

SUPPLEMENTARY TREATY
TO
THE ENERGY CHARTER TREATY

Text for Adoption
24-25 June 1998

PREAMBLE

The Contracting Parties to this Treaty,

Having regard to the Energy Charter Treaty done at Lisbon on 17 December 1994;

Acting in accordance with Article 10(4) of the Energy Charter Treaty which calls for negotiation of a supplementary treaty that will, subject to the conditions laid down therein, oblige each party thereto to accord to Investors of other parties, as regards the Making of Investments in its Area, the Treatment described in Article 10(3) of the Energy Charter Treaty;

Recalling Understanding No. 10 adopted at the signature of the Final Act of the European Energy Charter Conference in Lisbon on 17 December 1994, which specifies that those conditions will include, inter alia, provisions relating to the sale or other divestment of state assets (privatisation) and to the dismantling of monopolies (demonopolization);

Considering the important contribution that foreign investment can make to the development of energy sectors of the Contracting Parties;

Desiring to liberalise further the existing regimes relating to the Making of Investments in the energy sector;

Wishing to establish stable, equitable, favourable and transparent market conditions to achieve this purpose;

Confirming the importance of effective dispute settlement procedures,

HAVE AGREED as follows:

PART I: INVESTMENT PROMOTION AND PROTECTION

ARTICLE 1

DEFINITION

In this Treaty “Contracting Party” means a state or Regional Economic Integration Organisation which has consented to be bound by this Treaty and for which this Treaty is in force.

ARTICLE 2

TREATMENT OF THE MAKING OF INVESTMENTS

1. As among the Contracting Parties, Article 10(2) to (5) of the Energy Charter Treaty shall read as follows:
 - (2) Each Contracting Party shall accord to Investors of other Contracting Parties and their Investments in its Area, as regards the Making of Investments in its Area, treatment no less favourable than that which it accords to its own Investors or their Investments, or to Investors of any other Contracting Party or any third state or their Investments, whichever is the most favourable.
 - (3) (a) Paragraph (2) shall not apply to:
 - (i) any non-conforming measure that is maintained by a Contracting Party as set out in Annex EX;
 - (ii) the continuation or prompt renewal of such non-conforming measure; or
 - (iii) an amendment to such non-conforming measure to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with paragraph (2).
 - (b) The obligation in paragraph (2) to accord treatment no less favourable than that which a Contracting Party accords to its own Investors or their Investments shall not apply to measures concerning privatisation as provided for in Annex PR.
 - (4) In the event of any inconsistency between paragraphs (2) and (3) of Article 10 and paragraph (7) of Article 10 the provision or provisions more favourable to the Investor or Investment shall prevail.
 - (5) Each Contracting Party shall, as regards the Making of Investments in its Area, endeavour to:
 - (a) limit to the minimum the application of measures referred to in paragraph (3);
 - (b) progressively remove existing restrictions affecting Investors of other Contracting Parties or their Investments;

- (c) (i) progressively reduce the scope of application inscribed against its name in Annex PR; and
- (ii) remove its name from the list of Annex PR.

The Charter Conference shall review Annex PR annually with a view to encouraging Contracting Parties listed therein to remove their names from that Annex.

In this light the Charter Conference shall, not later than 1 January 2004, conduct a comprehensive assessment of Annex PR taking into account the results of the annual reviews and any notifications by Contracting Parties of reliance on exceptions provided for in Annex PR.

2. As a consequence of paragraph 1. of this Article, the reference in paragraph (10) of Article 10 to paragraph (3) shall read paragraph (2).

PART II: FINAL PROVISIONS

ARTICLE 3

SIGNATURE

This Treaty shall be open for signature at from 28 September 1998 to 28 March 1999 by the states and Regional Economic Integration Organisations which have signed or acceded to the Energy Charter Treaty.

ARTICLE 4

RATIFICATION, ACCEPTANCE OR APPROVAL

This Treaty shall be subject to ratification, acceptance or approval by signatories. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

ARTICLE 5

APPLICATION TO TERRITORIES

1. Any state or Regional Economic Integration Organization may at the time of signature, ratification, acceptance, approval or accession, by a declaration deposited with the Depositary, declare that this Treaty shall be binding upon it with respect to all the territories for the international relations of which it is responsible, or to one or more of them. Such declaration shall take effect at the time this Treaty enters into force for that Contracting Party.
2. Any Contracting Party may at a later date, by a declaration deposited with the Depositary, bind itself under this Treaty with respect to other territory specified in the declaration. In respect of such territory this Treaty shall enter into force on the ninetieth day following the receipt by the Depositary of such declaration.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification to the Depositary. The withdrawal shall become effective upon the expiry of one year after the date of receipt of such notification by the Depositary.
4. The definition of "Area" in Article 1(10) of the Energy Charter Treaty shall be construed having regard to any declaration deposited under this Article.

ARTICLE 6

ACCESSION

This Treaty shall be open for accession, from the date on which this Treaty is closed for signature, by states and Regional Economic Integration Organisations which are or at the same time become Contracting Parties to the Energy Charter Treaty, on terms to be approved by the Charter Conference. The instruments of accession shall be deposited with the Depositary.

