OECD POLICY FRAMEWORK FOR INVESTMENT IMPLEMENTATION IN THE ASIA-PACIFIC REGION COUNTRIES

Andrei SAKHAROV, Advisor of the International Relations Department of the Russian Union of Industrialists and Entrepreneurs (RSPP); Researcher of Center for International Institutions Research (CIIR) at the Russian Presidential Academy of National Economy and Public Administration (RANEPA)

Protracted economic recovery, intensification of cross-border investment flows, and emergence of global value chains as one of the pillars of economic growth have brought the idea of investment regimes harmonization to the forefront of international agenda. OECD, being actively involved in the work on this issue, created the Policy Framework for Investment (PFI)[1] which could serve as a basis for future international investment regime harmonization arrangements.

PFI includes a list of recommendations and best practices across 12 investment-related national policy areas, including finance, fiscal policies, trade, competition, human resource development, corporate governance, and regulation. The PFI aims primarily to help countries create favorable conditions for mobilizing domestic and foreign private investment to advance sustainable economic growth and development and ultimately — prosperity for every member of the society.

Among the key novelties of the 2015 edition of the PFI is the discussion of green investment and green growth issues. The concept of green growth is perceived by the OECD as a means to stimulate economic growth and development while ensuring "that natural assets continue to provide the ecosystem services on which our wellbeing relies".[2] Green assets investment and development of relevant new technological solutions are regarded as some of the key drivers of sustainable growth. The PFI 2015 also outlines six core principles crosscutting all 12 policy areas covered by the document in the *Horizontal policies and practices* section.

The PFI recommendations are non-obligatory. The document is used as a guiding framework for steering national and regional economic policies towards creating favorable conditions for investment. The PFI additionally serves as a platform for elaborating common international approaches, involving both governmental and nongovernmental actors, including private investors, NGOs, civil society, local communities, etc., providing clear, transparent and commonly acceptable provisions, to facilitate consensus building among the stakeholders.

[1] The first edition of the PFI was issued in 2006. The document was conceived as a supplement to the existing international development instruments, such as the UN Millennium Development Goals, the WTO Doha Development Agenda, and Johannesburg Declaration on Sustainable Development

[2] Towards Green Growth, OECD 2011. *http://www.oecd.org/greengrowth/towards-green-growth-9789264111318-en.htm* (here and henceforth the sources cited or referred to in this article footnotes were accessed 20 February 2017)

The PFI salience for both OECD and non-OECD countries, including Russia, is bolstered by the increasing competition on international investment market. Implementation of the document's recommendations can significantly enhance a jurisdiction's investment attractiveness and, consequently, increase its economic competitiveness. Additionally, the G20 Guiding Principles for Global Investment Policymaking, adopted at the Hangzhou summit, which largely reflect the spirit of the PFI horizontal policies and practices, constitute a part of Russia's commitment as a member of the G20. This article explores the experience of the largest emerging economies of the Asia-Pacific region — China, India, and Indonesia, in implementing the PFI provisions, with a view to highlight some of the best practices, which might be considered for further adaptation to Russian national conditions.

Китай

Chinese authorities exert a significant amount of control over investment. According to the UNCTAD Investment Policy Hub data, since 1 January 2010 China has introduced 32 measures directly affecting investment climate.[3] The OECD FDI Regulatory Restrictiveness Index[4] for the country amounts to 0.39 (average for the OECD countries is 0.07, APR countries — 0.19, Non-OECD APR countries — 0.24). It is the second highest result among all states, assessed by the OECD (after the Philippines with 0.41), indicating a highly restrictive nature of the Chinese investment regime.[5]

Many industries in Chinese economy are subject to investment restrictions motivated by national security concerns. According to the UNCTAD and OECD, six investment-related measures taken by China since 2010 were aimed directly at ensuring national security. Industries affected by such measures include defense, major equipment manufacturing, transportation and infrastructure services, energy and resource extraction, agriculture, and hi-tech industries.[6]

State control motivated by national security concerns is not weakening. On 1 July 2015, Standing Committee of the 12th National People's Congress passed the National Security Law, providing for the creation of the government supervision mechanism to oversee foreign investors' activities for their compliance with PRC national security interests.[7]

However, despite harsh regulatory requirements, especially in comparison with the country's major foreign trade partners, the overall investment environment is being slowly steered towards liberalization.

