

JANUARY 2024



# INVESTMENT FOR GROWTH

A REVIEW OF FOREIGN DIRECT  
INVESTMENT FRAMEWORKS  
IN THE PACIFIC

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**PSDI** | THE PACIFIC  
PRIVATE SECTOR  
DEVELOPMENT  
INITIATIVE

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## ABBREVIATIONS

ADB	-	Asian Development Bank
BIT	-	bilateral investment treaty
COVID-19	-	coronavirus disease
CRM	-	customer relationship management
DMC	-	developing member country
FDI	-	foreign direct investment
FET	-	fair and equitable treatment
FIA	-	Foreign Investment Act
G20	-	Group of Twenty
GATS	-	General Agreement on Trade in Services
GDP	-	gross domestic product
ICSID	-	International Centre for Settlement of Investment Disputes
IIA	-	international investment agreement
IMF	-	International Monetary Fund
ITS	-	investor tracking system
IP Act	-	Investment Promotion Act 1992 (PNG)
IP Regulations	-	Investment Promotion Regulations (PNG)
IPA	-	PNG Investment Promotion Authority
IPI	-	investment promotion intermediary
MCILI	-	Solomon Islands Ministry of Commerce, Industry, Labour and Immigration
MFN	-	most-favored nation
MSMEs	-	micro, small, and medium sized enterprises
New York Convention	-	United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards
NIPS	-	national investment policy statement
ODA	-	official development assistance
OECD	-	Organisation for Economic Co-operation and Development
PACER Plus	-	Pacific Agreement on Closer Economic Relations Plus
PNG	-	Papua New Guinea
TIP	-	treaty with investment provisions

UNCTAD	–	United Nations Conference on Trade and Development
VFIPA	–	Vanuatu Foreign Investment Promotion Authority
WTO	–	World Trade Organization

## CURRENCIES

In this report, “\$” refers to United States dollars, unless otherwise stated.

<b>F\$</b>	Fiji Dollar
<b>NZ\$</b>	New Zealand Dollar
<b>K</b>	Papua New Guinea Kina
<b>SI\$</b>	Solomon Islands Dollar
<b>ST</b>	Samoa Tala
<b>T\$</b>	Tonga Pa’anga
<b>Vt</b>	Vanuatu Vatu

## A. EXECUTIVE SUMMARY

**Foreign direct investment (FDI) can be a powerful driver of economic and human capital development.** However, capturing these benefits requires several interconnecting parts of an overall framework that is designed to efficiently and effectively attract, retain, and assess FDI. As countries in the Pacific seek ways to improve economic growth and reduce poverty, FDI can be used to overcome or alleviate many constraints to private sector growth, including limited access to capital, remoteness from markets, and underdeveloped human capital and technical know-how. Achieving economic growth is particularly important as countries seek to recover from the economic damage caused by the coronavirus disease (COVID-19).

**This study reviews the FDI frameworks in Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, and Vanuatu.** The five main areas being reviewed in this study are FDI entry, investment guarantees and obligations, foreign investor residence, FDI monitoring and reporting, and investment promotion. These factors are considered the most directly relevant factors for the attraction, retention, and assessment of FDI under the broader investment climate. A detailed review of sectoral and other crosscutting policies and laws is beyond the scope of the study.

**The importance of FDI varies substantially across study countries, but all countries could improve their FDI frameworks.** FDI is more prominent in the economies of Vanuatu and Solomon Islands, with FDI inflows as a percentage of gross domestic product higher than the other study countries, and generally higher than fellow lower middle income countries. PNG has a unique experience with large inflows and outflows of FDI (largely attached to the extractive resources cycle), but as a percentage of gross domestic product often trails smaller Pacific economies. Samoa and Tonga receive smaller volumes of FDI, but benefit from larger flows of remittances.

**In the Pacific, FDI has contributed substantially to the development of key export sectors, diversification of economies, promotion of competition, and improvement of citizen employment opportunities.** Despite these benefits, all study countries can be described as more dependent on foreign aid than on foreign investment. While aid can be an important catalyst in development, there are limits to what it can achieve. If countries wish to continue their progress towards more sustainable economic growth, well-considered reforms to FDI frameworks and the broader investment climate are necessary.

**Across the study countries, there is no one standout performer, but there are areas in which individual countries demonstrate better practice.** Study countries face the same fundamental challenges in configuring their FDI frameworks. There are instances of FDI framework reform in the Pacific, however, that other countries may wish to emulate. Further, there are examples of convergence towards better regional practice (e.g., increasing efficiency of certification laws); common constraints (e.g., unclear strategic investment policy); new areas of better practice (e.g., enhanced access to international commercial arbitration); and continued inefficiencies (e.g., use of reserved activities).

**A fundamental issue is that, in all study countries, FDI policies do not adequately establish a strategic approach to harnessing foreign investment.** Better practice is for high-level national development goals to be connected to a tangible policy for foreign investment. The strategic use of FDI to achieve national development goals or specific economic aspirations is generally weak. While study countries have developed some elements of strategy, particularly in the context of national trade policies, gaining more from foreign investment may require additional consideration by governments and the private sector. To provide a common approach for understanding the current composition, strengths, and weaknesses of the investment climate of most study countries, the first step for them is to draft or update their national investment policy statements (NIPS).

**Front-end systems for screening investment are largely functional across the study countries, with quicker, nondiscretionary certification processes becoming the norm.** Solomon Islands, Tonga, and Vanuatu demonstrate better practice in this respect, with strong indications from PNG and Samoa that they are open to reform. While it is preferable for countries to have no separate screening of incoming FDI (like the system Fiji is adopting) and use improved data collection and monitoring strategies to maintain oversight, it is acknowledged that this is a step change in approach, which may not be feasible in the short to medium term. Thus, the improvement of certification systems should remain a priority for governments, but this should be performed in conjunction with other FDI framework improvements, such as the enhancement of a strategic investment policy and investment promotion activities.

**Current practices in relation to reserving and restricting activities from foreign investment are concerning.** Countries have a right to regulate to promote domestic interests; however, they need to do so in good knowledge of the likely costs and benefits of this intervention. If reserving or restricting economic activities remains a prominent feature of FDI frameworks in study countries, it will be important to use these controls in targeted ways that result in minimal economic disruption. There are several issues with current approaches:

- **Too many activities are listed.** All countries list too many reserved or restricted activities, ranging from Vanuatu (41) to Tonga (11), which can create an unwelcoming perception among foreign investors. Concerningly, there are also indications in some countries such as PNG and Solomon Islands that the prevailing policy is to expand the number of reserved and restricted activities.
- **A disconnect exists between policy objectives and restrictions.** Regulators indicated that the policy objective of restricting investment was often to achieve tangentially relevant objectives, such as protecting micro, small, and medium-sized enterprises and promoting citizen participation in export markets. There is little evidence that the processes that were undertaken to review restrictions credibly consider the reasons behind market failures, complement effective supporting policy (e.g., support services for micro, small, and medium-sized enterprises), or undergo regular review.
- **The restriction of some activities is neither strategic nor beneficial.** Some activities are restricted to appease domestic interests, as they would be inherently unattractive to foreign investors (e.g., small handicrafts). Conversely, some key export activities are reserved or restricted without an effective supporting policy to grow local participation in export industries.

**No study country explicitly provides investors with investment guarantees that meet international standards.**

The inherent vulnerabilities in study economies (e.g., natural disasters, remoteness, and small market size) as well as less-efficient investment climates make them riskier for investment. Thus, it is important for governments to provide international standard investment guarantees which increase foreign investor confidence in managing risks. While study countries generally treat foreign investors fairly as a matter of practice, no study country in its investment law offers explicit guarantees that meet international standards. These guarantees are fragmented across investment laws, international investment agreements, and other investment-related instruments. The participation of all study countries (except PNG) in the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) may be a catalyst for improvement in the explicit guarantees that are provided to foreign investors.

**The ability for foreign investment owners (or their designated representatives) to reside in the host country of their investment is not uniform.** Without the ability to manage an investment themselves (or through someone they trust), foreign investors are less likely to invest and reinvest in an economy. In general, immigration systems in study countries do not sufficiently distinguish between foreign investors and foreign workers, and impose additional requirements (such as work permits) which make it harder to invest. Investors should be regarded as employment creators rather than “takers”. Vanuatu has demonstrated better practice in providing a streamlined means for foreign investment owners to obtain in-country residence permits, and Solomon Islands has a credible legal framework for issuing residence permits. However, practices can be improved across all study countries to reduce the administrative

burden on foreign investors, promote consistency of treatment for owners of foreign investments and their representatives, and provide greater certainty of residence.

**Monitoring and evaluation of FDI's contribution to national economies is an important aspect of FDI frameworks, which is often overlooked by study countries.** FDI can be a sensitive issue in Pacific countries, and it is often necessary to demonstrate the positive economic contribution of FDI to justify the resources involved in its facilitation. However, the practical ability of governments in study countries to assess the impact of FDI is generally lacking and, even where information is being analyzed, it is not being used to its full benefit to inform policy. PNG and Solomon Islands show better practice in having more advanced information technology systems that can analyze flows, but further work is needed to enhance data credibility. As other study countries implement legal reforms, better monitoring systems can help countries review the contribution of investment and make necessary policy adjustments on an ongoing basis.

**Investment promotion remains a key challenge for all study countries.** In the absence of clear government expectations about the role and contributions of FDI, investment promotion agencies do not have sufficient guidance to market their countries to the world effectively. This has resulted in promotion activities being largely untargeted, and investor services being reactive to investor enquiries. PNG and Vanuatu demonstrate greater capacity to undertake investment promotion activities, with explicit investment promotion mandates in addition to regulatory and other responsibilities. Vanuatu in particular has made strong progress in providing up-to-date, useful, and detailed information to investors on their website. Samoa, Solomon Islands, and Tonga undertake this function as part of general government ministry work and do not currently engage in active investment promotion. If a study country wishes to seek foreign investment more aggressively, it would be preferable to first address any lack of quantifiable FDI goals and develop an investment promotion strategy.

## B. ABOUT THIS STUDY

### Study aims and audience

This study provides a foundation for senior officials and policy makers to conceptualize and assess FDI frameworks in medium-sized Pacific countries. The framework identifies five factors of the overarching investment climate that are typically most relevant to the attraction, retention, and assessment of FDI. The framework is based on global better practice, but tailored to reflect the economic, policy, and legislative settings of Pacific countries. FDI frameworks are not always intuitive, and “zooming out” to gain a holistic understanding is a valuable first step in understanding how they work to attract, retain, and assess the benefits of investment.

It is important that the purpose of the study is not to advocate for countries to uncritically throw open their doors in an investment “free-for-all”. The governments of the study countries are sovereign and are responsible for navigating a spectrum of policy objectives and community expectations towards development. This study helps the governments in this exercise by providing a more expansive way to consider the advantages and disadvantages of investment, connect investment policy to national development priorities, and efficiently configure policy and legal settings.

An additional objective of this study is to encourage the Pacific developing member countries (DMCs) of the Asian Development Bank (ADB) to compare their FDI frameworks to each other. Countries in the region often compare themselves to economies such as Australia, New Zealand, or economies in Asia. This can come at the cost of the diffusion of context-appropriate systems and practices between close neighbors, who often experience similar challenges and successes.

Frameworks to promote FDI should be based on fundamental principles. However, the way these principles are expressed within FDI frameworks should work for both the country and foreign investors. Given the region’s increasing focus on economic development and trade and economic integration, the need for Pacific countries to share knowledge on how to attract and retain investment for the benefit of their citizens is critical.

### Participating study countries

This study assesses the FDI frameworks of 5 of the ADB’s 14 Pacific DMCs:<sup>1</sup> PNG, Samoa, Solomon Islands, Tonga, and Vanuatu. These countries represent the top sovereign recipients of FDI inflows of the Pacific DMCs, with the exception of Fiji. While Fiji was invited to participate in the study, the Government of Fiji did not elect to proceed. Any future iterations of the study may expand to other countries in the region.

### Key concepts

#### *FDI framework*

The institutions—the “rules of the game”<sup>2</sup>—affecting investment must be designed to attract and capture the positive aspects of investment.<sup>3</sup> In the context of the five study countries, the FDI framework constitutes the primary institutions that are affecting the attraction, retention, and assessment of FDI. This includes:

- national development plans and similar documents;
- applicable policies, strategies, international investment agreements, and laws;
- sectoral policies; and
- crosscutting policies and laws that impact FDI.

### *Foreign direct investment*

For consistency, this study adopts the broad definition established by the Organisation for Economic Co-operation and Development (OECD) that “FDI reflects the objective of establishing a lasting interest by a residence enterprise in one economy (direct investor) in an enterprise (direct investment enterprise) that is residence in an economy other than that of a direct investor.”<sup>4</sup> The “lasting interest” is generally considered to be long term and to involve a degree of management influence, although the interpretation of “management influence” is often context-specific.<sup>5</sup> Investment can include investment by companies, partnerships, sole traders, or other legal entities in new or existing enterprises. It is acknowledged that national frameworks in the study countries adopt definitions that focus on the nationality of the investor.

### *Indirect investment*

Indirect investment contrasts with direct investment in that the investment has less of a character of lasting investment or control. Some types of investment are typically considered indirect investment, such as ownership of shares or other equity securities without management control, or licensing agreements. Typically, this type of investment is not addressed in investment laws. Other legal frameworks, such as securities law, often govern these arrangements.

### *Investment climate*

A country’s investment climate refers to a broad range of factors which affect the ability or likelihood of investment being established. The investment climate is typically understood to refer to both domestic and foreign investment. Often, details concerning a country’s investment climate will be contained in a national investment policy statement (NIPS) or other investment promotion materials.

While there is no set definition, a number of factors is relevant to investment climate, including: macroeconomic policy framework, trade policy, taxation, foreign exchange, land, and labor; political risk and governance; government administration and management of the regulatory process related to commercial activities; legal and judicial frameworks and their ability to protect property, settle disputes, and enforce contracts; and the quality of physical infrastructure (i.e., power, transport, and water) and institutional infrastructure (i.e., educational and banking systems and civil society institutions).<sup>6</sup>

### *Investment policy*

Investment policy generally refers to a government’s stated position towards investment in its economy. While there are no prescriptive standards, typically investment policy determines who can invest, in which areas, and under what conditions.<sup>7</sup> While some countries may have a consolidated “investment policy”, investment policies can also refer to policies and laws that relate to government expectations or goals for investment, as well as specific rules concerning investment. This study looks at elements of overall investment policy that are most directly relevant for the attraction, retention, and assessment of FDI generally.

While this study conceptualizes “investment law” separately from “investment policy”, there are overlaps between these concepts in practice because law is an expression of policy. All study countries have a foreign investment law which regulates the admission of FDI and part of the conditions under which they may enter, establish, and conduct themselves. Additional conditions may be found under law or policies which are not directly related to the investment law itself. Better practice is for policy to underpin law, and any changes to legislation should be made on a solid and consultative policy basis. Investment law is treated separately in this study to enable a more targeted assessment of better practice.

The full study methodology can be found in **Appendix 1**.

# 1. FOREIGN DIRECT INVESTMENT IN THE PACIFIC

## Benefits of FDI for the Pacific

**The need for private sector-led growth in Pacific countries to promote economic growth, raise employment, and reduce poverty is well accepted.**<sup>8</sup> Pacific economies, however, are characterized by factors which can make this growth slower or more fragile, including small markets, physical remoteness, higher cost bases, susceptibility to natural disasters, limited access to capital, and heavy (and often inefficient) state involvement.<sup>9</sup> This does not mean that Pacific countries should resign themselves to lower growth, but rather that countries may need to be more resourceful and strategic in how they develop their economies.

**Well-managed FDI frameworks can encourage wanted investment and, in turn, accelerate private sector development.** FDI is associated with direct and indirect benefits that address common private sector growth issues in the region, including the limited availability of capital, outdated technology, underdeveloped human capital, poorer corporate governance standards, and limited integration into global value chains. Pursuing a purely domestic-led growth agenda is unlikely to be feasible in most Pacific countries, given their smaller size and limited resources. Developing frameworks, which better attract and retain quality investment on terms acceptable to both government and investors, thus can be a powerful tool for countries to foster greater private sector participation in the economy.

**Of particular relevance to Pacific countries is the contribution that FDI can make to export competitiveness.** As smaller economies, the development of export industries in areas of competitive advantage is an important strategy for economic growth. Pacific countries are highly exposed to international trade, with a strong export focus in a narrow range of products such as agriculture and forestry (e.g. copra, coconut oil, cocoa, fresh and canned fish, timber), minerals (e.g. crude petroleum, petroleum gas), and tourism.<sup>10</sup> Countries have increasingly signed up to international trade agreements and benefited from preferential trading arrangements for key exports in the hope of driving economic growth.<sup>11</sup> However, fully exploiting these advantages can be hampered by factors, including limited capital, know-how, technology, and international connections. Overcoming these challenges may be possible through well-considered FDI framework reforms which encourage the contribution of foreign investors.

**Capturing maximum benefit from FDI requires ongoing improvements to the overall investment climate, which will help both domestic and foreign investors.** FDI generally has an immediate, positive effect on inputs (e.g., flow of capital, employment), but capturing the flow-on effects that benefit the whole economy is easier when the fundamental factors which hamper business operation and growth are addressed.<sup>12</sup> While individual Pacific economies have progressed pro-private sector reforms, more work is needed to reap the broader benefits of FDI in line with global averages. One study found that an increase in the ratio of FDI to host gross domestic product (GDP) of 10% can be expected to create higher growth of about 2%, but the effect in the Pacific is lower, with an average of 0.1%–0.4% GDP growth.<sup>13</sup> Continued improvements to address key constraints in the investment climate, such as infrastructure, education, inefficient regulation, anti-competitive practices, and macroprudential stability, are needed to get the most “bang for buck” out of FDI, as well as empower and support domestic investors.



## Comparative importance of FDI in Pacific countries

**Of the study countries, FDI<sup>14</sup> is comparatively a more important feature in the economies of Vanuatu and Solomon Islands.** Papua New Guinea (PNG) has the highest overall inflow at \$620 million; however, its FDI is calculated differently from other study countries<sup>15</sup> and is accordingly not directly comparable. The contribution of FDI to GDP for PNG is generally lower than that for Vanuatu and Solomon Islands. Over the 2016–2021 period, Vanuatu received net FDI inflows at \$205 million, followed by Solomon Islands at \$199 million. Vanuatu also has the highest level of FDI as an overall percentage of GDP, followed by Solomon Islands. Both countries generally evidence a higher contribution of FDI as a percentage of GDP than other lower middle-income countries for most years.

**FDI contributes comparatively less to Samoa and Tonga.** The contribution of FDI as a percentage of GDP is less for both countries than the average for lower middle-income countries (in the case of Samoa) and upper middle-income countries (in the case of Tonga). Both countries lag behind their Melanesian neighbors in net inflows. Samoa received \$40 million over the 2016–2021 period and Tonga received \$46 million.

**Across the region, FDI is even more comparatively important for Fiji and the Pacific islands small states.** Fiji is the standout in the region, with a history of aggressively pursuing FDI. Fiji attracted \$2.21 billion of incoming FDI in the 2016–2021 period, and consistently has above-average FDI as a percentage of GDP for upper middle-income economies. Fiji has engaged in sweeping FDI reforms in recent years, including the abolition of foreign investment certification<sup>16</sup> and a heavy emphasis on investment promotion in priority sectors.<sup>17</sup> The contribution of FDI to the GDP of Pacific islands small states<sup>18</sup> is also comparatively more than the study countries. However, this may be attributable to the smaller size of their economies, rather than more functional FDI frameworks.

**Table 1: Foreign Direct Investment Inflows (\$ million)**

	2016	2017	2018	2019	2020	2021	Total
Papua New Guinea	-40*	-180*	306*	335*	112*	87**	<b>620</b>
Samoa	3	9	17	-2	4	9	<b>40</b>
Solomon Islands	39	43	25	33	9	50**	<b>199</b>
Tonga	9	14	15	2	4	2**	<b>46</b>
Vanuatu	44	38	37	35	25	26**	<b>205</b>
Fiji	390	386	471	321	241	401	<b>2,210</b>

\* asset/liability basis, \*\*estimates

Data source: United Nations Conference on Trade and Development. 2022. *World Investment Report 2022*. Geneva.

**The Pacific region has a modest number of international investment agreements.** Most Pacific countries<sup>19</sup> are members of the World Trade Organization (WTO), and parties to a limited number of treaties with investment provisions (TIPs) (e.g., the South Pacific Regional Trade and Economic Co-operation Agreement). Fiji, PNG, Solomon Islands, and Vanuatu are negotiating the Melanesian Spearhead Group Free Trade Agreement to promote intraregional trade and extend to trade in services; however, limited progress has been made. Bilateral investment treaties (BITs) are not a prominent feature in most study countries: PNG has five active agreements<sup>20</sup> and Tonga has one.<sup>21</sup>

**More substantive liberalization efforts have been achieved with the Pacific Agreement on Closer Economic Relations Plus (PACER Plus), which entered into force on 13 December 2020.** PACER Plus is currently active

between the Cook Islands, Australia, Kiribati, New Zealand, Niue, Samoa, Tuvalu, Solomon Islands, Tonga, and Vanuatu. PNG and Fiji have so far declined to join PACER Plus. Most relevantly, PACER Plus covers trade in goods and services, and features a dedicated investment chapter which is likely to address the majority of direct investment in the parties. PACER Plus covers a number of matters including market access, investment protections, and transparency obligations among the parties. Significant technical assistance has been made available by the governments of Australia and New Zealand for the implementation of PACER Plus, and parties have strong governance arrangements<sup>22</sup> to promote a coordinated work program for reforms in support of the agreement. This intra-regional cooperation is a good opportunity to continue to develop and share institutional arrangements that are tailored to the unique investment needs of the region. Enthusiasm for the implementation of PACER Plus provides the strongest push in recent decades by many Pacific countries to pursue investment climate reforms.

**Despite the importance of FDI to many Pacific economies, the contribution of official development assistance and personal remittances outstrips FDI in all Pacific countries except Fiji (Table 3, page 4).** With few exceptions, official development assistance (ODA) is a higher percentage of gross national income in all study countries, often by a large amount. Samoa and Tonga show more reliance on overseas remittances than the Melanesian countries. In the case of Tonga, remittances make up 34–46% of GDP. Assessments of the impacts of ODA and personal remittances on development are often positive,<sup>23</sup> which may lead to conclusions that, to develop export industries, FDI is not required. However, overreliance on ODA and personal remittances can, in some circumstances, remove the will to reform the investment climate<sup>24</sup> and deny countries the benefits that are associated with private sector-led economic growth.

### The impact of COVID-19 on FDI

**FDI can be vulnerable to economic and other shocks, such as disasters.** Widespread coronavirus disease (COVID-19)-related restrictions on travel, internal movement, and other measures, such as social distancing, reduce the practical ability of investors to undertake key activities such as pre-investment scoping and investigation, labor acquisition, and enterprise management.<sup>25</sup> Globally, the effect on FDI has been profound, with flows in 2020 falling by 35% to \$1 trillion, the lowest levels since 2005.<sup>26</sup> Greenfield investment<sup>27</sup> decreased to the lowest levels recorded.<sup>28</sup>

**Table 2: Gross Domestic Product Growth (%)**

	2020	2021	2022	2023
Papua New Guinea	-3.5	-0.2	3.5	4.9
Samoa	-3.1	-7.1	-5.3	2.0
Solomon Islands	-3.4	-0.5	-4.2	3.0
Tonga	0.5	-2.7	-2.0	3.7
Vanuatu	-5.0	1.0	2.0	4.0
Fiji	-17.2	-4.1	11.7	8.5

Source: Asian Development Bank. 2022. *Asian Development Outlook 2022 Update*. Manila.

**The Pacific has been heavily affected by COVID-19.** The narrow economic base of many Pacific economies, particularly those with a focus on tourism, has highlighted their vulnerabilities to external shocks. Longer-than-expected travel restrictions further adversely affected growth prospects in the region. The International Monetary Fund (IMF) forecasts have indicated that, on a regional level, real GDP per person will not reach the 2019 levels until at least 2025, prompting warnings of a “lost decade” of economic opportunity and poverty reduction.<sup>29</sup> While its exact economic effects remain uncertain, the Asian Development Bank (ADB) has forecast relatively weak economic growth in the post-COVID-19 recovery period.

**While short- to medium-term priorities will focus generally on government and donor support for local economies, the longer-term need to promote and accelerate private sector growth will be vital to ensure**

**sustainable economic recovery.** Using FDI under a well-considered and supportive institutional framework can help recover lost ground and provide a solid foundation for the future of Pacific economies. FDI could also be used as a means to diversify the economic bases of Pacific countries to provide greater economic resilience. However, in order to meet this potential, serious consideration to FDI reforms with ongoing business enabling environment reforms is required.

**Table 3:** Regional Comparison – Foreign Direct Investment Net Inflows as a Percentage of Gross Domestic Product (Foreign Direct Investment); Net Official Development Assistance Received as a Percentage of Gross National Income (Official Development Assistance); and Personal Remittances Received as a Percentage of Gross Domestic Product (Remit)

	2017			2018			2019			2020			2021		
Country	FDI	ODA	Remit	FDI	ODA	Remit	FDI	ODA	Remit	FDI	ODA	Remit	FDI	ODA	Remit
Papua New Guinea	-0.79	2.39	0.02	1.27	3.36	0.02	1.36	2.74	0.12	0.47	4.47	0.01	-0.04	4.63	0.04
Samoa	1.04	15.86	15.34	1.90	15.08	16.80	-0.24	14.11	17.00	0.51	19.87	23.50	1.05	10.04	29.44
Solomon Islands	2.92	12.97	1.11	1.55	12.26	1.23	2.02	13.97	1.57	0.58	13.63	1.79	1.71	15.99	3.13
Tonga	-1.22	18.22	34.45	4.07	18.78	37.52	0.34	19.51	37.18	0.87	30.96	39.30	0.06	22.82	46.22
Vanuatu	4.51	15.04	12.20	4.11	13.91	15.62	3.96	12.86	20.19	2.72	15.63	16.02	4.32	15.88	21.74
Fiji	7.24	2.96	5.21	8.40	2.32	5.20	5.88	2.56	5.23	5.35	4.62	7.08	9.54	14.96	9.16
Pacific island small states*	5.37	9.98	7.42	6.14	9.85	7.88	4.42	9.74	8.52	3.67	14.84	9.96	5.84	17.12	12.52
Lower middle income**	1.88	0.64	4.26	1.80	0.61	4.45	1.86	0.59	4.42	1.83	0.80	4.61	1.66	0.71	4.45
Upper middle income***	1.82	0.08	0.64	1.97	0.07	0.63	1.72	0.06	0.62	1.69	0.09	0.67	2.23	0.07	0.68

\*Pacific Island Small States: Federated States of Micronesia, Nauru, Kiribati, Marshall Islands, Palau.

\*\*Lower-middle income economies: Papua New Guinea, Samoa, Solomon Islands, Vanuatu

\*\*\*Upper-middle income economies: Fiji, Tonga

Source: World Bank. World Development Indicators.

## 2. FOREIGN DIRECT INVESTMENT POLICY

**An effective investment policy is required for a country to achieve the economic and development benefits that are associated with FDI.** International experience has shown that, without appropriately designed enabling policy, the attraction and retention of FDI on terms that are consistent with national priorities are unrealistic. Pacific economies generally pursue export-oriented strategies to achieve economic and development objectives, which typically include substantial involvement by foreign investors. As the importance of FDI to national development in the Pacific is comparatively higher than in other regions, there is a stronger argument that “investing in” investment policy should be a government priority.

**Given that the investment climate is the sum of interconnecting elements and strategic decisions, “investment policy” is not a single, stand-alone policy document.** Rather, investment policy is the layering of different expressions of policy which, as whole, provide strategic direction to investment, the rules governing distinct areas (e.g., investment certification, taxation, land use), and how systems function. These expressions of policy include strategy documents, policies, laws, and other regulations, as well as the actual administration of systems and cross-government coordination mechanisms. In an ideal world, these policy expressions are strategic, consistent, and efficiently administered. However, given the breadth of investment policy, achieving a high-functioning overall framework can be a challenge for country policymakers. For the purposes of this study, we focus largely on existing general investment policy, investment laws and regulations, other laws and regulations that affect the FDI framework, and investment promotion strategies.

**A useful typology for policymakers when considering investment policy at the domestic level<sup>30</sup> consists of several layers:<sup>31</sup>**

- **Strategic:** the high-level approach to investment (both domestic and foreign), and its link to national development aspirations. While beyond the scope of this study, developments in investment policy in recent years have emphasized the role of investment policy promoting sustainable economic development, in reference to the United Nations Sustainable Development Goals.<sup>32</sup>
- **Normative:** the specific rules governing the functioning of the investment climate. However, for the purposes of this study, the factors that are identified comprise the “FDI framework”, which more directly affects foreign investors.
- **Administrative:** how systems are administered to promote investment.

**Table 4 (page 6) maps these aspects against key policy questions.** This study generally concentrates on how the normative aspects of investment policy are addressed across the study countries. However, all aspects are relevant.

### Overview

**Study countries demonstrate several of the elements of investment policy that are required for a highly functional FDI framework.** However, as discussed throughout this study, there are some elements which are not sufficiently developed, present, efficiently designed, or coordinated to gain maximum benefit. This does not mean that the FDI framework and broader investment policy need to be wiped clean. Rather, it means that study countries should make informed choices about how they envision FDI strategically contributing to their economies, and then how normative policy and administrative practices should be designed to support this outcome.

**A common challenge is that study countries do not generally have strong conceptual links between strategic investment policy and FDI frameworks.** All study countries have national development plans and other associated documents which articulate their medium- and longer-term visions for development. Some industrial policies seek to

**Table 4: Mapping of Key Policy Questions to Strategic, Normative, and Administrative Policy**

Strategic investment policy		
Policy questions <sup>a</sup>	Addresses	Relevant to study chapter
<p>How will investment (both domestic and foreign) be used to achieve development goals?</p> <p>What types of investment is the country seeking to target?</p> <p>How open is the country to investment?</p>	<p>How countries consider matters including the role and contribution of FDI, private domestic, and public investment to achieve strategic goals in policies such as national development strategies and industrial or sectoral development strategies.</p> <p>What type of investment the country is seeking to attract, and how it plans to do so.</p>	<p>FDI entry</p> <p>Investment promotion</p>
Normative investment policy		
Policy questions <sup>a</sup>	Addresses	Relevant to study chapter
<p>Who can invest in the country?</p> <p>Under what conditions can investors enter the country and operate?</p> <p>Are there restrictions on investment generally or in certain activities?</p>	<p>The rules and regulations affecting the admission, operation, and assessment of FDI.</p> <p>The relationship with other policies and regulations involving trade, taxation, intellectual property, competition, labor market regulation, environmental policies, social issues, and access to land.<sup>b</sup></p>	<p>FDI entry</p> <p>Investment guarantees and obligations</p> <p>Investor residence in country</p> <p>FDI monitoring and reporting</p>
Administration of investment policy		
Policy questions <sup>a</sup>	Addresses	Relevant to study chapter
<p>How are investors treated in the establishment and operation of FDI?</p> <p>How are components of the FDI framework coordinated to work efficiently?</p> <p>How are investors involved in proposed changes to rules?</p> <p>How will the government work to improve the investment climate?</p> <p>How is the contribution of FDI tracked and evaluated?</p>	<p>The administration of investment and related policy by responsible agencies should be fair and impartial, including the assessment of policy performance.</p>	<p>FDI entry</p> <p>Investment guarantees and obligations</p> <p>Investor residence in country</p> <p>FDI monitoring and reporting</p> <p>Investment Promotion</p>

a. List of policy questions is not exhaustive.

b. United Nations Conference on Trade and Development. 2015. *Investment Policy Framework for Sustainable Development*. Geneva.

Source: Pacific Private Sector Development Initiative.

connect the use of FDI in individual sectors to attain these goals. However, this is not routinely done.<sup>33</sup> Trade policy is making the most relevant strategic connections in study countries. However, the detail and extent of these connections differ. Trade policy frameworks have evolved into being sweeping statements of intent to comprehensively address constraints to trade competitiveness. As such, they have an overlapping role with strategic investment policy, although the focus on trade competitiveness may not serve the same direct purpose as investment policy. Vanuatu and Solomon Islands have the most meaningful considerations in their trade policy but there are mentions in PNG and Tonga, as well as consideration in the Samoan Trade, Commerce, and Manufacturing Sector Plan.

**Existing policy positions concerning the strategic use of FDI and industrial policy generally do not connect to investment promotion.** No study country has a fully developed investment promotion strategy which identifies priority sectors and investor locations. Linkages between strategic investment policy, industrial policy, and the operations of investment promotion intermediaries (IPIs) are missing components in all study countries. As discussed in **Chapter 7 [Investment Promotion]**, this lack of direction in investment promotion limits the utility of the overall FDI framework.

**At the normative policy level, all study countries answer the fundamental questions “who can invest” and “under what conditions”.** Countries are generally quite open to investment and have clear rules for FDI entry (discussion is in **Chapter 3 [FDI Entry]**), even if the rationale behind some rules, particularly around market access restrictions, may be questionable. **Chapters 4 [Investment Guarantees and Obligations], 5 [Foreign Investor Residence in Country], and 6 [Foreign Investment Monitoring and Reporting]** provide further analysis of the policy settings informing the FDI framework.

**Evidence shows mixed results regarding study countries’ administration of investment policy.** As a general proposition, the overall openness of countries’ FDI frameworks filters down to administrative practices in which investors are treated fairly (or, where there are aspects of discrimination, these are communicated ahead of time). However, efficiency in the administration of expressions of investment policy could be improved in all study countries.

**The lack of quantifiable investment policy goals is a major issue for study countries that are seeking to accelerate economic growth through FDI.** Tonga is an exception to this general observation, with a defined FDI attraction target in its trade policy. Dependent on country economic strategies, it may be suitable for study countries to have overarching FDI goals with a limited number of sector-specific sub-goals. Sub-goals should be identified in coordination between the relevant sectoral authority, the IPI, and other interested stakeholders; and should identify the mechanism by which to assess performance. However, the need for targets must be paired with a commitment to regularly reviewing progress. As such, regulators’ ability to collect and analyze credible data (**Chapter X**) will increase in importance as better guidance is provided for the FDI framework.

**All study countries, except PNG, have clear divisions of policy and operational responsibility. However, cross-government efforts to coordinate reforms to FDI frameworks and broader investment climate continue to founder.** This may partially stem from a limited understanding across study country bureaucracies of the interconnectedness of FDI frameworks. Without a shared understanding of the FDI framework and clearer strategic policy objectives, there is little incentive for cross-government collaboration. This can increase the risk that policy developed in isolation will inadvertently impact a study country’s FDI openness. However, there are existing coordination mechanisms in study countries that may be suitable for fostering greater awareness and action on reform. Co-opting existing coordination bodies and functions in an expanded role could enable reform while avoiding the creation of additional bureaucracy. If FDI and investment climate reform are considered more of a priority, prior groups could be reinvigorated or new mechanisms created.

**It may not be necessary for study countries to commence a full policy process to develop a “national investment policy”.** A more pragmatic approach may be to build off existing policy expressions, address obvious gaps, and improve the efficient administration of the FDI framework. The recommended first step is adopting detailed NIPS that consolidate existing policy. Investment policy (specifically, normative policy relating to the FDI framework) is



spread across various policies and laws. This can make understanding and navigating requirements difficult for foreign investors. Accordingly, countries that have up-to-date, detailed NIPS provide investors with the best visibility of their requirements. In this respect, Vanuatu is the clear leader among the study countries, and it is highly recommended that other countries follow its example.

**Depending on study country priorities, subsequent steps could include:**

- **Articulating strategic investment policy.** Create a more detailed NIPS or create a shorter policy that connects national development priorities, industrial policy, and normative policy relating to the FDI framework.
- **Identifying measurable targets for FDI attraction and impact.** This would provide better direction for overall investment policy, and enable countries to obtain more benefit from FDI in line with development priorities.
- **Assessing and reforming parts of the FDI framework.** Undertake detailed diagnostic work to determine appropriate reforms (potentially across other elements of the investment climate) to improve the attractiveness of the country to investment.
- **Identifying appropriate mechanisms for cross-government coordination.** Adapt existing mechanisms or create new ones to foster a shared understanding of government expectations of FDI, and coordinate improvements to the FDI framework.
- **Prioritizing investment promotion,** if the country views this as a priority.

## Strategic investment policy

**Pacific developing countries routinely have high-level national development and economic strategies, which define the country's vision for the medium-to-long term.** National development strategies typically outline economic development objectives, but also include objectives relating to human capital development, social development, environmental protection, governance, and external affairs, among others. Better practice is for investment policy to be aligned to the goals outlined in these strategies. These national development policies can help focus policymakers' minds on:

- how FDI can be used strategically to help achieve higher level development aspirations; and
- identifying various competing public interest factors, which can be incorporated into policy and system design at both the normative and administrative levels.

**Better practice also entails the alignment of investment policy with industrial policy.**<sup>34</sup> Industrial policy involves the intervention of governments in certain sectors to improve the chances of economic growth which would not otherwise have occurred.<sup>35</sup> In the Pacific context, industrial policies are commonly used for sectors in which countries enjoy a competitive advantage, such as tourism, fisheries, agricultural products, mining, and forestry. While the study does not consider industrial policy in detail, there is substantial opportunity for countries to better link industry policy priorities with their FDI framework.

**No study country has a stand-alone strategic investment policy. However, there are expressions of policy which may be viewed to partially serve similar purposes.** Clearer and more relevant policy connections tend to be made in countries with detailed trade policy frameworks. The development of trade policy frameworks across the Pacific has provided the additional benefit of enabling better statements of FDI openness for study countries. Issues often addressed in trade policies include investment promotion, general improvements to the business enabling environment, and targeting priority sectors. Issues such as encouraging local-foreign partnership, import substitution, investment incentives, and special economic zone development are discussed less frequently. Better examples of policy are evident in Tonga, Solomon Islands, and Vanuatu. Samoa does not have a trade policy framework. However, the country addresses some FDI matters in its Trade, Commerce, and Manufacturing Sector Plan. **In particular,** Vanuatu's trade policy framework makes extensive references to the importance of FDI to the Vanuatu economy, while PNG includes less-detailed statements in its trade policy.