ARTICLE 7

AMENDMENTS

1. Any Contracting Party may propose amendments to this Treaty.
2. The text of any proposed amendment to this Treaty shall be communicated to the Contracting Parties by the Secretariat at least three months before the date on which it is proposed for adoption by the Charter Conference.
3. Amendments to this Treaty, texts of which have been adopted by the Charter Conference, shall be communicated by the Secretariat to the Depositary which shall submit them to all Contracting Parties for ratification, acceptance or approval.
4. Instruments of ratification, acceptance or approval of amendments to this Treaty shall be deposited with the Depositary. Amendments shall enter into force between Contracting Parties having ratified, accepted or approved them on the thirtieth day after deposit with the Depositary of instruments of ratification, acceptance or approval by at least three-fourths of the Contracting Parties. Thereafter the amendments shall enter into force for any other Contracting Party on the thirtieth day after that Contracting Party deposits its instrument of ratification, acceptance or approval of the amendments.

ARTICLE 8

ENTRY INTO FORCE

1. This Treaty shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance or approval thereof, or of accession thereto, by a state or Regional Economic Integration Organisation which is a Contracting Party to the Energy Charter Treaty.
2. For each state or Regional Economic Integration Organisation which ratifies, accepts or approves this Treaty or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such state or Regional Economic Integration Organisation of its instrument of ratification, acceptance, approval or accession, or on the same date as the Energy Charter

Treaty enters into force for that state or Regional Economic Integration Organisation, whichever is later.

3. For the purposes of paragraph 1., any instrument deposited by a Regional Economic Integration Organisation shall not be counted as additional to those deposited by member states of such Organisation.

ARTICLE 9

RESERVATIONS

1. The Charter Conference may, at any time before the ratification, acceptance or approval of or accession to this Treaty by each of the three states listed in Annex DS, decide whether such a state may make a reservation at the time of ratification, acceptance, approval or accession in respect of Article 26(3) as it applies to this Treaty.
2. No other reservations may be made to this Treaty.

ARTICLE 10

PROVISIONAL APPLICATION

1. Each signatory to this Treaty which either applies the Energy Charter Treaty provisionally in accordance with its Article 45 or is a Contracting Party to the Energy Charter Treaty agrees to apply this Treaty provisionally pending its entry into force for such signatory in accordance with Article 8, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.
2. (a) Notwithstanding paragraph 1. any signatory to this Treaty may, when signing, deliver to the Depositary a declaration that it is not able to accept provisional application. The obligation contained in paragraph 1. shall not apply to a signatory making such a declaration. Any such signatory may at any time withdraw that declaration by written notification to the Depositary.
(b) Neither a signatory which makes a declaration in accordance with subparagraph (a) nor Investors of that signatory may claim the benefits of provisional application under paragraph 1.
(c) Notwithstanding subparagraph (a), any signatory making a declaration referred to in subparagraph (a) shall apply provisionally Part VII of the Energy Charter Treaty regarding institutional arrangements pending the entry into force of this Treaty in accordance with Article 8, to the extent that such provisional application is not inconsistent with its laws or regulations.
3. Any signatory may terminate its provisional application of this Treaty by written notification to the Depositary of its intention not to become a Contracting Party to this Treaty. Termination of provisional application for any signatory shall take effect upon the expiration of 60 days from the date on which such signatory's written notification is received by the Depositary. Any signatory which

terminates its provisional application of the Energy Charter Treaty in accordance with Article 45(3)(a) shall be considered as also having terminated its provisional application of this Treaty with the same date of effect.

4. A state or Regional Economic Integration Organization which, prior to this Treaty's entry into force, accedes to this Treaty in accordance with Article 6 shall, pending the Treaty's entry into force, have the rights and assume the obligations of a signatory under this Article.

ARTICLE 11

WITHDRAWAL

1. At any time after this Treaty has entered into force for a Contracting Party, that Contracting Party may give written notification to the Depository of its withdrawal from the Treaty.
2. Any Contracting Party which withdraws from the Energy Charter Treaty shall be considered as also having withdrawn from this Treaty.
3. The effective date of withdrawal under paragraph 1. shall be one year after receipt of notification by the Depository. The effective date of withdrawal under paragraph 2. shall be the same as the effective date of withdrawal from the Energy Charter Treaty.

ARTICLE 12

STATUS OF ANNEXES AND DECISIONS

The Annexes to this Treaty and Decisions No. 1 to 5 adopted in connection with this Treaty are integral parts of this Treaty.

ARTICLE 13

DEPOSITARY

The Government of the Portuguese Republic shall be the Depository of this Treaty.

ARTICLE 14

AUTHENTIC TEXTS

In witness whereof the undersigned, being duly authorized to that effect, have signed this Treaty in English, French, German, Italian, Russian and Spanish, of which every

text is equally authentic, in one original, which will be deposited with the Government of the Portuguese Republic.

ANNEX EX

NON-CONFORMING MEASURES MAINTAINED BY A CONTRACTING
PARTY AND ANY COMMITMENTS WITH REGARD TO THEM

(in accordance with Article 10(3)(a)(i))

ANNEX PR

EXCEPTIONS RELATING TO PRIVATISATION MEASURES

(In accordance with Article 10(3)(b))

1. A Contracting Party listed below may, subject to the scope of application inscribed against its name, reserve a right for its own Investors to acquire all or some of the shares of a state enterprise or assets owned by the state or a state enterprise which it is privatising, or may sell or dispose of such shares or assets to its own Investors on preferential terms.