On 1 June 2009, a decree, relaxing some of the restrictions on foreign investments into mass media, entered into force. 2009 was also marked by liberalization of outward investment procedures for Chinese corporations. On 1 May 2009, PRC Ministry of Commerce eased approval procedures for national companies seeking to invest abroad and delegated most of the authority over such matters to provincial bodies. That same year the Chinese government lifted the ban on issuing renminbi bonds for foreign banks and allowed foreign investors to create partnerships when investing into Chinese economy.

[3] Investment Policy Hub, UNCTAD. *http://investmentpolicyhub.unctad.org/IPM*

[3] FDI Regulatory Restrictiveness Index measures statutory FDI restrictions in 58 countries, including all OECD and G20 members across 22 sectors. The study analyzed 4 groups of restrictions: equity restrictions, screening and approval requirements, restrictions on foreign key personnel, and other operational restrictions. However, enforcement of these restrictions, which is difficult to assess, is not factored into the scoring. Higher score reflects more restrictive investment regime

[5] FDI Regulatory Restrictiveness Index, OECD. *http://www.oecd.org/investment/fdiindex.htm*

[6] Investment Policies Related to National Security A Survey of Country Practices, OECD 2016. *http://www.oecd-ilibrary.org/content/workingpaper/5jlwrrf038nx-en*

[7] National Security Law, China Law Translate 2015. *http://chinalawtranslate.com/2015nsl/?lang=en*

China currently holds a second place in the world by the number of international trade agreements it is involved in (after Germany) with 130 total agreements, 108 of which are currently in force. Additionally, China is a member of 17 broader investment agreements.[8]

In recent years the PRC has come a long way in terms of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) implementation. However, concerns over law enforcement in this sphere persist among investors, who note inconsistencies in terms of foreigners' intellectual property rights (IPR) protection, lack of administrative procedures transparency, and limited effect civil litigation has on IPR infringement.[9]

On 3 September 2015, the PRC National People's Congress discontinued an approval regime for foreign investments into Chinese economy. Foreigners are no longer required to seek approval with the Ministry of Commerce or its regional branches. Exceptions are only allowed in the sectors on the so called "black list".[10] On 19 November 2015, the Ministry of Industry and Information Technology issued the decree lifting the ban on foreign investment in Chinese ICT companies.

Despite this trend towards foreign investment regime liberalization, Chinese companies, especially state corporations, still enjoy preferential treatment on the domestic market. In November 2013, the key role of state-owned enterprises (SOEs) was confirmed at the Third Plenum meeting of the Chinese Communist Party. However, their monopolist power is diminishing with the erosion of exclusive access to factors of production, as well as increasing efficiency and transparency.[11]

All in all, China conducts a flexible policy in terms of foreign investment regulation, and maintains a balance between attracting foreign capital and serving the interests of domestic business. Significant role is also played by existing restrictions in securitized industries, such as military equipment manufacturing, energy, resource extraction, and mass-media. In medium to long term, as the Chinese economy embraces globalization, the country's investment policy is likely to become increasingly more liberalized.

India

According to the UNCTAD research, since 2010 India has taken 58 investment-related policy measures.[12] ИА high degree of state regulatory involvement is characteristic of India's investment regime. FDI Regulatory Restrictiveness Index for India is 0.24, almost on par with non-OECD APR states (0.25).[13]

Foreign investors in India's economy face two options: the first is the so called "automatic route" which implies an absence of any approval procedures, whereas the second one, applicable in certain sensitive sectors of the economy, requires approval by the Foreign Investment Promotion Council. The comprehensive list of industries permitting

[8] Policy Considerations for Negotiating a U.S.-China Bilateral Investment Treaty, US-China Economic and Security Review Commission 2016. *http://origin.www.uscc.gov/sites/default/files/Research/Staff%20Report_Policy%20Considerations%20for%20Negotiating%20a%20U.S.-China%20Bilateral%20Investment%20Treaty080116.pdf*

[9] Executive Summary, US Department of State. *https://www.state.gov/documents/organization/228504.pdf*