**Strategic investment policy is important because it indicates where IPIs should target their investment promotion efforts.** While having general FDI openness and efficient systems for FDI admission, retention, and assessment is important, countries generally need to be more proactive in marketing their countries for investment. As discussed in **Chapter 7 [Investment Promotion]**, IPIs have reported that investment priorities are not well identified at the strategic level. This hampers IPI efforts to promote investment opportunities effectively or demonstrate value for money in their operations.

## Normative investment policy

**Normative investment policy has a stronger focus on the rules which are applied within an economy.** As such, they should be consistent with the overall strategic investment policy and, where applicable, complementary to priorities expressed in industrial policies. This is important particularly where countries are implementing restrictions or other conditions on FDI to achieve an economic development or other objective. For example, where a country is proposing to reserve a sector from FDI, it is preferable that it be grounded in a solid, strategic policy basis.

**The general position is that countries should adopt normative investment policy positions that are open to FDI and foreign investors.** In practical terms, FDI openness involves removing (or not instituting) barriers to the free flow of foreign investment. It is important to note, however, that very few countries place no additional requirements on foreign investment. Accordingly, the better practice is to avoid the imposition of unnecessary or inefficient restrictions, and identify upfront any special terms or requirements that apply to investors. Particular areas which are relevant include reserved or restricted sectors, discriminatory regulation at the sector level, foreign equity limits, FDI screening thresholds, restrictions on entry of foreign personnel, local content requirements, access to land, and preferential access to government procurement.<sup>36</sup> These matters are considered more fully in **Chapter 3 [FDI Entry]**, and **Chapter 5 [Foreign Investor Residence in Country]**.

**In general, study countries have adopted normative policy expressions that are open to investment in relation to the factors considered under the “FDI framework”.** These expressions include laws for investment certification and immigration, NIPS, crosscutting policy, and investment promotion policy. The core FDI certification laws, which govern the entry of foreign investment into study country economies, have also been shifting towards faster, more automatic authorization. Solomon Islands, Tonga, and Vanuatu are examples of post-reform systems, whereas PNG and Samoa are navigating reform processes currently.

**However, there are policy positions and practices which detract from the general position of FDI openness in study countries.** As outlined in **Chapter 3 [FDI Entry]**, and **Chapter 5 [Foreign Investor Residence in Country]**, the most prominent examples include practices around reserving activities from foreign investment, foreign exchange restrictions, access to land, and immigration restrictions.

## Administration of investment policy

**The ongoing implementation of investment policy affects the overall efficiency and impact of investment.** While strategic investment policy may articulate a strong vision for how investment will contribute to national development outcomes, and normative policy may adopt a high degree of openness, this alone is insufficient. Policy must be administered in a way which sets targets, reviews effectiveness, coordinates implementation across government, and maximizes the benefits of FDI impartially.



**Table 5: Investment Impact Indicator Methodology**

Area	Indicators	Details and Examples
<b>Economic value added</b>	Total value added	<ul style="list-style-type: none"> <li>Gross output (GDP contribution) of the new/additional economic activity resulting from the investment (direct and induced).</li> </ul>
	Value of capital formation	<ul style="list-style-type: none"> <li>Contribution to gross fixed capital formation.</li> </ul>
	Total and net export generation	<ul style="list-style-type: none"> <li>Total export generation. Net export generation (net of imports) is also captured by the value added indicator.</li> </ul>
	Number of formal business entities	<ul style="list-style-type: none"> <li>Number of businesses in the value chain supported by the investment. This is a proxy for entrepreneurial development and expansion of the formal (tax-paying) economy.</li> </ul>
	Total fiscal revenues	<ul style="list-style-type: none"> <li>Total fiscal take from the economic activity resulting from the investment, through all forms of taxation.</li> </ul>
<b>Job creation</b>	Employment (number)	<ul style="list-style-type: none"> <li>Total number of jobs generated by the investment, both direct and induced (value chain view), dependent and self-employed.</li> </ul>
	Wages	<ul style="list-style-type: none"> <li>Total household income generated, direct and induced.</li> </ul>
	Typologies of employee skills levels	<ul style="list-style-type: none"> <li>Number of jobs generated, by International Labour Organization (ILO) job type, as a proxy for job quality and technology levels (including technology dissemination).</li> </ul>
<b>Sustainable Development</b>	Labor impact indicators	<ul style="list-style-type: none"> <li>Employment of women (and comparable pay) and of disadvantaged groups.</li> <li>Skills upgrading, provision of training.</li> <li>Health and safety effects, occupational injuries.</li> </ul>
	Social impact indicators	<ul style="list-style-type: none"> <li>Number of families lifted out of poverty, wages above subsistence level.</li> <li>Access to basic goods and services at affordable prices, and expansion of goods and services offered.</li> </ul>
	Environmental impact indicators	<ul style="list-style-type: none"> <li>Greenhouse gas (GHG) emissions, carbon offset/credits, carbon credit revenues.</li> <li>Energy and water consumption and efficiency, presence of hazardous materials.</li> <li>Enterprise development in eco-sectors.</li> </ul>
	Development impact indicators	<ul style="list-style-type: none"> <li>Development of local resources.</li> <li>Technology dissemination.</li> </ul>

Source: United Nations Conference on Trade and Development. 2011. *Indicators for measuring and maximizing economic value added and job creation arising from private sector investment in value chains*. Report to the Group of Twenty (G20) Cannes Summit, November 2011.

### Targets, measurability, and reviews

**Investment policy at both the strategic and normative levels should have measurable targets, preferably for both investment attraction and impact.**<sup>37</sup> Measuring the progress of implementation against targets, as well as the overall outcomes of investment, should be undertaken.<sup>38</sup> Targets should be consistent with the overall investment policy goal, as well as any other articulated economic or human development objectives. Common targets for investment attraction include total value added or contribution to gross fixed capital formation. Table 5 reproduces the impact indicator methodology of the United Nations Conference on Trade and Development (UNCTAD) for the Group of Twenty (G20) Development Working Group, and provides additional indicators that are used globally.

**Regular reviews using sound principles ensure that policies are achieving their objectives.**<sup>39</sup> Investment policy is not “set and forget”, and it is important for policymakers to make necessary adjustments to improve the likelihood that the country will obtain benefit from FDI. This is important particularly where discriminatory entry or other measures are placed on investors (discussion is in **Chapter 3 [FDI Entry]**). For example, where restricting foreign investment in certain sectors is for domestic development reasons, it is important to determine whether the exclusion of foreign investment has resulted in local businesses becoming acceptably competitive.

**Robust systems to measure progress are necessary for quantifying the impact of FDI and enabling governments to reposition policy throughout the country’s development cycle.** Further discussion on country capacity to monitor attraction targets and articulate the impact of FDI is in **Chapter 6 [FDI Monitoring and Reporting]**.

**Of the study countries, only Tonga has a credible, measurable target for attracting foreign investment.** However, the target is outlined in its national trade policy, which does not appear to have been strongly communicated with the Ministry of Trade and Economic Development’s FDI Promotion and Facilitation Unit. This target is also not being regularly reviewed. Interviews with regulators and investment promotion officials in study countries indicated that informal targets are being conveyed infrequently through political statements, industrial policies, and informal directions. These targets are often insufficiently detailed to enable effective tracking or evaluation.

### Government roles and responsibilities

**Investment policy should clearly articulate roles and responsibilities across relevant agencies.** Investment policy is the sum of several moving parts, which are generally the responsibility of multiple government authorities. Poorly considered changes in one aspect of the overall framework can have cascading impacts on other components. Achieving policy consistency can be a challenge for developing countries<sup>40</sup> for reasons that include:

- **Siloed policy development.** Crosscutting and sectoral policy is often developed in isolation, with limited to no consultation across government or with the private sector.
- **Limited view of investment options.** Sectoral authorities who are seeking to address capital, skills, and technology deficits may not consider the relative merits of private, public, domestic, and foreign sources of investment.<sup>41</sup>
- **Limited technical skills.** Aspects of investment frameworks, such as international investment agreements (IIAs), can involve technical or niche knowledge, which is not shared across all agencies responsible for aspects of the FDI framework.
- **Inconsistent mandates placed in single agency.**<sup>42</sup> Some components of the FDI framework, such as investment regulation and investment promotion,<sup>43</sup> require different organizational cultures and skills. Placing inconsistent responsibilities within one agency can result in elements of the framework being inadequately managed.

**Responsibility for overall investment policy is generally clear across the study countries, particularly smaller countries where policy functions are concentrated in single agencies.** PNG has elements of overlap and ambiguity in the development of investment policy across several agencies, which may reflect the comparative complexity of investment policy in a larger economy. In general, there is a split between investment certification and promotion in commerce-related agencies, with IIAs being the responsibility of foreign affairs. As discussed in **Chapter 7 [investment Promotion]**, all study countries have combined investment regulation and promotion in single agencies to various extents which, in general, has led to an emphasis on regulation over investment promotion.

**No country has a dedicated coordination mechanism for investment policy generally or their FDI framework.** However, this may not be a binding constraint. Study countries adopt differing approaches to coordinating reforms across government. PNG and Solomon Islands previously used business environment reform committees, but these are now largely defunct, and similar reform is conducted in a more informal manner. Samoa, Tonga, and Vanuatu reported no specific mechanism that would serve this purpose. Interviews with regulators indicated that ongoing communication between agencies responsible for elements of the FDI framework can be weak, with policy reforms developed in isolation.

**Active committees that are attached to trade policy frameworks are active in PNG, Solomon Islands, Tonga, and Vanuatu.** Generally, while these bodies are not actively seeking to coordinate improvements to the FDI framework, they largely involve the government stakeholders who would be involved in coordinating reform efforts. If countries seek to prioritize reforms to the FDI framework without creating new structures, it may be suitable to investigate using trade policy mechanisms.

### *Impartially and fairly administer policies, laws, and systems relevant to FDI*

**The fairness and stability of the FDI framework and its administration becomes increasingly important for investors to manage risk, and for governments to fully realize the benefits of FDI.** Countries have a sovereign right to regulate<sup>44</sup> in the public interest (and, where needed, change regulations), but this must be balanced with fair treatment of foreign investors. Therefore, abrupt or opaque changes to policy can affect an economy's attractiveness to investment negatively. This negative effect can be compounded where investment is devalued or expropriated without compensation based on the country's actions. Countries with weak institutions tend to deter investors or attract investment from countries with similarly weak institutions,<sup>45</sup> so countries have an interest in improving their FDI frameworks to better attract quality investment.

**Generally, study countries act fairly and do not formally discriminate against foreign investors.** Common sources of discriminatory measures include access to land, government procurement, and access to government-subsidized finance. However, these are generally well-advertised to investors. However, as discussed in **Chapter 3 [FDI Entry]**, a particular issue of concern in all countries are the practices surrounding reserving and restricting activities for foreign investment. The accessibility and efficiency of these systems (such as processes for appealing immigration decisions and accessing dispute resolution pathways) are often questionable and detract from regulatory quality. Further discussion on these matters is in **Chapter 4 [Investment Guarantees and Obligations]** and **Chapter 6 [FDI Monitoring and Reporting]**.

## National Investment Policy Statements

**As study countries generally have fragmented strategic, normative, and administrative investment policies, they should prioritize the development and maintenance of a detailed NIPS.** A NIPS provides a consolidated, unequivocal, publicly documented, and transparent record of a country's policies concerning its investment climate, and the means by which the country will be marketed. The strategic, normative, and administrative matters discussed

**Box 1. Areas Typically Addressed in a National Investment Policy Statement**

**Sector priorities and investment conditions**

- Sector priorities.
- Sector/activity investment limitations and other investment restrictions.

**Investment Guarantees**

- Fair and equitable treatment.
- Expropriation/compensation.
- Convertibility and repatriation of funds.
- Dispute Settlement.

**Investment Regulation**

- Foreign investment entry.
- Company registration.
- Business licensing.
- Planning permission and building permits.

**Industrial infrastructure**

- Access to land.
- Factory space.
- Utilities (electricity, water, sewerage, information communication technologies).
- Transportation.

**Environmental protection**

- Environmental approvals.
- Climate change and disaster risk reduction.

**Work and residency**

- Labor regulation.
- Expatriate work permits/residence permits.

**Trade**

- Customs clearance procedures.
- Special economic zones.
- Trade agreements.

**Competition and consumer protection**

- Competition laws.
- Consumer protection rules.

**Money matters**

- Foreign exchange availability, accounts.
- Local borrowing rules for foreign investors.
- Interest rates.
- Financial inclusion.

**Government revenue raising**

- Tax on corporations and individuals.
- Trade and excise taxes.

**Investment promotion and incentives**

- Investment promotion support.
- Availability of incentives and application and approval procedures.

Source: Pacific Private Sector Development Initiative.

above should be summarized by a NIPS. A NIPS is useful particularly for foreign investors because of its holistic perspective, enabling them to easily understand overall business conditions within the country. It also promotes greater policy coherence by providing politicians and government officials with a better understanding of the interaction between various policy areas. Box 1 outlines the aspects of FDI that are typically included in a NIPS.

**Samoa and Vanuatu demonstrate better practice in having an up-to-date national investment policy statement.**

The quality of information in the Vanuatu NIPS represents better practice, with detailed information and contacts that provide investors with substantial details regarding investment in the country. Samoa's NIPS is more basic; however, it also provides useful information to investors. Conversely, PNG and Tonga have a substantially outdated NIPS, and Solomon Islands does not have one. It is highly recommended that PNG and Tonga update their NIPS, and Solomon Islands develop one.

## 3. FOREIGN DIRECT INVESTMENT ENTRY

### Better practice

**Table 6:** Foreign Direct Investment Entry: Better Practice

Issue	Better Practice
FDI screening	<p>Foreign investors should be subject to business registration requirements like a citizen-owned business, with no additional FDI screening.</p> <p>If a country chooses to impose FDI screening, it should have the following characteristics:</p> <ul style="list-style-type: none"> <li>• Codification of screening requirements.</li> <li>• Application to direct investment with any level of foreign ownership.</li> <li>• Assess applications using objective decision criteria.</li> <li>• Limited information requirements.</li> <li>• Confidentiality obligations.</li> <li>• Decide applications quickly.</li> <li>• Allow open-ended registration.</li> <li>• No complex screening for proposed investments in strategic areas.</li> </ul>
Investment law (general restrictions)	<p>Investment law should not place general restrictions on investment, such as minimum investment amounts, foreign equity restrictions, or general performance requirements.</p>
Investment law (sector or activity-specific restrictions)	<p>Limitations in particular sectors or activities should be kept to a minimum. If a country chooses to place limitations on sectors or activities, it should:</p> <ul style="list-style-type: none"> <li>• use a “negative list” approach,</li> <li>• reserve and/or restrict as few activities as possible, and</li> <li>• avoid limitations in export-oriented sectors or activities providing important inputs into other businesses.</li> </ul>
Consistency in setting limitations and restrictions	<p>If used, market access restrictions should:</p> <ul style="list-style-type: none"> <li>• only be under the investment law, and</li> <li>• be consistent with commitments made in bilateral or multilateral investment agreements.</li> </ul>
Review of limitations and restrictions	<p>The investment law should provide for:</p> <ul style="list-style-type: none"> <li>• periodic review of limitations and restrictions (using public consultation),</li> <li>• clearly defined principles for the review, and</li> <li>• protection for existing investors.</li> </ul>

Source: Pacific Private Sector Development Initiative

**Attracting FDI is not a goal in and of itself, and countries have the sovereign right to configure their frameworks to best achieve economic and social policy objectives.** While countries should not discriminate<sup>46</sup> between foreign and domestic investors<sup>47</sup> as a general principle, most countries apply some controls on the entry of foreign investors. Well-considered and evidence-based national development, industrial development, and investment policies are vital for countries to maximize the benefits of FDI, while also achieving national economic and social objectives. Government imposition of rules relating to the admission and establishment of investment (as well as other rules affecting operation) deliberately create distortions in the free flow of capital. Thus, governments should investigate the use of nondiscriminatory measures to achieve stated objectives before resorting to FDI entry restrictions.<sup>48</sup>

**Countries that are seeking to place controls on the entry of foreign investment should do so with an understanding of their potential economic consequences.** Increased FDI restrictiveness is correlated with reduced overall inflows of FDI,<sup>49</sup> and the loss of associated benefits such as greater capital infusion, employment, access to foreign markets, technology and skills transfers, and infrastructure development.<sup>50</sup> Additionally, the implementation of entry restrictions can affect the overall value proposition<sup>51</sup> for foreign investors in the host economy.<sup>52</sup> This can become a critical issue for investors who are seeking a base to participate in global value chains, given their need to assess the cumulative effects of restrictions across all economies participating in their particular chain.<sup>53</sup> Accordingly, rules should be efficiently designed to meet overarching objectives while creating minimal economic distortion.<sup>54</sup>

## Overview of country performance

**Table 7: Foreign Direct Investment Entry: All Countries**

Country	Alignment
Papua New Guinea	WEAK
Samoa	MODERATE
Solomon Islands	MODERATE
Tonga	MODERATE
Vanuatu	MODERATE

Source: Pacific Private Sector Development Initiative

**While no country would ideally require FDI screening, all study countries adopt general screening requirements.** Study countries demonstrate better practice by allowing investment in all sectors, except those identified on a negative list. Assuming that screening processes will remain a feature of FDI frameworks in study countries in the short to medium term, emphasis should be placed on the efficient design of screening systems that least distort incoming FDI flows. Countries should also be clear on the purpose of screening, and how it will be used to achieve national development objectives.

**Solomon Islands and Tonga represent better practice among the study countries, with clear screening and assessment criteria that use a registrar-style model.** Vanuatu and Samoa theoretically have a similar system. However, they have incorporated informal criteria for assessing applications outside of the investment law. PNG currently operates under older legislation which requires the Investment Promotion Authority (IPA) board to approve investments against both discretionary and objective criteria. It is recommended that PNG substantially amend its screening system to enable faster, more predictable decisions on FDI certification. If countries choose to engage in reform, it is recommended that this includes a staged removal of general screening of incoming FDI.

**All study countries do not holistically consider the costs of implementing restrictions on FDI.** Restricting FDI can be a legitimate method of achieving policy objectives, but it comes with substantial opportunity costs in terms of lost investment, employment, and innovation. While there is some diversity of practice across the study countries, no approach adequately achieves balanced policy results. Some steps that all study countries can take include:

- Ensure that current and planned restrictions are aligned with national development goals and industrial policies, and have clear policy objectives.
- Establish legislative procedures and principles for reviewing reserved and restricted activities, and comply with these requirements.
- Ensure that policymakers actively assess whether existing restrictions are necessary and actually achieve policy objectives.
- Articulate the proposed costs versus the benefits of restrictions.

**Policy objectives in micro, small, and medium-sized enterprises development and promotion are particularly problematic and need to be challenged.** The void in strategic investment policy appears to have resulted in most study countries viewing reserved and restricted activities as a means to protect micro, small, and medium-sized enterprises (MSMEs) from being “crowded out” by foreign investors. Interviews with regulators indicate that limited credible evidence is demonstrated during the review process for this assertion, but there is strong pressure to keep

expanding the lists for this purpose. This has resulted in list expansions which are aimed more at satisfying domestic sentiment rather than achieving credible policy objectives. The content of many reserved lists often includes activities that are very unlikely to be commercially attractive to foreign investors (e.g., sales at markets, manufacture of handicrafts, and gathering of wild products) or difficult to engage in, given other binding constraints in host economies (e.g., activities involving extensive use of agricultural land).

**The question policymakers must ask is not “How do we stop foreign investors from crowding out investment?”, but rather “What constraints are in place which hold back local entrepreneurs from competing in the market?”.**

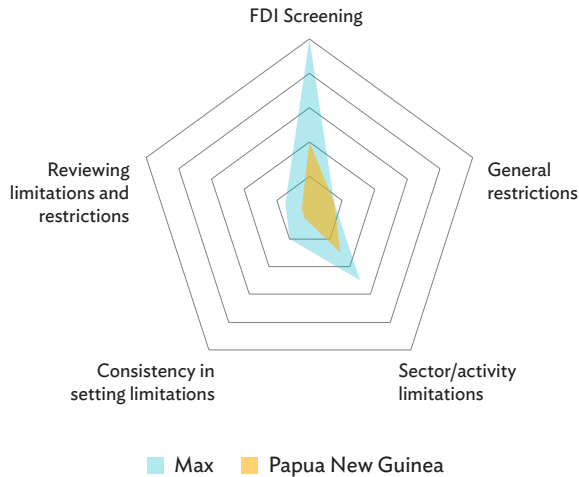
Arguably, foreign involvement in lower-level economic activities is a response to a local market failure in providing the relevant goods or services on acceptable quality or cost terms. Therefore, removing foreign participation from these activities is unlikely to result in local enterprises filling the gap because it does not address the underlying issues which prevented local enterprises from effectively providing the goods or services. Policymakers should question which aspects of the current economic framework prevent or disincentivize citizen investors from competing in the relevant economic activity. There is substantial evidence that inefficiencies in the investment climate—such as inefficient business laws, heavy state involvement in the domestic economy, lack of access to finance, and poor competitive frameworks—hold back citizen entrepreneurs. Development objectives for MSMEs would be met better by addressing these and other related issues.

**It is vital for countries to assess applications and set FDI restrictions in accordance with investment law, or clearly advertise restrictions in a national investment policy statement or similar document.** However, there is a number of concerning instances where the law has not been followed. Examples include:

- PNG introducing some restrictions, such as controls on cocoa exporting, disconnected from the reserved list.
- Solomon Islands disregarding the required review intervals and legislative principles for reviewing its reserved list.
- Samoa incorporating due diligence checks in the assessment process without a legislative basis.
- Vanuatu acting without a legislative basis to informally assess an applicant’s background and financial capabilities, as well as whether investments are in the national interest or affect employment.



**Figure 1: Foreign Direct Investment Entry: Papua New Guinea**



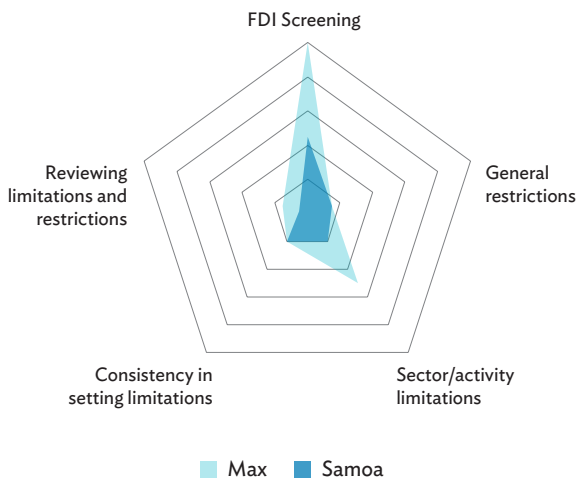
**Alignment**

WEAK

- Leads study countries in not having reserved activities in export-oriented activities or those otherwise important for other businesses, but total number of activities is large.
- Detailed information regarding application and decision-making processes related to FDI entry is not available.
- FDI screening process is inefficient, requiring board approval and significant staff resources.
- Process for reviewing reserved activities does not meet better practice. Recent policy moves towards expanding the reserved list are a concerning development.

FDI = foreign direct investment, Max = maximum  
Source: Pacific Private Sector Development Initiative

**Figure 2: Foreign Direct Investment Entry: Samoa**



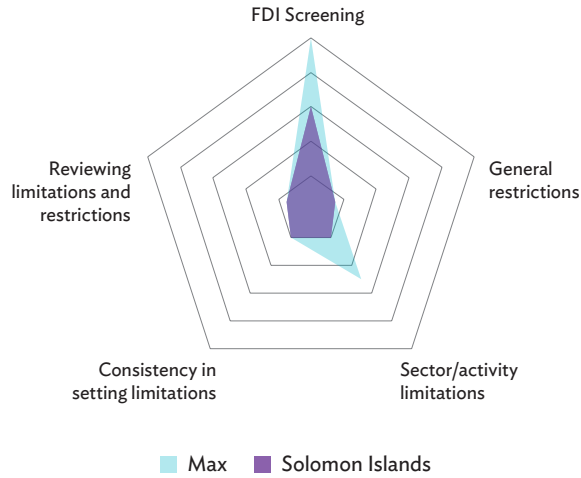
**Alignment**

MODERATE

- Detailed information regarding application and decision-making processes related to FDI entry is not available.
- Process for reviewing reserved and restricted practices is unusual among study countries. A complex set of indicators is used in the review process that is difficult to apply in practice.
- Only study country to require annual reapproval of investment.

FDI = foreign direct investment, Max = maximum  
Source: Pacific Private Sector Development Initiative

**Figure 3: Foreign Direct Investment Entry: Solomon Islands**



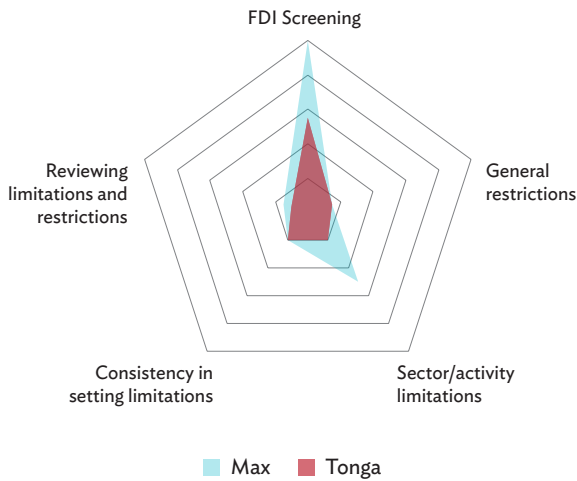
**Alignment**

**MODERATE**

- Legislative framework scores the best for FDI entry among study countries.
- Detailed information regarding application and decision-making processes related to FDI entry is not available.
- Reviews of reserved and restricted activities are not being undertaken in accordance with the Foreign Investment Act FIA. Expansion of reserved list in 2020 does not accord with legislative requirements.
- Commitments under General Agreement on Trade in Services (GATS) are not current.

FDI = foreign direct investment, Max = maximum  
Source: Pacific Private Sector Development Initiative

**Figure 4: Foreign Direct Investment Entry: Tonga**



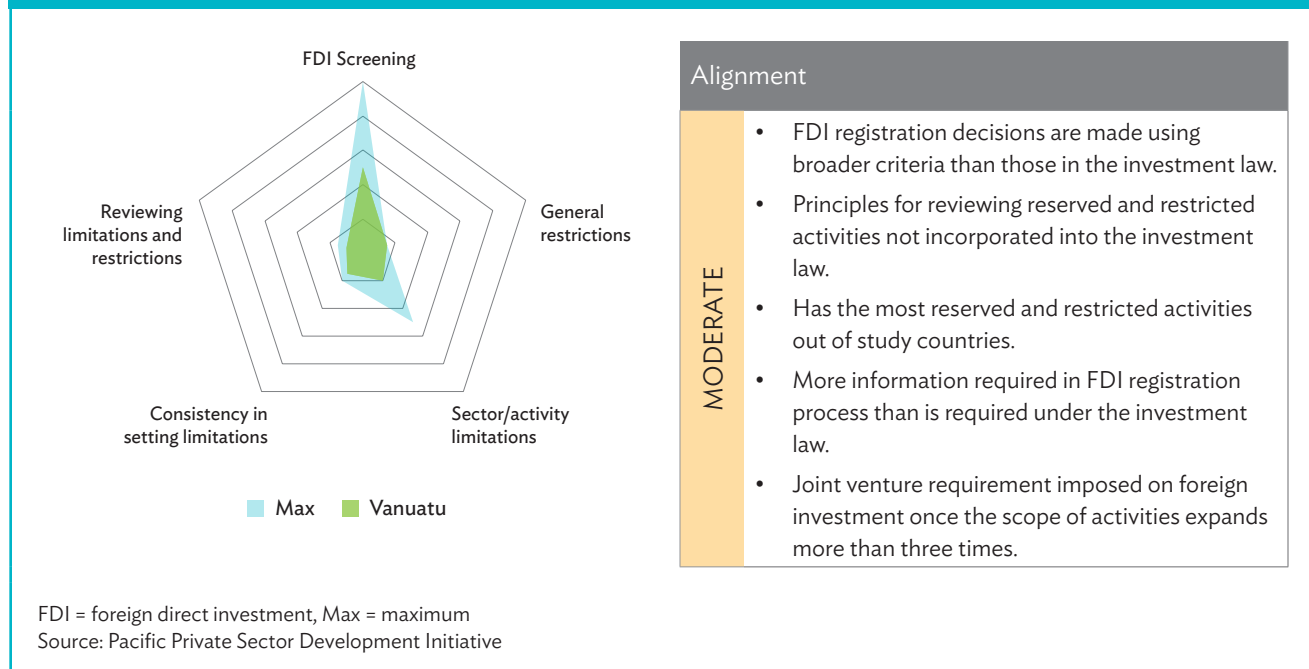
**Alignment**

**MODERATE**

- Detailed information regarding application and decision-making processes related to FDI entry are not available.
- Leads study countries in having the fewest reserved activities. Tonga is the only study country to reduce the number of reserved and restricted activities in its most recent review.
- Lack of a grandfathering guarantee to foreign investors in the event their activity becomes reserved or restricted in the future.

FDI = foreign direct investment, Max = maximum  
Source: Pacific Private Sector Development Initiative

**Figure 5: Foreign Direct Investment Entry: Vanuatu**



## FDI Screening

**Screening and approval processes are government requirements that only apply to foreign investors.**<sup>55</sup> Formal requirements before the approval of foreign investment applications can deter FDI flows.<sup>56</sup> Globally, the trend is towards eliminating or easing screening processes by raising the monetary threshold for screening and approval, narrowing the range of sectors or types of investors subject to review, providing automatic approval after a set time period, and providing for appeal rights.<sup>57</sup> Fiji is a prominent regional example of easing general screening of investment. While some countries contend that screening processes can keep out potentially harmful FDI and extract maximum potential benefit from proposed investments, often these countries adopt additional screening at the sectoral and other levels (for both domestic and foreign investment) which detracts from the utility of general screening.<sup>58</sup>

**Countries should carefully consider the potential impact of screening and approval processes on the achievement of their FDI attraction goals.** Foreign investors have cited cumbersome processes as a major regulatory barrier to investment establishment and expansion, and as a contributing factor to the reduction or withdrawal of investment.<sup>59</sup> Further, government screening is unlikely to assess the desirability of a project on an individual basis effectively, particularly because screening criteria are often vague.<sup>60</sup> Depending on the policy goal, an alternative nondiscriminatory measure may be suitable.

### FDI screening mechanism

**Screening refers to the investigation or evaluation of FDI that occurs at the initial entry phase.** The overarching approach to screening is operationalized on the basis of screening legal requirements (Table 9).

**The simpler end of the spectrum involves no discriminatory entry processes for foreign investors.** Foreign and domestic investors are treated similarly for start-up processes, such as business registration, incorporation, tax registration, and other required registrations. Reserved or restricted sectors can still be incorporated into this system

**Table 8: General Screening**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>General Screening</b>					
Foreign Direct Investment (FDI) is not separately screened	Separately screened*	Separately screened	Separately screened	Separately screened	Separately screened
Administrative form	Registration/ approval	Registration	Registration	Registration	Registration
FDI screening approach	Majority of FDI*	All FDI	All FDI	All FDI	All FDI

\* Papua New Guinea's definition of foreign investment does not capture some minority foreign ownership.

Source: Pacific Private Sector Development Initiative

**Table 9: Overarching Screening Approaches**

<b>Open admission</b>	No separate FDI screening. FDI notification.
<b>Open admission, but with targeted screening</b>	No separate FDI screening for most investment. FDI notification. FDI approval.
<b>Screening all incoming investment</b>	FDI registration. FDI approval.

FDI = foreign direct investment

Source: Pacific Private Sector Development Initiative

in line with investment policy. Countries sensitive to FDI inflows may employ additional screening mechanisms. These include:

- **FDI notification.** This entails simple notification as part of an information system to monitor the type and number of foreign investments made.
- **FDI registration.** Investors are required to explain what activities they intend to pursue to ensure that they comply with predetermined prohibited, reserved, and restricted lists.<sup>61</sup>
- **FDI approval.** This entails positive approval by government authorities for investment. Factors incorporated may include:
  - due diligence checks to verify a foreign investor's commercial standing, and establish that the proposed investment is a serious proposition;
  - detailed financial evaluations of proposed investment viability;
  - cost-benefit evaluations that examine the net impact of the proposed investment on the country; and
  - assessments to determine whether the proposed investment is in the best interests of the country.

**Complex screening processes can have serious disadvantages for both investors and governments.** From a foreign investor's perspective, it is an additional cost to investing in the host country. Where the decision-making process involves considerable discretion, these costs can potentially extend to rent-seeking behavior by corrupt officials. From a government's perspective, complex screening includes direct time and resource costs incurred in managing an additional bureaucratic process, and pursuing and purchasing verification information. Poor intragovernmental coordination can also result in duplicative screening checks, adding to costs for both the investor and the government. Given the scarcity of government resources, this is an opportunity cost from facilitating FDI establishment and reinvestment.

**The effectiveness of complex forms of screening, either as a means of identifying potential investor fraud or determining whether a specific foreign investment is desirable, is also limited.** It is difficult to identify deceitful investors if there is an orchestrated intent to defraud. Quality policy and effective institutions are likely to better act as a deterrent to undesirable activity than complex screening mechanisms. Further, attempting to establish a particular investment's benefit to a country is also problematic because of the difficulty in establishing objective criteria.

**All study countries employ a registration approach for incoming investment, although arguably PNG adopts elements which could be considered an investment approval approach.** However, the functional definition of foreign investment used in PNG allows minority foreign ownership of domestic businesses without certification. Registration approaches appear to be popular for governments, enabling them to project control and oversight over the establishment and conduct of foreign investors. While this objective can be met more efficiently by data sharing across existing systems (e.g., companies registration, taxation, and provident fund registration), these systems are not yet sufficiently sophisticated to do so. This is slowly changing however, and the interoperability of government systems is improving across study countries. This may provide more flexible monitoring options in the medium term, assuming that government agencies coordinate interoperability requirements and establish adequate protocols to share information. Interviews with regulators indicated that there were several policy pressures associated with current practices that require FDI screening:

- a need to know the value of incoming FDI and “weed out” undesirable investors;
- community expectations of stringent oversight of foreign investors, as well as the enforcement of reserved and restricted lists; and
- the monitoring and enforcement of investment law, immigration requirements, and other domestic legal obligations.

**Better practice is evident in countries that adopt a registrar model for registration of incoming FDI.** A registrar of foreign investment is an administrative position established under investment law which provides for a faster, more objective approach to screening incoming investment. A registrar is generally required to:

- approve or deny applications based on nondiscretionary criteria,
- monitor foreign enterprises to determine whether they are complying with the relevant terms and conditions of investment,
- report to government on the status of investment generally in the country, and
- maintain registers of foreign investments and foreign investment opportunities.

**Samoa, Solomon Islands, Tonga, and Vanuatu adopt a registrar-style model.** A key advantage of this approach is that it facilitates the establishment of an FDI framework closer to “open admission with targeted screening” in style. This enables economies to allow the establishment of investment faster and capture the benefits of FDI. Suboptimal practice is evidenced in PNG, which empowers the IPA board to approve incoming investment decisions.

## Principles for screening investment

**Table 10: General Screening Features**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>General Screening</b>					
If additional FDI screening is required, it has the following features:					
Codification of screening requirements	No	No	No	No	Yes
Application to direct investment with any level of foreign ownership	No	Yes	Yes	Yes	Yes
Assess applications using objective decision criteria	No	No	Yes	Yes	No
Limited information requirements	Yes	No	Yes	Yes	No
Confidentiality obligations	No	Yes	Yes	No	Yes
Decide applications quickly	No	Yes	Yes	Yes	No
Allow open-ended registration	Yes	No	Yes	Yes	Yes

Source: Pacific Private Sector Development Initiative

General screening of investment is not recommended. However, if it is to be done, it should incorporate the following principles to create the least disruption to investment flows.

### *Codification of screening requirements*

**The relevant processes and assessment criteria for FDI certification should be up-to-date, outlined in detail, and readily accessible and comprehensible to investors, preferably in widely understood languages.**<sup>62</sup> Providing investors with this information enhances the transparency of the overall FDI system, and enables investors to predict how their applications will be decided.

**Vanuatu demonstrates better practice in providing up-to-date, comprehensive information concerning its processes for approving incoming FDI.** Samoa has an updated NIPS, but it does not contain sufficient information for investors to determine how their application will be assessed. PNG, Solomon Islands, and Tonga effectively require investors to scrutinize the source legislation independently to estimate how the application will be reviewed.

### *Application to direct investment with any level of foreign ownership*

**FDI with any level of foreign direct ownership (as foreign citizens or overseas-based companies) should be required to comply with the registration requirement.** The OECD benchmark definition of direct investment applies

to control of more than 10% of the voting power of an enterprise, which will not cover some minor foreign participation. However, in the Pacific, there are often strong community reactions to perceived shadow control by noncitizens in enterprises, particularly in reserved activities. This can place difficult burdens of proof onto regulators to demonstrate that there are formal or implied agreements of control. Given this community sensitivity, there is benefit in having a definition of direct foreign investment that captures any foreign involvement. This assists regulators further by not requiring them to make subjective decisions about whether foreign persons are effectively controlling investment in contravention of the investment law.<sup>63</sup>

**The political economy concerning FDI in all study countries indicates substantial concern on the impacts of investment on domestic economic and social development.** All study countries except PNG require incoming FDI of any value to obtain certification.<sup>64</sup> Against this backdrop, the policy justification for tracking all incoming FDI (at least in the short to medium term) is more persuasive than in developed countries. If improvements to investment policy are made and public attitudes change, then revisiting this position may be justified.

### *Assess applications using objective decision criteria*

#### **Decisions to register should be limited to checks for whether:**

- the proposed investment is reserved or restricted,
- the proposed investment is prohibited,<sup>65</sup> and
- the investor(s) meets defined disqualification criteria.

Adopting objective decision criteria enables faster processing of registration applications and provides investors with greater certainty about whether they can invest in-country. Where possible, activities should be defined in relation to the International Standard Industrial Classification system or domestic equivalent to enable better monitoring.