<u>Country</u>	<u>Scope of Application</u>
Armenia	All energy sectors
Australia	All energy sectors
Azerbaijan	All energy sectors
Belarus	All energy sectors
Bulgaria	All energy sectors
Cyprus	All energy sectors
Georgia	All energy sectors
Hungary	All energy sectors
Japan	All energy sectors
Kazakhstan	All energy sectors
Norway	Electricity and oil sector; gas industry
Poland	All energy sectors
Portugal	Electricity and oil sector; gas industry
Russia	All energy sectors
Slovak Republic	a) Electricity sector; gas industry; gas and crude oil transit pipelines b) A significant part of shares in mining industry and refineries
Tajikistan	All energy sectors
Ukraine	All energy sectors
Uzbekistan	All energy sectors

2. Any Contracting Party may reduce the scope of application inscribed against its name or remove its name from the list by notifying the Secretariat. The Secretariat shall forthwith inform other Contracting Parties and update Annex PR accordingly.

ANNEX DS

APPLICATION OF ARTICLE 26(3) OF THE ENERGY CHARTER TREATY
IN THE CONTEXT OF THE SUPPLEMENTARY TREATY
(In accordance with Article 9.1.)

Australia

Iceland

Norway

COUNTRY: ALBANIA

MEASURES

Law No.7980 of 27 July 1995 on Buying and Selling Building Sites, Article 5, paragraph 2.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign individuals or legal entities have the right to buy building sites after they have completed an investment, in accordance with the construction license, only when the value of investment is three times higher than that of the building site, according to the definition of the Council of Ministers.

PHASE - OUT

No plans for changes.

OTHER EXCEPTIONS

None.

COUNTRY: **ALBANIA**

MEASURES

Law No.8006 of 5 October 1995 on Approval of the Distribution of the Shares of Stocks in the Moment of their Sale for Companies that Operate in the Electric Energy Sector, Article 1.

SECTOR

Electricity.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The distribution of shares of stock in the moment of their sale for companies operating in the electric energy sector is as follows:

- no less than 30% of the shares to a strategic investor (may be a foreign or national),
- no less than 30% of the shares by a mass privatisation plan (nationals only; re-sale of shares is free).

PHASE - OUT

No plans for changes.

OTHER EXCEPTIONS

None.

COUNTRY: ARMENIA

MEASURES

Law on Foreign Investments of 31 July 1994, Chapter II, Article 6.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Activities of enterprises with foreign investors may be limited or forbidden on some territories defined by legal acts of the Republic of Armenia on grounds of defence and national security considerations.

PHASE-OUT

Under discussion.

OTHER EXCEPTIONS

None.

COUNTRY: ARMENIA

MEASURES

Constitution of the Republic of Armenia of July 1995.

Law on Immovable Property of January 1996.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign natural persons, stateless natural persons and foreign legal persons do not enjoy the right to own land on the territory of Armenia.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: AUSTRALIA

MEASURES

Foreign Acquisitions and Takeovers Act 1975.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Australia welcomes foreign investment, including in relation to the energy sector. The welcoming environment is in recognition of the substantial contribution foreign investment has made and can continue to make to the development of Australia's industries and resources.

Within this welcoming environment, a screening system for foreign investment proposals above certain thresholds operates, under the provisions of the Foreign Acquisitions and Takeovers Act 1975. It is important to note that the smaller proposals are not notifiable. Prior authorisation is required for acquisitions by foreign interests of a substantial interest in domestic firms with total assets of A\$5 million or more. Proposals up to A\$60 million are readily approved without detailed examination.

The proposals screened are subject to a 'contrary to the national interest' test. Under this test, the onus is on the authorities to identify reasons to reject, rather than on the investor to justify the approval. Approval would only be withheld in the most unusual circumstances. On occasions, approval is subject to certain conditions and as a means to protect the environment.

The screening system operates within statutory deadlines whereby a decision on each case must be made within a set time. Most decisions are advised within a month.

Foreign investors are encouraged to make early contact with Australia's Foreign Investment Review Board, which regularly briefs investors of Australia's foreign investment policy.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: AUSTRALIA

MEASURES

Foreign investment policy in relation to the establishment of new business.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Australia welcomes foreign investment, including in relation to the energy sector. The welcoming environment is in recognition of the substantial contribution foreign investment has made and can continue to make to the development of Australia's industries and resources.

Prior authorisation is required for foreign interests to establish new businesses (including new investment in unrelated areas, a new mining or raw materials processing project) with total investment of A\$10 million or more. There is not a 'net income benefits' test or a requirement to have Australian partners. Proposals are assessed as to whether they are contrary to the national interest. Under this test, the onus is on the authorities to identify reasons to reject, rather than on the investor to justify the approval. Approval would only be withheld in the most unusual circumstances.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: AUSTRALIA

MEASURES

Foreign investment policy for investments by foreign governments.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

All investments, irrespective of size, by foreign governments require prior approval. Approval is usually readily forthcoming in circumstances where governments undertake that they will not claim sovereign immunity in relation to taxation treatment for income from the investment when it is a commercial/business entity.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: AUSTRIA

MEASURES

Laws, including detailed regulations, issued by the states (“Länder”) (a list of the applicable state laws is attached).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

State (“Länder”).

DESCRIPTION

Acquisition, purchase as well as rent or lease of real estate by foreigners is subject to authorisation. Authorisation is also required for the acquisition of real estate by established foreign-controlled companies. The states, under their own constitutionally granted authority, permit the acquisition of real estate by foreigners, subject to approval by the respective Real Estate Commission.

PHASE-OUT

Plans for further liberalisation in some states are currently under consideration.

OTHER EXCEPTIONS

None.