[10] National Development and Reform Commission and Ministry of Commerce Announces to Promote the Reform of Foreign-invested Enterprises to Set Up Filling Management, Ministry of Commerce of China *http://english.mofcom.gov.cn/article/newsrelease/significantnews/201610/20161001407033.shtml*

[11] Executive Summary, US Department of State. *https://www.state.gov/documents/organization/228504.pdf*

[12] Investment Policy Hub, UNCTAD. *http://investmentpolicyhub.unctad.org/IPM*

[13] FDI Regulatory Restrictiveness Index, *OECD.http://www.oecd.org/investment/fdiindex.htm*

the "automatic route" investment procedure is published on the official government web-page.[14] Thus, despite restrictions, the conditions facing foreign investors are relatively predictable and transparent.

"Make in India" initiative, launched in September 2014 was designed to attract investment into the country's industry and infrastructure, aiming at achieving as high as a 10 percent growth rate in manufacturing. The initiative includes a wide range of measures stimulating foreign investment:

— Phase-out of approval procedures and restrictions on foreign participation in a number of industries, such as defense industry, civil aviation, TV broadcasting, banking, construction, pharmaceutical industry, agriculture, etc.;

— Facilitation of business-related procedures. The number of documents required to conduct import/export activities was lowered from 11 to three, the registration period for new companies shortened to just one day instead of 10, and power connection time-frame reduced from 180 to 15 days;

— Modernization of infrastructure, including transport and trade-related infrastructure (highways, railways, seaports, river navigation infrastructure). Indian government is planning to construct five new "industrial corridors" with 21 new Industrial Cities (Delhi—Mumbai, Chennai—Bengaluru, Bengaluru—Mumbai, Vizag—Chennai, Amritsar—Kolkata);

— Granting permanent residency status to foreign investors for 10 years.[15]

The new IPR legislation has been in force in India since May 2016.[16] On 13 May 2016, the government approved the act, which brought India's legislation in line with the TRIPS requirements, as well as enabled wider use and acceleration of patent examination procedure.[17] The new bankruptcy law was adopted in 2015, providing for simple and quicker insolvency procedure. This law entered into force in 2017.[18]

The Indian government also conducted a large-scale review of its FDI regulatory practices across multiple sectors: agriculture and livestock farming, firearms production, telecommunications, civil aviation, private security companies, wholesale trade, pharmaceutical industry. In all these sectors the government either significantly raised foreign participation quotas or abolished them altogether. This policy package was announced on 24 June 2016.[19]

Although India retains certain FDI restrictions in several sensitive sectors of the economy, such as agriculture, oil-refining, commodities trade, and insurance, investment regime liberalization is being carried forward at an increasing pace. The comprehensive "Make in India" initiative can, in case of successful implementation, advance the country's standing across most policy areas covered by the PFI.

Indonesia

Indonesia's investment climate is currently assessed by the OECD as significantly hampered by structural and regulatory constraints. The country's FDI Regulatory Restrictiveness Index stands at 0.34. Among the APR countries only Myanmar, China,

[14] Foreign Direct Investment, Make in India. http://www.makeinindia.com/policy/foreign-direct-investment

[15] New initiatives, Make in India. http://www.makeinindia.com/policy/new-initiatives

[16] Cabinet approves National IPR Policy: Jaitley, Times of India 2016. *http://timesofindia.indiatimes.com/city/delhi/Cabinet-approves-National-IPR-Policy-Jaitley/articleshow/52254963.cms*

[17] All you need to know about the new IPR Policy, The Hindu 2016. *http://www.thehindu.com/business/all-you-need-to-know-about-the-intellectual-property-rights-policy/article8600530.ece*

[18] New initiatives, Make in India. http://www.makeinindia.com/policy/new-initiatives

[19] Review of Foreign Direct Investment policy on various sectors, Government of India 2016. *http://dipp.nic.in/English/acts_rules/Press_Notes/pn5_2016.pdf*

and the Philippines are assessed as having more restrictive investment environments.[20] However, according to the UNCTAD study, since 2010 Indonesia has implemented 16 measures directly affecting investment climate.[21] And many initiatives being brought forward by the Indonesian government were designed to liberalize investment legislation.