**There is a general split in the study countries between older and newer style legislative approaches to registering incoming FDI.** Better practice is employed in Solomon Islands and Tonga, which essentially require the registrar (or chief executive officer) to register investments unless they trigger disqualification criteria. This provides a clearer signal to investors regarding the likelihood of their application being approved. Further, by adopting clear and nondiscretionary criteria, these countries are in a better position to use electronic registries to manage FDI applications and more efficiently approve incoming FDI.

**PNG, Samoa, and Vanuatu deviate from better practice.** Samoa generally assesses applications against objective criteria, but has adopted some practices which incorporate discretionary elements. For example, the Samoa Transnational Crime and Financial Intelligence Unit now assesses FDI applicants, but there is no capacity under the Foreign Investment Act (FIA) to deny an application based on an adverse finding. PNG similarly deviates from better practice by imposing non-objective criteria into the decision process. Under the Investment Promotion Act, the IPA board is required to assess whether an investment is “likely to achieve all or any of the purposes of the Act”, and whether the applicant can “finance, establish and operate the enterprise”. The practical ability of the IPA board to undertake detailed assessments is limited, creating uncertainty for investors. Vanuatu makes certification decisions partially on information provided in the application beyond the investment law, such as police clearances, financial information, and whether the investment would be in the “national interest”.

### *Limited information requirements*

#### **Better practice is for application requirements to be limited to:**

- the foreign investor’s name(s) and contact details,
- the name under which the business will operate,

- the name and contact details of the investor’s representative in the country for service of notices and other documents,
- a description of the investment and business operations being proposed in the country, and
- a brief business plan.

**PNG, Solomon Islands, and Tonga demonstrate better practice by requiring relatively limited information in the FDI certification process.** PNG and Solomon Islands use an online system for applications which enables applicants to upload necessary information. Samoa deviates from better practice by requiring a more complex application form, including passport photos and confirmation of source of funds. Vanuatu requires the most complex application form, including information concerning implementation and substantial supporting documentation.

### *Confidentiality obligations*

**If the application requires sharing of commercially sensitive information, it should be kept confidential and not disclosed to third parties under the investment law.** Particularly for study countries which require substantial amounts of additional information, it is necessary to establish a legal obligation on assessing parties to maintain confidentiality. This should also include the establishment of organizational practices to effectively safeguard information.

**Samoa, Solomon Islands, and Vanuatu provide a positive obligation on FDI regulators to keep commercial information confidential.** While there is no evidence that the other study countries routinely disclose commercial information provided in applications, a positive legal obligation would be preferable. This is particularly true for PNG, given the assessing entity (the IPA board) includes substantial private sector representation and representatives from a range of government departments.

### *Decide applications quickly*

**Better practice is to legally require certification applications to be decided in a reasonable time frame, preferably within 5 working days.** This requirement is most feasible where:

- an administrative position, such as a registrar of foreign investment, is empowered to make decisions on routine FDI applications;
- decision criteria are objective, simple to satisfy, and require limited supporting information;
- the FDI framework specifies that certification is the first step in investment establishment, and that certification is not contingent on the prior attainment of other approvals (noting that this does not remove the need for other approvals to be obtained, where necessary); and
- an online registry solution, with the capacity to accept online payments, is in place.

**Samoa, Solomon Islands, and Tonga all have statutory obligations to assess applications within 5 working days.** PNG is required by law to assess applications within 35 working days, and Vanuatu within 15 working days. There is little evidence that any study country routinely tracks processing times.

### *Allow open-ended registration*

**Registration should be open-ended, and include authorization to establish the enterprise anywhere in the country unless stipulated as a restricted list activity condition.** This is important for establishment of investment, and for providing security to investors on their length of stay in the country. Additional conditions of registration (e.g., an establishment period or the acquisition of relevant licences) should generally be standardized. If the name of the business or its ownership changes subsequently, or the investor wishes to pursue additional activities, they should be required to vary their registration to reflect these changes.



**All study countries except Samoa follow better practice in having open-ended registration.** Under the Samoa FIA, holders of certificates are required to renew their certification annually, ensuring that compliance with investment law is assessed at least every 12 months. However, the better approach is to authorize the suspension and cancellation of certificates for breach of investment law obligations, or breach of other relevant domestic laws. The approach in Samoa institutionalizes annual uncertainty for investors, which may deter them from establishing businesses in Samoa.

*No complex additional screening at certification level*

Table 11: Complex Screening					
	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Complex Screening</b> Complex screening used in a few strategic areas:					
Not imposed	Not imposed	Not imposed	Not imposed	Not imposed	Not imposed
Imposed, but: <i>uses transparent procedures and clearly defined timelines</i>	n/a	n/a	n/a	n/a	n/a
Imposed, but: <i>does not use transparent procedures and clearly defined timelines</i>	n/a	n/a	n/a	n/a	n/a

n/a = not applicable

Source: Pacific Private Sector Development Initiative

**Some countries have introduced individual FDI screening mechanisms for instances in which they perceive national security or other public risks.** This is despite a range of policy instruments that host countries can use to exercise their sovereign right to regulate FDI’s participation in certain sectors of the economy (such as reserved and restricted lists, licensing requirements, and competition laws).<sup>66</sup> Use of national interest or security concerns to review and/or control FDI has expanded globally. However, its use tends to be limited to larger countries that are exposed to high FDI inflows where there are concerns about foreign takeovers in sensitive economic sectors and infrastructure.<sup>67</sup> As a general principle, if complex screening is proposed, it should be done in a transparent manner, adopt proportionate responses, and institute public accountability mechanisms.<sup>68</sup>

**All study countries follow better practice in not requiring additional screening.** There are several features of Pacific country economies and legal frameworks that suggest this is the correct approach:

- **General FDI screening.** Currently, most countries assess incoming foreign investment against lists of prohibited, reserved, and restricted activities.
- **Bureaucratic resources.** Making complex assessments on foreign investment decisions requires specialized skills to understand the information obtained, weigh the relative benefits and costs, and provide objective advice to allow, block, or impose risk mitigation requirements. The comparative scarcity of these resources

- would make implementation difficult.
- **State involvement in economy.** Across the Pacific, most critical infrastructure is controlled directly by state-owned enterprises, often on a monopoly basis.
  - **Sectoral regulation.** Regulation and licensing in sectors such as telecommunication, banking and finance, land acquisition, mining, fisheries, and forestry are common, and can be used to promote sustainable economic development.
  - **Evolving competition and securities rules.** Several countries are adopting modernized rules about competition, market conduct, and mergers and acquisitions which can achieve similar policy objectives.
  - **Narrow economic bases.** Most countries have developing productive sectors, and foreign investment to promote growth in exports would likely be economically beneficial.

## Investment law general restrictions

Table 12: Investment Law General Restrictions					
	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>General Minimum Investment</b>					
General minimum investment not imposed	Not imposed	Not imposed	Not imposed	Not imposed	Not imposed
<b>General Foreign Equity Restrictions</b>					
General foreign equity restrictions not imposed	Not imposed	Not imposed	Not imposed	Not imposed	Not imposed
<b>General Performance Requirements</b>					
General performance requirements not imposed	Not imposed	Not imposed	Not imposed	Not imposed	Not imposed

Source: Pacific Private Sector Development Initiative

**General use of restrictions significantly reduces foreign investor interest in a country.** Restrictions may include:

- **Minimum investment requirements.** This restriction requires a foreign investor to make a minimum level of capital investment in the country. The requirement can be defined in terms of funds (as well as the value of imported goods) brought into the country, or total capital invested (whether it is sourced from outside the country or borrowed locally). Increasingly, countries do not set a general minimum investment threshold because it deprives them of smaller investments, which in thriving economies can be an important source of employment opportunities and economic growth. Smaller investments that are grouped together can also have a greater impact than a single large investment. Moreover, initial capitalization does not limit the potential impact of an investment, since small investments can grow into large businesses.
- **Foreign equity restrictions.** This restriction involves limiting the amount of equity ownership that a foreign investor may have in enterprises in the host economy. This is broader than reserved and restricted activities, which only limit foreign participation in specified economic activities.

- Performance requirements.** This restriction requires foreign investors to meet certain specified goals with respect to their operations in the country. They include a wide variety of things, such as local employment or export requirements, requirements to transfer technology or other proprietary knowledge, and local content<sup>69</sup> requirements. Local content often leads to policy failures whereby investors are forced to use local inputs which are not matched by improved local firm and worker capacity.<sup>70</sup> Foreign investors view their inclusion as a significant constraint, particularly if they are not required in competing locations.<sup>71</sup>

**All study countries follow better practice in not requiring general minimum investment, foreign equity restrictions, or performance requirements.** Some study countries, such as Samoa and Vanuatu, have implemented activity-specific minimum requirements. However, a minimum investment for certification is different from a minimum investment for residency. Solomon Islands, for example, has imposed a minimum investment amount for an investor to live and operate a business in the country. PNG has shown some interest in implementing performance requirements in support of the development of small and medium-sized enterprises. This policy has not yet been finalized.

### Sector- or activity-specific restrictions in investment law

Table 13: Use of Negative Lists and Reserved and Restricted Activities					
	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Negative Lists</b>					
Negative list approach is used	Yes	Yes	Yes	Yes	Yes
<b>Number Of Reserved And Restricted Activities</b> Total number of reserved and restricted activities is:					
5 or fewer	No	No	No	No	No
6 – 10	No	No	No	No	No
11 – 20	No	No	No	Yes	No
More than 20	Yes	Yes	Yes	-	Yes
Number of reserved and/or restricted activities	32	23	25	11	41
<b>Reserving Or Restricting Export-Oriented Activities Or Inputs Into Other Businesses</b>					
Reserved and/or restricted activities are <b>not</b> export-oriented or important inputs into other businesses	Not export-oriented	Export-oriented	Export-oriented	Export-oriented	Export-oriented

Source: Pacific Private Sector Development Initiative

**Pacific FDI frameworks implement restrictions under two broad categories:**

- **Reserving activities from foreign investment.** This completely excludes foreign investment in an identified activity.
- **Restricting activities.** This allows limited foreign investment in an identified activity with conditions in the form of mandated minimum investment requirements, minimum local equity participation, or other general performance requirements to force linkages between domestic and foreign investors.<sup>72</sup>

**Promoting forced linkages between foreign and domestic firms through restricted activities has mixed success.**<sup>73</sup>

While the use of restricted lists is limited across the Pacific, there is an increasing interest from governments in achieving policy objectives such as benefit sharing from resources projects and promoting the transfer of technology and skills to citizens. Countries should be very cautious in the use of restricted list activities. It is imperative that any mandated conditions in developing investment climates remain commercially attractive for an investor. Global experience shows mixed reactions by investors to equity restrictions and/or forced joint partnerships. While there are examples of foreign partners having a positive impact via vertical-backwards spillovers,<sup>74</sup> there is evidence that foreign firms are less likely to transfer technology to businesses in which they hold minority ownership,<sup>75</sup> and are generally unlikely to make domestically owned competitors more productive.<sup>76</sup> Accordingly, countries should be clear on the policy objectives that they are trying to achieve, and consider whether there are alternative (and potentially more effective) ways to achieve the same outcome.<sup>77</sup>

*Use negative lists*

**Governments can use either a positive list or a negative list approach to setting sector/activity limitations for the establishment of FDI.**<sup>78</sup> A positive list approach (which is seldom used) prohibits all investment except that which the government defines as welcome. A negative list approach allows investment generally; however, can specify that defined activities or sectors cannot be invested in or can only have foreign participation under predetermined conditions. The former are termed “reserved” sectors/activities and the latter “restricted” sectors/activities. If restrictions are to be put in place, the use of a negative list is a better practice.

**All study countries evidence better practice by adopting a negative list approach.***Reserve or restrict as few activities as possible*

**Economies have sought to implement investment restrictions to achieve different policy objectives.** However, these objectives can fail where a foreign investment restriction is not complemented with policy interventions that encourage economic development and increase global competitiveness. Policy objectives include:<sup>79</sup>

- protecting industries or sectors that are not considered strong enough to compete with foreign firms (however, these restrictions often need to be removed to stimulate growth in domestic firms);<sup>80</sup>
- retaining control and ownership of perceived sources of national wealth, e.g., land ownership;
- blocking foreign investment in sectors seen to need regulatory oversight, e.g., financial services;
- regulating natural monopolies in the public interest;
- protection of small and medium-sized enterprises; and
- protection of cultural industries.

**Better practice is to welcome investment in all sectors or economic activities.** However, if restrictions are implemented, they should be as few as possible and nondiscretionary.<sup>81</sup> Extensive lists of reserved or restricted activities can foster an image that the host economy is not open to investment. The activities on the negative list should have a foundation in a rational economic objective. A key issue is that study countries routinely list activities which are unlikely to be attractive to foreign investment but resonate with domestic stakeholders. Further, the negative list should be the exhaustive list of economic activities that are either solely reserved for citizens or allowed under the restricted list. That

is, a thorough audit of market access and national treatment conditions should be undertaken at the sectoral level and reflected in the negative list.

**Study countries have shown increasing interest in using FDI restrictions for micro, small, and medium-sized enterprise development purposes.** While data sources are scant, formal and informal MSMEs are a major component of Pacific economies, contributing substantially to national GDP and employment. While the literature is mixed concerning the effect of FDI on local MSMEs,<sup>82</sup> barriers to citizen enterprise growth and success typically stem from a range of operational disadvantages, such as lack of access to capital, difficulties in obtaining secure access to land, and administrative inefficiencies in regulatory institutions. Limiting FDI generally fixes neither the fundamental flaws in the business enabling environment, nor the higher costs that make local industry uncompetitive.<sup>83</sup>

**Study countries have implemented longer reserved and restricted lists than required to achieve government policy objectives.** Vanuatu has the longest list at 41 activities, followed by PNG at 32, Solomon Islands at 25, Samoa at 23, and Tonga at 11. In 2020, Solomon Islands added four new activities to its list, despite the cited purpose of the review process to “assess whether to reduce the reserve activities specified in it to promote a competitive economy in Solomon Islands”.<sup>84</sup> In 2021, Tonga demonstrated better practice by reducing its reserved and restricted lists, while PNG has expressed an intention to expand its reserved list to meet development objectives for MSMEs.

*Do not reserve export-oriented activities or those otherwise important for other businesses.*

**Better practice is to avoid reserving activities that would affect the export competitiveness of an economy, or activities that are important for other businesses.** To various extents, study country economies have narrow economic bases with comparatively few export industries, smaller domestic markets, limited resource bases, and vulnerability to external shocks.<sup>85</sup> Sources of domestic finance and technical know-how to develop internationally competitive industries are often in short supply.<sup>86</sup> Accordingly, Pacific countries often rely on export industries to create economic prosperity through employment, transfer of skills, managerial expertise, and domestic efficiency gains.<sup>87</sup> The presence of FDI has been credited as an impetus for improved export sophistication in developing economies.<sup>88</sup> Given the binding constraints faced by study countries, governments should be cautious about introducing investment restrictions, which make it harder for their vital export industries to be successful.

**Reserving economic activities that are important inputs to other businesses will generally favor existing domestic suppliers, discourage competition, and increase downstream costs.**<sup>89</sup> For example, reserving services such as supplies and logistics can increase the input costs of all businesses that rely on this intermediary service. A lack of competitive pressure, particularly in activities that are fundamental to supply chains, ultimately costs the consumer and limits the potential of the sector to compete globally.

**All study countries except PNG restrict investment in some activities that are export-oriented.** Interviews with regulators indicated that the decision to reserve or restrict activities is not generally made using detailed data or impact analysis. Export-oriented activities are evident in the lists of:

- **Samoa:** commercial fishing and the manufacturing of nonu and virgin coconut oil;
- **Solomon Islands:** bungalow, eco-lodge, and homestay accommodation;
- **Tonga:** export of green and mature coconuts, fishing activities, and short-term accommodation services; and
- **Vanuatu:** tourism-related activities and the export of kava, sandalwood chip and stick, and seeds.

**Further, some activities specified in reserved and restricted lists effectively limit competition in goods and services used by other businesses, including:**

- **Samoa:** professional services such as architectural services, professional engineering, general construction, and saw milling;

- **Solomon Islands:** customs clearance, retail trading of housing and general goods, and timber milling; and
- **Vanuatu:** private security services, residential building construction, and retail shops.

## Consistency in setting restrictions

**Table 14:** Domestic and International Market Access Limitations

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Market Access Limitations In Domestic Law And Policy</b>					
Market access limitations are not being set in national policy or legislation outside the investment law	Limitations not in investment law	All limitations in investment law	All limitations in investment law	All limitations in investment law	All limitations in investment law
<b>Market Access Limitations In International Investment Agreements</b>					
Investment law controls on market access are not more restrictive than those made in bilateral and multilateral investment agreements.	Not more restrictive	Not more restrictive	Not more restrictive	Not more restrictive	More restrictive

Source: Pacific Private Sector Development Initiative

**A key objective of investment law is to bring together and transparently identify all sector and activity limitations the country imposes on FDI.** If the reserved and restricted lists fail to perform this function comprehensively and accurately, it reflects badly on the quality of a country's regulatory regime. Attention should be focused on ensuring consistency in two particularly areas:

- **National policy and legislation.** It may be the case that some sector/activity limitations and general restrictions are administered by government agencies through other regulatory processes. This lack of intragovernmental coordination is problematic when a country creates false expectations among foreign investors about the sectors or activities that they are allowed to participate in. If sector, activity, or general restrictions are being imposed, they should be comprehensively identified in investment law.
- **Bilateral and multilateral investment agreements.** Governments may include market access and other commitments in agreements with other parties, whether bilateral or multilateral in nature. A coordinated approach is needed to ensure that commitments in these agreements and those in investment law are consistent.

**While study countries have acceded to various bilateral and multilateral trade agreements, all study countries are members of the World Trade Organization.**<sup>90</sup> Countries are under a general obligation to provide services and service suppliers or any other member country treatment no less favorable than the terms, limitations, and conditions specified in its schedule of specific commitments. All study countries have made horizontal (i.e., applying to all sectors)<sup>91</sup> and sector-specific<sup>92</sup> market access limitation commitments in the General Agreement on Trade in Services (GATS).<sup>93</sup>

These specific commitments are intended to represent the maximum extent of restriction and do not necessarily need to be applied in practice. As such, restrictions put in place by the investment law should not go beyond these specific commitments. Further, all study countries except for PNG have also signed and ratified the PACER Plus.<sup>94</sup> Relevantly, PACER Plus provides obligations on member countries with respect to the establishment of commercial presence of nationals from a PACER Plus country under its Trade in Services Chapter and the Investment Chapter.

**Except for PNG, all study countries do not implement restrictions on investment inconsistently with the investment law framework.** Anecdotally, there is evidence of informal restrictions being placed upon investors of certain nationalities. In addition, PNG’s Cocoa Board restricts export licences to foreign enterprises, although cocoa exporting is not a reserved activity.

**All study countries except Vanuatu have not implemented investment limitations under their investment laws that are more restrictive than they have notified under the General Agreement on Trade in Services.** However, there are outdated references in the schedules of specific commitment which do not appear to be intentional. Under its FIA, Vanuatu has applied restrictions on services including legal, accounting, engineering, architecture, and management requiring an annual sales turnover of Vt5 million. These requirements are not listed under Vanuatu’s schedule of specific commitments, even though it includes an outdated requirement under the defunct FIA to have minimum Vt5 million investment for certification.

## Review of limitations and restrictions

**Table 15:** Reviews of Investment Law Limitations and Restrictions

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Reviews Of Investment Law Limitations And Restrictions</b>					
The investment law requires reviews of limitations or restrictions to:					
Take place periodically, and include public consultations	No	No	Yes	Yes	Yes
Be decided using clearly defined principles	No	Yes	Yes	Yes	No
Provide that an existing foreign investor affected by the introduction of a new limitation or restriction can continue to operate in the activity	Yes	No	Yes	No	Yes

Source: Pacific Private Sector Development Initiative



### *Periodic reviews and public consultation*

**Where investment restrictions are incorporated, they should be done on a time-bound basis with regular reviews to determine the effectiveness of the relevant restriction.**<sup>95</sup> Shorter-term restrictions on some activities may be justified on the basis that a sector or industry is undertaking structural reforms to become competitive.<sup>96</sup> Ongoing or permanent reservations or restrictions likely demonstrate that there are underlying structural issues affecting competitiveness that must be addressed.

**Solomon Islands, Tonga, and Vanuatu all have legislative provisions requiring regular review of reserved and restricted activities.** The Solomon Islands FIA requires reviews every 2 years. However, since the introduction of the previous reserved list in 2005, the list in Solomon Islands has only been updated once in 2020. Tonga requires review after 3 years and Vanuatu after 2 years. However, no review has come due since the introduction of modernized legislation. PNG and Samoa do not have statutory requirements to review reserved and restricted activities.

### *Clearly defined review principles*

**Reserving or restricting activities can have substantial economic impacts, and it is important that legislative principles and other controls are in place to guide the review process.** Principles for the review process should include matters such as keeping lists as short as possible, promoting competition, identifying activities, avoiding reserving or restricting export industries or those that are important for other businesses, and maintaining consistency with international law commitments.

**Solomon Islands and Tonga have the best legislatively incorporated controls and review principles across the study countries.** Solomon Islands places important controls on whether an activity can be reserved at all. Section 9(3) of the Solomon Islands FIA only allows an activity to be considered for reservation where (i) there is at least one citizen involved in the activity, (ii) there are at least 10 businesses undertaking the activity, and (iii) the activity is carried on as a business or part of a business that produces or supplies goods or services that are used regularly by, or are otherwise important for the operation of, other businesses in Solomon Islands. The Tonga FIA does not preclude any activities from being reserved; however, requires the minister to review a number of factors when identifying the lists, which include factors such as keeping the lists as short as possible, encouraging competition, and only including activities that would be consistent with Tonga's commitments and obligations under international, regional, bilateral, and multilateral trade and investment agreements. Samoa incorporates review principles. However, they are drafted with a level of detail which is difficult to apply in practice. Conversely, PNG and Vanuatu<sup>97</sup> do not incorporate principles or strong controls into their legal frameworks.

### *Protection for existing investors*

**Procedural fairness requires governments to meaningfully consult with and, where appropriate, compensate affected parties.** Host countries should commit to fair and equitable treatment (FET)<sup>98</sup> of investors, which generally entails consultation in advance of changes to relevant regulations. Further, countries should also commit to non-expropriation, which requires the provision of fair value where the investor has had their investment confiscated, nationalized, or otherwise denied their use of it. Better practice, accordingly, is to provide advanced notice of list assessments with commitments to grandfathering affected investors.

**All study countries except for Samoa have committed to protecting or grandfathering existing investors.**

Tonga only extends this protection for activities which become restricted, rather than those which become reserved under its FIA.



## 4. INVESTMENT GUARANTEES AND OBLIGATIONS

### Better practice

**Table 16: Investment Guarantees and Obligations: Better Practice**

Issue	Better Practice
National treatment	Investment law commits to treating an admitted foreign investor the same as citizen investors in like circumstances.
Most Favored Nation treatment	Investment law commits to treating foreign investors from a given country no less favorably to investors from any other country in like circumstances.
Fair and Equitable treatment	Investment law assures investors that they will not be subject to arbitrary measures and have equal access to due process of law.
Expropriation	Investment law commits to only expropriating investment assets a) for a public purpose, b) in a non-discriminatory way, c) in accordance with laws and procedures, and d) subject to prompt payment and adequate compensation.
Convertibility and repatriation of funds	Investment law allows transfers relating to foreign investment to be made freely and without delay.
Dispute settlement	Host country provides foreign investors means to settle investment disputes through international arbitration.
Investor behavior	Investment law requires foreign investors to abide by domestic laws.

Source: Pacific Private Sector Development Initiative

**The long-term nature of FDI, and the additional risks of doing business in an unfamiliar country, increase the importance of stability and predictability for foreign investors.** There are a number of risks that investors must manage; however, one of particular note is political risk. Political risk refers to “the probability that political decisions, events, or conditions will significantly affect the profitability of a business or the expected value of an economic action”.<sup>99</sup> Political risk has a number of aspects:<sup>100</sup>

- **Expropriation risk:** loss of investment because of a discriminatory act (or acts) by any branch of the government that may reduce or eliminate ownership, control, or rights to the investment.
- **Transfer and convertibility restrictions:** risk of losses arising from an investor’s inability to convert local currency into foreign exchange for transfer outside the host country. Currency devaluation is not covered.
- **Breach of contract:** risk of losses arising from the host government’s breach or repudiation of a contractual agreement with the investor, including noncompliance with arbitral awards.

- **Noncompliance with sovereign financial obligations:** risk of losses because of government’s noncompliance with guarantees stipulating full and timely repayment of a debt used to finance the development or upgrade of a project.
- **Terrorism:** risk of losses because of politically motivated acts of violence by non-state groups.
- **War:** risk of losses because of destruction, disappearance, or physical damage resulting from organized internal or external conflicts
- **Civil disturbance:** risk of losses because of social unrest.
- **Other adverse regulatory changes:** risk of losses stemming from arbitrary changes to regulations.

**Higher political risk deters FDI flows to developing countries.**<sup>101</sup> Pacific countries that are wishing to attract significant levels of FDI must provide foreign investors with confidence that they and their investments will be protected. This is done generally through the provision of legally enforceable investment guarantees, which enable investors to enforce rights against other private investors and the state. These guarantees are not commercial guarantees such as guaranteed rates of return on investments.

**Currently, there is no multilateral legal framework which provides comprehensive investment protection guarantees.** Protections against types of political risk are generally provided through:

- protections in domestic law (e.g., constitutional protections, investment law protections, and sectoral law protections), and
- IIAs. These include:
  - bilateral investment treaties (BITs) that are negotiated between individual states and cover the terms of investment of an investor from one state to the other;
  - TIPs that are multilateral agreements, such as preferential trade agreements, which provide investment guarantees; and
  - investment-related instrument that include other binding and nonbinding instruments (e.g., model agreements, multilateral conventions, and documents adopted by international organizations). For the purposes of this study, only conformity with the GATS is considered where it provides for the relevant investment protection.

**There is substantial variation between agreements regarding the exact scope and extent of investment guarantees.**<sup>102</sup> IIAs can formulate the same core guarantee in substantially differing ways which will affect how they function in practice to manage political risk. Generally, the formulation of the relevant guarantee agreed will reflect the intentions and interests of the parties. However, with increasing complexity being seen in IIAs globally, it can be challenging for developing countries to have a good understanding of their commitments, as well as how the provisions within an overall IIA interact with each other.<sup>103</sup> Ideally, the extent of investment guarantees provided should be driven by country strategic investment policy choices. As such, the better practice used in this study represents the base minimum that should be included in an investment guarantee rather than being seen as a maximum “gold standard”.

**While the expression of investment guarantees should be context specific, there are some advantages to regional consistency.** Developing countries in the Pacific often face similar development challenges, needs to balance government rights to regulate in the public interest, and a desire to attract FDI. Given the complexity of understanding, committing to, and applying investment guarantees, there is an argument that accessing appropriate, tailored formulations may be necessary and efficient. Across the study countries (excluding PNG), PACER Plus represents the most recent attempt to determine a “standard” formulation for many key investment guarantees in a Pacific context. While this is intended to apply generally only to investment between the signatory parties, it can provide an important base upon which countries can explicitly consider how their commitments sit within the overall FDI framework. This can inform the extent to which countries may wish to reflect core commitments in domestic legal frameworks such as investment laws. A recent example of a modern investment guarantees being provided in Pacific investment laws is the Fiji Investment Act 2021.

**While countries may have fears that investment guarantees may limit their ability to regulate effectively, there is no expectation that governments will never modify policy and legal settings.** IIAs and domestic expressions of investment guarantees routinely provide for government regulatory freedom. However, in the interests of providing a stable investment climate, governments should be aware that policy and regulatory changes can directly impact investor confidence.<sup>104</sup> Where governments ignore provided guarantees and engage in bad faith conduct, such as corruption,<sup>105</sup> expropriation of property,<sup>106</sup> or not honoring contractual rights, it can be predicted that FDI flows will decline.<sup>107</sup> Unintentional government conduct, such as implementing poorly planned regulatory changes, can also impact FDI attractiveness. Government agencies in developing countries may have lower capacity and understanding of how regulatory actions could breach existing investment laws or IIAs.<sup>108</sup> Cross-government communication and awareness of how regulatory changes affect government commitments should be prioritized.

## Overview of country performance

**Table 17: Investment Guarantees and Obligations: All Countries**

Country	Alignment
Papua New Guinea	WEAK
Samoa	WEAK
Solomon Islands	MODERATE
Tonga	MODERATE
Vanuatu	WEAK

Source: Pacific Private Sector Development Initiative

No study country includes all international standard investment guarantees in their investment laws. Currently, investment guarantees are fragmented across investment law, some constitutional provisions, and IIAs. The specific content of guarantees can differ from better practice, and there also appears to be limited government awareness of the practical application of investment guarantees. Commitments to FET and national treatment are not provided in the investment law of any study country, and only Solomon Islands provides some guarantee regarding most-favored nation (MFN) treatment. While all study countries provide guarantees regarding expropriation, the formulation of these guarantees generally does not meet better practice, particularly in regard to outlining the process for compensation and how it is calculated, and should be revisited. While all countries provide a qualified guarantee of repatriation of capital and profits, the specific laws and practices relating to currency remittances in PNG, Samoa, and Tonga can be difficult to implement and affect the attractiveness of these economies to FDI.

**Study countries can improve the quality of their investment laws by incorporating the commitments that they have made in IIAs.** Investment commitments made in IIAs such as GATS, PACER Plus, and BITs generally go further than the investment law or provide exceptions that are not well-reflected in investment frameworks. For example, study countries that are parties to PACER Plus could use the form and content of investment guarantees from the agreement to update the guarantees in the investment law. Specific commitments for countries under GATS should be updated as they are now inconsistent with existing investment frameworks in several cases. Controls on investment that are not suitable for the investment law (e.g., immigration controls, currency remittances, and land acquisition restrictions) should be included in study countries' national investment promotion strategy.

**Consultations have indicated that, in many study countries, there are concerns regarding the conduct of investors and the impact of investment on local communities.** Investor behavior is an important part of the “deal” that is implicitly made between the host economy and the investor, and involves:

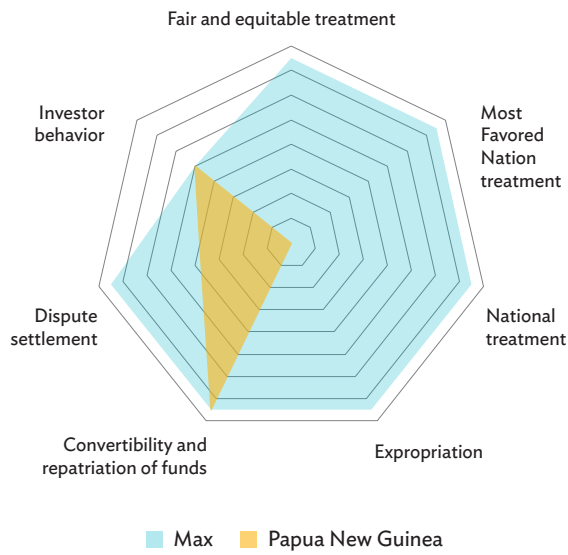
- making investors aware of their obligations under domestic law;
- improving institutional quality by promoting the coherency of domestic legal obligations on an ongoing basis;
- monitoring compliance with laws, dealing with noncompliance, and ensuring that regular reporting is undertaken (**Chapter 6 [FDI Monitoring and Reporting]**); and
- undertaking regular macro assessments on FDI's impacts, and using this information to inform the public and/or adjust investment policy framework settings (**Chapter 2 [FDI Policy Strategy]**).

**There are practical steps that all study countries can take in relation to these issues.** An important first step is to ensure that relevant and accurate information concerning domestic obligations is available through an up-to-date

NIPS, and paired with a well-advertised legal obligation to comply with domestic laws. Longer term, there is a strong need in all study countries to tackle the imposition of investment restrictions outside of the investment law, both deliberate and inadvertent. While these restrictions may be justifiable on legitimate public interest grounds, there are several instances in which these de facto restrictions cannot be reasonably ascertained by an investor before they expend resources making investment inquiries. Study countries should consider models for better cross-government coordination of policy to better highlight the potential issues surrounding consistency with international obligations (particularly national treatment obligations), as well as the potential impact on FDI attractiveness. IPIs that are empowered to provide insights from the private sector to senior officials will also assist in “reality testing” proposals (**Chapter 7 [Investment Promotion]**). Improving the quality of information provided to investors and the overall coherency of domestic obligations can also work to attract higher-quality, ethical investors.

**Commercial arbitration remains underdeveloped in study countries, although Tonga and PNG have made strong reform progress.** While all study countries have judiciaries with competence over commercial matters, courts are generally under-resourced and have limited practical ability to hear complex and/or higher-value commercial disputes. Investors who are seeking to mitigate country risk often view access to arbitration for investor-state and investor-investor disputes favorably. While most study countries provide access to the Convention on the Settlement of Investment Disputes, accession and domestic enactment of legislation to support the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) will expand this offering. Reforming or introducing laws to better enable domestic commercial arbitration would benefit both citizen and foreign investors.

Figure 6: Investment Guarantees and Obligations: Papua New Guinea



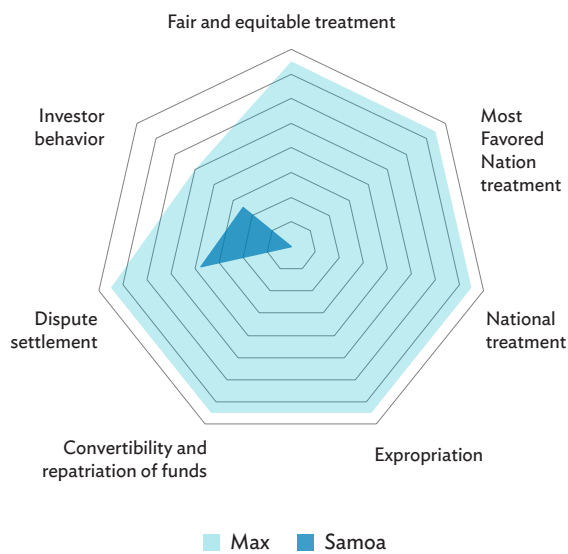
**Alignment**

**WEAK**

- Investment law lacks a full set of investment guarantees.
- Policies and laws outside the investment law detract from Papua New Guinea in scoring higher on national treatment.
- Acceded to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), but is yet to pass domestic legislation to operationalize its use.
- Investment law fails to explicitly require investors to comply with domestic laws.

Max = maximum  
Source: Pacific Private Sector Development Initiative

Figure 7: Investment Guarantees and Obligations: Samoa



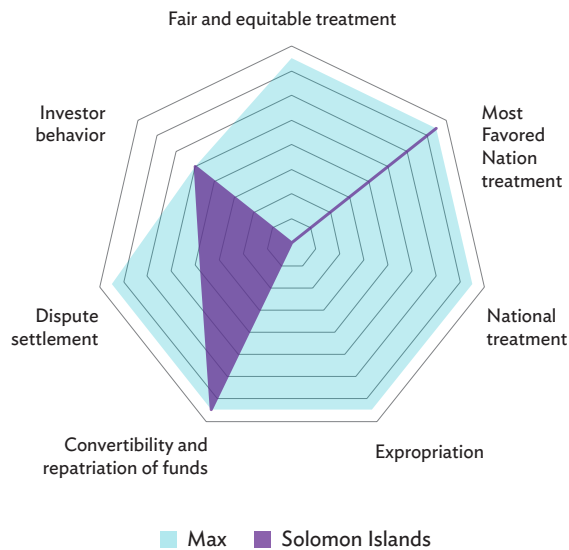
**Alignment**

**WEAK**

- Investment law does not provide a full set of investment guarantees and is not consistent with obligations under PACER Plus.
- Application of foreign exchange restrictions to foreign investors is not consistent with better practice.
- Has not acceded to the New York Convention and lacks effective arbitration laws.
- Investment law fails to explicitly require investors to comply with domestic laws.