Addendum

State Real Estate Laws (“Landesgrundverkehrsgesetze”):

Burgenland: State Law Gazette No 42/96

Carinthia: State Law Gazette No 104/94, 81/95

Lower Austria: State Law Gazette No 6800

Upper Austria: State Law Gazette No 88/94, 93/95

Salzburg: State Law Gazette No 11/97

Styria: State Law Gazette No 134/93, 60/95

Tyrol: State Law Gazette No 61/96

Vorarlberg: State Law Gazette No 61/93, 11/95, 9/96

Vienna: State Law Gazette No 33/1967.

COUNTRY: AUSTRIA

MEASURES

Laws, including detailed regulations, issued by the states ("Länder") (a list of the applicable state laws is attached) in line with several principles and guidelines, determined by the Electricity Act (Elektrizitätswirtschaftsgesetz) 1975, issued under federal authority.

SECTOR

Electricity.

LEVEL OF GOVERNMENT

State ("Länder").

DESCRIPTION

These laws govern the licensing of electricity supply utilities, notwithstanding international obligations. For natural persons to be so licensed it is required that the person be (a) of EEA nationality and, in case of Vorarlberg only, (b) domiciled in Austria. For juridical entities or commercial partnerships, it is required the entity (a) be established under the laws of an EEA country and, in case of Burgenland, Carinthia, Styria, Tyrol and Vorarlberg only, (b) have as members of the governing body of companies persons with an EEA nationality and, in case of Vorarlberg, natural persons domiciled in Austria.

In case of "a particular economic interest", the state ("Länder") governments can deviate from the nationality requirement and admit foreign investment.

PHASE-OUT

There are no plans for further liberalisation.

OTHER EXCEPTIONS

None.

Addendum

Relevant implementing electricity acts of the state ("Länder"):

- Electricity Act of Burgenland (Burgenländisches Elektrizitätsgesetz).
Statute dated October 1, 1985, published in the State Law Gazette N° 3/1986, as amended by State Law Gazette N° 18/1993.
- Electricity Act of Carinthia (Kärntner Elektrizitätswirtschaftsgesetz).
Statute dated June 15, 1978, published in the State Law Gazette N° 77/1978, as amended by State Law Gazette N° 5/1994.
- Electricity Act of Lower Austria (Elektrizitätswesen-Gesetz NÖ EWG)
Statute dated May 17, 1990, published in the State Law Gazette N° 7800-0/1990, as amended by State Law Gazette N° 7800-1/1993.
- Electricity Act of Upper Austria (OÖ. Elektrizitätsgesetz)
Statute dated April 16, 1982, published in the State Law Gazette N° 41/1982, as amended by State Law Gazette N° 90/1993.

- Electricity Act 1979 of Salzburg (Salzburger Landeselektrizitätsgesetz)
Statute dated January 1, 1979 published in the State Law Gazette N° 22/1979, as amended by State Law Gazette N° 47/1980, by State Law Gazette N° 77/1986 and by State Law Gazette N° 53/1993.
- Electricity Act of Styria (Stmk. Elektrizitätswirtschaftsgesetz)
Statute dated April 7, 1981, published in the State Law Gazette N° 77/1981, as amended by State Law Gazette N° 83/1995.
- Electricity Act of Tyrol (Tiroler Elektrizitätsgesetz)
Statute dated March 24, 1982, published in the State Law Gazette N° 40/1982, as amended by State Law Gazette N° 120/1993.
- Electricity Supply Act of Vorarlberg (Vorarlberger Elektrizitätsversorgungsgesetz)
Statute dated November 30, 1983, published in the State Law Gazette N° 31/1983, as amended by State Law Gazette N° 69/1993.
- Electricity Act of Vienna (Wiener Elektrizitätswirtschaftsgesetz)
Statute dated December 17, 1976, published in the State Law Gazette N° 8/1977, as amended by State Law Gazette N° 22/1980 and by State Law Gazette N° 2/1993.

COUNTRY: AUSTRIA

MEASURES

Pipeline Law (Rohrleitungsgesetz) of 1975, Federal Law Gazette No 411/1975 as amended by Law No 127/1993.

SECTOR

Oil and gas pipelines.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Notwithstanding other international obligations, to be licensed to own and operate an oil or gas pipeline a natural person must (a) have EEA nationality and (b) be domiciled in the EEA; and a juridical entity of commercial partnership must (a) be established under the laws of an EEA country and (b) have as members of the governing body of companies persons with an EEA nationality. The authority to grant licenses is with the federal government.

In case of "a particular economic interest", the federal government can refrain from the nationality requirement and admit foreign investment.

PHASE-OUT

There are no plans for further liberalisation.

OTHER EXCEPTIONS

None.

COUNTRY: AUSTRIA

MEASURES

Industry Craft and Commerce Act (Gewerbeordnung) of 1994.

SECTOR

Oil and gas, refining.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

For operation of refineries, gasworks, filling stations, district heating as well as the trading of fuels foreign natural persons can only be licensed if national treatment is stipulated in international agreements or is based on reciprocity.

Juridical entities not incorporated in the EEA are dependent on international agreements.

PHASE-OUT

Further liberalisation is under consideration.

OTHER EXCEPTIONS

This might constitute an exception to the MFN principle.

COUNTRY: AZERBAIJAN

MEASURES

Land Code of the Azerbaijani Republic of 9 November 1991, Part I, Article 11.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Ownership and life-time inheritable proprietorship of land plots shall not be transferred to foreign natural and legal persons. Land plots are given for purposes of permanent use to joint ventures with participation of national and foreign legal persons.

Permanent use is recognised as such a use that is effected permanently (continuously) or with no fixed period of time.