On 15 August 2011, the practice of tax holidays was announced for significant investors in metallurgy, chemical, manufacturing, and mineral extraction industries.[22] In August 2015, the list of industries eligible for tax reductions was expanded with the addition of "agriculture product-based manufacture industry, marine transportation industry, manufacture industry that is the main industry in Special Economic Zones, and economic infrastructure other than those using a government and business entity partnership scheme."[23]

On 12 July 2012, the Indonesian Parliament approved the law on higher education, allowing foreign universities to open educational facilities in the country[24] to carry out non-profit educational in cooperation with Indonesian universities.[25]

On 26 October 2015, Indonesia adopted a streamlined three hours registration procedure for new companies, applicable to certain groups of investors. The procedure allows investors to receive preliminary approvals, including those concerning land rights in accordance with a "single window" standards.[26]

The policy, conducted since September 2015 through a number of economic stimulus policy packages, allowed the country to significantly improve the primary investment climate indicators and consequently its standing in the World Bank's "Doing Business" Index.[27] BNotably, the number of trans-border investment regulatory procedures was reduced from 94 to 49, the time required to pass all the procedures cut down from 1566 days to 132 days, with the relevant costs also substantially decreased.[28]

At the same time, a significant amount of structural and legislative restrictions persists in Indonesia, hampering the investment climate. Many of them are directly related to law enforcement and administration. Despite the improvements, such as the institutionalization of public consultations practice, red tape still inhibits private enterprises, sectoral restrictions for foreign businesses are still widespread, while regional differences in state investment policy implementation further complicate matters for the investors.[29]

[20] FDI Regulatory Restrictiveness Index, OECD. *http://www.oecd.org/investment/fdiindex.htm*

[21] Investment Policy Hub, UNCTAD. *http://investmentpolicyhub.unctad.org/IPM*

[22] Provision of Corporate Income Tax Relief or Reduction Facility, Indonesian Ministry of Finance 2011. *http://www.gbgindonesia.com/en/main/useful_resources/documents/regulations/Indonesia%20Income%20Tax%20Relief%20or%20Reducation%20Facilities%20Ministry%20of%20Finance%20Regulation%20No.%20130%20of%202011.pdf*

[23] Indonesian government revised tax holiday regulation to boost investment, UNCTAD 2015. *http://investmentpolicyhub.unctad.org/IPM/MeasureDetails?id=2752&hubc=null&rgn=&grp=&c=188&t=&s=&df=&dt=&pg=1&map=false&isSearch=true*

[24] Indonesia opens up to foreign universities, The PIE News 2012. *http://thepienews.com/news/indonesia-opens-up-to-foreign-universities/*

[25] Indonesia enacted the new law which encourages the entrance of foreign universities, UNCTAD 2012. *http://investmentpolicyhub.unctad.org/IPM/MeasureDetails?id=2806*

[26] Indonesia begins 3-hour-licence process for certain categories of investors, UNCTAD 2015. *http://investmentpolicyhub.unctad.org/IPM/MeasureDetails?id=2780*

[27] *http://russian.doingbusiness.org/data/exploreeconomies/indonesia*

[28] It's Getting Easier to Do Business in Indonesia: Report, Indonesia Investment Coordinating Board. *http://www3.bkpm.go.id/en/publication-investment/detail/investment-news/its-getting-easier-to-do-business-in-indonesia-report*

[29] Indonesia — Investment Policy Review, OECD 2010. *http://www.oecd.org/daf/inv/investmentfordevelopment/indonesia-investmentpolicyreview-oecd.htm*

There is still no clear trend towards investment market liberalization. The government, although conducting partial ad-hoc liberalization in some sectors of the economy, retains many of the restrictions, introducing new ones.

In March 2012, Indonesian government issued a decree requiring foreign investors "to sell off stakes in mines and increase domestic ownership to at least 51 percent by the 10th year of production".[30]

On 13 July 2012, the Central Bank announced a 40 percent foreign ownership limit for Indonesian banks.[31]

On 23 April 2014, the government published an amended list of economic activities with appropriate foreign ownership requirements. Several positions, such as power generation with more than 10 megawatt capacity, saw a prescribed foreign ownership share decrease from 95 to 49 percent.[32]

Indonesian investment environment remains one of the least hospitable among the large APR economies. Regulatory risks pervade some of the most lucrative industries – mining, energy, and agriculture. The most salient of those risks are decentralized decision making process, legal uncertainty, corruption, and economic nationalism. Indonesian government's formal and informal requirements to foreign companies also significantly hamper the latter's capacity to engage in meaningful competition with the local businesses.[33]

Russia

Russia's FDI Regulatory Restrictiveness Index (0.18), while being higher than the OECD average, is still slightly better than the APR average (0.19) and significantly better than the non-OECD APR average (0.25). Similar results were registered for Canada (0.17), Iceland (0.17), and Mexico (0.19).[34] Thus, according to the OECD estimates Russia boasts the least restrictive investment regime among the large emerging APR economies discussed in this article.