Max = maximum  
Source: Pacific Private Sector Development Initiative

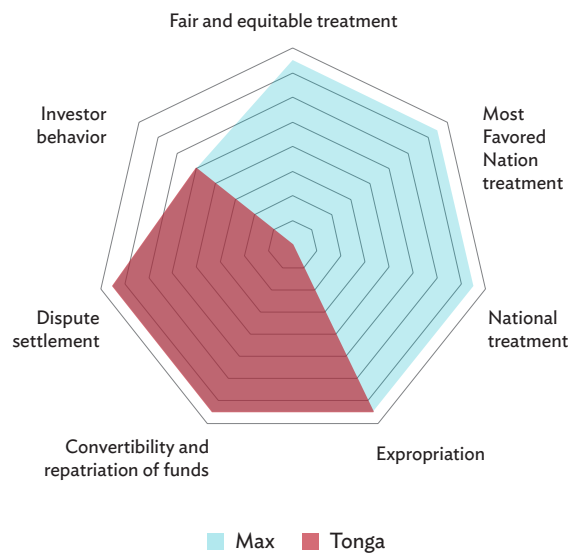
Figure 8: Investment Guarantees and Obligations: Solomon Islands



Max = maximum  
Source: Pacific Private Sector Development Initiative

Alignment	
MODERATE	<ul style="list-style-type: none"> <li>• Scores best out of study countries for its investment guarantees. However, their formulation is outdated and is inconsistent with PACER Plus obligations.</li> <li>• Incorporating investment principles by reference to the nonbinding investment principles of the Asia-Pacific Economic Cooperation is unusual and is not recommended as better practice in the Pacific.</li> <li>• Has not acceded to the New York Convention or undertaken action to improve access to international commercial arbitration.</li> </ul>

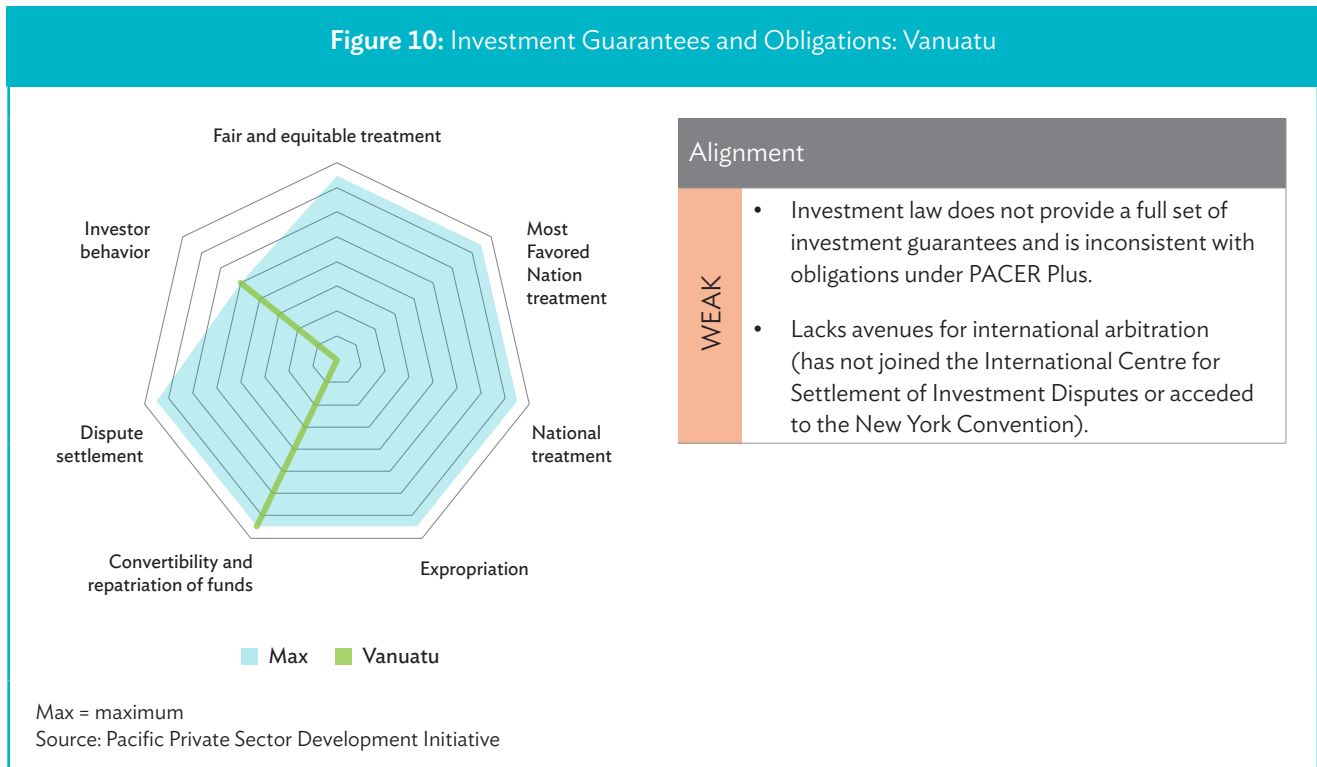
Figure 9: Investment Guarantees and Obligations: Tonga



Max = maximum  
Source: Pacific Private Sector Development Initiative

Alignment	
MODERATE	<ul style="list-style-type: none"> <li>• Investment law does not provide a full set of investment guarantees, and is inconsistent with obligations under PACER Plus.</li> <li>• Has clear requirements for investors to comply with domestic laws and streamlined processes for cancelling certification for investors who do not meet reporting requirements.</li> <li>• Foreign exchange laws introduce substantial uncertainty for investors who are seeking to remit capital and profits.</li> </ul>

Figure 10: Investment Guarantees and Obligations: Vanuatu



## National treatment

**The national treatment standard entails the host country treating foreign investors at least as favorably as citizen investors.**<sup>109</sup> In this regard, national treatment is an example of the general obligation of the state to adhere to the principle of nondiscrimination. Better practice is for the national treatment standard to extend to all foreign investors in relation to the acquisition,<sup>110</sup> establishment, expansion, management, operation, and protection of their investments.<sup>111</sup> “Like circumstances” is generally interpreted as businesses operating in the same sector, or in direct competition with one another.

**No government provides unfettered national treatment.**<sup>112</sup> However, exceptions should be designed to achieve legitimate policy objectives. Where discriminatory measures are implemented, they should be proportional to the issue identified and able to be assessed against measurable objectives.<sup>113</sup> Matters commonly associated with treating foreign investors less favorably than domestic investors include:<sup>114</sup>

- approval mechanisms for foreign investors;
- foreign equity limits;
- key personnel (e.g., foreign managers, technical experts, and board members);
- profit and capital repatriation;
- land ownership for business purposes;
- branching limitations;
- reciprocity requirements;
- minimum capital requirements;
- local content requirements;
- access to local finance; and
- government procurement practices.



**Table 18: National Treatment**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>National Treatment</b>					
Investment law has specific commitment to national treatment with either:					
No exceptions; or	No	No	No	No	No
Clearly acknowledged exceptions	No	No	No	No	No
<b>Other sources</b>					
Bilateral Investment Treaties	Yes	No	No	Yes	None in force
Treaties with Investment Provisions	No	Yes	Yes	Yes	Yes
IRIs (i.e., General Agreement on Trade in Services [GATS])	Yes	Yes	Yes	Yes	Yes
<b>GATS specific commitments</b>					
Notified sectors (and identified conditions or qualifications)	Yes	Yes	Yes	Yes	Yes
<b>Other exceptions</b>					
Exceptions in practice, but not identified in investment law	Yes	Yes	Yes	Yes	Yes

Source: Pacific Private Sector Development Initiative

**No study country adequately identifies all exceptions to national treatment in their investment laws.** All study countries except for PNG are parties to the PACER Plus agreement, which extends national treatment obligations for trade in services (Chapter 7, Article 3) and investors and covered investments generally (Chapter 9, Article 6) where specific commitments have been notified (Annexes 7-A and 9-A). Better practice is for exceptions to national treatment to be clearly and consistently articulated by governments,<sup>115</sup> ideally in a country’s reserved or restricted list insofar as possible. Practices which do not afford investors national treatment contained in other laws (e.g., land ownership) ideally should be signposted in the rs with a transparent picture of the playing field compared to citizen competitors.

**A common national treatment exception involves controls on the acquisition of land or interests in land.**

All study countries restrict land acquisition rights to citizens, and this requirement is reflected in PACER Plus-specific commitments regarding national treatment (excluding PNG) and most countries’ GATS schedules of specific commitments.<sup>116</sup> Other differences in national treatment involve favoring citizen businesses in government procurement, and providing subsidized finance for citizen businesses. Experience across the region and interviews

with FDI regulators indicate a strong interest by governments to develop discriminatory measures in favor of local enterprises and local industry development, and there is little evidence that these policy interventions accommodate national treatment obligations.

**Study countries' GATS commitments regarding national treatment are generally not fully consistent with domestic restrictions and other international obligations.** Partly, this appears attributable to the development of sectoral and crosscutting policies and laws over time without updated notification to the WTO. It is recommended that all study countries review their GATS notifications and update accordingly.

## Most-favored nation treatment

**Table 19: Most-Favored-Nation Treatment**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Most-Favored-Nation Treatment</b>					
Investment law has a specific commitment to the principle of non-discrimination between investors of different nationalities	No	No	Yes	No	No
<b>Other sources</b>					
Bilateral Investment Treaties	Yes	No	No	Yes	None in force
Treaties with Investment Provisions	Yes	Yes	Yes	Yes	Yes
Investment Related Instruments (i.e., General Agreement on Trade in Services [GATS])	Yes	Yes	Yes	Yes	Yes
<b>General Agreement on Trade in Services most-favored nation exemptions</b>					
Notified most-favored nation exemptions	No	Yes	Yes	Yes	Yes

Source: Pacific Private Sector Development Initiative

**Most-favored nation (MFN) treatment requires a host country to treat investors from a given foreign country no less favorably than those from any other foreign country.**<sup>17</sup> The standard places foreign investors on an equal competitive footing. While national treatment (discussed above) is the main guarantee provided by states for

maintaining the availability of competitive opportunities, MFN is an important secondary standard.<sup>118</sup> While the scope of MFN obligations varies across IIAs, generally, if a host country provides special concessions to investors from one country, it must grant the same for all other foreign investors to keep a level playing field. The standard should apply to all kinds of investment activities, including investment establishment, operation, management, and protection.<sup>119</sup> This ensures that foreign investors are protected during the lifetime of their investments.

MFN treatment obligations:<sup>120</sup>

- must be specifically contained in an IIA,
- compare the treatment of two (or more) foreign investors in similar objective circumstances,
- apply to issues belonging to the same subject matter or category to which the clause relates,
- do not detract from the state's ability to grant special privileges or incentives to a foreign investor through a contractual arrangement,<sup>121</sup> and
- for a breach, must be shown to have provided less favorable treatment to the foreign investor based on their nationality.

**An investment law can include exceptions to the MFN standard.**<sup>122</sup> This typically occurs in the case of free trade areas, customs unions, or regional trade and investment agreements. Generally, countries that are party to these agreements are exempted from an obligation to grant MFN treatment to nonmembers. This provides an opportunity for participating countries to liberalize their internal investment frameworks at a faster pace than that to which nonmembers have agreed. All study countries are signatories to GATS, which requires members to provide services<sup>123</sup> and service providers of all other members treatment no less favorable than accorded to like services and services suppliers of any other country (Article II(1)). Exemptions to MFN treatment have been notified under GATS by all countries except PNG. Further, all study countries except PNG are parties to the PACER Plus agreement, which incorporates MFN obligations for trade in services (Chapter 7, Article 3) and covered investments generally (Chapter 9, Article 7)<sup>124</sup> although MFN exemptions can (and have been) notified (Appendix). These exemptions are generally different to those notified under GATS. Further, PNG and Tonga have signed BITs that have MFN obligations.

**Commitments to providing MFN treatment to foreign investors across study countries are inconsistent and largely not in compliance with better practice.** Only Solomon Islands incorporates MFN treatment for investors under its investment law, extending to the establishment, expansion, and operation of investments without prejudice to relevant international obligations and principles.<sup>125</sup> This formulation is narrower than contemplated by GATS and PACER Plus. However, it does acknowledge other international obligations and principles. PNG makes oblique reference to MFN by acknowledging in its investment law that more favorable investment guarantees may be accorded by bilateral or multilateral agreements to which PNG is a party (S 37(1) Investment Promotion Act 1992). By necessity, investors in the other study countries need to rely on MFN obligations from other sources, which may affect their practical ability to seek redress for breaches.

## Fair and equitable treatment

**Fair and equitable treatment (FET) has become established as a fundamental standard mainly through its inclusion in the increasing global network of BITs.** Generally, it is understood to refer to a minimum standard as defined by international customary law, which is evolving over time.<sup>126</sup> FET is an “absolute” standard of treatment in that it is accorded to all investors, and is determined in relation to the specific circumstances of application.<sup>127</sup>

**At its core, the FET standard protects investors against serious incidences of arbitrary, discriminatory, or abusive conduct by host states.**<sup>128</sup> Where disputes or other issues relating to investment occur, it is important for investors to be able to have access to legal means of redress. Countries that provide a FET guarantee are reassuring investors that they will be treated according to minimum international expectations of state behavior. This is likely to be incorporated into a foreign investor's political risk assessment when deciding whether to establish operations in the country.

**Table 20: Fair and Equitable Treatment**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Fair And Equitable Treatment</b>					
Investment law has a commitment to fair and equitable treatment, with:					
Reference to minimum standards of international law	No	No	No	No	No
Guarantees investors will not be subject to unreasonable or discriminatory measures	No	No	No	No	No
Undertaking that investors will have equal access to due process of law	No	No	No	No	No
<b>Other sources</b>					
Limited constitutional protections	Yes	Yes	Yes	Yes	Yes
Bilateral Investment Treaties	Yes	No	No	Yes	None in force
Treaties with Investment Provisions	No	Yes	Yes	Yes	Yes

Source: Pacific Private Sector Development Initiative

**FET can be viewed as a bundle of rights accorded to investors.**<sup>129</sup> Despite differing opinions on the exact scope of the FET standard, several concepts are relevant<sup>130</sup>

- Prohibition of manifest arbitrariness in decision making, i.e., measures taken purely on the basis of prejudice or bias without a legitimate purpose or rational explanation.
- Prohibition of the denial of justice and disregard of the fundamental principles of due process.
- Prohibition of targeted discrimination on manifestly wrongful grounds, such as gender, race, or religious belief.
- Prohibition of abusive treatment of investors, including coercion, duress, and harassment.
- Protection of the legitimate expectations of investors arising from a government's representations or investment-inducing measures. However, this is balanced with the host state's right to regulate in the public interest.

**No study country makes an explicit FET guarantee in their investment law.**<sup>131</sup> However, some commitments are made elsewhere. These include:

- **Constitutional protections.** While expressed differently, common matters include all persons being equal under the law, freedom from discrimination, and the existence of an independent judiciary.
- **BITs.** Some countries have entered into bilateral agreements, including FET standards.
- **TIPs.** All study countries excluding PNG have signed on to the PACER Plus agreement, which provides for

FET for investors. An update to the Melanesian Spearhead Group Free Trade Agreement, currently being negotiated, also provides for FET.

**Study countries’ fair and equitable treatment commitments are patchy, and may be difficult for investors to rely on.** While there is little evidence that study countries are treating foreign investors unfairly, the preferable position is for explicit qualified or unqualified guarantees to be made in the investment law itself, and highlighted in the country’s NIPS. The minimum FET standard should be that of customary international law. It should guarantee that foreign investors will not be subject to unreasonable or discriminatory measures, and will have equal access to due process of law. Countries that are signatories to PACER Plus may wish to consider harmonizing their investment law with the FET formulation provided for under PACER Plus.<sup>132</sup> Study countries may also wish to better incorporate awareness of their international obligations to investors to avoid unintentional breaches of their FET obligations.

## Expropriation

Table 21: Expropriation					
	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Expropriation</b> Investment law has commitment ensuring investors will not be subject to direct expropriation or measures with similar effect, except:					
For a public purpose	Yes	Yes	Yes	Yes	Yes
In a non-discriminatory way, and in accordance with laws and procedures	Yes*	Yes*	Yes*	Yes*	Yes*
Subject to prompt, effective, and adequate compensation	No	No	Yes	Yes	No
<b>Other sources:</b>					
Bilateral Investment Treaties	Yes	No	No	Yes	None in force
Treaties with Investment Provisions	No	Yes	Yes	Yes	Yes

\* Commitment made but no procedures specified in investment law or regulations.

\*\* Vanuatu’s Land Acquisition Act 1992 guarantees market value compensation will be paid.

Note: Scoring for expropriation is “all or nothing”, i.e., if a country provides commitments but does not have a guarantee to the effect of prompt, effective, or adequate compensation, then the standard is not met.

Source: Pacific Private Sector Development Initiative

**Expropriation is the direct or indirect confiscation, nationalization, or denial of use of an asset by a state.**

Expropriation or confiscation generally entails property-specific or enterprise-specific assets by the state, or transfers by the state to other economic actors.<sup>133</sup> Nationalization classically covers the state's large-scale taking of private property in all economic sectors or on a sector-by-sector basis,<sup>134</sup> while expropriation also can involve large-scale taking of land for redistribution, or targeting of a particular foreign investor.<sup>135</sup>

**However, the negative effects of a particular regulation on an investor do not necessarily constitute expropriation.**<sup>136</sup> Uncertainty around how a host country defines expropriation, the process by which it occurs, and the means by which investors will be compensated restrains investment by raising the cost of capital and weakening firm competitiveness. To attract investment, governments need to take steps to address this risk.

**Expropriation can be indirect.** While the scope of indirect expropriation is not settled under international law,<sup>137</sup> in some circumstances expropriation or deprivation of property<sup>138</sup> can occur where government actions interfere with the rights of the investor to enjoy their property.<sup>139</sup> Given the nebulous nature of indirect expropriation, determinations must be made on a case-by-case basis. Indirect expropriation can include, for example, measures such as forced divestment of company shares, interference in management rights, appointment of managers, refusal of access to labor or raw materials, or excessive or arbitrary taxation.<sup>140</sup> This does not mean that governments cannot exercise their right to regulate in the public interest however<sup>141</sup> as some policy measures may impact the value of an existing investment. Rather, to address any ambiguity, countries should provide additional clarification on measures that are introduced to ensure correct and consistent application of government policy.<sup>142</sup>

**Better practice is for government taking of private property to comply with the conditions for expropriation as generally understood under international law:**<sup>143</sup>

- **For a public purpose.** Public purpose is a broad term. Generally, a state asserting that an expropriatory action is for a public purpose<sup>144</sup> is sufficient, unless it appears manifestly unreasonable.<sup>145</sup>
- **Nondiscriminatory.** The measure should not be based on the particular nationality or ethnic origin of the investor.<sup>146</sup>
- **Take place under due process of law.** Expropriatory actions must not be arbitrary, must comply with procedures in domestic legislation and recognized international rules, and must provide investors with rights to access an independent arbiter.<sup>147</sup>
- **Paid adequate and prompt compensation.** Compensation must be prompt,<sup>148</sup> adequate,<sup>149</sup> and effective.<sup>150</sup> It should be derived by the state and investor, or by a tribunal or other body using a method (such as discounted cash flow, book value, or a combination of methods) designated by the parties.

**All study countries have formal commitments in their investment laws. However, the extent of these commitments is not consistent with better practice.** While all countries have provided some commitment to due process, there is no detail in the existing investment laws or regulations and it would be necessary for affected investors to seek redress through the court system or arbitration mechanisms (where available). Clarifying redress pathways in the investment law would provide greater investor certainty. Further, no study country provides sufficient detail as to how compensation will be calculated, and there are no binding judicial or arbitral decisions directly concerning expropriation by a study country.<sup>151</sup> Tonga has the best legislative formulation; however, still does not provide detail about how compensation would be calculated beyond describing it as being “full and timely” (s 40(2)). For study countries that are parties to PACER Plus, the commitment regarding expropriation and compensation (Chapter 9, Article 13; also Annex 9-C) addresses these issues, and could be viewed as a starting point for amendments to investment law.

## Convertibility and repatriation of funds

**From a foreign investor perspective, an investment cannot be protected unless the host country commits itself to allowing repatriation of funds relating to the investment.**<sup>152</sup> Many countries will seek to manage their currency and

**Table 22: Convertibility and Repatriation of Funds**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Investment Law Guarantee on Repatriation of Capital and Profits</b>					
Investment law guarantees free and prompt transfer of funds related to foreign investment in freely convertible currency	Implied in investment law guarantee	No	Yes	Implied in investment law guarantee	Yes
<b>Transfer Restrictions</b>					
Host country does not impose restrictions on the free and prompt transfer of funds (or, if it does, these exceptions are identified)	Identified restrictions	Imposes restrictions	No relevant restrictions	Identified restrictions	No restrictions

Source: Pacific Private Sector Development Initiative

foreign reserves, which in some circumstances can create conflict between the interests of the host country and the foreign investor.<sup>153</sup> Investors assessing political risk ahead of an investment decision are likely to closely observe rules relating to fund convertibility and repatriation.

**Better practice is for countries to:**

- **Enable repatriation of funds related to a foreign investment.** Transfers should include dividends and profits, interest paid on loans, payments derived from intellectual property rights such as royalties and technical assistance fees, and capital.<sup>154</sup>
- **Allow investors to convert local currency into a freely convertible currency.**<sup>155</sup> The exchange rate should be the market rate, where it exists, or the official rate of exchange as determined on the date of transfer. Access to foreign exchange is important to businesses, as it enables them to pay the costs of imports and other foreign obligations. This right should be available to all forms of investment.
- **Identify restrictions on transfers, if imposed.** If restrictions are imposed, they should be limited to nondiscriminatory, good-faith application of the host country’s laws and regulations.<sup>156</sup> Host countries may also feel the need to impose restrictions of free transferability if faced with a balance of payment crisis, or where foreign exchange reserves become exhausted.<sup>157</sup> Where a host country reserves the right to impose restrictions on free and prompt transferability of funds, it should make investors aware of the exceptions.

**All study countries except for Samoa provide expressed or implied guarantees in investment law for the repatriation of funds.** There is substantial difference in the formulation of the guarantees, with some countries adopting guarantees much closer to better practice than others. Better practice is to provide explicit confirmation that funds are freely convertible, rather than implied (as in PNG and Tonga). Solomon Islands references the Asia-Pacific Economic Cooperation nonbinding investment principles which are drafted in a more aspirational fashion than is usual for law. In this respect, the Vanuatu FIA demonstrates the best formulation of the guarantee among study countries—it is more specific regarding the types of funds that can be repatriated, while also acknowledging the existence of other laws which modify this guarantee (Box 2).

**Box 2:** Foreign Investment Act 2019 (Vanuatu), Section 54: Free transfer of funds

1) A foreign investor, holding a valid certificate of registration, may transfer profits (including capital gains, dividends, royalties, loan payments, and liquidations) in any currency, to any person inside or outside Vanuatu.

(2) Subsection (1) does not limit the application of any other Act that requires the deduction withholding of any tax or levy from a payment to be made inside or outside Vanuatu.

Source: Foreign Investment Act 2019 (Vanuatu)

**Transfer restrictions remain a feature of many study countries.**

The extent and complexity of these requirements differs. However, in general, the practical barriers for investors to remit funds are likely to be a drag on investment. While it is acknowledged that exchange controls are implemented by policymakers for a number of reasons, they can have a negative effect on investors’ legal and practical ability to realize the benefits of their investments. PNG deviates from better practice by imposing complex controls on foreign investment. Samoa and Tonga both would likely categorize foreign investors as “residents” and impose restrictions on the repatriation of profits, which incorporates substantial imposition on commercial freedom. Samoa’s practices are less certain for investors as repatriation of capital, dividends, or operating

profits do not have delegated limits and are assessed on a “case-by-case basis”, potentially with further documentation to be provided.

## Dispute settlement

**Table 23:** Dispute Settlement

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Dispute Settlement</b> Country has ratified and domestically enacted (if necessary, under the country’s legal system) the following international conventions:					
Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention)	Yes	Yes	Yes	Yes	No*
New York Convention	No**	No	No	Yes	No

\* Section 55 of Vanuatu’s Foreign Investment Act 2019 references the ICSID (International Centre for Settlement of Investment Disputes) Convention; however, Vanuatu is listed as a non-member country.

\*\* Papua New Guinea has acceded to the Convention on 17 July 2019, but has not yet taken the necessary domestic legal steps.

Source: Pacific Private Sector Development Initiative

**An effective and efficient dispute resolution system is essential to facilitate cross-border investment because it assures foreign investors that contractual rights and obligations will be upheld.** While both states and investors are incentivized to resolve disputes in the most rapid, informal, and amicable way, this may not always be possible.<sup>158</sup> Overall, host countries can and should reduce their potential exposure to disputes by working to reform areas that create political risk. However, the practical ability of an investor to resolve disputes and, if necessary, enforce investment guarantees are of utmost importance.<sup>159</sup>



**Recourse to national-level dispute resolution mechanisms—typically local arbitration or litigation in national courts—is an important avenue for settling investment disputes.** Strong capacity at the national level is important, particularly for smaller investors. This is because costs for international arbitration and similar mechanisms can range between \$4 million and \$5 million, while damages can cost billions of dollars.<sup>160</sup> Accordingly, countries with higher proportions of smaller-scale or resident investment should have effective dispute resolution mechanisms at the national level. However, resorting to national-level mechanisms can pose risks to investors where they perceive a lack of impartiality or if the local judicial system is ill-equipped to deal with the potentially highly technical nature of many investment disputes.

**Countries seeking to attract larger-scale investment should provide access to international avenues for dispute resolution.** International arbitration is the preferred way for most investors to resolve both investor–investor and investor–state disputes<sup>161</sup> of a more serious nature or of higher value. Arbitration is a mechanism for the private settlement of disputes in which the disputant parties mutually consent to appoint an arbitrator to make a final and binding determination of the rights and obligations of the parties.<sup>162</sup> While definitions vary and domestic laws can affect access to international arbitration,<sup>163</sup> an arbitration is likely to be viewed as an “international arbitration” where it has a cross-national quality. This could include, for example, disputes in which the parties have residence in different states when the agreement is concluded, and their agreement specifies that arbitration is to be determined outside the state which serves as their place of business, or if the parties have agreed that the subject matter of their agreement relates to more than one country.<sup>164</sup>

**International arbitration provides several advantages for foreign investors who are seeking to minimize political risk.** From a foreign investor standpoint, its main benefits include ease of enforcement, the ability to choose who decides the dispute, procedural flexibility and privacy, and the opportunity to have the dispute heard in a neutral country. Foreign investors can be expected to prefer international over local arbitration within the Pacific islands region for several reasons. Several countries simply lack national arbitration legislation. Of those that have national legislation, it tends to be outdated, and out of step with good practice. Moreover, the availability of skilled and experienced arbitrators within the region is extremely limited.

**Access to international arbitration always requires consent, which may occur through provisions in investment legislation, arbitration clauses in contracts between parties, or through a bilateral and multilateral investment treaty.** In general, consent does not require exhaustion of local remedies before international proceedings can commence. However, good practice is for parties to first attempt to settle their dispute through consultations or negotiations.

**Several institutions and systems are available to establish international arbitration proceedings.** Among the most important are:

- **The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).** The International Centre for the Settlement of Investment Disputes (ICSID) provides a neutral mechanism for settling investment disputes between foreign investors and the host state. It requires countries to become a signatory to the ICSID Convention. In countries with a common law legal system, it also typically requires parliamentary consent for the mechanism to be operationalized. This typically occurs through inclusion in an investment law (or treaty) which indicates that the ICSID Convention has the force of law within the country.
- **The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).** The New York Convention provides for the enforceability of arbitral awards. It requires that countries which become signatories to the New York Convention enact legislation and regulations which enable parties to commit themselves to arbitrate disputes internationally, and ensure that the resulting awards are recognized and enforced by local courts without undue delay.

**All study countries except Vanuatu provide access to ICSID. However, to date, only Tonga has taken the necessary steps to operationalize access to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.** Investors seek to assess and mitigate expropriation, contract repudiation, and legal and regulatory risks. Providing confidence that investors can seek resolution to disputes with both state and private parties, thus, is a basic core assurance that countries should provide to investors. While ICSID is an important path to resolve investment disputes, it effectively limits international arbitration to disputes between the contracting state and a national of another contracting state. Accordingly, investor–investor disputes are insufficiently catered for under current FDI frameworks. The New York Convention provides for both investor–state and investor–investor dispute resolution under the United Nations Commission on International Trade Law (UNCITRAL) model laws.

**Study countries should also consider reforming access to domestic commercial arbitration.** The domestic legal systems in study countries generally operate under heavy caseloads and have limited capacity to resolve complex commercial law matters. Foreign investors—particularly smaller–value, resident investors—may not have the resources or willingness to bring international arbitration claims. Access to swift, less–expensive, and impartial dispute resolution outside the court system can provide confidence to investors. This is particularly relevant for investors who are seeking to manage contract repudiation risks and can also benefit citizen investors. Currently, PNG and Tonga are engaging in arbitration reform efforts. However, all countries should consider implementing modern arbitration laws.

## Investor behavior

Table 24: Investor Behavior					
	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Investor Behavior</b>					
Investment law includes a requirement that foreign investors:					
Comply with all domestic laws and regulations	Yes	No	Yes	Yes	Yes
Provide periodic statistical reports concerning operations	Yes	Yes	Yes	Yes	Yes

Source: Pacific Private Sector Development Initiative

**Foreign investment is a two-way relationship between the host country and the foreign investor.** While host countries should provide foreign investors with confidence that their investments will be protected, they also have legitimate expectations of foreign investors’ conduct when they have established a commercial presence in the country. Therefore, the investment law should also clarify the nature of these expectations.

### *Comply with all domestic laws and regulations*

**Host governments have a legitimate right to regulate in matters of labor and development of human resources, consumer and environmental protection, taxation, and other public interest issues.** Investors should be informed that, alongside the investment guarantees that they receive, they will be required to comply with all domestic laws and

regulations (including the investment law). In the event of noncompliance, they should be subject to penalties and sanctions specified within those laws. This is particularly relevant to countries that have acceded to PACER Plus. The agreement specifically acknowledges that investors of a party and their investments are subject to the laws, regulations, and standards of the host state party (Chapter 9, Article 5).

**All study countries except for Samoa have provisions in their investment law or through certificate conditions which obligate investors to comply with domestic laws.** The formulation of the obligation varies; however, better examples are seen in section 4 of the Tonga FIA and section 36 of the Vanuatu FIA. The formulation of Solomon Islands falls short of an explicit requirement to comply with domestic laws and obligations.

**There are perceptions of noncompliance with local laws by a minority of foreign investors.** While it is beyond the scope of this study, interviews with FDI regulators indicated that there was substantial community concern about some investors not complying with laws. This may arise because of deliberate noncompliance on the part of investors, or a lack of awareness (e.g., in relation to zoning laws or trading licenses).

**It is important that investment laws state upfront that other domestic laws must be followed because it is relied upon in several study countries to sanction the investor or cancel investment certification.** Where there is a requirement that is directly related to the investment law, such as market access, location restrictions, or equity requirements, this should be reflected in the investment law itself. Interviews indicated that, in most study countries, laws and policies that can affect foreign investors are developed in silos, particularly at the sectoral level. As such, countries should take proactive steps to include affected investors when developing policy, as well as communicate requirements clearly so that they can comply. Restrictions which are unsuitable for inclusion in investment law should be reviewed for efficacy, and/or identified in a country's NIPS.

#### *Provide periodic reports concerning their operations*

**Foreign investors should be required to submit periodic reports about their operations.** Reporting should be limited to non-commercially sensitive information that enables governments to develop an overall picture of the benefits FDI generates for the country. This picture should include capital invested, people employed, and FDI contribution to the growth of priority sectors or activities. Reports can also provide regulators with information concerning an investor's operational status and compliance with investment law.

**All study countries require investors to provide statistical reports concerning their operations. However, in practice, compliance rates can be low.** This is occurring even in countries like PNG and Solomon Islands that have electronic registries to make reporting easier for investors. Interviews indicated that unsatisfactory compliance is often a combination of limited enforcement and investors neglecting administrative requirements. Accordingly, the quality and quantity of data that are gathered by study country regulators are unlikely to be sufficient to provide detailed reports to government. This has real impacts on study countries' ability to adequately create and adjust policies to effectively capture and maximize the benefits of FDI. Further discussion on monitoring is in **Chapter 6 [FDI Monitoring and Reporting]**.

## 5. FOREIGN INVESTOR RESIDENCE IN COUNTRY

### Better practice

**Table 25:** Foreign Investor Residence in Country: Better Practice

Issue	Better Practice
Screening approach	Foreign investors and their designated representatives should not be subject to work permit requirements.
	An investor class residence permit should be available, with decisions made by one government authority using objective criteria.
Duration of investor residence permit	Residence permits should be issued on a temporary basis for new investors with longer term residence options available once investment has been established.
Residence permit fee	Fees for investor-class residence permits should be affordable and priced on a cost-recovery basis.

Source: Pacific Private Sector Development Initiative

**Foreign investors in a new host economy seek to minimize uncertainty, particularly where institutional quality is low<sup>165</sup> or they are not familiar with the country.** Accordingly, many investors seek to oversee their investments personally or appoint trusted representatives. IIAs typically do not provide explicit guarantees that investors or their key personnel will be able to reside in the host economy on a long-term basis.<sup>166</sup> Accordingly, countries wishing to encourage FDI should adopt flexible provisions for foreign investors and/or their key personnel to reside in country.

**It is acknowledged that immigration policy is politically sensitive in many countries, and community expectations can differ substantially on the desirability of migration.** Accordingly, it is necessary to find an acceptable balance between attracting investment with a liberal foreign investor and worker regime on one side, and protecting the local labor market and national security on the other. This study is limited solely to the foreign investor component of this issue.

## Overview of country performance

**Table 26: Foreign Investor Residence in Country: All Countries**

Country	Alignment
Papua New Guinea	WEAK
Samoa	WEAK
Solomon Islands	WEAK
Tonga	MODERATE
Vanuatu	MODERATE

Source: Pacific Private Sector Development Initiative

**Most study countries do not have immigration systems, which effectively incentivize foreign investors or their designated representatives to relocate to the host economy.** Factors that should be considered in the design of an immigration system to promote investment include:

- protecting the right of countries to regulate migration flows, and denying entry to undesirable persons;
- promoting employment opportunities for citizens, while filling skills shortages;
- providing investors with confidence that they can manage their investments personally or through a trusted representative; and
- providing investors sufficient certainty of presence that they can achieve a return on their investment.

**No study country adequately balances the above factors, and better connection between investment policy and immigration systems is needed.** When developing investment policy, governments should explicitly consider how to improve their location offering through providing expedited processes to attract and retain investors, including their designated representatives. Immigration policy and systems can complement investment policy by operationalizing the goals of investment policy in addition to its core purpose in regulating the flow of foreign workers. It is important for immigration systems to provide investors with time and space for them to effectively establish their business, oversee its management, and have a reasonable opportunity to make a return on their investment. This, in turn, is likely to provide a net benefit for the host economy.

**Practices across the study countries regarding confidence of management are generally poor.** While most countries have an “investor” or a “business” permit which enables residency, only Tonga and Vanuatu recognize the pro-employment status of investors and exempt owners of foreign investments from obtaining a work permit. Study countries, which routinely require work permits for foreign investors, place an unnecessary barrier to investment and introduce further uncertainty for investors which can deter investment. Further, no country exempts designated representatives or intra-company transferees of an overseas-based investment from work permit requirements, presumably on the assumption that the position could be filled locally. While a citizen may have the requisite skills (and it is open for investors to find suitable workers locally for the position), it is important for investors to have personal confidence in their representative, particularly for senior and key positions at the investment establishment phase. Accordingly, designated representatives should be considered effectively the same as an owner of a foreign investment for residence purposes.

**The duration of residence permits in most countries is also a barrier to investment.** Better practice is evident in PNG and Solomon Islands, which have clear rules that enable investors to obtain residence permits for up to 5 years.

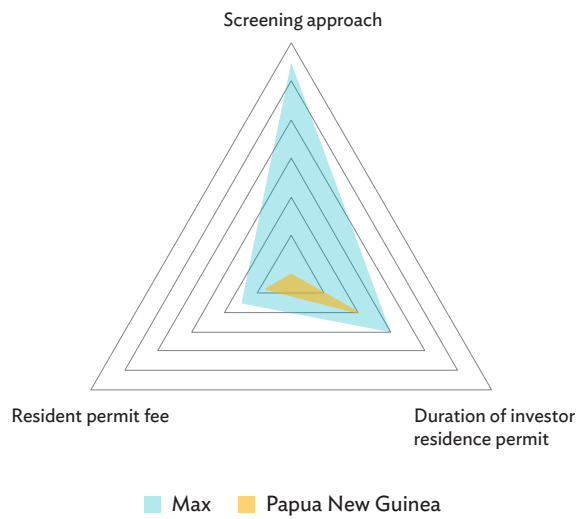
Samoa, Tonga, and Vanuatu either offer shorter-term permits or offer longer-term permits but on a discretionary basis, effectively building uncertainty into the system. Vanuatu's position limits designated representatives' residence in country to 4 years, on the assumption that a citizen will be able to take up the relevant position. This detracts from the country's otherwise positive practices in issuing investor class residence permits.

**While options for permanent residence are available in study countries excluding Solomon Islands and Tonga, they have time limits and often involve eligibility criteria that render them unattractive for investors.** Samoa and Vanuatu's permanent residence options are highly restrictive and not likely to be accessed by many investors. PNG has a permanent residence option, but requires high levels of investment in country to qualify. Countries offering citizenship by investment programs are not likely to be attractive for most investors. Samoa's high start-up investment value to access the program may deter investors from entry into the market. Vanuatu's pathways to citizenship are poorly adapted for investment outside real estate because they do not take into account the value of investment already made by bona fide investors and require substantial additional payments.

**Better practice is for countries to balance competing policy interests by adopting a two-stage investor residence permit that does not require a work permit.** This enables countries to welcome investors on a temporary basis and, once they have demonstrated that their investment is successfully established, retain their presence to generate further economic opportunities for the benefit of citizens. The interests of the host economy in retaining control on migration flows while promoting citizen opportunity are also better achieved. Only Solomon Islands has adopted this system, and it is recommended that other study countries consider this approach.

**Immigration laws across the study countries tend to be older, and provide substantial discretion for authorities to deny permit applications.** While it is a sovereign right of countries to manage migration flows, it is important to provide investors with reasonable certainty to how that their applications will be assessed. Solomon Islands has adopted clear and detailed legislative criteria in this vein. However, its continued imposition of work permit requirements detracts from system efficiency. Vanuatu's investor residence permit is another example of clear criteria being used by immigration authorities. Further, processing times across the countries varies substantially, with most immigration authorities failing to track actual processing times. Adopting clearer, well-advertised, and tracked service times would provide greater certainty to applicants.

**Figure 11: Foreign Investor Residence in Country: Papua New Guinea**



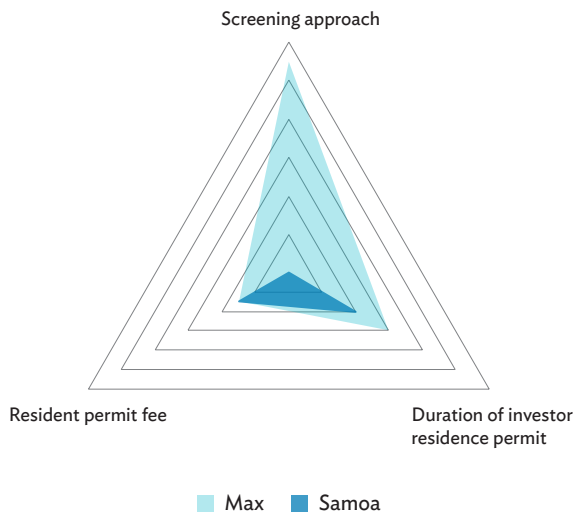
**Alignment**

**WEAK**

- Cumbersome two-stage residence permit system, which requires owners of foreign investments and their designated representatives to separately obtain work and residence permits from different government agencies.
- Lack of clear information on how residence permit decisions are made.
- No legislated processing times for issuing permits, and performance against targets is not monitored.