PHASE OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: AZERBAIJAN

MEASURES

Law on Stock Exchanges and Securities of 24 November 1992, Part VI, Article 20.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Cabinet of Ministers sets up general rules and annual quotas of securities to be issued by foreign emmitents in the territory of Azerbaijani Republic.

PHASE OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: AZERBAIJAN

MEASURES

Law on Privatisation of State Property of 7 January 1993, Article 8.

The State Privatisation Programme of State Property in the Azerbaijani Republic for 1995-1998 as adopted by the Law of the Azerbaijani Republic No 1120 of 29 September 1995.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Participation of foreign legal and natural persons in privatisation is only permitted in accordance with the legislation of the Azerbaijani Republic under the procedures established by the State Privatisation Programme.

In accordance with the State Privatisation Programme of State Property in the Azerbaijani Republic for 1995-1998, the President of the Azerbaijani Republic, on the advice of the State Committee on Property, decides on the admission of foreign investors to participate in privatisation of facilities specified in Section 2 of Annex 1 to the Programme when he decides on granting a permission to privatise these facilities and enterprises.

PHASE OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: AZERBAIJAN

MEASURES

The State Privatisation Programme of State Property in the Azerbaijani Republic for 1995-1998 as adopted by the Law of the Azerbaijani Republic No 1120 of 29 September 1995.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A foreign investors' acquisition of privatisation vouchers (cheques), as well as shares of privatised enterprises, shall exclusively be upon redemption of State Privatisation Options.

An Option is a state security issued for a bearer that gives its owner, a foreign investor, the following rights:

- to acquire privatisation vouchers (cheques) for consequent participation in privatisation;
- to acquire shares of privatised enterprises.

Utilisation of privatisation vouchers (cheques) in the privatisation process by a foreign investor without Privatisation Options shall not be permitted.

PHASE OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **BELARUS**

MEASURES

Law on Land Ownership of 16 June 1993, as amended and supplemented by Laws of 21 February 1995 and of 24 December 1997, Articles 7 and 10.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign legal persons may be owners of the plots of land on the territory of the Republic of Belarus under the same circumstances and conditions as the national legal persons.

Based on a decision of the President of the Republic of Belarus, or of bodies authorised by the President of the Republic of Belarus, legal persons, including the foreign legal persons, may own plots of land allotted for:

- use of privatised enterprises or services;
- construction and use of enterprises desirable for the Republic of Belarus in accordance with investment projects.

The plots of land may be given for use to foreign States, international organisations and associations on condition of lease with the lease period not exceeding 99 years, in accordance with the land legislation of the Republic of Belarus.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **BELARUS**

MEASURES

Law on Destatization and Privatisation of State Property of the Republic of Belarus of 19 January 1993, as amended and supplemented by Law of Republic of Belarus of 11 April 1995 and of 21 June 1996, Articles 6 and 10.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In the process of privatisation, part of the state property is transferred free of charge only to the nationals of the Republic of Belarus.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **BELARUS**

MEASURES

Law on Destatization and Privatisation of State Property of the Republic of Belarus of 19 January 1993, as amended and supplemented by Law of Republic of Belarus of 11 April 1995, Articles 9 and 19.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In carrying out privatisation of the Republican property the interests of the State, as an owner, shall be represented and protected by an authority of the Council of Ministers of the Republic, and in the case of facilities constituting communal property by privatisation bodies of local Soviets of People's Deputies.

In order to allow privatisation of facilities of communal property by foreign legal and physical persons or stateless persons, privatisation bodies of local Soviets of People's Deputies shall be obliged to obtain permission from the Committee on the Management of State Property under the Council of Ministers of the Republic of Belarus.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: BELARUS

MEASURES

Law on Foreign Investments in the Territory of the Republic of Belarus of 14 November 1991 as amended and supplemented by Law of the Republic of Belarus of 16 June 1993, Article 26.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign investors may participate in privatisation of objects of state property in the territory of the Republic of Belarus. They are entitled to purchase enterprises (or shares) under the programme of privatisation provided that the working collectives or other Belarussian subjects refuse to acquire these enterprises (or shares).

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: BELGIUM

MEASURES

Commercial Code of 1949 as amended by Law on Financial Options and Financial Markets of 4 December 1990, Article 108.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Prior authorisation by the Ministry of Finance is required for public issues, offers for sale on the security market, listing on stock exchanges and other financial instruments created by a private person, a company or an institution under non-EU control, as well as offers for sale of Belgian securities by a private person, a company or an institution under non-EU control.

For the application of this measure, the following are considered as non-EU controlled:

- private persons who have not the nationality of any Member State of the EU;
- entities of private law or entities of public law who are not established in conformity with the legislation of any EU Member State;
- entities of private law or entities of public law established in conformity with the legislation of an EU Member State but who have not either their legal seat or their central administration or their principal establishment within the EU.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

Measure also violates MFN principles in the pre-investment stage.

COUNTRY: BULGARIA

MEASURES

Constitution of the Republic of Bulgaria (State Gazette 56/1991), Article 22, paragraphs 1 and 2.

Law on Foreign Investment (State Gazette 97/1997 with amendments published in State Gazette 99/1997 and 29/1998), Article 23.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

1. Foreign natural and legal persons may not acquire property rights over land except by way of inheritance according to the Law. Ownership thus acquired shall be duly transferred.

Foreign natural and legal persons may acquire rights to using buildings as well as other real estate rights specified in the Law.

2. Foreign natural and legal persons may not acquire property rights over land, including via a subsidiary or as a sole trader.