Russia, however, retains foreign investment restrictions in a wide range of sectors, which are motivated by national security concerns. Among these sectors are military industries, mass media, and natural monopolies.[35]

According to the Federal Law "On Procedures for Foreign Investments in the Business Entities of Strategic Importance for Russian National Defense and State Security", "Foreign states and international organizations, as well as organizations under their control, including those established in the Russian Federation, cannot make transactions leading to a gain of majority interest in the business entities of strategic importance for national defense and state security".[36]

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[30] [Indonesia] Changes regulation on foreign ownership of mines, UNCTAD 2012. *http://investmentpolicyhub.unctad.org/IPM/MeasureDetails?id=400*

[31] [Indonesia] Announces new regulations limiting bank ownership , UNCTAD 2012. *http://investmentpolicyhub.unctad.org/IPM/MeasureDetails?id=463*

[32] Indonesia amended the list of business activities open or closed to foreign investors, UNCTAD 2014. *http://investmentpolicyhub.unctad.org/IPM/MeasureDetails?id=2589*

[33] Indonesia Investment Climate Statement 2015, US Department of State 2015. *https://www.state.gov/documents/organization/241809.pdf*

[34] FDI Index, OECD. *http://www.oecd.org/investment/fdiindex.htm*

[35] Investment Policies Related to National Security, OECD 2016. *http://www.oecd-ilibrary.org/finance-and-investment/investment-policies-related-to-national-security_5jlwrrf038nx-en*

[36] Federal law on "Rules of Foreigng Investment into Companies that are Strategically Important for Defence and Safety of the State" [in Russian]. Rossiyskaya Gazeta. *https://rg.ru/2008/05/07/investicii-fz-dok.html*

The amendments to this federal law made in recent years have not been liberalizing. The amendments of 4 November 2014 set the requirement to obtain approval from the government commission in order to acquire more than 25 percent from strategic companies' assets. Previously, such restrictions applied only to stock capital. Additionally, the list of strategic industries was also expanded. The 4 February 2014 amendments added the following activities to the list: "the assessment of the vulnerability of transport infrastructure and vehicles, carried out by specialized organizations; the protection of transport infrastructure and vehicles against acts of unlawful interference, performed by departments of transport security; certification of transport for security forces carried out by certification organizations in accordance with the legislation of the Russian Federation on transport safety".[37]

On 14 October 2014, the amendments to the Law on Mass Media brought the foreign capital share in mass media down to 20 percent.[38]

Over the last few years Russian government has also taken measures to liberalize investment climate and facilitate capital flows into the country.

On 16 July 2015, the government issued a resolution "On Special Investment Contracts", stipulating a procedure of special investment contracts between federal government, subject of the Russian Federation or municipality and investor. This measure provides incentives to investors in industrial sectors and effectively simplifies the procedure of obtaining access to government subsidies.[39]

On 26 February 2015, the Ministry of Economic Development announced the creation of the special institution to protect the interests of investors from APR economies. The institution, created under the auspices of the Ministry's investment policy department, was designed to provide relevant information to investors from APR countries, as well as to address their concerns regarding bureaucratic predicaments.[40]

Important role in government efforts to stimulate foreign direct investment in Russian economy was given to special economic zones. There are currently four types of special economic zones in Russia: industrial and production zones, technology and innovation zones, port zones, and tourist and recreational zones.[41] Depending on conditions provided by a specific zone, investors are eligible to certain tax exemptions, customs treatment, or administrative procedures, such as a "single window" system.[42] However, due to the inefficiency of the project as well as budget cuts, the special economic zones phase-out was announced in June 2016. The creation of new zones was suspended and 10 of the existing ones slated for closure.[43]