FDI = foreign direct investment, max = maximum  
 Source: Pacific Private Sector Development Initiative

**Figure 12: Foreign Investor Residence in Country: Samoa**



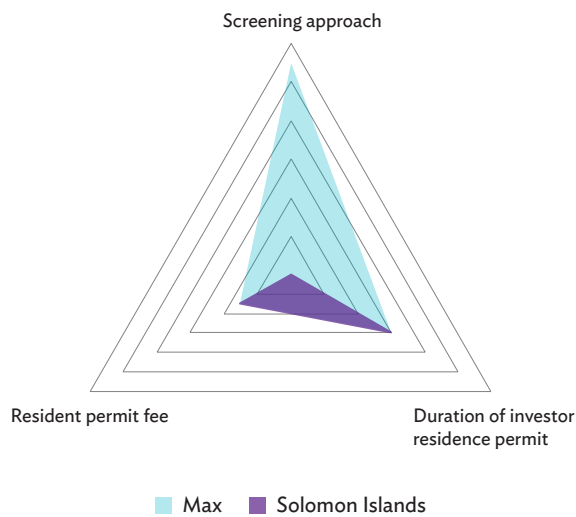
**Alignment**

**WEAK**

- Cumbersome two-stage residence permit system, which requires owners of foreign investments and their designated representatives to separately obtain work and residence permits from different government agencies.
- While permanent residence is an eventual option, the process is lottery based, and temporary residence permits are limited to a maximum of 2 years.
- No legislated processing times for issuing permits, and performance against targets is not monitored.

FDI = foreign direct investment, max = maximum  
 Source: Pacific Private Sector Development Initiative

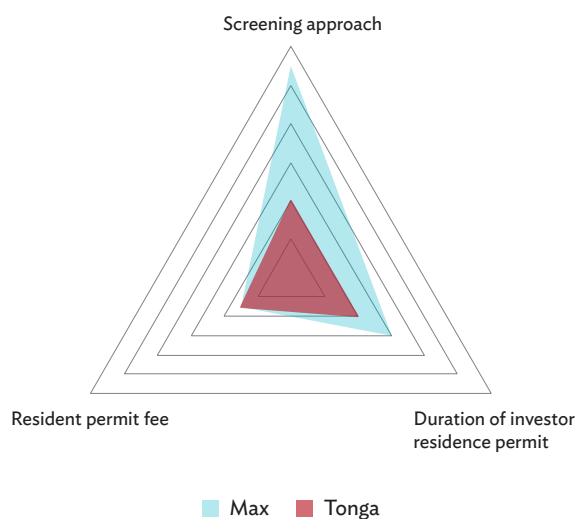
Figure 13: Foreign Investor Residence in Country: Solomon Islands



FDI = foreign direct investment, max = maximum  
Source: Pacific Private Sector Development Initiative

Alignment	
WEAK	<ul style="list-style-type: none"> <li>• Cumbersome two-stage residence permit system, which requires owners of foreign investments and their designated representatives to separately obtain work and residence permits.</li> <li>• Transparent criteria used in issuing residence permits to owners of foreign investments, but designated representatives are not treated in the same way.</li> <li>• No provision for permanent residence.</li> <li>• No legislated processing times for issuing permits, and performance against targets is not monitored.</li> </ul>

Figure 14: Foreign Investor Residence in Country: Tonga

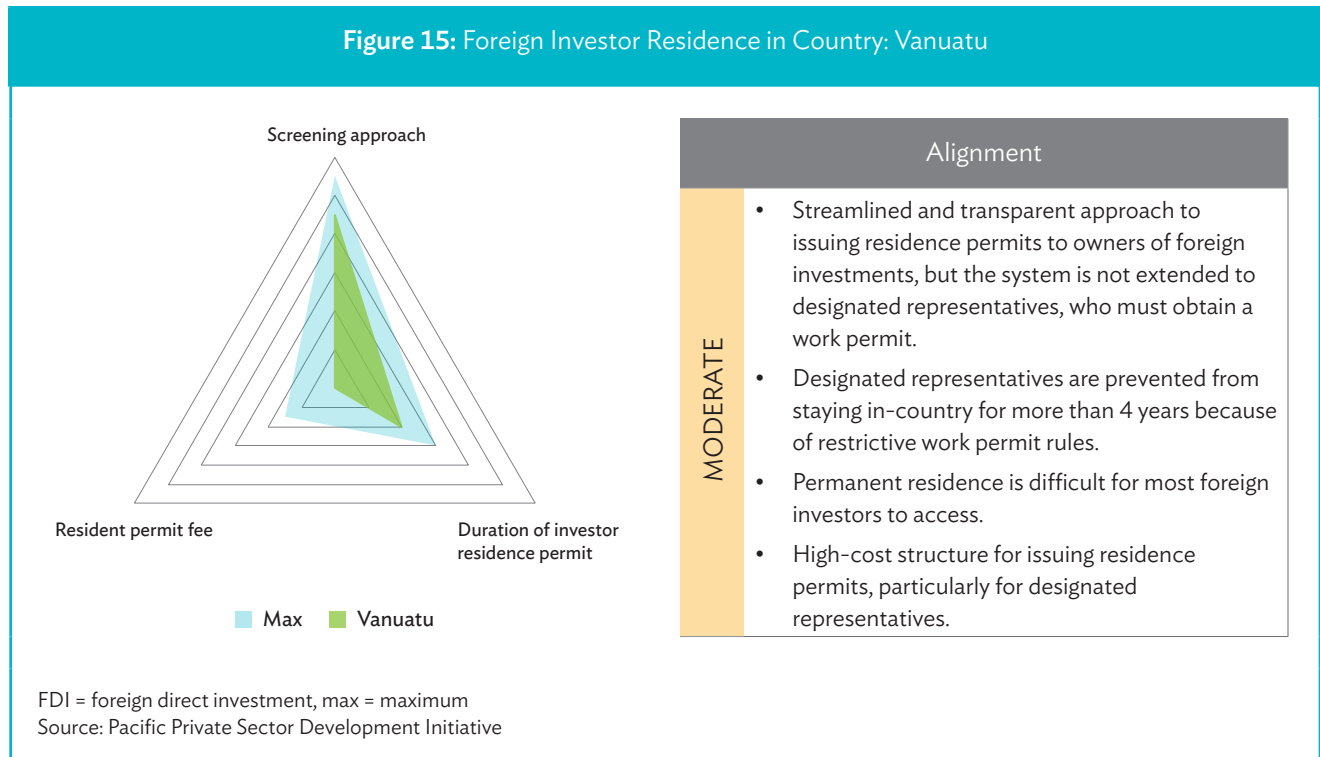


FDI = foreign direct investment, max = maximum  
Source: Pacific Private Sector Development Initiative

Alignment	
MODERATE	<ul style="list-style-type: none"> <li>• Foreign investor residence permits administered by a single agency, but support from commerce ministry is required.</li> <li>• Lack of clear and consistent public information about how the system operates.</li> <li>• Residence permit durations are based on unofficial practice rather than clear rules.</li> <li>• No provision for permanent residence.</li> <li>• No legislated processing times for issuing permits, and performance against targets is not monitored.</li> </ul>



**Figure 15: Foreign Investor Residence in Country: Vanuatu**



## Screening approach

*Do not require investors to apply for a separate work permit*

**Foreign investors and their designated representatives and intra-company transferees should be treated differently from foreign workers.** Many countries use work permits as a means of protecting the local labor market combined with residence permits to ensure that immigrants do not pose a health or security risk. A major rationale for countries that are pursuing FDI is for its employment-generation effects. Foreign investors, particularly for smaller-value or niche sectors, may wish to reside in the host country to oversee their investment. Larger investors who are establishing themselves in a new country typically wish to deploy trusted employees to oversee complex start-up requirements and train new workers. Both these scenarios are likely to create more job opportunities for citizen labor. As such, labor market considerations are not a relevant concern in the context of issuing residence permits to foreign investors, and work permits should not be required.

**All study countries except Tonga and Vanuatu require resident foreign investors to obtain a work permit. However, this is not extended to designated representatives or intra-company transferees.** The issue of requiring work permits in some cases appears to stem from disconnects between work permits and immigration legislation. For example, while the Solomon Islands Immigration Regulations do not mention a specific requirement for holders of provisional investment or long-term investment residence permits to possess a work permit,<sup>167</sup> the extension of work permits to “self-employed” immigrant or non-indigenous workers<sup>168</sup> effectively imposes an unnecessary requirement. In Samoa, section 4 of the Labour and Employment Relations Act defines “employment” so broadly that longer-term investors are almost always captured by work permit requirements. However, the blanket extension of work permit requirements to designated representatives or intra-company transferees is largely attributable to the lack of distinction between foreign workers and representatives of foreign investors.

**Table 27: Availability and Features of Temporary Residence Permits for Investors**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Availability of Temporary Residence Permit</b>					
Country has a temporary residence permit for investors/businesspersons, which is available to:					
Owners of registered foreign investors, without the need to apply for a separate work permit	Yes*	Yes*	Yes*	Yes	Yes
Designated representatives/intra-company transferees of a registered overseas-based investment, without the need to apply for a separate work permit	No**	No**	No**	No**	No**
<b>Features of Temporary Residence Permit</b>					
Where either part of the above criteria is met, the temporary residence permit is:					
Administered solely by the immigration authority, without approvals or support from other authorities (excluding FDI certification)	No	No	No	Yes	Yes
Issued according to the following decision criteria:					
(i) only checks ensuring that the foreign investment has successfully met FDI entry requirements, the person has a valid passport and passes objective character and health tests and has a minimum amount of funds for residence; or	Yes	No	No	No	Yes
(ii) meets the requirements of (i), plus the enterprise must satisfy a minimum investment threshold; or	n/a	No	Yes***	No	n/a
(iii) meets the requirements of (i), plus meet a range of additional, investor-specific requirements	n/a	Yes	Yes***	Yes	n/a
Processed in accordance with a statutory processing period of 20 working days or less	No	No	No	No	Yes

\* But work permit required. \*\* Employment permit with separate work permit required. \*\*\* If points threshold met only with investment criteria  
 Source: Pacific Private Sector Development Initiative

**Study countries should follow Tonga and Vanuatu's example and exclude resident foreign investors from work permit requirements.** This position recognizes that foreign investors are not “taking” a job from a citizen, but rather establishing a business that, in turn, will increase local employment opportunities. It would be preferable for immigration frameworks to not require work permits for designated representatives of nonresident investors in recognition that these persons are effectively standing in the place of the investor.

### *Have an investor class resident permit*

**Countries' resident permit regimes should comprise different classes, including ones that specifically address foreign investors.** Permits should be available for:

- **Resident foreign investors.** A foreign citizen with an ownership stake in an enterprise who wishes to reside in the country to establish and manage the investment must be listed as an owner or shareholder of a foreign investment that has completed the registration process. This type of foreign investor accounts for a significant portion of foreign investment into the Pacific islands region.
- **Designated representatives and intra-company transferees.** Larger foreign investors based overseas may want to select the individuals who will oversee their investment (e.g., a managing director and/or senior managers) in the country, particularly in its early years of operation. These individuals will be foreign citizens who they trust.

**All study countries have residence permits that are designated as “investor” or “business person” or similar.**

However, no study country has an investor-class permit that is applicable to designated representatives and intra-company transferees. In all cases, these workers are treated the same as any other foreign worker, and go through a different residence permit process.

### *Use one government agency to administer the process*

**Each interaction with a government agency adds costs and other resource burdens on foreign investors.** In the absence of legitimate labor market concerns, foreign investors should only be required to deal with the government agency tasked with obtaining residency permits.

**Tonga and Vanuatu use one agency to make decisions relating to foreign investors' authorization to enter and reside in country.** However, only Vanuatu approaches better practice with its system, which dispenses of the need to apply for a work permit. This system is not extended to designated representatives and intra-company transferees. Tonga, while not having a formal work permit system, operates a de facto work permit system whereby residence permits are not issued unless the immigration authorities receive concurrence from the Ministry of Trade and Economic Development. This concurrence only focuses on labor market concerns for designated representatives or intra-company transferees however.

### *Make decisions using objective criteria*

**Countries seeking to attract resident foreign investors should decide residence permit applications on objective grounds that are directly relevant to satisfying border security concerns.** However, many countries include additional criteria which go beyond border security and introduce complexity which deters investors. These extra criteria can also overlap with other approvals, including investment certification. The following are broadly the possible options (from more to less welcoming to investors that countries can employ):

- **Minimal requirements.** The country focuses on ensuring that the proposed activities of the foreign investment are acceptable, and the person is an owner or designated representative (in the case of overseas-based investors) and not a risk to public health or safety.

To address the first issue, an applicant must prove that the enterprise has met FDI entry requirements and verify that they are either legally identified as the enterprise owner or their proposed representative. The second issue is addressed by ensuring that the person possesses a valid passport, passes objective character and health tests, and is not otherwise defined as a prohibited immigrant, and possesses a minimum level of financial resources sufficient to cover basic living expenses while in the country.

- **Ensure that minimum investment is achieved.** Many countries also attach a minimum investment threshold to resident permits for senior positions in foreign investments. This is done to ensure that foreign investments requiring executive management by foreign citizens make a capital investment.

If used, a minimum investment requirement is preferably attached to investor residence permits rather than FDI entry (with the minimum investment requirement applying to each investor permit issued). In small developing countries, foreign investments often start small and expand as investors become acclimatized to the country and business landscape, and as their businesses prove viable. Care needs to be taken to ensure that minimum investment thresholds do not unduly discourage small and medium-sized investments, and are competitive with those imposed by similar countries. Countries may also set different thresholds, depending on the type of investment being made (such as capital-intensive activities versus professional services), and/or use different methods to assess their achievement (such as funds brought into the country versus value of fixed assets employed). Table 28 identifies examples of minimum investment thresholds used when issuing temporary investor-class residence permits.

- **Additional requirements.** Some countries also require that investors meet additional criteria such as a clear history of bankruptcy and fraud, proof of a minimum level of qualifications or experience, and/or proficiency in at least one of the country's national languages.

**Table 28:** Minimum Investment for a Temporary Investor-Class Residence Permit in Selected Countries

	Minimum Investment Requirement (\$)
Estonia	<ul style="list-style-type: none"> <li>• \$77,000 (€65,000) for a company or sole proprietorship.</li> <li>• \$19,000 (€16,000) for a self-employed person.</li> </ul>
Mauritius	<p><b>Occupation permit</b> (investor category) – combined work and residence permit:</p> <ul style="list-style-type: none"> <li>• Issued for a maximum of 10 years, renewable thereafter against established criteria.</li> <li>• Minimum investment:                             <ul style="list-style-type: none"> <li>• <b>New investment:</b> Initial transfer of \$50,000.</li> <li>• <b>Established investment:</b> Net asset value of at least \$50,000 and a cumulative turnover of at least MUR 12 million (~\$269,000) over 3 preceding years.</li> <li>• <b>High technology investment:</b> \$50,000, of which half is in funds transferred into the country, and the other half in the value of imported equipment.</li> </ul> </li> </ul> <p><b>Permanent residence permit:</b></p> <ul style="list-style-type: none"> <li>• for 20 years if investor has held an occupation permit for 3 years with: a) a minimum annual turnover of at least MUR 15 million (~\$335,000), or b) an aggregate turnover of MUR 45 million (~\$1,005,000) in a period of 3 years.</li> </ul>
New Zealand	<ul style="list-style-type: none"> <li>• \$67,000 (NZ\$ 100,000) invested in fixed assets.</li> </ul>

Sources: Estonian temporary resident permit <https://www2.politsei.ee/en/teenused/residence-permit/tahtajaline-elamisluba/ettevotluseks/>; Mauritius investor occupation/resident permit <https://www.edbmauritius.org/sites/default/files/inline-files/guidelines-occupation-permit-residence-permit.pdf>; New Zealand entrepreneur work visa <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/about-visa/entrepreneur-work-visa>. New Zealand also offers other investor class work visas.

**Most study countries have adopted complex investor residence permit systems that require substantial additional information.** The Vanuatu residence permit application includes a subcategory for investors which only requires basic information. This is in contrast to other countries, which require evidence of business licences, curricula vitae, language certificates, and letters of support from relevant government agencies. All countries except for Solomon Islands do not require a minimum investment amount. Additional information requests also duplicate evidence required by foreign investment registration processes. Accordingly, independent collection and verification of duplicated information is needlessly time- and resource-intensive.

*Complete the process quickly*

**While countries should conduct due diligence on incoming investors, resident permits should be issued in a timely fashion to enable investors to establish and run investments in country.** At a minimum, investors expect to receive an indication on submission of an application when a decision will be made. Therefore, decision-making authorities should establish a target time for processing investor-class residence permit applications. While the target processing time needs to be realistically achievable based on institutional capacity, a target process time of 20 working days would be considered efficient and acceptable to investors.

**Most study countries issue resident permits to foreign investors slowly.** Only Vanuatu has legislated a processing time target for investor-class resident permit applications of 5 working days. However, achievement of the target is not tracked. While other countries nominate standard application processing times, anecdotally these targets are routinely not met.

Duration of investor class residence permits

Table 29: Two-Stage Residence Permits					
	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Two-Stage Residence Permit</b> Temporary residence permits for investors/businesspersons issued using a two-stage process:					
Initially for a period sufficient to enable the investor to demonstrate they have successfully established themselves, such as 1 year	No	No	Yes	No*	No**
Once establishment has been verified, for longer periods	Yes	Yes	Yes	Yes	Yes

\*Tonga does not offer a specific investor residence permit.

\*\*Legislation allows for longer periods, but practice is to provide residence permits on a yearly basis.

Source: Pacific Private Sector Development Initiative

**Foreign investment is most often a long-term relationship with the host country.** It typically takes many years for an investor to recoup the funds that they have spent in establishing an investment. Thus, foreign investors want assurances that they (or their designated representative) will be able to reside in the country for a sufficient period to earn an adequate return on their investment. Countries, therefore, need to provide foreign investors a high degree

of comfort in this regard, and ideally offer those making substantive contributions to the economy a pathway to permanent residence.

### *Issue investor-class temporary residence permits on a conditional basis to new investments*

**Because new foreign investments are yet to establish themselves, an investor-class residence permit will initially need to be issued on an expectation basis.** Better practice is for countries to provide for a two-stage residence permit system. This entails:

- **A temporary permit.** Foreign investors can establish and commence a business and have enough time to demonstrate that they have done so (generally 6–12 months or more, depending on investment complexity).
- **An established investor permit.** Available for longer periods, this will enable the foreign investor to manage the business, reinvest in the host economy, and generate citizen employment.

**A two-stage system provides a balance between countries controlling migration flows while ensuring that foreign investors can have enough time to make a return on their investment.** Of the study countries, only Solomon Islands officially provides for a two-stage system, with an initial residence permit issued for a maximum period of 2 years. Tonga has adopted an informal system of issuing permits initially for 2 years and then a subsequent 5 years. Study countries should make better use of investor-class residence permits to achieve two investment objectives:

- **Speed of investment.** Providing faster, temporary resident permits encourages more foreign investors to establish businesses in line with country investment priorities as represented by the NIPS and other controls on foreign investment certification.
- **Verification of investment.** Foreign investment registration certificates should require investors to establish an investment in a stipulated time period. The connection of temporary residence permit periods with establishment requirements can help authorities verify that investment has occurred, and quantify the value of the investment to the local economy.

### *Provide foreign investors with an option to reside in the country for longer periods once established*

**Table 30: Permits for Established Investors**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Permits for established investors</b>					
Foreign investors associated with established foreign investments may eventually apply for residence permits of at least 5 years.	Yes*	Yes	Yes	Yes	Yes
Permanent residence is available to foreign investors	Yes	Yes**	No	No	Yes
Citizenship by investment program	No	Yes	No	No	Yes

\* Work permits can be issued for up to 5 years for “good corporate citizens”. Residence permits will generally be issued for the same length of time. \*\*Samoa operates a lottery-based permanent resident system.

Source: Pacific Private Sector Development Initiative

**Once established, governments should be encouraging foreign investments in the country to expand and reinvest.** Foreign investors who are associated with these investments should be rewarded with an option to obtain a residence permit with a longer term. This reduces the administrative burden placed on them and also signals the country’s interest in deepening the relationship. In order to be meaningful, investor-class residency permits should be available for a period of at least 5 years, and include a pathway to permanent residence for investors who are making substantial contributions to the economy.

**Greater certainty should be given to foreign investors so they are comfortable to invest, and reinvest, in the country.** All study countries provide the technical ability for longer-term residence for foreign investors. However, the administration of these schemes does not generally provide certainty. Only Solomon Islands represents better practice by providing for 5-year residence permits for investors specified in its regulations. PNG provides for longer-term work permits for “good corporate citizens” which is generally linked to the length of the residence permit. Interviews with Tongan authorities indicated that longer permits of up to 5 years can be issued, but as a matter of administrative practice rather than specified in law. Samoa enables holders of temporary residence permits to apply for a limited number of permanent residence permits determined annually by the Cabinet; however, only if they are successful in being selected for assessment through a randomized computer lottery. Vanuatu enables longer-term permits to be issued at the discretion of the director of immigration but are not commonly issued.

**Samoa and Vanuatu both offer citizenship by investment programs, although Vanuatu’s program is more heavily marketed and taken up by foreign investors.** While citizenship by investment programs around the world have increased in recent years, countries should exercise caution in promoting these programs. Without stringent oversight, these systems can be abused by non-genuine investors and jeopardize compliance with the requirements of anti-money laundering/combating the financing of terrorism. Vanuatu, for example, has several programs often described as “citizenship by investment”, which have high citizenship (certificate) fees but no positive obligation for the applicant to invest in a business in Vanuatu.<sup>169</sup> Samoa provides a pathway to citizenship with proven minimum investment of ST4 million (about \$1.48 million) and a minimum net worth of ST2.5 million (about \$927,000), although there has been limited interest in this program.

## Permit fees

Table 31: Residence Permit Fees					
	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Residence Permit Fees</b>					
Total temporary residence permit cost (and, where applicable, work permit costs) for a foreign investor over a 5 year period:					
Is less than \$1,000	No	Yes	Yes	Yes	No
Is between \$1,001 – \$2,000	Yes	n/a	n/a	n/a	No
Total cost for temporary residence (5 years) (\$)	\$1,805	\$990 – 1,980*	\$920	\$665	\$2,578

\* Cost depends on whether application is made in or outside of Samoa.  
Source: Pacific Private Sector Development Initiative.

**Countries compete globally for FDI and, accordingly, should keep fees for investor-class resident permits competitive, preferably on a cost recovery basis.** Countries should avoid using permit fees as a means for government to raise revenue. This should be done through the tax system once a foreign investment is operational. The resident permit fee should be limited to covering the costs associated with the processing of an application. This will vary from country to country. Ideally, the fee should not exceed \$2,000. Estonia, for example, charges a nonrefundable processing fee of \$220 for its temporary residence permit for business, which can be issued for a period of up to 5 years.<sup>170</sup>

**Most study countries charge relatively affordable fees, with costs under \$2,000.** The differential and higher cost for Samoa reflects the applicant's location when applying for the permit. Vanuatu is more problematic in that it charges a high fee for work permits (~\$1,800 per year) and will only issue work permits (and associated temporary residence permits) for a maximum of 4 years to designated representatives and intra-company transferees. This may be partially attributable to Vanuatu's shallow tax base and the need to raise revenue through the provision of government services. The practical inability for foreign investors to designate representatives on an ongoing basis may be a deterrent to investment.



## 6. FOREIGN DIRECT INVESTMENT MONITORING AND REPORTING

### Better practice

**Table 32: Foreign direct investment Monitoring and Reporting: Better Practice**

Issue	Better Practice
Unique business identifiers	Unique business identifiers used to track FDI across government
Monitoring and enforcement	<p>Monitoring and enforcement efforts by regulators</p> <ul style="list-style-type: none"> <li>• use clear criteria to define when investments are operational,</li> <li>• have key conditions reflected in offences and penalties,</li> <li>• are performed in accordance with legislated authority to gather information, and</li> <li>• are proactive.</li> </ul>
Appeals	<p>Investors have rights under investment and immigration laws to appeal</p> <ul style="list-style-type: none"> <li>• a denial of FDI application,</li> <li>• a revocation of FDI registration,</li> <li>• a denial of resident permit application, and</li> <li>• a revocation of residence permit.</li> </ul>
System reporting	<p>Reporting on the status of foreign investments in country should</p> <ul style="list-style-type: none"> <li>• be limited to non-commercially sensitive information,</li> <li>• be accessible online,</li> <li>• analyze the makeup of FDI in the country,</li> <li>• analyze the extent to which investment occurs, and</li> <li>• analyze the impacts associated with FDI.</li> </ul>

Source: Pacific Private Sector Development Initiative

**Governments have a vital role in providing a level “playing field” on which businesses, including foreign-owned businesses, operate.** Governments use legislation to establish rules that specify what are permissible and impermissible activities on the part of business enterprises in their countries. These rules address all aspects of the enterprise life cycle, from start-up to site development and operation. Failure to effectively monitor and enforce rules may confer unfair competitive advantages on some participants and generate negative social and environmental impacts.

**Regulatory compliance and enforcement is a broad topic which is beyond the scope of this study.** This section is narrowly focused on additional rules imposed on FDI concerning initial entry, and efforts that government should make from a monitoring and reporting perspective. While host countries should make foreign investors’ entry easy and welcoming, it is important to ensure that they live up to their obligations.

## Overview of country performance

**Table 33: Monitoring and Reporting: All Countries**

Country	Alignment
Papua New Guinea	MODERATE
Samoa	MODERATE
Solomon Islands	MODERATE
Tonga	MODERATE
Vanuatu	WEAK

Source: Pacific Private Sector Development Initiative

**Study countries should take advantage of monitoring and reporting powers and capabilities to better identify and assess the impacts of FDI.** Interviews with regulators indicate that most emphasis is placed on enforcement efforts—generally, spot inspections and similar activities—to ensure compliance with investment law, immigration, and other regulatory requirements. While this is a core function of regulators and should be retained, study countries are missing out on opportunities to make additional use of information to capture and communicate the advantages of FDI.

**All study countries experience challenges from a lack of accurate data about the state of foreign investment, although there are differing capacities to collect, interpret, and report on FDI.** In general, PNG and Solomon Islands have more sophisticated capabilities to collect and analyze data because of their use of online registry solutions, which have moderate reporting capabilities. Samoa, Tonga, and Vanuatu do not use online registries, which hampers their ability to accurately assess FDI in their respective economies. However, online registries, while useful tools, do not guarantee the effective use of available data and regulators must proactively require investors to submit required information, including through the use of their legislated powers. All study countries indicated that there was substantial noncompliance with annual information reporting obligations and, anecdotally, inconsistent willingness to use existing powers under investment laws to secure compliance.

**Current practices surrounding data analysis do not indicate that study countries are capitalizing on available information to better inform policy development and communicate the value and impact of FDI.** This could partially be attributable to disjointed investment policies, which do not encourage a strong data-driven approach to meeting investment goals. No study country, except Samoa to a limited extent, reports on the extent to which investment occurs, and no country assesses impact. While agency annual reporting of system-level FDI information is being undertaken in most study countries, there is little evidence that this information is actively being used across government or consistently communicated to senior officials.

**Countries should prioritize the effective collection and analysis of higher-quality data for monitoring and assessment purposes.** Better consideration should be put towards collaboration between government agencies (such as taxation, superannuation/provident funds, sectoral licensing, and exporting departments/agencies) to better assess FDI's contribution, impact, and efficacy. Improvements in this area would help to address siloed policymaking, which occurs in all study countries, and improve the overall investment climate.

**Traditional enforcement roles are still an important role of regulatory agencies. However, Samoa and Solomon Islands retain gaps in necessary powers, and all countries struggle to adequately resource enforcement.** Better use of data can assist enforcement activities by targeting higher-risk activities or sectors for compliance checks. Further,

several countries have undertaken flexible and innovative steps to use resources better. For example, the PNG IPA partners with local authorities to report suspected noncompliance; Solomon Islands runs proactive awareness sessions for higher-risk sectors; and Samoa participates in joint inspections. There is substantial opportunity for study countries to compare lessons in this area.

**Study countries should take several practical steps to improve their ability to determine the extent and impact of foreign investment in their economy.** These include:

- Utilize online registries to capture and report on foreign investment at the FDI entry level, as well as make better information available to the public.
- Adopt better definitions of when an investment is “established” to monitor FDI more consistently.
- Require compliance with investor information reporting obligations, including the use of coercive powers under investment law, where necessary.
- Ensure that overall FDI system reporting is undertaken with the best available information, and clearly communicate to senior officials to enable better policy development.
- Track FDI across government with unique business identifiers to gain a richer dataset on the activities and contribution of foreign investors.

**Appeal avenues available to investors for investment decisions are generally sufficient. However, more gaps exist in immigration arrangements.** Immigration systems tend to be based on older laws, which provide high levels of discretion to decision-makers, and can complicate appeals. Appeal mechanisms can be practically impossible to access, particularly when they assign decision-making to the Prime Minister or panels of ministers. Study countries should consider reform of migration laws. However, it is acknowledged that this is a broader issue than investment.

**Figure 16: Foreign Direct Investment Monitoring and Reporting: Papua New Guinea**

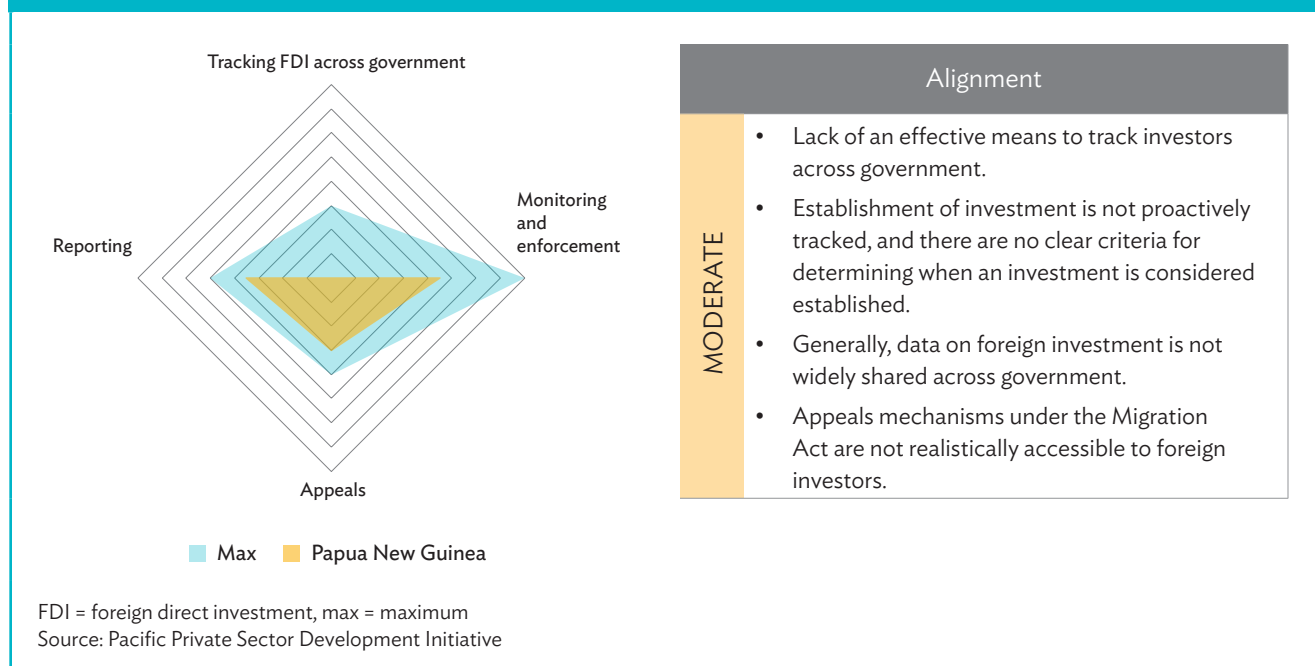
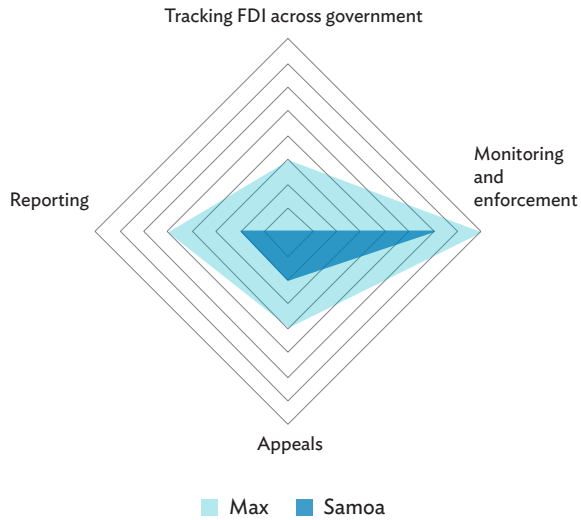


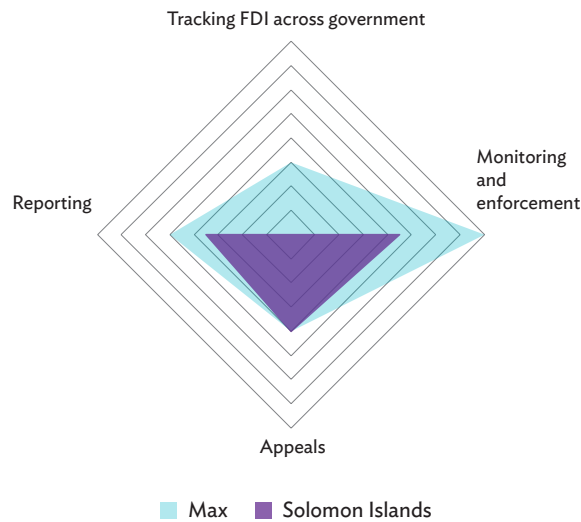
Figure 17: Foreign Direct Investment Monitoring and Reporting: Samoa



Alignment	
MODERATE	<ul style="list-style-type: none"> <li>• Lack of an effective means to track investors across government.</li> <li>• Lack of clear criteria for determining when an investment is considered established within the legislated 2-year period.</li> <li>• While offences and penalties are included in legislation, they fail to address all conditions imposed on registered foreign investments. Penalties in relation to investment law and labor legislation also require a court decision, which makes administration of penalties for minor infractions time-consuming and expensive.</li> <li>• Non-commercially sensitive information concerning foreign investors is not available online.</li> </ul>

FDI = foreign direct investment, max = maximum  
 Source: Pacific Private Sector Development Initiative

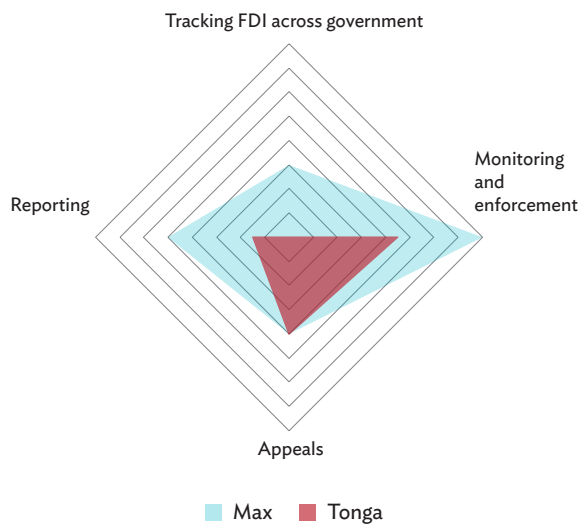
Figure 18: Foreign Direct Investment Monitoring and Reporting: Solomon Islands



Alignment	
MODERATE	<ul style="list-style-type: none"> <li>• Lack of an effective means to track investors across government.</li> <li>• Lack of clear criteria for determining when an investment is considered established.</li> <li>• Investment law does not pair all investor obligations with an appropriate penalty.</li> <li>• Lack of detailed, stand-alone reporting on the state of FDI and its impacts on the economy.</li> </ul>

FDI = foreign direct investment, max = maximum  
 Source: Pacific Private Sector Development Initiative

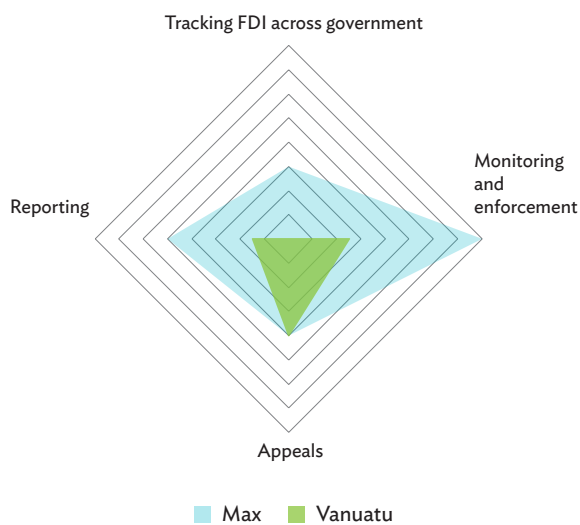
**Figure 19: Foreign Direct Investment Monitoring and Reporting: Tonga**



Alignment	
<b>MODERATE</b>	<ul style="list-style-type: none"> <li>• Lack of an effective means to track investors across government.</li> <li>• Establishment of investment is not proactively tracked, and there are no clear criteria for determining when an investment is considered established.</li> <li>• FDI data is not generally collated, nor is FDI information commonly shared across government.</li> <li>• Non-commercially sensitive information concerning foreign investors is not available online.</li> </ul>

FDI = foreign direct investment, max = maximum  
 Source: Pacific Private Sector Development Initiative

**Figure 20: Foreign Direct Investment Monitoring and Reporting: Vanuatu**



Alignment	
<b>WEAK</b>	<ul style="list-style-type: none"> <li>• Lack of an effective means to track investors across government.</li> <li>• Lack of proactive monitoring of establishment of investment and compliance with FDI registration and residence permit requirements. No clear criteria for determining when an investment is considered established.</li> <li>• Non-commercially sensitive information concerning foreign investors is not available online.</li> </ul>

FDI = foreign direct investment, max = maximum  
 Source: Pacific Private Sector Development Initiative

## Tracking FDI across government

**Table 34:** Tracking of Foreign Direct Investment Across Government

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Tracking Foreign Direct Investment Across Government</b>					
Government regulators have the ability to efficiently communicate with each other about foreign investors through the use of unique business identifiers	No	No	No	No	No

Source: Pacific Private Sector Development Initiative

### Box 3: New Zealand's Business Number

The New Zealand Business Number (NZBN) is a globally unique 13-digit identifier issued to all types of businesses in New Zealand. Some types of business entities, such as companies, incorporated societies, and limited partnerships, are automatically assigned a NZBN when they register with the New Zealand Company Office. Others, such as sole traders, partnerships, and trusts, must obtain an NZBN through the NZBN register.