PHASE - OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: BULGARIA

MEASURES

Law on Foreign Investment (State Gazette 97/1997 with amendments published in State Gazette 99/1997 and 29/1998), Article 24, paragraphs 1 and 2.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A foreign natural or legal person and a joint venture may acquire right of ownership over buildings and limited rights over real estate in the border-line regions and other territories identified by the Council of Ministers from the view of national security only on the basis of a permit issued by the Council of Ministers or by a proxy thereof.

PHASE - OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: BULGARIA

MEASURES

Law on Foreign Investment (State Gazette 97/1997 with amendments published in State Gazette 99/1997 and 29/1998), Article 3, paragraph 2, which re-enacts a provision of the Law on Foreign Investment of 1996.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The provisions of the Law are not applicable, wholly or partially, to investments of foreign natural or legal persons from States listed by the Council of Ministers in which Bulgarian citizens or companies are subject to discrimination.

PHASE - OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: CROATIA

MEASURES

Basic Ownership Rights and Relations Act, Article 356, paragraph 1.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign entities operating in the Republic of Croatia can bear ownership over real estate only if such possibility is also accessible to Croatian entities in particular State.

PHASE-OUT

No plans.

OTHER EXCEPTIONS

None.

COUNTRY: CYPRUS

MEASURES

The Exchange Control Law, CAP. 199.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Investments by non-residents are subject to approval under the Exchange Control Law, on the basis of the applicable policy in the sector. Under the Law, before making an investment, a non-resident investor must obtain permission for the investment from the Central Bank of Cyprus. The permit specifies the conditions which thereafter constitute the framework of operations in Cyprus of the legal entity in which the non-residents participate and which will undertake the materialisation of the investment. The conditions imposed at the pre-investment stage continue to be in force during the post-investment stage and include the following:

- (a) The activities of the company must be confined to those specified in the permit. Any re-investment of profits in any other business or activities is also subject to approval in accordance with the above Law.
- (b) The equity capital of the company must be commensurate with the activities of the company and the cost of the project. The non-resident investor must pay for his share in the company in foreign exchange.
- (c) The non-resident investor is required to contribute to the finances of the company in proportion to his equity participation.
- (d) In the case that the majority of company's shares are held by residents of Cyprus, unless otherwise authorised by the Central Bank of Cyprus, the majority of the company's directors shall also be residents of Cyprus.
- (e) Other specific conditions may be imposed as appropriate, in line with the Government's policy on the sector or activity.

Approved foreign investments enjoy freedom for repatriation of capital, capital appreciation, interest, profits and dividends resulting from the investment.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **CYPRUS**

MEASURES

Law on Cyprus Petroleum Refinery No 42/1965, Articles 5 and 12, paragraphs (a), (f), (g) and (h).

SECTOR

Oil sector.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

(5) Within the framework of the Government's policy of encouraging local industries, the Government will arrange for all refineries in Cyprus to have the right to supply the requirements of Cyprus petroleum products to the extent that such refineries are able to do so.

(12)

(a) Should the Government choose to forego part of its right to acquire shares in the Refinery Company in favour of another existing marketing company, it will only do so to an extent that would enable such company to have a percentage shareholding in the Refinery Company which, upon the assumption that the Government exercises both its own shareholding options, reflects the quantities of refinery type distillate products that such company sells in the inland market of Cyprus as compared with the amounts of such products sold by Shell, BP and Mobil.

(f) Any shares held by the Government may be transferred to a Cypriot but, if the Government should desire to transfer any shares other than to a Cypriot, it shall first offer to sell such shares to Shell, BP and Mobil.

(g) (i) Should any other marketing company desire to transfer any shares (obtained under (a) above) it shall first offer to sell such shares to the Government.

(ii) Thereafter, if such other marketing company desires to transfer any such shares not purchased by the Government under (i) above, it will offer to sell such shares to a Cypriot.

(iii) Provided that the procedure set out in (i) and (ii) above has been complied with, if such other marketing company desires to transfer any such shares which have not been purchased under (i) and (ii) above, it shall offer to sell such shares to Shell, BP and Mobil.

(h) For the purposes of paragraphs (f) and (g) above, "a Cypriot" shall mean

(i) individuals of Cypriot citizenship, and

(ii) companies incorporated in Cyprus, a majority of whose share capital is owned beneficially by individuals of Cypriot citizenship (but excluding companies whose main business is related to acquiring, processing, storing, transporting, selling or otherwise dealing in petroleum in any way).

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

MFN exception.

COUNTRY: **CYPRUS**

MEASURES

The Immovable Property Acquisition (Aliens) Law, Cap. 109.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Acquisition of real estate property by aliens is subject to approval by the Council of Ministers.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: THE CZECH REPUBLIC

MEASURES

Foreign Exchange Act No 219/1995, Articles 1, 17 and 31.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A non-resident who is not a citizen of the Czech Republic may acquire an ownership right towards real estate in the Czech Republic, unless otherwise stipulated by a separate Act [e.g. Act No. 229/1991 on Arrangement of Ownership Relations towards Land and other Agricultural Property (Act on Land) in the wording of subsequent Acts], only:

- a) by heritage;
- b) for the diplomatic representation of a foreign country under the terms of reciprocity;
- c) if it is real estate acquired in an unapportioned co-ownership of a married couple of which only one is a non-resident, or where a non-resident acquires property from a husband, wife, parents or grandparents;
- d) through the exchange of domestic real estate which he owns for other domestic real estate the usual price of which does not exceed the usual price of the former real estate;
- e) if he has a pre-emption by reason of a proportioned co-ownership of real estate [Act No. 40/1964 (Civil Code) in the wording of subsequent Acts];
- f) if it is a construction built by a non-resident on his own land;
- g) provided it is explicitly so stipulated by a separate Act [e.g. Act No. 403/1990 on Mitigating the Consequences of some Property Injustice in the wording of subsequent Acts; Act No. 427/1990 on Transfers of State Ownership of some Objects to other Legal or Natural Persons in the wording of subsequent Acts; Act No. 92/1991 on the Terms of the Transfer of State Assets to other Persons in the wording of subsequent Acts].