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[37] RUSSIA: Changes to Russia foreign investment rules for strategic industries, Global Disclosures 2014. *http://www.globaldisclosures.com/Latest-News/2752*

[38] Federal Law of 14 October 2014 № 305-FZ «Of Amendments to Mass Media Act of the Russian Federation» [in Russian], Rossiyskaya Gazeta. *https://rg.ru/2014/10/17/ino-smi-dok.html*

[39] Government Resolution №708 On Special Investment Contracts, UNCTAD 2015. *http://investmentpolicyhub.unctad.org/IPM/MeasureDetails?id=2825*

[40] Ministry of Economic Development Created an Institute of Asian Investors Rights Protection [in Russian]. Vedomosti, 26 February 2015 г. *http://www.vedomosti.ru/economics/news/2015/02/26/minekonomrazvitiya-sozdalo-institut-dlya-zaschi-ti-prav-aziatskih-investorov*

[41] Special Economic Zones. Ministry of Economic Development of the Russian Federation [in Russian]. *http://economy.gov.ru/minec/activity/sections/sez/main/*

[42] Preferential Conditions for Investors. Ministry of Economic Development of the Russian Federation [in Russian]. *http://economy.gov.ru/minec/activity/sections/sez/preferences/*

[43] Speical Economic Zones Are To Be Closed For Regions Refuse To Carry Them As Assets [in Russian]. Interfax, 9 June 2016. *http://www.interfax.ru/russia/512642*

Despite the measures aimed directly at regulating investment, business environment is shaped by a number of other factors, such as: trade policy, administrative procedures and law enforcement, infrastructural development, etc. World Banks "Doing Business" Index provides important insight into many of those factors, while also allowing to capture countries' progress across a multitude of these critical development indicators.

Russia's positions on the majority of indicators in the current version of the index, "Doing Business-2017", slumped down compared to the previous year's report. Significant improvement was registered only in "Starting a business" and "Dealing with construction permits" categories. However, the country's results on the latter continue to stay below the current best practice level (65.85 percent). According to the Index Russia is lagging behind the most in international trade, reaching the level of only 57.96 percent of the current best practice.[44]

At the same time, Russia managed to score high in "Registering property" (9th place) and "Enforcing contracts" (12th place) categories. [45]

In 2016 the work on assessing the feasibility and expedience of the PFI implementation was launched in Russia. The assessment aims to ensure that Russia's investment regime is coherent with the PFI requirements in order to increase its attractiveness to foreign investors, as well as to harmonize national legislation and law enforcement with the OECD standards.

Conclusion

Despite the APR countries' efforts to liberalize their investment regimes, the FDI Regulatory Restrictiveness Index indicates that most of them still fall behind the average OECD level in terms of openness and transparency for foreign investors.

Carrying out complex investment policy strategies in a wide range of investment climate dimensions, while actively disseminating information on the measures being implemented among both domestic and international investors, has proven to be an effective way of liberalizing the country's investment regime. The primary feature of such strategies is their focus on structural bottlenecks pervading countries' business environments.

The successful experiences of India and Indonesia in implementing such policy strategies testifies to the importance of streamlining administrative and customs procedures, reducing red tape, cutting trade and investment costs.

It is also necessary to take into account the negative experiences of APR economies. Indonesia's persisting structural constrains, including the conflict of interests between regional government bodies and local business communities, illustrates the need to harmonize decision making on federal, regional and municipal levels.

All APR economies, discussed on these pages, were subject to the PFI investment policy review process. However, more than seven years have passed since the last review, as Russia and China were reviewed in 2008, India — in 2009, and Indonesia — in 2010.[46]

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[44] Doing Business, Russia, World Bank 2016. *http://www.doingbusiness.org/data/exploreeconomies/russia#trading-across-borders*

[45] Ibid

[46] Investment Policy Country reviews, OECD. *http://www.oecd.org/daf/inv/investment-policy/countryreviews.htm*

Since then, not only investment climate conditions, and global capital movement characteristics, but also the very baseline for the assessment have changed, and the PFI was updated in 2015. More active involvement into the self-assessment exercises, including without direct reference to the PFI process, would signal the countries' openness and readiness for dialogue to foreign investors.