A NZBN is linked to a business' core business information, which is stored on the NZBN register. It includes

- trading name,
- email,
- legal business name,
- phone number,
- physical address,
- Business Industry Classification Code,
- registered business address, and
- website.

Businesses identify themselves using the NZBN. It avoids the need to provide the same information repeatedly, or update information in multiple places. The NZBN provides access to all details needed for a business to establish a working relationship with government agencies, as well as other businesses and customers.

Source: New Zealand Business Number. <https://www.nzbn.govt.nz>

### Foreign and citizen enterprises engage with multiple government agencies.

Foreign-owned enterprises, like citizen-owned investments, are expected to comply with all domestic laws. When enterprises interact with government agencies, each interaction requires them to identify themselves and often provide information. The task of monitoring compliance across government becomes challenging if a common identifier is not used. Repeated provision of the same information to multiple government agencies is also an administrative burden for business.

### To address this problem, some countries are introducing unique business identifiers.

The identifier is usually a number assigned to any income-earning entity which is operating in the country, and is used when interacting with government agencies. The number can also be linked to basic information about the entity, which can be stored in a central register and made publicly accessible. Box 3 describes the system used in New Zealand.

### No study country issues unique business identifiers to businesses.

Study countries will typically require investors to possess several identification numbers for matters such as foreign investment registration, company registration, business names registration, taxation, importation,

trade licensing, and provident fund/superannuation contributions. This can lead to difficulties in matching information on investors to provide a more comprehensive view of foreign investment in the relevant country.

**Study countries should consider introducing unique business identifiers on an ongoing basis as electronic business systems are upgraded.** This is not specific to foreign investors and is anticipated to benefit all businesses that are operating in study countries. Should a country not have sufficient capacity to introduce a common business identifier, a more straightforward alternative may involve prioritizing system interoperability when governments or development partners are going out to tender for electronic systems upgrades. This should be supported by legislation to enable information sharing where appropriate.

## Monitoring and enforcement

Table 35: Monitoring and Enforcement					
	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>When Investment is Established</b>					
Transparent criteria for when investments are considered established	No	No	No	No	No
<b>Inspection Powers</b>					
Regulators have legislated inspection powers to determine if the conditions of Foreign Direct Investment (FDI) registration/residence permits are being breached	Yes	Yes	No	Yes	Yes
<b>Offences and Penalties</b> Offences and penalties are specified in legislation, and:					
Address all legislated requirements	Yes	No	No	Yes	Yes
Address some, but not all, legislated requirements	n/a	Yes	Yes	n/a	n/a
<b>Proactive Monitoring And Enforcement</b> Regulators proactively monitor:					
FDI to ensure establishment requirements are met	No	Yes	Yes	No	No
Foreign investor compliance with FDI registration and residence permit requirements	Yes	Yes	Yes	Yes	No

Source: Pacific Private Sector Development Initiative

**It is legitimate for host governments to expect foreign investors and their investments, once established, to comply with specific requirements set out in investment and immigration legislation.** This requires the establishment of appropriate monitoring and enforcement mechanisms.

### *Clear criteria are used to define when an investment is established*

**Ensuring a foreign investment is established is important for several reasons:**

- **Investor residence in country is conditional on establishing investment.** In many cases, a foreign citizen(s) will be required to manage the investment, and a residence permit is authorized for this purpose. Residence is provided to these individuals on the expectation that they establish the investment and commence business operations. Clear criteria are needed to determine whether this expectation has been met, enabling the extension of the resident permit if needed.
- **Determine how the country is performing in attracting FDI and ensure that investment promotion spending provides value for money.** Countries need to determine whether investors are following through with investment and generating benefits in the local economy. This can also provide critical evidence on whether investment promotion efforts are succeeding in attracting target FDI volume and sectors. Criteria for determining whether an investment is operational typically require the enterprise to have successfully completed all business entry requirements and started generating income and filing tax returns.
- **Determine compliance with investment conditions.** Regulators should ensure compliance with (i) general investment conditions, (ii) specific conditions for restricted activities, or (iii) investor-specific investment conditions. Regulators should specify requirements in a written policy and communicate this to foreign investors at the outset of the investment establishment process.

**Generally, study countries adopt a time-based requirement for investment establishment or commencement.**

However, they provide no guidance on what “established” means. The times are:

- **PNG:** periods vary, but commonly 6 months;
- **Samoa:** 2 years;
- **Solomon Islands:** 12 months;
- **Tonga:** 1 year; and
- **Vanuatu:** 12–18 months, depending on the size of the investment.

**FDI regulators often stated in interviews that “established” meant when the business had commenced trading.**

However, interpretation is left to inspectors. Regulators highlighted that, where there were potential delays, early engagement by investors was encouraged to avoid breaching establishment conditions. This case-by-case approach provides some flexibility, particularly where slow approvals by other government authorities delay establishment. However, on a system level, inconsistent application of when a business is established hampers the consistency of data collection and reporting.

### *Regulators have authority to gather information*

**Institutions charged with monitoring and enforcing legislation need the ability to carry out their responsibilities effectively.** This should include authority to request and examine business-related information and records to ensure that offences have not been committed. These powers should be included in legislation.

**All study countries except Solomon Islands provide regulators with the above powers.**



### *Key conditions are reflected in offences and penalties*

**Investment and immigration laws that establish conditions for investment should also have corresponding offences and penalties for noncompliance.** For foreign investment entry, conditions should include not providing false or misleading information in applications, adhering to reserved and restricted lists, providing periodic reports, informing regulatory authorities of key changes in ownership or investment activity, and complying with all domestic laws. Regulators should be granted the ability to penalize those who fail to comply with such conditions, and penalties should be graduated, depending on the severity of the offence.

**Some components of investment law contain gaps, which can affect the capacity of the country FDI regulator to effectively engage in monitoring and compliance activities.** Where identified, these gaps should be rectified through legislative amendment. Gaps include:

- **Samoa:** Providing false or misleading information on an application, late certificate renewal, and late report submission are not offences.
- **Solomon Islands:** Undertaking an investment without a valid certificate is not a specified offence, and there are no legislated powers of inspection.

### *Requirements are proactively monitored*

**Regulators should actively monitor registered foreign investments and investors with residence permits to determine (i) when investments become operational and (ii) if they breach registration- or permit-related conditions.** Standard operating procedures should be established to guide how monitoring is conducted. Typically, it should include a mix of approaches. For example, the procedures could require registered foreign investments to submit a written report confirming that they have met all operational requirements, along with information to support their claim. Regulatory officers would review the reports and conduct follow-up calls with other regulatory authorities, as well as conduct site visits to confirm the information provided.

**Monitoring registered foreign investments and investor residence permit holders is often carried out by using a risk-based approach.** The frequency of checks is typically based on the type of sector/activity that investors are involved in, as well as past performance. Checks could start with calls to other key regulatory authorities (such as those involved in taxation, customs, and licensing) to ascertain compliance concerns, followed by site visits. A system for accepting and responding to public complaints is also often used.

**Ideally, the approach of regulatory authorities to compliance monitoring should be first to inform and advise, particularly in the case of less serious offences.** Only in situations where investors display a resistance to compliance, or where noncompliance is deliberate or serious in nature, would penalties be enforced. Regulatory authorities will likely need to establish agreements with other key regulatory agencies to enable the sharing of information. Joint monitoring visits involving staff from several regulatory agencies can also be an efficient way of monitoring compliance.

**Monitoring and compliance are priorities for all study country FDI regulators. However, efforts could be enhanced through system improvements, coordination, and better resourcing.** FDI regulators reported facing substantial political and public pressure to be visibly proactive in compliance and enforcement efforts, particularly in sectors where there are perceptions of widespread breaches of investment and immigration law. However, responding to these demands within existing frameworks and resourcing envelopes is challenging.

**All FDI authorities indicated that, while monitoring and compliance are the priorities, resourcing these activities is challenging, particularly in rural areas.** Study countries have established several different approaches to proactively monitor compliance, such as:

- **PNG:** The IPA has entered into memoranda of understanding with provincial authorities to report suspected noncompliance with investment laws. This enables the IPA to extend the reach of its enforcement team into regional areas, where it does not have a physical presence. The IPA also engages in joint spot-checks with immigration authorities.
- **Samoa:** The Ministry of Commerce, Industry, and Labour participates in joint team activities with immigration and customs authorities to raise awareness in the business community.
- **Solomon Islands:** The Ministry of Commerce, Industry, Labour and Immigration (MCILI) runs an annual program of awareness and training for targeted sectors based on reports of noncompliance and detected noncompliance with annual return requirements. MCILI also engages in joint regional monitoring and compliance tours with immigration, tax, and labor officials.

**Improved use of registry information is recommended for targeting compliance efforts.** Interviews with FDI regulators have indicated that noncompliance with annual reporting obligations is a serious issue that hampers targeted monitoring and enforcement efforts. All regulators should prioritize data integrity in order to improve compliance. Regulators have powers to suspend and cancel certification for noncompliance with annual reporting requirements, yet there seems some reluctance to fully use these powers. It is recognized that establishing and maintaining effective electronic registry systems is a resource-intensive and specialized activity. As such, where appropriate and available, development partner support could be suitable.

## Appeals

**Table 36:** Foreign Direct Investment Registration and Residence Permit Appeals

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Foreign Direct Investment Registration Appeals</b>					
Foreign investors have the right to appeal the following decisions under the investment law:					
Denial of an application for registration	Yes	Yes	Yes	Yes	Yes
Revocation of registration	Yes	Yes	Yes	Yes	Yes
<b>Residence Permit Appeals</b>					
Foreign investors have the right to appeal the following decisions under the immigration law:					
Denial of an application for a residence permit	No	No	Yes	Yes	No
Revocation of residence permit	Yes	No	Yes	Yes	Yes

Source: Pacific Private Sector Development Initiative

**Foreign investors should have access to administrative and judicial review procedures to appeal against investment and immigration-related decisions.** Procedures should allow the following concerns to be addressed:

- **Denial of an application decision.** Foreign investors whose petition to register a foreign investment in country or apply for an investor residence permit have been denied should have recourse to appeal based on the legislated criteria that were used to make the original decision. The minister responsible for the legislation, or a

board or tribunal not involved in the initial decision, often hears such appeals.

- **Revoking a permit or the right to operate.** Governments reserve the right to stop a foreign investment from operating in country, or a foreign investor's residence in country. Such a decision often has serious implications for the investor, other businesses, and consumers. Therefore, legislation must clearly specify the grounds on which a decision of this nature is made, and provide a means for the affected party to lodge an appeal. The responsible minister usually handles appeals of this nature, with parties having further recourse to the court system.

**Appeal processes typically require aggrieved parties to submit their appeal request in writing within a specified period of the decision being made.** Decisions regarding appeals should similarly be governed by a strict timetable.

**Appeals against investment decisions are generally well covered by the investment laws of the study countries.** All study countries have relatively streamlined appeal mechanisms, generally through the relevant minister or an administrative committee. Appeal to the courts is subsequently made available.

**Immigration requirements are generally based on older legislation, which provides (i) broader discretion for immigration officers to decide applications, and (ii) more limited access to effective appeal mechanisms.** Solomon Islands, in contrast, has very clear decision criteria in relation to residence permits, and can be seen as an example for other study countries. If countries adopt streamlined procedures for investor residence permits, it would be appropriate to limit the scope of discretion to matters solely relevant to immigration (that have not already been decided under investment law).

**Appeals from denial of an application for a residence permit are very limited in all countries.** In PNG, Samoa, and Solomon Islands, it is not possible to appeal a denial of a residence permit. In Tonga, an appeal must be made to the Prime Minister, and in Vanuatu to the minister for immigration.

**Similarly, difficult provisions apply for revocation of a residence permit:**

- **PNG:** The Migration Act establishes a complicated system of appeal to the minister for immigration, who must inform the Prime Minister and form a three-minister appeal committee.
- **Samoa:** The Immigration Act requires appeals to be made to the Supreme Court.
- **Solomon Islands:** Appeals are made to the minister for immigration.
- **Tonga:** Appeals are made to the Prime Minister.
- **Vanuatu:** Appeals are made to the minister for immigration.

**While these are technical avenues for appeal, it remains very difficult for investors aggrieved by immigration decisions to meaningfully assert rights of appeal.** Given that these decisions are largely administrative, it would be more appropriate to reform immigration laws to provide formal appeal mechanisms to an administrative officer or committee in the first instance.

## Reporting

*Reported information should be accessible and limited to non-commercially sensitive information*

**Information about foreign investment in the country should be accessible through a publicly accessible registry.** The contents of the register should be limited to basic information about a foreign investment, such as date of registration, legal name, contact details, registered investment activities, details about past changes such as transfers and suspensions, and current status (operational, suspended, or cancelled).

**The register should be available online.** In building an online register, care should be taken to avoid duplication. For example, if a separate foreign investment registry is to be maintained, efforts should be made to link it to information

**Table 37: Availability of Information and Reporting on Foreign Direct Investment**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Availability of Information about Foreign Direct Investment (FDI)</b>					
Non-commercially sensitive information about a registered foreign investment's ownership and investment activities is:					
Available online	Yes	No	Yes	No	No
Only available through requests to the regulator	n/a	Yes	n/a	Yes	Yes
<b>Reporting on FDI in Country</b>					
Periodic FDI reports are produced by the FDI regulator that address the following:					
Make up of FDI in the country	Yes	Yes	Yes	Yes	Yes
The extent to which investment occurs	No	Yes	No	No	No
Impacts associated with FDI	No	No	No	No	No

Source: Pacific Private Sector Development Initiative

in the company register. Where a country intends to introduce a national business number registry that includes core business information, effort should be made to incorporate foreign investment-related data. In the absence of an online registry option, countries should make information available to interested parties through requests to the responsible authority during office hours.

*Reporting should analyze the nature of FDI in the country, the extent to which investment occurs, and the impacts that are associated with FDI*

**It is useful for countries to understand the composition of FDI they receive.** This includes separating new investments from acquisitions and variations of existing investments, and identifying those that have ceased. It also involves identifying FDI source countries, the extent to which investments involve joint venture arrangements, investment sectors/activities, and geographic location. This information is useful in strengthening investment promotion efforts and formulating targeted development policies and programs.

**Countries are particularly interested in attracting new investment because it tends to impact economic growth positively.** A foreign investor's decision to register an investment and obtain a residence permit only indicates an intention to invest. It is important to understand how successfully the country converts these intentions into investment. This requires analyzing the extent to which newly registered foreign investments complete the necessary steps to become operational. A poor conversion rate or a downward trend suggests that there may be obstacles in the process of establishing the investment which require rectification. It is equally important to monitor and report on the extent to which existing foreign investors reinvest and expand their operations in the country.

**FDI is at times negatively perceived within countries.** In many cases, these views stem from a lack of understanding of its role and importance in the economy. Addressing this problem requires, as a starting point, information describing

FDI's economic contributions in areas such as formal employment, capital investment, and government tax revenues. Regardless of what indicators are used, reports should highlight FDI's absolute and relative contributions. Information should be presented for the country as a whole and, if possible, by key sectors. Care should be taken to avoid sharing information about individual businesses. Where feasible, information should be gathered directly from government sources. This will likely require information-sharing agreements between government agencies, as well as an ability to identify foreign investments within agency databases.

**All study countries have the capacity to disclose non-commercial information about foreign investments.** This information is generally based on initial certifications, variations, and annual returns. However, as discussed above, compliance with these variations and annual returns is often poor, and regulators generally show a reluctance to use the powers available to them to suspend or cancel certification. As such, the information available for public disclosure has data integrity concerns.

**All study countries are required under investment law to provide information on the composition of FDI in country.** As above, data integrity issues affect the capability of regulators to provide accurate information to inform policy. Further, countries generally do not collect information concerning the extent to which investment occurs, nor the full impact of investments beyond annual turnover and employment figures.

**Investment policy settings should be data-driven. However, study countries currently struggle to provide accurate information.** As discussed above, there are substantial opportunities to use technology solutions to help establish the composition, extent, and impact of FDI. Unique business numbers could assist in this regard by simplifying data sharing and corroboration across government areas such as taxation, provident funds/superannuation, immigration, and business licensing. However, technology solutions must be complemented by consistent use of regulator powers, which require foreign investors to provide accurate information.

## 7. INVESTMENT PROMOTION

### Better practice

**Table 38: Investment Promotion: Better Practice**

Issue	Better Practice
Strategic approach to investment	<p>The investment promotion intermediary (IPI)</p> <ul style="list-style-type: none"> <li>• is guided by clear and realistic FDI goals aligned with national development priorities, sectoral priorities, and overall investment policy, and its performance is monitored against these goals, and</li> <li>• has its services driven by a multi-year investment promotion strategy based on an assessment of the country's comparative advantages, competitive situation, target markets, and available resources.</li> </ul>
Organizational form	IPI is a statutory agency separate to government ministries with substantial private sector representation.
IPI functions	IPI is solely or primarily focused on investment promotion and does not have regulatory responsibilities.
IPI activities	IPI prioritizes the delivery of effective marketing and facilitation services.
Streamlined online approvals	Investors should have the ability to complete investment approvals electronically through internet-based systems.

Source: Pacific Private Sector Development Initiative

**Countries compete globally to attract FDI.** One strategy employed by countries is to actively promote investment in the host economy by establishing dedicated agencies, known as IPIs or investment promotion agencies.<sup>171</sup> Promotional activities consist of “providing information to potential investors, creating an attractive image of the country as a place to invest, and providing services to prospective investors”.<sup>172</sup> This can include activities such as advertising, hosting investment seminars and missions, participating in trade shows and exhibitions, distributing literature, conducting one-on-one direct marketing, facilitating visits of prospective investors, matching investors with local partners, assisting in obtaining permits and approvals, preparing project proposals, conducting feasibility studies, and servicing current investors.<sup>173</sup> This is complementary with, or additional to, other strategies such as tax incentives,<sup>174</sup> special economic zones, the reduction of red tape, and the provision of investment guarantees.<sup>175</sup>

**IPIs seek to reduce information asymmetries between the foreign investor and the host economy.** Simply put, foreign investors do not know as much about investing in a particular country as those who live there. Investment promotion seeks to reduce transaction costs by providing investors with information on business opportunities and prevailing laws and regulations in a host country, helping investors estimate operational costs, and assisting investors to comply with bureaucratic procedures.

**Attracting FDI requires well-functioning, nimble IPIs.** The global trend towards greater investment across borders has led to an increase in the number of IPIs at the national and subnational levels.<sup>176</sup> While the number of IPIs is

growing, the effectiveness of these agencies differs substantially. Attracting better-quality investment requires a strong strategic focus, a supportive institutional framework, and the capacity to deliver investor services throughout the investment cycle.<sup>177</sup> Accordingly, IPIs should seek to provide standardized services that mirror the investment life cycle phases.<sup>178</sup>

**Evidence shows that investment promotion services offered by IPIs can be more impactful in emerging markets than in developed economies.**<sup>179</sup> Well-performing IPIs can achieve substantial economic benefit—one study on IPIs generally estimated that \$1 spent on promotional activities on average resulted in \$189 of FDI inflows.<sup>180</sup> Box 4 describes how IPIs with a service orientation and specialized marketing skills have the potential to attract FDI. In many cases, developing countries have greater information asymmetry between the host economy and the investor. Investors may not be as familiar with matters affecting investment such as accessing sectoral data and information, navigating complex regulatory environments, and dealing with cultural differences.<sup>181</sup> Further, investment can be facilitated by well-functioning IPIs in circumstances where the host economy maintains inefficient regulatory structures for matters such as licensing.<sup>182</sup>

#### Box 4: How Investment Promotion Can Affect The Decision Process Of A Foreign Investor

A company considering a foreign investment usually starts the process of selecting the investment location by drawing up a long list of potential host countries. The list is compiled by the company executives or a consulting firm hired for the purpose of site selection. The long list typically includes 8 to 20 countries belonging to three groups: (a) the most popular FDI destinations in the world, (b) countries located in proximity to the existing operations of the investor, and (c) emerging FDI destinations (that is, countries which represent “out of the box” thinking). The inclusion of the third category presents an opportunity for an IPI. The potential investor may include in this category countries they have recently seen in the media, countries whose IPIs recently approached them or their colleagues, or countries whose IPI representatives have attended conferences and industry fairs.

Based on the trade-off between costs and business environment quality, the long list is narrowed down to a shortlist of up to 5 potential host countries. This is usually done without visiting the potential host countries, so the accessibility of information on the host country is crucial. IPIs that provide up-to-date, detailed, and accurate data on their websites, and are willing to spend time preparing detailed, customized answers to investors’ inquiries, can increase the chance their country is included in the shortlist.

The next step in the decision-making process involves visits to countries on the shortlist. Multiple sites in each country may be visited. A visit often involves interactions with the IPI, which provides the IPI with an opportunity to emphasize its locational advantages, answer questions, show executives potential investment sites, and introduce them to potential local business partners.

In the final stage of the process, the investor chooses an investment location based on the availability of potential sites, costs, and the overall quality of its business climate. An IPI can assist at this point by addressing additional investor questions, and offering to help with the foreign investment registration process.

The IPI is often the first entity contacted by a potential investor. As such, the absence of an IPI not only complicates investor efforts to gather information, but also constitutes a potential reason to eliminate a location during the selection process.

Source: Harding, T. and Javorcik, B.S. 2012. Roll out the Red Carpet and They Will Come: Investment Promotion, Information Asymmetries and FDI Inflows. *The Economic Journal*. Vol 121 Issue 557.



## Overview of country performance

**Table 39: Investment Promotion: All Countries**

Country	Alignment
Papua New Guinea	WEAK
Samoa	WEAK
Solomon Islands	WEAK
Tonga	WEAK
Vanuatu	WEAK

Source: Pacific Private Sector Development Initiative

**An issue common to all study countries is a lack of strategic direction with regard to investment promotion.** This lack of policy direction prevents IPIs from developing investment promotion strategies that can guide their operations and contribute to the achievement of national economic and social development priorities. While countries should develop FDI frameworks in accordance with government priorities and community expectations, articulated FDI objectives would provide better clarity regarding government expectations of IPIs. This policy clarity can be translated into an investment promotion strategy and better organizational operational practices. This need is particularly relevant to PNG and Vanuatu, where governments have expressed a stronger focus on investment promotion by establishing autonomous IPIs. If PNG and Vanuatu were guided by FDI goals and investment promotion strategy, their scores would have been “good” rather than “weak”.

**No study country currently operates under an investment promotion strategy.** This is likely attributable to the overall lack of policy guidance. However, countries wishing to market themselves proactively for investment should undertake this exercise. To be effective, IPIs need to be guided by a strategy with realistic and measurable targets that are aligned to national development goals. These investment promotion goals can inform IPI structure (although ideally this should be through investment policy), internal work plans, and external and client-facing activities. Most IPIs reported that they were operating reactively, needing to interpret government economic announcements without clear guidance or meaningful input into performance target development. Further, the lack of measurable, monitored targets inhibits the IPIs’ ability to demonstrate their value and attract ongoing budget allocations to resource their operations.

**The current range of activities undertaken by all study country IPIs deviates from better practice.** As a general proposition, IPIs should not undertake regulatory functions such as FDI certification. International evidence indicates that better-performing IPIs have a narrower focus on investment promotion services and avoid regulatory functions, the facilitation of specific transactions, or engagement in general development activities for small and medium-sized enterprises. All study countries have a focus on investment certification, which tends to dominate the IPIs’ day-to-day operations for autonomous agencies or be a higher relative priority in integral or sub-units of major ministries. The organizational culture and staff skills that are needed to promote inwards FDI are generally not consistent with regulatory agencies. While better practice is to separate investment promotion from other activities, the size and available resources of study countries differ, and this may not be financially feasible or necessary to meet overall investment objectives. However, there are practical steps, such as separating regulatory and promotion functions, which can help increase IPI focus on investment promotion.

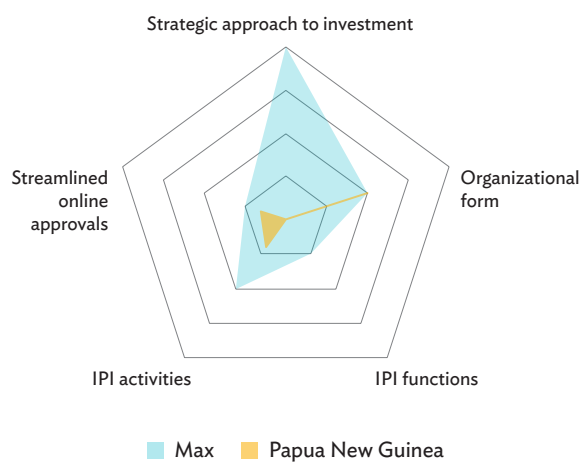
**While study countries prioritize general marketing and facilitation in their promotional efforts, there is considerable scope for improvement.** PNG has the most proactive investment promotion program generally. While



investment promotion typically includes other functions, marketing and facilitation are critical in establishing a positive country perception among foreign investors. All IPIs in the study use websites as their primary marketing tool and provide some level of facilitation support. Most websites, however, provide information on a range of issues, and are not specifically addressed at foreign investors. There are also gaps in the provision of up-to-date information typically considered useful by investors. While most IPIs have protocols in place to respond promptly to investor inquiries and offer start-up compliance support, there is little evidence of proactive IPI project handling, relationship management, or problem solving.

**All study countries (to varying degrees) enable investors to complete administrative procedures using internet-based systems.** PNG and Solomon Islands lead in providing online foreign investment certification. However, all countries are likely to provide this service in the medium term. As study countries become increasingly sophisticated in their online capabilities, there is continuing scope for electronic systems to ease barriers to investment and ongoing investment in country, as well as improve transparency.

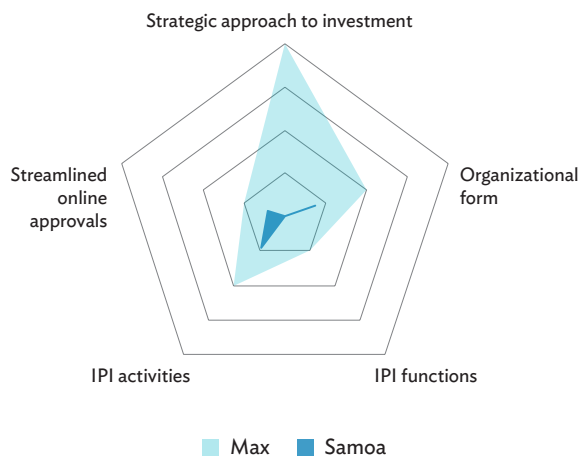
Figure 21: Investment Promotion: Papua New Guinea



Alignment	
WEAK	<ul style="list-style-type: none"> <li>• Unclear expectations and goals for FDI.</li> <li>• No investment promotion strategy.</li> <li>• IPI is responsible for many regulatory functions alongside investment promotion.</li> <li>• Gaps in investment-related information on IPI website, and lack of proactive investor facilitation support.</li> <li>• IPI does not regularly advocate for investment climate improvement.</li> </ul>

FDI = foreign direct investment, IPI = investment promotion intermediary, Max = maximum  
 Source: Pacific Private Sector Development Initiative

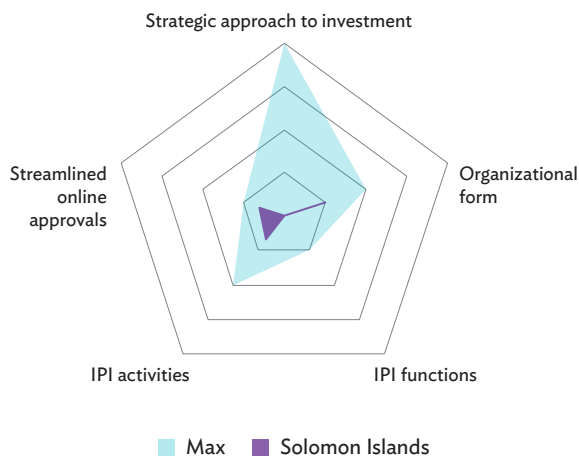
**Figure 21: Investment Promotion: Samoa**



Alignment	
<b>WEAK</b>	<ul style="list-style-type: none"> <li>• Unclear expectations and goals for FDI.</li> <li>• Investment promotion is treated as a minor activity, and is provided by a government department division that is also responsible for regulating FDI registration and administering industry support programs.</li> <li>• No investment promotion strategy.</li> <li>• Gaps in investment-related information on government department website, and few dedicated investment promotion staff.</li> <li>• Limited foreign investor ability to access investment approvals online.</li> </ul>

FDI = foreign direct investment, IPI = investment promotion intermediary, Max = maximum  
 Source: Pacific Private Sector Development Initiative

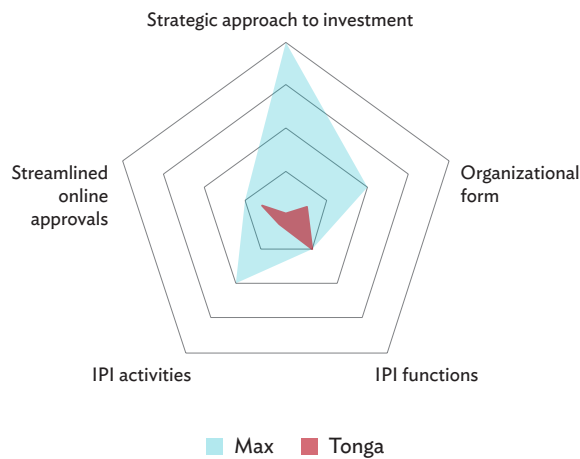
**Figure 23: Investment Promotion: Solomon Islands**



Alignment	
<b>WEAK</b>	<ul style="list-style-type: none"> <li>• Unclear expectations and goals for FDI.</li> <li>• Investment promotion is provided by a government department division that is also responsible for regulating FDI registration.</li> <li>• No investment promotion strategy.</li> <li>• Gaps in investment-related information on IPI website, and a lack of proactive investor facilitation support.</li> <li>• IPI does not regularly advocate for investment climate improvement.</li> </ul>

FDI = foreign direct investment, IPI = investment promotion intermediary, Max = maximum  
 Source: Pacific Private Sector Development Initiative

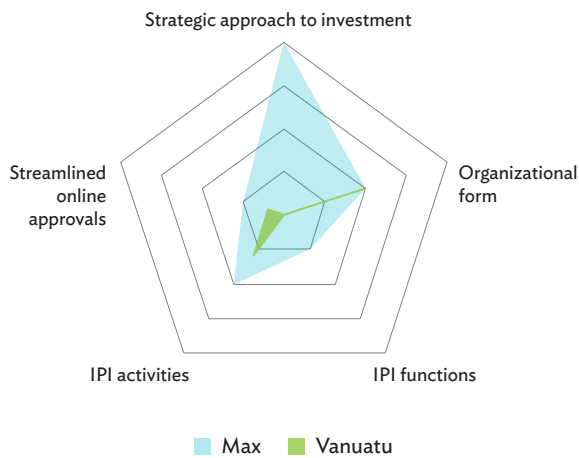
Figure 24: Investment Promotion: Tonga



Alignment	
WEAK	<ul style="list-style-type: none"> <li>• Unclear expectations and goals for FDI.</li> <li>• No investment promotion strategy.</li> <li>• Limited investment-related information online, and minimal provision of investor facilitation services.</li> <li>• IPI does not regularly advocate for investment climate improvement.</li> </ul>

FDI = foreign direct investment, IPI = investment promotion intermediary, Max = maximum  
 Source: Pacific Private Sector Development Initiative

Figure 25: Investment Promotion: Vanuatu



Alignment	
WEAK	<ul style="list-style-type: none"> <li>• Unclear expectations and goals for FDI.</li> <li>• IPI is responsible for both investment promotion and FDI regulation.</li> <li>• No investment promotion strategy.</li> <li>• Standout in terms of the quality and quantity of online information provided to investors, although some gaps remain.</li> <li>• IPI does not regularly advocate for investment climate improvement.</li> <li>• Limited foreign investor ability to access investment approvals online.</li> </ul>

FDI = foreign direct investment, IPI = investment promotion intermediary, Max = maximum  
 Source: Pacific Private Sector Development Initiative

## Strategic approach to investment

**Table 40: Foreign Direct Investment Goals and Investment Promotion Strategy**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Foreign Direct Investment Goals for Investment Promotion Intermediaries (IPIs)</b>					
IPI is guided by clear and realistic goals against which its performance is managed.	No	No	No	No	No
<b>Investment Promotion Strategy</b>					
IPI has its services driven by a formal, multi-year investment promotion strategy.	No	No	No	No	No

Source: Pacific Private Sector Development Initiative

**IPIs are generally the primary means through which countries operationalize their strategic approach to obtaining FDI in support of national development and sectoral development priorities.** As discussed in **Chapter 2 [FDI Policy]**, national development plans or similar documents should address the role of FDI in developing the local economy. Investment and industrial policies should cascade down from national development strategies and provide guidance on the strategic use of investment in the host economy, as well as detailed strategies for developing priority sectors.

**IPIs are most effective when their operational strategies are clearly aligned with sector priorities and overarching national development goals.** As a matter of better practice, these policies should be developed by responsible policy agencies.<sup>183</sup> An investment promotion strategy and detailed corporate plan should be developed by the IPI in response to identified priorities and the overall strategic approach to attracting and retaining investment.

### *Investment promotion is guided by FDI goals*

**FDI goals should be quantitative and realistic so their achievement can be easily monitored over time.** For example, a country characterized by a high degree of informality may wish to encourage greater formal sector employment through the use of FDI. A goal might be to “achieve a target growth rate of X% per year in FDI-based jobs”. An associated key performance indicator might be “growth in the number of workers registered with the national provident fund which are employed by IPI-assisted FDI enterprises”.

**National development plans, investment policy, and sectoral policy should set FDI goals.** These goals are necessary to provide direction to the IPI to attract the quantum and types of investment that are deemed national priorities. These high-level goals should be translated into more granular goals, which can be operationalized by IPIs to allocate resources for maximum country benefit. As discussed in **Chapter 2 [FDI Policy]**, no study country except Tonga has formal FDI attraction targets. However, this high-level attraction goal is included in trade policy, and not used formally by Tonga’s IPI. Consultations with IPIs in study countries indicate that a lack of strategic FDI policy—and, more broadly, a lack of general awareness across governments of FDI frameworks—prevents informed targets being established which can guide IPI activities.

*Investment promotion strategies*

**IPIs are more effective when they are guided by written investment promotion strategies that translate national FDI goals into realistic organizational targets and operational procedures.**<sup>184</sup> An investment promotion strategy is distinct from an IPI corporate plan or similar document because it focuses on attracting investment rather than outlining agency operational priorities. The strategy should outline how much FDI, of what type, in what sector, and in what location should be attracted within a certain time period (typically 3–5 years). It should focus the IPI’s promotional activities on industry sectors in which the country possesses comparative advantages, and source investment from geographic areas that are a good fit culturally and can be pursued cost effectively. The strategy should also aim to move beyond the attraction and establishment of investors, and extend to retention and expansion of foreign investment in the country.<sup>185</sup>

**Countries should identify a limited number of priority sectors or global value chains for investment.** International evidence indicates that IPIs are more successful in attracting FDI when they are focused on promoting priority sectors, rather than generally promoting investment at the national level.<sup>186</sup> Many IPIs have moved towards targeting specific global value chains. Generally, better practice is for an IPI to focus on 3–5 competitive segments for proactive<sup>187</sup> investment promotion.<sup>188</sup> Increased IPI focus on a smaller number of priority sectors or value chains enables IPI staff to better develop expertise and relationships, as well as provide better and more detailed information to potential investors.

**An investment promotion strategy serves other key functions.** Once validated by policymakers, it provides the basis upon which the IPI can solicit support for its activities, develop annual business plans, and provide direction to inbound

**Table 41:** Approaches to Foreign Direct Investment Attraction

	Minimalist	Aggressive
Foreign Direct Investment (FDI) contribution	Identify the value and contribution of FDI to the country, consistent with national investment policy.	Identify the value and contribution of FDI to the country, consistent with national investment policy.
Country value proposition	Articulate the country’s value proposition for investors.	Articulate the country’s value proposition for investors.
General FDI goals	General, quantifiable FDI attraction targets, consistent with national investment policy.	High level, quantifiable FDI attraction targets consistent with national investment policy.
Investor services	General outline of investor services.	Specific investor services to support investors across the investment cycle, informed by investor feedback.
Priority sectors	Not addressed.	Three to five sectors identified for investment promotion efforts.
Sector FDI goals	Not addressed.	Specific, granular investment promotion targets for priority sectors. These targets should be measurable and attributable to the investment to provide confidence in FDI’s value and effects.
Target markets	Not addressed.	Identify key international markets to target for promotion activities.

Source: Pacific Private Sector Development Initiative

investment policies and investment climate reforms. Investment promotion strategies can also achieve social goals, such as the economic empowerment of women.<sup>189</sup>

**No study country has an investment promotion strategy.** Interviews with IPIs indicated that priority sectors and locations are determined through the interpretation of government policy directives in areas such as agriculture, fisheries, logging, extractives, tourism, and rural development. However, the lack of explicit priorities hampers the ability of IPIs to have an effective and aligned investment promotion strategy. This has a direct impact on IPI performance and the ongoing value for money of their operations. While most surveyed IPIs indicated that they have corporate plans and similar documents, it is difficult for these plans to connect appropriately to the host economy’s FDI goals.

**If study country governments determine that FDI is a priority, it becomes more important for relevant authorities and the IPI to develop an appropriate investment promotion strategy in line with a national investment policy.** The content and extent of an investment promotion strategy will be dependent on how aggressively national governments wish to pursue FDI. Table 41 provides an overview of the types of information and detail that would be appropriate for an investment promotion strategy in line with a national strategy.