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: THE CZECH REPUBLIC

MEASURES

Act No 360/1992 on Authorisations of Architects, Engineers and Technicians on Performance in Civil Engineering, as amended.

Building Act No 50/1976 as amended.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Authorisation for some design activities and for performing construction may be granted solely to citizens of the Czech Republic and only under special conditions to foreign persons. Such selected activities include:

- preparation of territory planning documentation;
- geodesic measurements for design activities and aligning works;
- design of structures;
- evaluation of the structures' environmental impact;
- static and dynamic calculation of engineering structures;
- management of the structure's erection and erection supervision;
- investigation, testing and diagnostics of structures.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **THE CZECH REPUBLIC**

MEASURES

Act No 222/1994 on the Conditions of Conducting Business Activities and State Administration in the Energy Industries and on the State Energy Inspection, Article 4, paragraphs 1 and 2.

SECTOR

Gas, electricity and heat supply industries.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A licence for conducting business activities in the gas, electricity and heat supply industries may be granted only to natural persons having a permanent residence, or to legal persons having a seat in the territory of the Czech Republic.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: ESTONIA

MEASURES

Law on Privatisation of 24 July 1993, Article 3(2).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The organizer of privatization may, according to the privatization programmes mentioned in Article 12 of this Law, restrict privatization of some objects to entities as follows:

- 1) physical person not being citizen of Estonia
- 2) legal person whereof over 50% of capital belongs to persons not being Estonian citizens or in case they have more than a half voting power as nominated by shares.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

CONTRACTING PARTY: **THE EUROPEAN COMMUNITIES**

MEASURES

Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the Conditions for Granting and Using Authorisations for the Prospecting, Exploration and Production of Hydrocarbons, Articles 2 and 8.

SECTOR

Hydrocarbons.

LEVEL OF GOVERNMENT

European Union.

DESCRIPTION

Member States shall ensure that there is no discrimination between entities as regards access to and exercise of the activities of prospecting, exploring for and producing of hydrocarbons.

Whenever a third country is not granting Community entities, as regards access to and exercise of these activities, treatment comparable to that which the Community grants entities from that third country, the Commission may at any time propose that the Council authorise one or more Member States to refuse an authorisation to an entity which is effectively controlled by the third country concerned and/or by nationals of that third country.

PHASE-OUT

No plans.

OTHER EXCEPTIONS

This provision would be a potential violation of the MFN standard.

COUNTRY: **FINLAND**

MEASURES

Act on Monitoring Foreign Acquisitions of Enterprises (1612/92), sections 1, 3, 5, 8 and 9.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The transfer of Finnish companies into foreign hands is monitored concerning every company with more than 1000 employees on its payroll or with turnover or year end assets of FIM 1000 million or above. Confirmation by the Ministry of Trade and Industry would be needed if the buyer acquires control of at least 1/3 of the voting rights rendered by all shares of the company. Under the procedure, the MTI has to confirm the acquisition unless it considers that an essential national interest would be jeopardised. In such a case the Council of State may block an individual acquisition. Defence industries and services will fall under the monitoring practice regardless of the company's size.

As regards its acquisitions, any Finnish entity with foreign control of more than 50% of all voting rights rendered by all shares, is subject to the same monitoring procedure as foreigners and foreign entities. The same procedure also applies when a partner in a Finnish General or Limited Partnership is a foreigner or a foreign entity.

This regime is not applied to States party to the EEA or members of the OECD.

PHASE-OUT

None.

OTHER EXCEPTIONS

This is an exception to the MFN treatment.

COUNTRY: **FINLAND**

MEASURES

Trade Act of 1919 and the Act of 1993 on Amending the Trade Act (228/93), section 1.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

According to the 1993 Act (228/93) amending the 1919 Trade Act no permission for trade is required if the foreigner (i.e. natural person) in question is permanently resident in the area covered by the EEA Treaty. Similarly, no permission is required if a foreign entity which has registered a branch in Finland, has been established according to the legislation of a State party to the EEA Treaty and also has its registered office, central management or main place of business in such a State.

A permission to act as a partner in General Partnerships and Limited Partnerships is required unless the natural person or entity has its residence in the EEA area, as explained above.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: **FINLAND**

MEASURES

Companies Act of 1978 and the Act of 1993 on Amending the Companies Act, chapter 2, section 2 (1-3) and chapter 8, section 4 (1).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

According to the present (Limited) Companies Act:

1. At least half of the founders of a limited company (whether natural or legal persons) must have residence in the European Economic Area. If the founder is a legal entity it must have been established according to the legislation of a State party to the EEA Treaty and have its registered office, central management or main place of business in such a State.
2. At least half of the directors, the managing director, where one is needed, and all those authorised to sign the firm must have residence in the European Economic Area.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: **FINLAND**

MEASURES

Mining Act of 1965 and the Act of 1992 on Amending the Mining Act (1625/92), section 1.