## Organizational form of IPI

**Table 42: Type Of Investment Promotion Intermediary and Access to Private Sector Experience**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Type of Investment Promotion Intermediaries (IPIs)</b> IPI is:					
Autonomous agency	Yes	No	No	No	Yes
Integral unit of a major ministry	n/a	No	Yes	No	n/a
Sub-unit of a major ministry	n/a	Yes	n/a	Yes	n/a
<b>Guided by Private Sector Experience</b> IPI has access to private sector experience in an oversight or advisory role:					
Board has at least 40% private sector representation	Yes	No	No	No	Yes
Board has some private sector representation	n/a	No	No	No	n/a
Percentage of private sector representation on Board supervising IPI activities	50%–70%	0%	0%	0%	42%

Source: Pacific Private Sector Development Initiative

**An IPI’s organizational form is important to consider in line with overarching investment policy.** Promotional activities generally are nontraditional government functions, laying more comfortably within private sector skillsets<sup>190</sup> and, accordingly, standard government operating models may not be appropriate. However, there is no one “right”

**Box 5: Summary Comparison of Investment Promotion Intermediary (IPI) Institutional Set-up**

**Integral Unit of a Major Ministry**

Advantages:

- IPI's status within government is clear to other parts of government.
- The IPI is well placed to influence ministry policies relevant to investment promotion. Issues can be resolved in house, thereby avoiding discussions between government agencies with potentially competing agendas and objectives.
- Investment promotion is more likely to be viewed as a priority issue by the minister and generate a strong sense of ownership.

Disadvantages:

- Civil service procedures are often slow and cumbersome. Larger IPIs—particularly those actively involved in investment generation—benefit from financial autonomy, enabling them to allocate their budget without approval by a central financial body.
- It may be more difficult to recruit executives with private sector experience to work in a public sector institution. Most successful agencies have a mix of talented individuals from the public and private sectors.
- The IPI may not have enough authority to influence decisions, behaviors, and reforms under other ministries and government agencies.

**Autonomous Agency reporting to the National Executive Leader or a Cabinet Minister**

Advantages:

- IPI has a distinct identity, its own budget, and its own chief executive officer and board.
- The IPI can be run with more flexible procedures than a government department—it can hire staff from both the public and private sectors, and authorize needed expenditures.
- As a separate, accountable body, the IPI's performance is likely to be more open to parliamentary and public scrutiny.
- It should be possible to persuade talented private sector leaders to serve on a board of directors and recruit private sector staff on contract.

Disadvantages:

- IPI cannot be established without the need for special legislation (either within the investment law or as a separate law).
- This model may not work well under governments unfamiliar or inexperienced with the concept of an autonomous agency. In such a case, an autonomous IPI may be marginalized and lack influence over government policies.
- It requires additional effort and resources on the IPI's part to establish its own administrative and financial procedures.

Source: Adapted from International Finance Corporation. 2010. *Investment Law Reform – A handbook for development practitioners*. Washington, DC. <https://openknowledge.worldbank.org/handle/10986/25206>

type of organizational form for an IPI. What is suitable for a particular country is dependent on a number of factors, including its policy objectives for FDI, the relevant political context,<sup>191</sup> and practical factors such as financial and human resources.

**There are some characteristics of IPIs that are linked with better performance.** While these do not directly translate into a particular organizational form, they can inform countries in the design of an IPI. These characteristics include:<sup>192</sup>

- strong support from the top levels of government, preferably with direct reporting to the national leader or senior minister;<sup>193</sup>
- autonomy and operational independence;
- sufficient and sustained financial resources;
- management and staff with private sector experience;
- staff with international exposure;

- private sector board representatives;
- strong institutional collaboration;
- institutional experience and greater overseas presence; and
- use of digitalization and emerging technologies to reach target investors efficiently.

**Countries establishing IPIs largely have two basis choices: either as an integral unit within a major line ministry or as an independent agency through separate legislation.**<sup>194</sup> Where IPIs are established within a government structure, this should occur as an integral unit of a ministry, rather than a sub-unit. Studies have shown that sub-unit structures are a characteristic of poor-performing IPIs.<sup>195</sup> While there are examples of completely private investment promotion organizations, they are not common.<sup>196</sup> The comparative advantages and disadvantages of each approach are in (Box 5).

**Regardless of the organizational form of an IPI, meaningful private sector representation should be incorporated.** Private sector representatives are more likely to be able to conceive and manage a program aimed at attracting private sector investment than those whose experience is wholly within the public sector. Generally, only autonomous IPIs have a board of directors that play an oversight role. However, IPIs within government structures can have advisory boards with the same functions as a board of directors, but without legal authority over operations.

**Only PNG and Vanuatu have autonomous IPIs among the study countries.** Both agencies are established under enabling legislation and responsible to the minister for commerce. Importantly, private sector representation is present on both boards. PNG's IPA can comprise up to 70% private sector representation on its board, and VFIPA about 40% from peak agencies and the private sector generally. Both agencies have separate budgets from line ministries within their respective governments, and staff are technically employed under their respective acts.

**Conversely, IPIs in Samoa,<sup>197</sup> Solomon Islands, and Tonga are integral or sub-units within major ministries with no formal private sector representation.** Accountability and priority setting is through normal public service channels, e.g., ministry secretaries. Budgets are derived from the overall ministry budget and can be subject to internal reallocations. While there are oversight boards in Samoa and Solomon Islands, these do not review core IPI activities. As such, all three countries are effectively denied the benefit of private sector perspectives.

## IPI functions

**Table 43: Investment Promotion Intermediaries Functions**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Investment Promotion Intermediary (IPI) functions</b>					
IPI's* role is:					
Limited solely to providing investment promotion services	No	No	No	Yes	No
Broader than investment promotion, but does not involve regulatory responsibilities such as FDI monitoring and enforcement	No	No	No	n/a	No

\*Where the IPI has been established as an autonomous agency, the whole agency's functions are considered. Where the IPI is an integral or a sub-unit, the activities of the relevant unit are considered.

Source: Pacific Private Sector Development Initiative



**Smaller and developing countries tend to task IPIs with a broad suite of responsibilities beyond investment promotion.** These additional activities can include export promotion, foreign investment licensing, and domestic investment promotion.<sup>198</sup> In more developed countries, the trend has been towards establishing or reconfiguring IPIs as autonomous agencies with mandates in FDI promotion, export promotion, and innovation promotion.<sup>199</sup>

**There is a negative association between an increased number of IPI mandates and FDI inflows.**<sup>200</sup> While smaller economies may elect to combine all perceived investment-related functions into one agency, this may not result in higher FDI flows. Investment promotion is the most important function of an IPI and other functions should not detract from this core business. The World Bank has identified roles and activities that are commonly associated with IPIs and their comparative appropriateness (Table 44).

**Table 44:** Appropriateness of Investment Promotion Intermediary (IPI) Activities

Role	Activity
Investment promotion services	Marketing
	Information
	Assistance
	Advocacy
Other promotion types	Foreign investor and local supplier matching
	Export promotion
	Support for outward investment
	SME development
Administration or regulation	Administration of incentives
	Screening or approval of investment projects
	Issuance of non-investment licences or permits
	Administration or negotiation of government concessions (such as infrastructure or extractive industries)
	Administration of public-private partnerships
	Management of state land or assets

Must do	Okay with controls to avoid impeding core investment promotion role	Do not do
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Source: World Bank. 2020. *Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty*. Washington, DC: World Bank Group. p 192.

**Regardless of whether IPIs undertake responsibilities outside of investment promotion, they should not undertake regulatory functions.** The most effective investment promotion institutions focus on promotional activities and do not adopt a regulatory role.<sup>201</sup> Investment promotion is already a specialized and complex task, and there are several reasons why regulatory functions should generally be avoided:<sup>202</sup>

- **Performance.** IPIs with dual regulatory/promotion responsibilities tend to underperform their more specialized peers.
- **Mindset and recruitment.** Investment promotion is private sector-focused and requires different skills and

experience, whereas regulation involves a gatekeeper mentality.

- **Conflict of interest.** Investors may view regulation as incongruous with an IPI's promotion mandate.
- **Resource allocation.** IPIs with multiple roles may prioritize regulatory or administrative activities over promotion efforts.

**All study country IPIs have responsibility for the certification of incoming FDI in addition to investment promotion services.**

**Placing mandates for investment promotion and foreign investment certification is common in study countries.**

PNG and Vanuatu, as autonomous IPIs, are responsible for FDI certification in addition to promotion; however, allocate staff separately to these functions. Similarly, Tonga does not allocate investment promotion staff to regulatory functions, but is a sub-unit of a major ministry and housed in a division with responsibility for trade information and market research, trade negotiation, and export marketing. Samoa and Solomon Islands have the relevant integral or sub-unit responsible for both investment promotion and certification. In all cases, ultimately the head of the agency is responsible for both FDI certification and investment promotion.

**Beyond FDI certification, all study countries IPIs undertake some activities inconsistent with better practice.**

Vanuatu's VFIPA has the most focused profile, with only its incoming FDI certification role deviating from better practice. As a relatively young agency however, the majority of its operations are currently allocated to its regulatory function. PNG's IPA has a broad range of regulatory functions, including foreign investment certification, company registration, business names registration, intellectual property, business groups, and cooperatives. IPIs in Samoa, Solomon Islands, and Tonga are also traditional commerce ministries and have a broad range of functions, including matters such as competition and consumer protection, industrial development, business registration, labor regulation, and immigration. Table 45 (page 92) maps the current responsibilities of study country IPIs against better practice.

**While all IPIs have a responsibility to undertake "must do" services, interviews with study country IPIs indicated that all agencies struggle to devote sufficient time to the core business of investment promotion.** Interviews with IPIs indicated that, as a general proposition, investment promotion is more of a current and/or future corporate priority with IPA and VFIPA than the other study countries. All IPIs noted that tasks, including foreign investment certification and enforcement, export promotion, and trade negotiations, demand substantial resources, with investment promotion often being a second-order priority. Staff do not necessarily have specialist skills in investment promotion, which further compounds IPIs' reduced focus on investment promotion. Accordingly, much of the investment promotion activity is relatively reactive responses to foreign investor inquiries. PNG can be considered an exception to this general statement with an active schedule of combined investment promotion and export promotion activities. IPIs that are integral or sub-units of major ministries noted more budget and skills constraints for proactive external investment promotion.

**While recommendations must be considered in local context, the current models adopted by all study countries create institutional barriers to investment promotion.** IPIs must respond to government priorities and domestic concerns while fulfilling their core promotion roles. However, these pressures often result in increased focus on regulation and monitoring and compliance. Countries should consider options to provide greater emphasis on attracting investment.

## Investment promotion intermediary activities

**IPIs should focus their operations on the services that are most valued by foreign investors across the investment cycle (Table 46, page 93).**

**IPI services should be focused on extracting the greatest value from FDI.** The goal of FDI is to create a long-term relationship between a host economy and an investor to maximize the benefit of investment for both parties. However,

**Table 45: Study Country Investment Promotion Intermediaries Functions Against Better Practice**

Role	Activity	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
Investment promotion services	Marketing	✓	✓	✓	✓	✓
	Information	✓	✓	✓	✓	✓
	Assistance	✓	✓	✓	✓	✓
	Advocacy	✓	✓	✓	✓	✓
Other promotion types	Foreign investor and local supplier matching	✓	✓	✓	✓	✓
	Export promotion	✓	✗	✓	✓	✗
	Support for outward investment	✗	✗	✗	✗	✗
	SME development	✗	✓	✓	✓	✗
Administration or regulation	Administration of incentives	✗	✗	✗	✗	✗
	Screening or approval of investment projects	✓	✓	✓	✓	✓
	Issuance of non-investment licences or permits	✓	✓	✓	✓	✗
	Administration or negotiation of government concessions (such as infrastructure or extractive industries)	✗	✓	✗	✗	✗
	Administration of public-private partnerships	✗	✗	✗	✗	✗
	Management of state land or assets	✗	✗	✗	✗	✗

	Must do		Okay with controls to avoid impeding core investment promotion role		Do not do
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Source: Pacific Private Sector Development Initiative

**Table 46: Recommended Investment Promotion Intermediary (IPI) Activities**

Role	Service	Activity
<b>Attracting investors</b>  <u>Objective:</u> enhancing the investment climate, promoting the host economy, and supporting investor planning and exploration	Marketing	<ul style="list-style-type: none"> <li>Information provision through a website, guides, and brochures</li> <li>Media relations</li> <li>Investment missions</li> </ul>
	Investment generation	<ul style="list-style-type: none"> <li>Research and networking</li> <li>Tailored marketing, including business case information</li> <li>Investment missions</li> </ul>
	Aftercare and advocacy	<ul style="list-style-type: none"> <li>Dialogue and coordination with stakeholders to diagnose investment climate problems and develop solutions</li> </ul>
<b>Assisting investor entry and establishment</b>  <u>Objective:</u> providing a transparent and predictable legal environment, and delivering information and assistance services	Investment facilitation	<ul style="list-style-type: none"> <li>Inquiry handling</li> <li>Business case information</li> <li>Project handling and account management</li> <li>Assistance with approvals</li> <li>Problem solving, counselling</li> </ul>
	Aftercare and advocacy	<ul style="list-style-type: none"> <li>Dialogue and coordination with stakeholders to diagnose investment climate problems and develop solutions</li> </ul>
<b>Securing investor retention and expansion</b>  <u>Objective:</u> ensuring that investors operate without sudden legal and regulatory changes, and assisting investors during operations and expansion	Investment facilitation	<ul style="list-style-type: none"> <li>Project handling and account management</li> <li>Assistance with approvals</li> <li>Problem solving, counselling</li> </ul>
	Aftercare and advocacy	<ul style="list-style-type: none"> <li>Follow-up and relationship management</li> <li>Problem solving, counselling</li> <li>Dialogue and coordination with stakeholders to diagnose investment climate problems and develop solutions</li> </ul>
<b>Fostering links and spillovers</b>  <u>Objective:</u> looking for win-win benefits for both the investor and domestic economy	Investment facilitation	<ul style="list-style-type: none"> <li>Inquiry handling</li> <li>Business case information</li> <li>Project handling and account management</li> <li>Assistance with approvals</li> <li>Problem solving, counselling</li> </ul>

Source: author adaptation from A. Heilbron and Y. Aranda-Larrey. 2020. *Strengthening Service Delivery of Investment Promotion Agencies: The Comprehensive Investor Services Framework*. Washington, DC: World Bank Group. p 4.

many IPIs focus their activities on the “investment attraction” phase of the investment cycle, and provide less attention to entry and establishment, retention and expansion, and linkages and spillovers.<sup>203</sup> Investors have indicated that IPIs in developing countries commonly fail to provide the services they most value.<sup>204</sup>

**Individual investors value different types of services, depending on their investment objectives.** IPIs should engage with their current and target investors to tailor services that are valued by investors across the investment cycle.

*Information provision*

Table 47: Investment Promotion Intermediary Website Information					
	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Investment Promotion Intermediary (IPI) website information</b>					
IPI maintains an investment promotion website with the following up-to-date information:					
National Investment Policy Statement	No	Yes	No	No	Yes
Key business start-up and operational requirements	Yes	Yes	No	No	Yes
Strengths of the country as an investment destination	Yes	Yes	Yes	No	Yes
Business cost data	No	No	No	No	No
Business conditions within priority sectors and potential areas for investment	No	No	No	No	No
Investor testimonials	No	No	No	No	Yes
Contact details	Yes	Yes	Yes	Yes	Yes

Source: Pacific Private Sector Development Initiative

**Information provision is a basic function of IPIs, and important across all services provided across the investment cycle (Table 47).** By following better practice in identifying a narrower range of sectors or value chains, IPIs can provide in-depth information for investors to inform their initial analysis. Basic contemporary information that an IPI should be able to provide includes:<sup>205</sup>

- the legal and regulatory regime for investment;
- costs of doing business and setup procedures;
- government support such as investor services and fiscal, financial, and administrative incentives;
- available logistics, utilities, and infrastructure;
- available labor, land, facilities, and essential inputs;
- local markets, competitors, suppliers, and service providers;
- competitor locations; and
- other business information, particularly as it relates to different types of investment.

**Key investment information must be provided on an IPI website for it to achieve promotional impact.**<sup>206</sup> It is not enough for a website to look good. It must also be easy to navigate and provide investors with detailed, accurate, and timely information to select the country as an investment location and establish themselves. Foreign investors search for information related to their industries and needs, and require specific data to understand investment viability. IPIs should build in-house capacity to anticipate investors' data needs, gather and consolidate relevant information, and make information readily accessible. An IPI's website should include the following:

- **National Investment Policy Statement (NIPS).** As discussed in **Chapter 2 [Investment Policy]**, a NIPS provides investors with a comprehensive picture of government policies about the location's investment climate. Policy statements are typically the responsibility of government ministries.
- **Strengths of the country as an investment destination.** The country should highlight its key advantages for investors over competitor countries. These strengths should ideally be supportive of the priority sectors being pursued.
- **Information about priority sectors and potential investment opportunities.** The website should clearly convey the priority sectors that a country wishes to develop. Each sector's key characteristics should be described along with areas of potential investment opportunity. Ideally, business cost information should be structured around these sectors.
- **Information about key investment approval requirements.** New investors benefit from clear explanation of host country establishment and operational requirements. Therefore, the website should provide an overview of key establishment-related approvals and the order in which they should be obtained, along with the names of responsible administrative authorities. Key requirements for each approval process should be also described or provided.
- **Business cost information.** Investors need cost information to develop project budgets and assess their relative profitability. This information should address areas such as taxation, cost of commercial office space and real estate, utility rates, transportation and communication costs, commercial interest rates, and labor costs. Where fiscal incentives are offered, a link should be provided to additional information and the agency or agencies responsible for their award.
- **Investor testimonials.** Investor testimonials demonstrate interest and excitement about an investment location. They should highlight positive experiences, including problems and how they were overcome, and focus on priority sectors.
- **Contact details.** Investors should be able to reach out to the IPI to discuss potential investment opportunities and/or obtain additional information.

**All study countries provide publicly available information to differing extents on their website, but fail to provide sufficient data to credibly inform investment decisions.** In general, the websites do not provide detailed and current information concerning priority sectors, including business cost data and relevant business conditions. While this can be partially explained by the general lack of strategic direction for investment priorities in study countries, the dearth of information for investors can represent a substantial opportunity cost if potential investors fail to translate their initial interest into an active enquiry.

**The VFIPA website is the most comprehensive of the study countries.** PNG's IPA also has an agency website. However, it is designed to provide information on the broader range of functions it undertakes. Substantial amounts of information on the IPA website are also out of date. Solomon Islands has limited information available on its general business website and the MCILI website. Samoa and Tonga use their ministry websites to convey information about investment, but include minimal information.

**While study countries engage in a range of practices, it would be preferable to create dedicated investment promotion websites.** This approach would enable IPIs to better articulate the country's value proposition as an

investment destination, and engage in better branding. However, the focus should remain on improving the depth and quality of information provided through the IPI website.

*Investment facilitation services*

**Table 48: Investment Promotion Intermediary Facilitation Services**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Investment Promotion Intermediary (IPI) facilitation services</b> IPI adopts the following practices and facilitation services:					
Protocols in place enabling prompt response to investor inquiries	Yes	Yes	Yes	No	Yes
Account managers facilitate investments in priority sectors	Yes	No	Yes	Yes	No
Proactive support provided to investments in priority sectors	No	No	No	No	Yes

Source: Pacific Private Sector Development Initiative

**Investment facilitation is a vital IPI service offering.** Investment facilitation refers to policies and services offered by an IPI that aim to establish and expand investment, as well as assist investors to conduct everyday business in the host economy.<sup>207</sup> Investment facilitation goes beyond initial information provision and marketing activities, and actively converts investment interest into actual investment.<sup>208</sup> Facilitation services should be offered across the entire investment cycle,<sup>209</sup> as investors report gaining more value from investment facilitation than general information provision services.<sup>210</sup> Despite the relative importance of investment facilitation, many IPIs do not adopt better practice service standards or incorporate investment facilitation into national investment strategies or similar documents.<sup>211</sup>

**The following are essential for investment facilitation:**

- **Ensure inquiries are handled effectively.** IPIs that engage early and effectively with foreign investors, and present a compelling business case, set themselves apart from competitor locations. Few things are more damaging to an IPI’s image than failing to respond to investors’ inquiries or giving the impression that they are uninterested. This requires IPIs to design and enforce protocols for staff and management. The protocol should ensure that all inquiry responses are professional and prompt. Even if the IPI is unable to provide a detailed response, it should be acknowledged and followed up with additional research.

The IPI should also be ready to make referrals to other agencies that can assist, and take the opportunity to provide promotional materials that might influence the investor’s appreciation of the location. Protocols should be also established for management to ensure oversight of the inquiry pipeline and quality control of responses. The most successful IPIs dedicate considerable resources to this issue.<sup>212</sup>

- **Use account managers.** Most high-performing IPIs also assign a single individual to handle an investor’s inquiry throughout its entire life cycle, particularly in relation to identified priority sectors. Assigning an account manager for each customer builds familiarity and personal relationships, takes advantage of the IPI’s sector knowledge, and facilitates a smooth progression through the investor’s decision-making and start-up stages. Dedicated account managers help build investor confidence in the IPI. This is essential for investors

to share information about their plans, costs, suppliers, and corporate trends. As account managers build their relationships, it is critical to ensure that they become assets of the IPI and not just the individual. This is typically done through an investor tracking system.<sup>213</sup>

- **Provide establishment support.** High-performing IPIs are also proactive in assisting investors, particularly those in priority sectors, to become operational. This includes linking them with business service providers, helping them understand investment approval requirements, addressing problems if they arise, and assisting them to identify available land.

**Most study countries provide some level of facilitation support, although there is considerable scope for improvement.** Several IPIs help investors in relation to business start-up approvals (such as foreign investment entry, company registration, and some other registrations), but support for other approvals (such as land and facility development and sector licensing) is limited. More active investment facilitation is provided by the PNG IPA and, to a lesser extent, VFIPA.

**While IPIs are responsible for promoting investment, they are unlikely to be successful on their own.** IPIs need to move outside of siloed work and collaborate with government ministries which are responsible for sectors considered priorities for economic growth. This will help IPIs identify the nature, scale, quality, and location of suitable investments, and address possible investment establishment issues. These sectors and potential opportunities need to be supported by appropriate regulatory frameworks, infrastructure, and potential incentives to be sustainable and attractive in the eyes of investors. IPIs also need to leverage their respective overseas missions and the Pacific Islands Forum Secretariat’s network of trade and investment offices to help identify quality potential investors and encourage their interest in the country.

### Advocacy

**Table 49: Investment Promotion Intermediary Advocacy**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Investment Promotion Intermediary (IPI) advocacy</b>					
IPI regularly undertakes advocacy across government to improve the investment climate for investors	No	No	No	No	No

Source: Pacific Private Sector Development Initiative

**IPIs serve an important role in advocating for improvements to a country’s investment climate.**<sup>214</sup> IPIs are in a unique position to have deep, long-term relationships with investors, which can provide them with a unique insight into investment climate constraints and inefficiencies. IPIs are generally part of an overarching government structure and may have better connection and influence with policy agencies to advise on reforms that enable investments to operate more smoothly.<sup>215</sup> As identified above, investors generally regard efforts to improve a country’s investment climate as the most important service that an IPI provides.

**The advocacy function of IPIs is more important in developing economies.** The role of IPIs in reducing information asymmetries is valuable. However, from a longer-term perspective, it is necessary for countries to progressively improve



their investment climate. Practical issues that may be suitable for advocacy include investment approval processes, immigration policy, customs procedures, processes for establishing utilities, building approvals and other access to land processes, and sector-specific reforms.

**No study country IPI regularly undertakes advocacy work to improve the overall investment climate.** However, there is substantial scope to do so if IPIs leverage their natural advantages. IPIs can leverage private sector representation, client management services, reporting lines to key ministers, and relationships with government regulators to identify parts of the investment climate that do not promote investment efficiently. Where other agencies are developing policy that affects investors, it is important for IPIs to proactively work as an advocate for the private sector within government.

**Table 50: Streamlined Investment Online Approvals**

	Papua New Guinea	Samoa	Solomon Islands	Tonga	Vanuatu
<b>Streamlined Investment Online Approvals</b>					
Investors can complete investment approvals through online electronic systems for:					
Foreign investment certification	Yes	No	Yes	No	No
Company registration	Yes	Yes	Yes	Yes	Yes
Business names registration (if applicable)	Yes	n/a	Yes	Yes	Yes
Tax registration	No	No	No	No	No
Business/trading licences	No	No	No	Yes	No

Source: Pacific Private Sector Development Initiative

## Streamlined online approvals

**The establishment of electronic systems is often intended as a means by which to accelerate existing procedures, or bypass procedures where they are dysfunctional.** Numerous organizational models have been proposed for this purpose. The two most common approaches are “one window” and “one roof” facilities. Under the “one window” approach, a single agency has authority to issue a range of investment approvals. Under the “one roof” approach, representatives of responsible line ministries are located in a single physical location. Unfortunately, there are major problems with both approaches. In relation to “one window”, line ministries typically do not want to relinquish their mandated responsibilities to a single agency. In the case of “one roof”, meanwhile, the facility ultimately acts as a post office because decision-makers are unwilling to delegate responsibility.

**To get around these problems, countries are introducing e-government solutions which enable businesses to complete administrative procedures through online electronic systems.** To be effective, these systems must enable businesses to submit applications, make payments, and receive decisions electronically. Countries should initially focus on their business start-up procedures, such as FDI registration, business name registration, company registration, and

tax registration.<sup>216</sup> Over time, they should expand to other areas such as customs clearance, incentives, work permits, licenses, and government procurement. Some countries establish business e-service portals that either link applicants to an e-service administered by a government ministry, or enable submission of applications to approving agencies. For example, Trinidad and Tobago's TTBizlink website provides businesses with access to a range of e-government services, including business start-up requirements (company registration, National Insurance Board registration, and tax registration); incentives (import duty concessions and fiscal incentives); import/export permits and licenses; work permits; and government procurement.<sup>217</sup> IPAs generally should not undertake this function. In Trinidad and Tobago's case, the investment approval portal is managed by the Ministry of Trade of Industry, while InvestTT is responsible for FDI promotion.

**All study countries have the capacity for some business start-up procedures to be completed online, while the capacity to apply for foreign investment certification is available in PNG and Solomon Islands.** All countries enable company registration and business names registration to be completed online, where applicable. Business licensing is generally not available online, with the exception of Tonga.

**It is recommended that study countries continue to provide and improve online services.** Increasing internet penetration into Pacific countries will provide more opportunities for the development and use of government digital services. Where possible and appropriate, information required under one application should be shared across government to avoid investors filling out the same information multiple times. Coordinated approaches between agencies to ensure that systems are interoperable should also be considered to improve efficiency.

# APPENDIX 1. STUDY METHODOLOGY

## Overview

The methodology assesses country FDI systems as of 31 December 2021 against five main factors (Figure A2):

- FDI entry,
- investment guarantees and obligations,
- foreign investor residence in country,
- FDI monitoring and reporting, and
- investment promotion.

The main factors comprise sub-factors, which are scored to give an overall score for the main factor. This information was gained through desk research and direct consultations with study country government authorities. Sub-factors are differently weighted under the main factors in recognition that some factors impact FDI more than others. Study countries confirmed the details of the matrices in validation workshops conducted in the third quarter of 2022. The overall scores for each main factor are converted into “alignment” ratings to simplify country assessment against better practice.

## Better practice

Each chapter commences with a “better practice” table which outlines the principles which can be considered better practice for FDI in the context of Pacific DMCs. These principles are broad and can be incorporated into laws and policies in different ways. The specific questions asked by the assessment methodology are proxies for these principles, grounded in the general practices by Pacific countries in their FDI frameworks.

## Performance radar charts

To aid country comparisons, the data is also provided in a radar chart format. Figure A1 shows an example of country scores against the FDI entry main factor. The blue-shaded “max” represents the theoretical perfect score for the sub-factors and overall main factor. Countries that are closer to the “max” score demonstrate better alignment to better practice.

## Scoring against individual methodology questions

The analysis includes summaries of country scoring against questions from the assessment methodology. This enables countries to quickly compare themselves to others on specific issues and sub-issues. The responses have been color-coded to allow countries to determine performance (Table A1).

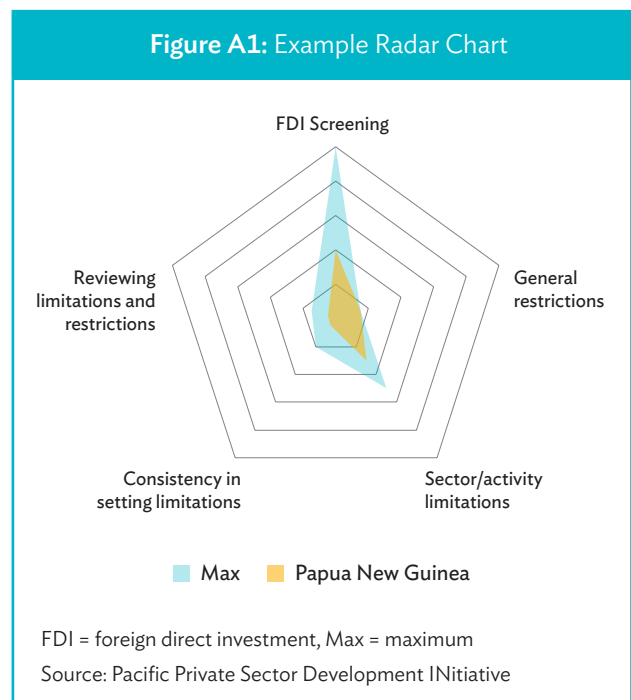







Figure A2: Scoring Methodology

Main factor	Sub-factors and scores			
 <b>FDI Entry</b>	FDI Screening	5	Max score: 10	Alignment: ● ≥ 7 : Good   ● ≥ 5 : Moderate   ● < 5 : Weak
	Investment law general restrictions	0.75		
	Investment law sector/activity restrictions	2.5		
	Consistency in setting sector/activity restrictions	1		
	Review of investment law limitations and restrictions	0.75		
 <b>Investment Guarantees and Obligations</b>	National Treatment	1.5	Max score: 10	
	Most-Favored-Nation Treatment	1.5		
	Fair and Equitable Treatment	1.5		
	Convertibility and repatriation of funds	1.5		
	Dispute settlement	1.5		
	Investor behavior	1		
 <b>Foreign Investor Residence in Country</b>	Screening approach	5.5	Max score: 10	
	Duration of investor residence permit	3		
	Residence permit fee	1.5		
 <b>FDI Monitoring and Reporting</b>	Tracking FDI across government	1.5	Max score: 10	
	Monitoring and enforcement	4		
	Appeals	2		
	Reporting	2.5		
 <b>Investment Promotion</b>	Strategic approach to investment	4	Max score: 10	
	Organizational form	2		
	IPI functions	1		
	IPI activities	2		
	Streamlined online approvals	1		

FDI = foreign direct investment, IPI = investment promotion intermediary, Max = maximum  
 Source: Pacific Private Sector Development Initiative.

*Limitations*

The assessment methodology is primarily designed to provide a foundation for conceptualizing FDI frameworks, as well as a common basis for comparison between study countries. As noted above, it does not assess all aspects of a country’s investment climate.

The most substantive limitation of the methodology is its partial measurement of **regulatory quality**. Regulatory quality generally refers to perceptions of the ability of governments to formulate and implement sound policies and regulations that permit and promote private sector development.<sup>222</sup> In the context of study countries developing FDI frameworks, this includes matters such as:<sup>223</sup>

- policy reform programs having clear objectives and implementation frameworks;
- impact reviews to ensure that objectives are met efficiently and effectively;
- incorporating transparency and principles of nondiscrimination;
- avoiding reducing competition, unless there is a clear public interest to do so; and
- identifying linkages with other policy objectives and developing policy in a pro-reform way.

To provide practical and comparative guidance, the study identifies broader “better practice principles”, but uses specific questions to act as a proxy for these principles. Therefore, the methodology tends to focus on the actual text of laws and policies. A summary of laws relied on is in the **Appendix 2**.

There are instances in which there is a qualitative difference between legal and policy formulations of a principle, but both countries receive the same score. One example is appeals mechanisms, whereby countries are awarded scores for possessing an appeals mechanism, irrespective of its efficiency and ease of access. Further, there may be instances in which the written policy or law is present (and scored), but is not being applied in practice. Instances in which this is occurring are noted in the analysis rather than the scores.

Comparative scoring between countries can only give approximate indications of potential reform areas. Moving towards any reform program would require detailed country-specific diagnostic work.

Table A1: Scoring Color-Coding	
Color code	Meaning
	Country received full score for entire assessment question
	Country received score for part of the assessment question, but not overall assessment question
	Country did not receive score for any part of the assessment question
	Contextual information only
n/a	Question is not relevant in country context or because of prior answer

n/a = not applicable  
 Source: Pacific Private Sector Development Initiative.

## APPENDIX 2. LAWS CONSIDERED

Table A.1 outlines the laws considered for this study.

Table A2: Laws Considered		
Country	Factor	Legislation considered
<b>Papua New Guinea</b>	FDI Entry	General Agreement of Trade in Services Investment Promotion Act 1992 Investment Promotion Regulations 1992 (as amended) Mining Act 1992 Oil and Gas Act 1998
	Investment Guarantees and Obligations	Central Banking Act 2000 Constitution of the Independent State of Papua New Guinea General Agreement of Trade in Services Income Tax Act 1959 Investment Disputes Convention Act 1978 Investment Promotion Act 1992 Land (Ownership of Freeholds) Act 1976 Land Act 1996 National Procurement Act 2018
	Foreign Investor Residence in Country	Employment of Non-Citizens Act 2007 Employment of Non-Citizens Regulation 2008 Migration Act 1978
	FDI Monitoring and Reporting	Employment of Non-Citizens Act 2007 Investment Promotion Act 1992 Investment Promotion Regulations 1992 (as amended) Migration Act 1978
	Investment Promotion	Investment Promotion Act 1992

<b>Samoa</b>	FDI Entry	Foreign Investment Act 2000 Foreign Investment Regulations 2005 General Agreement of Trade in Services Pacific Agreement on Closer Economic Relations Plus
	Investment Guarantees and Obligations	Alienation of Customary Land Act 1965 Alienation of Freehold Title Act 1972 Arbitration Act 1976 Central Bank of Samoa Act 2015 Constitution of the Independent State of Samoa Exchange Control Regulations 1999 Foreign Investment Act 2000 Foreign Investment Regulations 2005 Pacific Agreement on Closer Economic Relations Plus Taking of Land Act 1964
	Foreign Investor Residence in Country	Immigration Act 2020 Labour and Employment Relations Act 2013 Pacific Agreement on Closer Economic Relations Plus
	FDI Monitoring and Reporting	Foreign Investment Act 2000 Labour and Employment Relations Act 2013
	Investment Promotion	National Investment Policy Statement 2019

<b>Solomon Islands</b>	FDI Entry	Foreign Investment Act 2006 Foreign Investment Regulations 2005 (as amended) General Agreement of Trade in Services
	Investment Guarantees and Obligations	Arbitration Act 1987 Constitution of Solomon Islands Exchange Control (Foreign Exchange) Regulations 1977 Exchange Control Act 1976 Exchange Control Policy Foreign Investment Act 2006 General Agreement of Trade in Services Lands and Titles Act [Cap 133] Pacific Agreement on Closer Economic Relations Plus
	Foreign Investor Residence in Country	Immigration Act 2012 Immigration Regulations 2013 Labour Act [Cap 73] Work Permit Rules 1985
	FDI Monitoring and Reporting	Foreign Investment Act 2006 Foreign Investment Regulations 2005 (as amended) Immigration Regulations 2013 Labour Act [Cap 73]
	Investment Promotion	Foreign Investment Act 2006 Foreign Investment Regulations 2005 (as amended)



<b>Tonga</b>	FDI Entry	Constitution of Tonga Foreign Investment Act 2020 Foreign Investment Regulations 2021 General Agreement of Trade in Services Land Act [Cap 46.02] Pacific Agreement on Closer Economic Relations Plus
	Investment Guarantees and Obligations	Exchange Control Directive 2018 Foreign Exchange Control Act 2018 Foreign Investment Act 2020 General Agreement of Trade in Services International Arbitration Act 2020 Pacific Agreement on Closer Economic Relations Plus
	Foreign Investor Residence in Country	General Agreement of Trade in Services Immigration Act [Cap. 62]
	FDI Monitoring and Reporting	Foreign Investment Act 2020 Immigration Act [Cap. 62]
	Investment Promotion	Nil
<b>Vanuatu</b>	FDI Entry	Foreign Investment Act 2019 General Agreement of Trade in Services National Investment Policy Statement 2019 Pacific Agreement on Closer Economic Relations Plus
	Investment Guarantees and Obligations	Compulsory Land Acquisition Act 1992 Constitution of the Republic of Vanuatu Foreign Investment Act 2019 General Agreement of Trade in Services Pacific Agreement on Closer Economic Relations Plus Small Business Development Bill 2021
	Foreign Investor Residence in Country	Citizenship Act [Cap 112] Immigration Act 2010 Immigration Visa Regulation Order 2011 Labour (Work Permits) Act [Cap. 187]
	FDI Monitoring and Reporting	Foreign Investment Act 2020 Immigration Act 2010 Labour (Work Permits) Act [Cap. 187]
	Investment Promotion	Foreign Investment Act 2020 National Investment Policy Statement 2019

## ENDNOTES

- 1 The 14 Pacific developing member countries of the Asian Development Bank are: Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Republic of Marshall Islands, Nauru, Niue, Palau, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.
- 2 North. 1990. *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press.
- 3 Adapted from Echandi et al. 2015. The Impact of Investment Policy in a Changing Global Economy: A Review of the Literature. *Policy Research Working Paper 7473*. Washington, DC: World Bank (p. 3).
- 4 Organisation for Economic Cooperation and Development (OECD). 2008. *OECD Benchmark Definition of Foreign Direct Investment*. Paris (p. 48).
- 5 Generally, “lasting interest” includes a degree of management influence which is generally considered to be direct or indirect ownership of 10% or more of the voting power of an enterprise: OECD. 2008. *OECD Benchmark Definition of Foreign Direct Investment*. Paris: OECD. However, in many Pacific countries, any degree of foreign ownership is considered FDI.
- 6 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 4).
- 7 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 4).
- 8 Holden et al. 2004. *Swimming Against the Tide? An Assessment of the Private Sector in the Pacific*. Manila: Asian Development Bank (ADB) (p. 15).
- 9 World Bank. 2009. *Pacific Islands Development in 3D: Key findings and policy advice from World Development Report 2009 and other reports*. Washington, DC (pp. 4–7); and Holden et al. 2004. *Swimming Against the Tide? An Assessment of the Private Sector in the Pacific*. Manila: ADB.
- 10 Juswanto and Ali. 2016. Economic Growth and Sustainable Development in the Pacific Island Countries. *ADB Policy Briefs*. No. 2016–6. Tokyo: ADB Institute.
- 11 Chen et al. 2014. Pacific Island Countries: In Search of a Trade Strategy. *IMF Working Paper*. WP/14/158. Washington, DC: International Monetary Fund (IMF).
- 12 Makiela and Ouattara. 2018. Foreign direct investment and economic growth: Exploring the transmission channels. *Economic Modelling* Volume 72, pp. 296–305.
- 13 Feeny et al. 2014. Growth and Foreign Direct Investment in the Pacific Island Countries. *Economic Modelling*. 37. 332–339, p. 337.
- 14 For consistency, this study uses official data from the United Nations Conference on Trade and Development (UNCTAD) for official FDI flows. These figures may deviate substantially on country-level data derived from FDI certification agencies. First, UNCTAD data is drawn from balance-of-payments data prepared by country central banks, which may adopt different methodologies for surveying foreign investors. Balance-of-payments data will not capture investment financed through local borrowing. Second, FDI certification agencies often only have reliable information on “proposed investment”, rather than actual investment. As such, values reported by FDI certification agencies tend to be higher than figures reported through balance-of-payments data.
- 15 PNG’s figures are based on an asset/liability basis which organizes flows based on whether they relate to an asset or liability for the country. OECD. n.d. *Foreign Direct Investment Statistics Explanatory Notes*. Paris: OECD. <https://www.oecd.org/daf/inv/FDI-statistics-explanatory-notes.pdf>.
- 16 Section 6(1) of the Investment Act 2021 (Fiji) provides that “like any domestic investor, a foreign investor intending to invest in Fiji must register its business in accordance with the Companies Act 2015 before establishing in Fiji”. The Companies Act provides for the registration of companies (Part 3, Divisions 1–2), as well as the obligation to register a business name for firms, individuals, and companies operating under a business name (Part 3, Division 4). While foreign investment certification is no longer required, individual foreign investors are required to obtain relevant visas or permits under the Immigration Act 2003 (s 6(3) of the Investment Act 2021) and all investors are required to report and update information regarding their investment to the Investment Fiji Board (s 6(4) of the Investment Act 2021).
- 17 International Finance Corporation. 2022. *Investment Fiji Shifts Focus to Attract Investors and Drive Exports After IFC Technical*

- Assistance. <https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=26928>.
- 18 Nauru, Kiribati, Palau, the Federated States of Micronesia, and the Marshall Islands.
- 19 A comprehensive listing of all relevant agreements is in UNCTAD International Investment Agreements Navigator. <https://investmentpolicy.unctad.org/international-investment-agreements>.
- 20 Japan-PNG BIT (2011); People’s Republic of China-PNG BIT (1991); Australia-PNG BIT (1992); PNG-United Kingdom BIT (1981); and Germany-PNG BIT (1980).
- 21 Tonga-United Kingdom BIT (1997).
- 22 Chapter 12 (Institutional Provisions) and Annex 12-A (Subsidiary Bodies).
- 23 Feeny et al. 2014. Growth and Foreign Direct Investment in the Pacific Island Countries. *Economic Modelling* 37, 332–339.
- 24 Some Pacific economies are sometimes described as having a MIRAB (migration, remittances, aid, and bureaucracy) model of development. Under the model, higher levels of aid and remittances are considered to distort incentives to away from promoting private sector-led growth in export sectors. However, there has been substantial academic debate on the appropriateness of describing Pacific economies in these terms.
- 25 Hayakawa et al. 2022. The Effect of COVID-19 on Foreign Direct Investment. *ADB Economics Working Papers Series. No. 653*. Manila: ADB (p. 1).
- 26 UNCTAD. 2021. *World Investment Report 2021: Investing in Sustainable Recovery*. New York (p. 2).
- 27 Greenfield investment involves a foreign enterprise that establishes a local subsidiary rather than merges with or acquires an existing enterprise.
- 28 UNCTAD. 2021. *World Investment Report 2021: Investing in Sustainable Recovery*. New York (p. 9).
- 29 Rajah and Dayant. 2020. Avoiding a Pacific Lost Decade: Financing the Pacific’s COVID-19 Recovery. *Policy Briefs*. 2020. <https://www.lowyinstitute.org/publications/lost-decade-pacific>
- 30 Investment policy also has international aspects. These are largely related to IIAs and their implementation in country.
- 31 UNCTAD. 2015. *Investment Policy Framework for Sustainable Development*. Geneva: UNCTAD.
- 32 UNCTAD. 2015. *Investment Policy Framework for Sustainable Development*. Geneva: UNCTAD.
- 33 An exhaustive review of industrial policies across study countries is beyond the scope of this study.
- 34 Sometimes described as “sectoral policy”.
- 35 Pack and Saggi. 2006. Is there a Case for Industrial Policy? A Critical Survey. *World Bank Research Observer* 21:2, 267–297.
- 36 While it does not cover Pacific countries, the OECD FDI Restrictiveness Index can offer some insight into the various factors that are used overseas to calculate the overall restrictiveness. Kalinova, Palerm, and Thomsen. 2010. OECD’s FDI Restrictiveness Index: 2010 Update. *OECD Working Papers on International Investment* No. 2010/03. Paris: OECD Publishing.
- 37 UNCTAD. 2015. *Investment Policy Framework for Sustainable Development*. Geneva (p. 53).
- 38 UNCTAD. 2015. *Investment Policy Framework for Sustainable Development*. Geneva (p. 7).
- 39 UNCTAD. 2015. *Investment Policy Framework for Sustainable Development*. Geneva (p. 30).
- 40 UNCTAD. 2015. *Investment Policy Framework for Sustainable Development*. Geneva: UNCTAD.
- 41 UNCTAD. 2015. *Investment Policy Framework for Sustainable Development*. Geneva (p. 40).
- 42 Heilbron and Whyte. 2019. *Institutions for Investment: Establishing a High-Performing Institutional Framework for Foreign Direct Investment*. Washington, DC: World Bank.
- 43 Heilbron and Whyte. 2019. *Institutions for Investment: Establishing a High-Performing Institutional Framework for Foreign Direct Investment*. Washington, DC: World Bank (p. 7).
- 44 UNCTAD. 2015. *Investment Policy Framework for Sustainable Development*. Geneva: UNCTAD.
- 45 Beazer and Blake. 2018. The Conditional Nature of Political Risk: How Home Institutions Influence the Location of Foreign Direct Investment. *American Journal of Political Science* 62: 470–485.

- 46 This is generally enshrined in the principles of “national treatment” and “most-favored-nation treatment”, which are discussed further in Chapter 4 [Investment Guarantees and Obligations].
- 47 OECD. 2015. *Policy Framework for Investment 2015 Edition*. Paris (p, 17).
- 48 Mistura and Roulet. 2019. The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter? *OECD Working Papers on International Investment 2019/01*. Paris: OECD.
- 49 Mistura and Roulet. 2019. The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter? *OECD Working Papers on International Investment 2019/01*. Paris: OECD.
- 50 World Bank. 2017. *Investment Policy and Promotion Diagnostics and Tools: Maximizing the Potential Benefits of Foreign Direct Investment (FDI) for Competition and Development*. Washington, DC (p. 20).
- 51 Further discussion on articulating a country’s value proposition is in Chapter 7 [Investment Promotion].
- 52 OECD. 2015. *Policy Framework for Investment 2015 Edition*. Paris (p. 24)
- 53 Bhatia. 2013. *Barriers to FDI: A Corporate Perspective. Foreign Direct Investment as a Key Driver for Trade, Growth, and Prosperity: the Case for a Multilateral Agreement on Investment*. Geneva: World Economic Forum (p. 19).
- 54 Mistura and Roulet. 2019. The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter? *OECD Working Papers on International Investment 2019/01*. Paris: OECD (p. 6).
- 55 Mistura and Roulet. 2019. The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter? *OECD Working Papers on International Investment 2019/01*. Paris: OECD (p. 14).
- 56 OECD. 2002. *OECD Economic Outlook*. Volume 2003 Issue 1. Paris (pp. 168–169).
- 57 Mistura and Roulet. 2019. The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter? *OECD Working Papers on International Investment 2019/01*. Paris: OECD (p. 15).
- 58 Mistura and Thomsen. 2017. Is Investment Protectionism on the Rise? Evidence from the OECD FDI Regulatory Restrictiveness Index. *2018 GFII Background Note*. Paris: OECD.
- 59 World Bank. 2020. *Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty*. Washington, DC (pp. 39–40).
- 60 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 32).
- 61 Government may undertake investment screening at later points in the investment process; for example, when determining the award of incentives or issuing operational licenses, or ensuring that the investment does not have harmful impacts on the natural environment or communities. These types of screening are applied equally to all investors: foreign and citizen.
- 62 OECD. 2021. *Transparency, Predictability and Accountability for Investment Screening Mechanisms: Research Note by the OECD Secretariat*. Paris.
- 63 Registration should not be required in instances of indirect investment. This could include foreign citizens or entities purchasing preferred shares that do not provide any control or management authority; acquisition of debt instruments or securities such as loans, securities, bonds and debentures; or contractual arrangements such as licensing arrangements or turnkey contracts that do not involve management control.
- 64 PNG’s definition of a “national enterprise” under the Investment Promotion Act only applies to enterprises where the enterprise in question has more than 50% foreign ownership or control.
- 65 Prohibited means prohibited for private investment (citizen and foreign) either because (i) they are illegal in the country or (ii) exclusively provided by a government or state-owned agency. Examples of the former can include illicit drugs, pornography, and exporting goods prohibited by law. Examples of the latter can include matters relating to national defence or goods and services that fall under government monopolies.
- 66 L. Knight and T. Voon. 2018. The Evolution of National Security at the Interface Between Domestic and International Investment Law and Policy. *Melbourne Legal Studies Research Paper Series* No. 851.
- 67 UNCTAD. 2019. *World Economic Report: Special Economic Zones*. Geneva (p. 93).

- 68 Further information is in OECD. 2009. *Guidelines for Recipient Country Investment Policies Relating to National Security*. Paris.
- 69 Local content requires a minimum amount of local goods and services used in production by foreign firms.
- 70 Echandi et al. 2015. The Impact of Investment Policy in a Changing Global Economy: a Review of the Literature. *Policy Research Working Paper 7473*. Washington, DC: World Bank (p. 28).
- 71 Some performance requirements can be illegal also under a country's international commitments. For example, under the WTO Agreement on Trade-Related Investment Measures, it is illegal to establish local content requirements, trade-balancing requirements, export controls, or foreign exchange restrictions related to the foreign exchange inflows attributable to an enterprise.
- 72 Mistura and Roulet. 2019. The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter? *OECD Working Papers on International Investment 2019/01*. Paris: OECD (p. 13).
- 73 Mistura and Roulet. 2019. The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter? *OECD Working Papers on International Investment 2019/01*. Paris: OECD (pp. 13–14).
- 74 Vertical spillovers refer to productivity improvements that occur between different sectors, whereas horizontal spillovers relate to improvements within a sector. Backwards spillovers refer to benefits which accrue to local businesses which supply a foreign-owned business, whereas forwards spillovers are those that benefit local businesses that use a foreign firm as a supplier.
- 75 Javorcik and Spatareanu. 2008. To share or not to share: does local participation matter for spillovers from foreign direct investment? *Journal of Development Economics* Vol 85(1-2), pp. 194–217.
- 76 Mistura and Roulet. 2019. The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter? *OECD Working Papers on International Investment 2019/01*. Paris: OECD.),
- 77 For example, for benefits sharing, local economic development can be pursued through appropriate taxation regimes and agreements with landowner communities for corporate social responsibility activities by the foreign developer.
- 78 The term “negative list” can also be used in other contexts, e.g., extending most-favored nation (MFN) treatment, or the cross-border supply of goods and services with a different meaning.
- 79 UNCTAD. 2002. Admission and Establishment. *UNCTAD Series on International Investment Policies for Development*. Geneva.
- 80 Mistura and Roulet. 2019. The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter? *OECD Working Papers on International Investment 2019/01*. Paris: OECD.),
- 81 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 121).
- 82 Lembcke and Wildnerova. 2020. Does FDI benefit incumbent SMEs? FDI Spillovers and Competition Effects at the Local Level. *OECD Regional Development Working Papers 2020/02*. Paris: OECD. Evidence from research in several African countries, for example, indicates that such policies have been detrimental to the national economy. Benn Eifert, Alan Gelb, and Vijaya Ramachandran. 2005. Business Environment and Comparative Advantage in Africa: Evidence from the Investment Climate Data. *Working Paper* Number 56. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1112857](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1112857).
- 83 Evidence from research in several African countries, for example, indicates such policies have been detrimental to the national economy. Benn Eifert, Alan Gelb, and Vijaya Ramachandran. 2005. Business Environment and Comparative Advantage in Africa: Evidence from the Investment Climate Data. *Working Paper* Number 56. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1112857](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1112857).
- 84 Section 10(2), Foreign Investment Act.
- 85 Feeny et al. 2014. Growth and Foreign Direct Investment in the Pacific Island Countries. *Economic Modelling* 37, 332–339.
- 86 Feeny et al. 2014. Growth and Foreign Direct Investment in the Pacific Island Countries. *Economic Modelling* 37, 332–339.
- 87 Feeny et al. 2014. Growth and Foreign Direct Investment in the Pacific Island Countries. *Economic Modelling*. 37. 332–339, p 333.
- 88 Echandi et al. 2015. The Impact of Investment Policy in a Changing Global Economy: a Review of the Literature. *Policy*

- Research Working Paper 7473. Washington, DC: World Bank (p. 9).
- 89 Mistura and Roulet. 2019. The Determinants of Foreign Direct Investment: Do Statutory Restrictions Matter? *OECD Working Papers on International Investment 2019/01*. Paris: OECD (p. 16).
- 90 For the purposes of scoring countries, only GATS is considered.
- 91 However, this excludes services supplied in the exercise of governmental authority, which means any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers.
- 92 The sectors covered are business services, communications services, construction and related engineering services, distribution services, educational services, environmental services, financial services, health-related and social services, tourism and travel related services, and transport services. There are several subsectors that are included under the relevant services.
- 93 Under GATS, signatory countries commit to
- 94 PACER Plus is a regional development-centered free trade agreement covering goods, services, and investment. As of October 2020, 11 countries (Australia, the Cook Islands, Kiribati, Nauru, New Zealand, Niue, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu) had signed the agreement. Ratification by a total of eight countries is necessary to implement the agreement. This was achieved in October 2020. <https://www.mfat.govt.nz/assets/Trade-agreements/PACER-Plus/PACER-Plus-consolidated-legal-text.pdf>.
- 95 UNCTAD. 2006. Preserving Flexibility in IIAs: The Use of Reservations. *UNCTAD Series on International Investment Policies for Development*. Geneva.
- 96 UNCTAD. 2006. Preserving Flexibility in IIAs: The Use of Reservations. *UNCTAD Series on International Investment Policies for Development*. Geneva.
- 97 Vanuatu identifies principles in its National Investment Policy Statement but not the FIA.
- 98 More discussion is in Chapter 4 [Investment Guarantees and Obligations].
- 99 Kher and Chun. 2020. Policy Options to Mitigate Political Risk and Attract FDI. *Finance, Competitiveness and Innovation in Focus*. Washington, DC: World Bank (p. 3).
- 100 Multilateral Investment Guarantee Agency. 2011. *2011 World Investment and Political Risk*. Washington, DC: World Bank (p. 21).
- 101 Saurav and Kuo. 2020. *The Voice of Foreign Direct Investment: Foreign Investor Policy Preferences and Experiences in Developing Countries*. Washington, DC: World Bank.
- 102 ADB. 2021. *ADB International Investment Tool Kit: A Comparative Analysis*. Manila. ADB provides a more detailed analysis of the key differences in the expression of 15 key IIA provisions.
- 103 ADB. 2021. *ADB International Investment Tool Kit: A Comparative Analysis*. Manila.
- 104 World Bank. 2020. *Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty*. Washington, DC (p. 136).
- 105 Wei. 2000. How Taxing is Corruption on International Investors? *The Review of Economics and Statistics* Volume 81(1), pp. 1–11.
- 106 M. Azzimonti. 2018. The Politics of FDI Expropriation. *International Economic Review* Volume 59(2), pp. 479–510.
- 107 Kher and Chun. 2020. Policy Options to Mitigate Political Risk and Attract FDI. *Finance, Competitiveness and Innovation in Focus*. Washington, DC: World Bank (p. 4).
- 108 Kher and Chun. 2020. Policy Options to Mitigate Political Risk and Attract FDI. *Finance, Competitiveness and Innovation in Focus*. Washington, DC: World Bank (p. 9).
- 109 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 41).
- 110 National treatment can be extended to the pre-establishment phase of investment. However, some countries limit national treatment until after investment is established; for example, s 8(1) of the Investment Act 2021 (Fiji) in the Pacific is a



legislative guarantee extended to the pre-establishment phase.

- 111 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 42).
- 112 OECD. 2015. *Policy Framework for Investment 2015 Edition*. Paris (p. 24).
- 113 OECD. 2015. *Policy Framework for Investment 2015 Edition*. Paris (p. 17).
- 114 OECD. 2015. *Policy Framework for Investment 2015 Edition*. Paris (pp. 24–25).
- 115 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC.
- 116 Under GATS, acquisition of land or interest in lands is often described as a limitation on market access. Refer to GATS Article XVI for the description of matters considered to constitute market access commitments.
- 117 OECD. 2004b. Most-Favored-Nation Treatment in International Investment Law. *OECD Working Papers on International Investment 2004/02*. Paris (p. 2).
- 118 UNCTAD. 2010. Most-Favored-Nation Treatment. *UNCTAD Series on Issues in International Investment Agreements II*. Geneva (p. 1).
- 119 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 40).
- 120 UNCTAD. 2010. Most-Favored-Nation Treatment. *UNCTAD Series on Issues in International Investment Agreements II*. Geneva (pp. XIII–XIV).
- 121 However, generally it is not good practice for states to enter into contacts granting special privileges or incentives. World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (pp. 42–43).
- 122 OECD. 2004b. Most-Favored-Nation Treatment in International Investment Law. *OECD Working Papers on International Investment 2004/02*. Paris (p. 5).
- 123 Article I(3)(b) defines “services” as “includ[ing] any service in any sector except services supplied in the exercise of governmental authority”. Article I(3)(c) defines “a service supplied in the exercise of governmental authority” as “mean[ing] any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers”. Certain air transport services are also excluded under the **Appendix** on air transport services.
- 124 Given that a large percentage of investment in the Pacific is likely to involve establishing a commercial presence in the host economy and running the business itself, both chapters are relevant.
- 125 The formulation is based on the Asia-Pacific Economic Cooperation nonbinding investment principles. <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2910/download>.
- 126 OECD. 2004a. Fair and Equitable Treatment Standard in International Investment Law. *OECD Working Papers on International Investment 2004/03*. Paris.
- 127 OECD. 2004b. Most-Favored-Nation Treatment in International Investment Law. *OECD Working Papers on International Investment, 2004/02*. Paris (p. 2). For example, MFN treatment or national treatment applies a standard to an investor in reference to (comparatively better) treatment of an investor from a different country.
- 128 UNCTAD. 2012. Fair and Equitable Treatment. *UNCTAD Series on Issues in International Investment Agreements II*. Geneva (p. 1).
- 129 World Bank. 2020. *2019/2020 Global Investment Competitiveness Report*. Washington, DC (p. 153).
- 130 UNCTAD. 2012. Fair and Equitable Treatment. *UNCTAD Series on Issues in International Investment Agreements II*. Geneva (pp. XV–XVI).
- 131 Section 40(2) of the Tonga FIA provides that the property of an overseas person will not be subject to expropriation or other adverse dealing (emphasis added). However, this is assessed as falling short of an explicit guarantee.
- 132 Chapter 9, Article 9 of PACER Plus requires parties to accord covered investments of any other party the customary international law minimum standard of treatment of aliens, including fair and equal treatment and full protection and security. “Fair and equal treatment” is considered to include the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal

systems of the world.

- 133 UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva (p. 6).
- 134 UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva (p. 5).
- 135 UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva (p. 6).
- 136 OECD. 2015. *Policy Framework for Investment 2015 Edition*. Paris (p. 25).
- 137 OECD. 2004c. “Indirect Expropriation” and the “Right to Regulate” in International Investment Law. *OECD Working Papers on International Investment 2004/04*. Paris.
- 138 Assessment of indirect expropriation is context-specific. However, in general, features to consider include (i) the economic impact of the measure; (ii) the extent to which the measure interferes with distinct, reasonably investment-backed expectations, and (iii) the nature, purpose, and character of the measure. UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva.
- 139 OECD. 2004c. “Indirect Expropriation” and the “Right to Regulate” in International Investment Law. *OECD Working Papers on International Investment, 2004/04*. Paris (pp. 3–4).
- 140 UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva (p. 12).
- 141 UNCTAD. 2000. Transfer of Funds. *UNCTAD Series on Issues in International Investment Agreements*. Geneva.
- 142 For example, an explanatory clause could be included stating that “nondiscriminatory actions designed and applied to protect legitimate public health objectives such as public health, safety, and the environment do not constitute indirect expropriation”. Refer to the discussion in UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva.
- 143 UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva: UNCTAD.
- 144 For example, this could include addressing an environmental emergency, such as resettling people whose property is located in an irreparably contaminated area or developing public infrastructure, such as roads and power stations.
- 145 UNCTAD. 2000. Transfer of Funds. *UNCTAD Series on Issues in International Investment Agreements*. Geneva (p. 13).
- 146 UNCTAD. 2000. Transfer of Funds. *UNCTAD Series on Issues in International Investment Agreements*. Geneva (p. 13).
- 147 UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva (p. 36).
- 148 Paid without delay: UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva (p. 40).
- 149 Has a reasonable relationship with an investment’s fair market value. UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva (p. 40).
- 150 Paid in a convertible or freely usable currency. UNCTAD. 2012. Expropriation: A Sequel. *UNCTAD Series on Issues in International Agreements II*. Geneva (p. 40).
- 151 Claims regarding expropriation have been asserted in PNG regarding the Government of PNG’s acquisition of shares in the PNG Sustainable Development Program Ltd and initial refusal to extend a mining lease to Barrack Gold Ltd in *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea (ICSID Case No. ARB/13/33)*. However, the claims regarding expropriation were not addressed as the Tribunal found that section 39 of the Papua New Guinea Investment Promotion Act 1992 and section 2 of the Investment Disputes Convention Act 1978 were insufficient to constitute a unilateral ‘standing offer’ for PNG to consent to ICSID jurisdiction.
- 152 UNCTAD. 2000. Transfer of Funds. *UNCTAD Series on Issues in International Investment Agreements*. Geneva (p. 3).
- 153 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 47).
- 154 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 122).
- 155 Generally, freely useable currencies are those that are (i) in fact, widely used to make payments for international transactions; and (ii) are widely traded on principal exchange markets: refer to Article XXX(f) of the IMF Articles of Agreement. Examples



- of major currencies that are considered freely useable and form the basis of the IMF's Special Drawing Rights are the United States dollar, the euro, the yen, the pound sterling, and the yuan. The term differs from 'freely convertible' currencies which generally means that a currency is not subject to government controls on currency exchange. This would include currencies such as the Australian dollar, Canadian dollar, and the New Zealand dollar.
- 156 These can include issues such as bankruptcy, protection of creditor rights, criminal offences and the recovery of proceeds of crime, and taxation.
- 157 Host countries that establish restrictions also need to be aware of their obligations as a member of the IMF. Under Article VIII, Section 2(a) of the IMF's Articles of Agreement, members may not impose restrictions on the making of payments and transfers for current international transactions without authorization of the IMF. Current transactions include not only payments relating to trade and services but also a number of investment-related payments. Specifically, they include all income arising from investments, including interest on loans and other debt instruments, net of any income tax that may be levied by the country from which the payment is to be made; and a moderate amount for amortization of the principal of loans (or other debt instruments) or for the depreciation of direct investments. The obligation does not apply to capital movements, which include repatriation of capital.
- 158 UNCTAD. 2003. *Dispute Settlement: Investor-State*. *UNCTAD Series on Issues in International Investment Agreements*. Geneva (pp. 11–12).
- 159 UNCTAD. 2003. *Dispute Settlement: Investor-State*. *UNCTAD Series on Issues in International Investment Agreements*. Geneva (p. 1).
- 160 Kher and Chun. 2020. *Policy Options to Mitigate Political Risk and Attract FDI*. *Finance, Competitiveness and Innovation in Focus*. Washington, DC: World Bank (p. 8).
- 161 Conciliation and mediation are alternative or complementary methods to arbitration, but are more informal and do not guarantee a binding solution. In conciliation, a conciliator may recommend how a dispute should be resolved based on an examination of facts, whereas in mediation a mediator facilitates communication and decision-making between parties without making a recommendation.
- 162 UNCTAD. 2005. *Dispute Settlement: International Commercial Arbitration*. Geneva.
- 163 Refer to, for example, the analysis at in *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea* (ICSID Case No. ARB/13/33).
- 164 The United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration Article 1(3) provides a more thorough definition.
- 165 Kugler and Rapoport. 2011. *Migration, FDI, and the Margins of Trade*. *CID Working Paper No. 22*.
- 166 UNCTAD. 2004. *Key Terms and Concepts in IIAs: A Glossary*. *UNCTAD Series on Issues in International Investment Agreements*. Geneva (p. 58).
- 167 Immigration Regulations 2013, r 32 specifically mentions the need for a work permit for long-term employment permits.
- 168 Labour Act [Cap. 73], s 37
- 169 The Real Estate Option requires applicants to invest in approved real estate projects.
- 170 A processing fee of €160 if the application is lodged within Estonia, and €190 with an Estonian foreign representative. <https://www.politsei.ee/en/instructions/state-fee-amounts/residence-permit-and-rights-of-residence>.
- 171 The term IPI is adopted in this study to avoid confusion with the PNG IPA.
- 172 Wells, Jr. and Wint. 2000. *Marketing a country: Promotion as a tool for attracting foreign investment* (English). *Foreign Investment Advisory Service occasional paper no. 1*. Washington, DC: World Bank (p. 1).
- 173 Harding and Javorcik. 2010. *Roll out the Red Carpet and They Will Come: Investment Promotion and FDI Inflows*. *The Economic Journal* Volume 121 (557), p. 4.
- 174 Globally, countries have been cooperating to prevent base erosion and profit Shifting (BEPS) whereby multinational

- enterprises engage in tax avoidant behavior. PNG and Samoa are members of the OECD/G20 Inclusive Framework on BEPS. Under the inclusive framework, countries can adopt Global Anti-Base Erosion Rules, which introduce a global minimum corporate tax rate of 15% for constituent entities of a multinational enterprise group with revenue of more than €750 million. The purpose of a minimum tax rate is to disincentivise companies to shift profit to lower-tax jurisdictions, spurred by regulatory competition between jurisdictions. As such, countries may, in some circumstances, need to take this into account when designing tax incentives to attract FDI, including those delivered through special economic zones.
- 175 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 2).
- 176 Heilbron and Aranda-Larrey. 2020. *Strengthening Service Delivery of Investment Promotion Agencies: The Comprehensive Investor Services Framework*. Washington, DC: World Bank.
- 177 World Bank. 2020. *Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty*. Washington, DC.
- 178 World Bank. 2020. *Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty*. Washington, DC (p. 172); and Heilbron and Aranda-Larrey. 2020. *Strengthening Service Delivery of Investment Promotion Agencies: The Comprehensive Investor Services Framework*. Washington, DC: World Bank.
- 179 Harding and Javorcik. 2010. Roll out the Red Carpet and They Will Come: Investment Promotion and FDI Inflows. *The Economic Journal* Volume 121 (557), p. 15.
- 180 Harding and Javorcik. 2010. Roll out the Red Carpet and They Will Come: Investment Promotion and FDI Inflows. *The Economic Journal* Volume 121 (557), p. 17.
- 181 World Bank. 2020. *Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty*. Washington, DC (p. 173).
- 182 Harding and Javorcik. 2010. Roll out the Red Carpet and They Will Come: Investment Promotion and FDI Inflows. *The Economic Journal* Volume 121 (557), p. 14.
- 183 Heilbron and Whyte. 2019. *Institutions for Investment: Establishing a High-Performing Institutional Framework for Foreign Direct Investment*. Washington, DC: World Bank (p. 7).
- 184 Winning: Foreign Direct Investment 2015–2019 is an example of an effective investment promotion strategy ([https://www.idaireland.com/docs/publications/ida\\_strategy\\_final](https://www.idaireland.com/docs/publications/ida_strategy_final)). The strategy was developed and implemented by IDA Ireland, the semi-state body tasked with the responsibility for attracting and retaining FDI in Ireland. FDI contribution to the Irish economy is far-reaching. At present, Ireland is home to more than 1,200 overseas company operations. About 20% of all private sector employment in the country is directly or indirectly attributable to FDI. <https://enterprise.gov.ie/en/What-We-Do/Trade-Investment/Foreign-Direct-Investment-FDI/>.
- 185 While IPIs are responsible for promoting investment opportunities, they are unlikely to be successful working on their own. They will need to work collaboratively with government ministries responsible for sectors considered priorities for economic growth in order to identify the nature, scale, quality, and location of the most promising and suitable investments to pursue. These sectors/potential investments need to be supported by appropriate regulatory frameworks, infrastructure, and potential incentives to be attractive in the eyes of investors.
- 186 Whyte et al. 2012. *Global Investment Promotion Benchmarking GIBP 2012: Eyes on Africa, the Caribbean and the Pacific*. Washington, DC: World Bank.
- 187 Excludes IPIs providing reactive services outside these priority areas.
- 188 Heilbron and Aranda-Larrey. 2020. *Strengthening Service Delivery of Investment Promotion Agencies: The Comprehensive Investor Services Framework*. Washington, DC: World Bank Group (p. 188).
- 189 For a discussion on the opportunities for including women more in investment promotion: UNCTAD. 2020. *Mainstreaming Gender Equality in Investment Promotion. The IPA Observer Issue 10*. Geneva.
- 190 Wells, Jr. and Wint. 2000. Marketing a country: Promotion as a tool for attracting foreign investment (English). *Foreign Investment Advisory Service occasional paper no. 1*. Washington, DC: World Bank Group (p. 50).

- 191 OECD. 2018. *Mapping of Investment Promotion Agencies in OECD Countries*. Paris.
- 192 World Bank. 2020. *Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty*. Washington, DC (p. 174).
- 193 Heilbron and R. Whyte. 2019. *Institutions for Investment: Establishing a High-Performing Institutional Framework for Foreign Direct Investment*. Washington, DC: World Bank (p. 6).
- 194 An IPI can also be established as a private sector agency. Private sector groups in many countries, such as chambers of commerce, have active investment promotion programs. However, very few national governments chose to recognize a private sector organization as the official IPI. Because FDI attraction is an important part of their economic development strategy, governments feel that they should take the lead on implementing all of its aspects.
- 195 C. Ortega and C. Griffin. 2009. Investment Promotion Essentials: What Sets the World's Best Investment Facilitators Apart from the Rest. *Investment Climate in Practice* No. 6. Washington, DC: World Bank. <https://openknowledge.worldbank.org/bitstream/handle/10986/10526/503560BRI0Box31actice1GIPB01PUBLIC1.pdf?sequence=1&isAllowed=y>. In 2009, the World Bank conducted the Investment Promotion Benchmarking study (<https://openknowledge.worldbank.org/handle/10986/28205>), which empirically assessed 213 IPIs in 181 countries, yielding a ranking of effectiveness in investment facilitation. It evaluated the ability of IPIs to meet the informational needs of potential investors during the site-selection process based on IPI responses to two simulated inquiries and the effectiveness of its website. The study found that, while 73% of top IPIs were purely public bodies, only about 3 in 10 of these were ministerial sub-units. Moreover, of the weakest performing IPIs, about 50% were ministry sub-units.
- 196 While investment promotion involves private sector-like skills, the scope is limited for an IPI to capture profit at an organizational level.
- 197 Samoa has private sector representation; however, only in relation to its regulatory responsibilities under the FIA.
- 198 OECD. 2018. *Mapping of Investment Promotion Agencies in OECD Countries*. Paris.
- 199 OECD. 2018. *Mapping of Investment Promotion Agencies in OECD Countries*. Paris.
- 200 World Bank. 2020. *Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty*. Washington, DC (p. 182).
- 201 For example, none of the top-20 performing investment promotion institutions covered in the 2009 Global Investment Promotion Benchmarking report had regulatory responsibilities. In contrast, all bottom-20 performers did. World Bank. 2009. *Global Investment Promotion Benchmarking 2009: Summary Report*. Washington, DC; and Whyte et al. 2012. *Global Investment Promotion Benchmarking GIBP 2012: Eyes on Africa, the Caribbean and the Pacific*. Washington, DC (p. 11).
- 202 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC.
- 203 Heilbron and Aranda-Larrey. 2020. *Strengthening Service Delivery of Investment Promotion Agencies: The Comprehensive Investor Services Framework*. Washington, DC: World Bank (p. 2).
- 204 Heilbron and Aranda-Larrey. 2020. *Strengthening Service Delivery of Investment Promotion Agencies: The Comprehensive Investor Services Framework*. Washington, DC: World Bank (p. 3).
- 205 Heilbron and Aranda-Larrey. 2020. *Strengthening Service Delivery of Investment Promotion Agencies: The Comprehensive Investor Services Framework*. Washington, DC: World Bank (pp. 7–8).
- 206 For example, a survey conducted in 2017 of corporate location decision makers rated internet/websites as the most effective marketing technique for attracting investment. <https://aboutdci.com/thought-leadership/winning-strategies/>.
- 207 UNCTAD. 2017. Investment Facilitation: The Perfect Match for Investment Promotion. *The IPA Observer Issue 6*. Geneva (p. 1).
- 208 Whyte et al. 2012. *Global Investment Promotion Benchmarking GIBP 2012: Eyes on Africa, the Caribbean and the Pacific*. Washington, DC: World Bank (p. 6).
- 209 Heilbron and Aranda-Larrey. 2020. *Strengthening Service Delivery of Investment Promotion Agencies: The Comprehensive Investor Services Framework*. Washington, DC: World Bank (p. 8).

- 210 Harding and Javorcik found that assistance in obtaining permits and otherwise dealing with red tape has a greater impact on investment. Harding and Javorcik. 2010. Roll out the Red Carpet and They Will Come: Investment Promotion and FDI Inflows. *The Economic Journal*. Volume 121 (557).
- 211 UNCTAD. 2017. *Global Action Menu for Investment Facilitation*. Geneva (p. 4).
- 212 For example, Invest Spain dedicates 20% of its staff exclusively to inquiry response, and each of Austrian Business Agency's staff must be prepared to respond to investor inquiries. Both were top-performing IPIs in the World Bank's 2009 Global Investment Promotion Benchmarking report. C. Ortega and C. Griffin. 2009. Investment Promotion Essentials: What Sets the World's Best Investment Facilitators Apart from the Rest. *Investment Climate in Practice* No. 6. Washington, DC: World Bank.
- 213 An investor tracking system (ITS) refers to the process an IPI uses to track and organize contacts with current and prospective investors. Investor tracking typically requires ITS software, which consists of a customized customer relationship management (CRM) solution tailored to suit IPI operational needs. CRM solutions improve services and communication with current and prospective investors and enhance marketing efforts. The main elements of modern-day ITS/CRM software include support, training, reporting, data entry and maintenance protocol. This impacts operational organization, systems and information technology infrastructure, allowing for an IPI to better access and harnesses knowledge.
- 214 World Bank. 2010. *Investment Law Reform: A Handbook for Development Practitioners*. Washington, DC (p. 67).
- 215 Heilbron and Aranda-Larrey. 2020. *Strengthening Service Delivery of Investment Promotion Agencies: The Comprehensive Investor Services Framework*. Washington, DC: World Bank (p. 8).
- 216 The Global Enterprise Registration identifies good practice online business registration sites around the world. <https://ger.co>.
- 217 Government of the Republic of Trinidad and Tobago. N.d. Trade and Business Information Portal. <https://www.ttbizlink.gov.tt>.
- 218 List of policy questions is not exhaustive.
- 219 UNCTAD. 2015. *Investment Policy Framework for Sustainable Development*. Geneva: UNCTAD.
- 220 Article XVII of the General Agreement on Trade in Services provides that Members shall accord national treatment to services an service suppliers from any other Member in the sectors inscribed in its Schedule, and subject o any conditions and qualifications set out therein.
- 221 Article II of GATS provides that Members shall accord services and service suppliers of any other Member treatment no less favourable than it accords to like services and services suppliers of any other country; however, Members can maintain measures inconsistent with this obligation is identified in its Annex of Article II Exemptions.
- 222 D. Kaufmann, A. Kraay, and M. Mastruzzi. The Worldwide Governance Indicators: Methodology and Analytical Issues (September 2010). *World Bank Policy Research Working Paper* No. 5430, p. 4. SSRN: <https://ssrn.com/abstract=1682130>.
- 223 Adapted from OECD. 2008. *OECD Guiding Principles for Regulatory Quality and Performance*. Paris.





# INVESTMENT FOR GROWTH

## A REVIEW OF FOREIGN DIRECT INVESTMENT FRAMEWORKS IN THE PACIFIC

Foreign direct investment (FDI) can be a powerful driver of economic and human capital development. This study reviews the FDI frameworks in Papua New Guinea, Samoa, Solomon Islands, Tonga, and Vanuatu, and is designed to support countries to define their foreign direct investment objectives and develop appropriate frameworks to attract, retain, and assess FDI efficiently and effectively.




### About PSDI

PSDI is a technical assistance program undertaken in partnership with the Government of Australia, the Government of New Zealand, and the Asian Development Bank. PSDI supports ADB's 14 Pacific developing member countries to improve the enabling environment for business and to support inclusive, private-sector led economic growth. The support of the Australian and New Zealand governments and ADB has enabled PSDI to operate in the region for more than 15 years and assist with more than 300 reforms.



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