SECTOR

Mining.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

For mining activities a foreign natural person or entity needs a permit issued by the Ministry of Trade and Industry. No such permit is necessary for:

- a) a natural person being resident in the area covered by the EEA Treaty; or
- b) a foreign entity being established according to legislation of a State party to the EEA Treaty which also has its registered office, central management or main place of business in such a State.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: FINLAND

MEASURES

Nuclear Energy Act of 1987 (990/87) and the Act on Amending the Nuclear Energy Act (1420/94), section 17.

SECTOR

Nuclear.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A licence to use nuclear energy may be granted only to natural persons, entities or government authorities under the jurisdiction of a member state of the European Union.

PHASE-OUT

None.

OTHER EXCEPTIONS

A licence to possess, use, transport, export or import nuclear material or nuclear waste may, in connection with control activities, be also granted to an international organisation or foreign authority responsible for the control required by international treaties binding on Finland.

COUNTRY: **FINLAND**

MEASURES

Continental Shelf Act of 1965, section 2 (1).

SECTOR

Exploration and exploitation of the continental shelf.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The licence needed for exploration and exploitation of the continental shelf of Finland may be granted to a foreign citizen or entity only when especially justified.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: FRANCE

MEASURES

Decree on Concessions for Hydropower Production of 12 May 1970.

SECTOR

Hydropower.

LEVEL OF GOVERNMENT

National and local.

DESCRIPTION

Authorisation for electricity generation in hydropower plants with a capacity below 8 000 kW cannot be granted to foreign investors other than from the Member States of the European Union.

PHASE - OUT

None.

OTHER EXCEPTIONS

MFN exception.

COUNTRY: **GREECE**

MEASURES

Legislative Decree No. 210/1973 (Greek Mining Code), as amended by Law No 274/1976 (Law 274/1976 amends Articles 8, 9.1, 10, 11, 12, 20, 79.2, 80, and 126.4 of the Legislative Decree 210/1973 and introduces a general prohibition through its Article 1).

Presidential Decree 92/1986.

SECTOR

Solid fuels, radioactive minerals and geothermal energy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Under no circumstances an exploration licence may be granted to foreign natural or legal persons.

The prior approval of the Council of Ministers is mandatory for any concession or act of any kind referring to the exploitation by a foreign natural or legal person.

The above constraints do not apply to natural or legal persons from an EU Member State.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

MFN exception.

COUNTRY: GREECE

MEASURES

Legislative Decree No. 210/1973 (Greek Mining Code), Articles 3, 8, 9, 10, 11 and 20.

Presidential Decree 92/1986.

SECTOR

Mining.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The right of exploration and exploitation of all minerals except hydrocarbons, solid fuels, radioactive minerals and geothermal potential is subject to a concession by the Greek State. The concession is accorded by Presidential Decree after previous approval by the Council of Ministers. Such approval is not required for natural or legal persons or entities of the EU countries. A permit for exploration of minerals cannot be granted to non-EU natural or legal persons.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

MFN exception.

COUNTRY: GREECE

MEASURES

Law on Juridical Acts in Border Areas No 1892/1990, Articles 25 and 26, as amended by Law 1969/1991.

SECTOR

Real Estate.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Acquisition of real estate in the border regions either directly or through equity participation in a company which is not listed in the Greek Stock Exchange and which owns real estate in those regions or any change in the persons of the stockholders of such company, are subject to a permit issued by competent authorities. The procedure for obtaining this permit as well as the competent authority are different in the case of Greek or European Community natural or legal persons (local committee) than in the case of natural or legal persons of third countries (Ministry of Defence).

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

MFN exception.

COUNTRY: HUNGARY

MEASURES

Act V of 1990 on Private Entrepreneurs.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Only Hungarian residents have the right to take up and pursue economic activities as self-employed persons. In the application of this Act, the provisions of the Act on Foreign Exchange define a resident as follows: natural person who hold a valid identity card issued by the competent Hungarian authority.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

COUNTRY: HUNGARY

MEASURES

Act XCV of 1995 on Foreign Exchange, as amended by Act CXL VII of 1997 on Foreign Exchange.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

1. Foreigners may make investments or acquire securities issued by residents only if they make payments in convertible currency or from a convertible Forint account. Permission of the foreign exchange authority is required for foreigners to acquire securities except domestic shares and bonds of an original maturity of one year or more and collective investment securities issued for closed-end investment funds.
2. Permission of foreign exchange authority is required for domestic public or private offering and listing on the recognised domestic securities market of securities issued by foreigners in Hungary except bonds of maturity of one year or more issued by governments of OECD countries, shares and bonds denominated in foreign exchange of maturity of one year or more issued by OECD-based enterprises and shares and bonds denominated in Forint of maturity of one year or more issued by OECD-based enterprises with investment grade ratings.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

COUNTRY: **HUNGARY**

MEASURES

Act XXXIX of 1995 on Sale of State-Owned Entrepreneurial Assets.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In the course of the evaluation of the bids in the case of equal value, the bids of domestic investor(s) shall be granted preference.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

COUNTRY: ICELAND

MEASURES

Act No. 34/1991 on Investment by Non-Residents in Business Enterprises in Iceland, as amended.

SECTOR

Hydro and geothermal energy resources, production and distribution of energy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Only Icelandic citizens, legal persons with domicile in Iceland, and private and legal persons with domicile in a State which is party to the Agreement on the European Economic Area, are permitted to acquire and own exploitation rights of hydro and geothermal energy. The same applies to ownership of enterprises which produce and distribute energy.

PHASE-OUT

No commitments.

OTHER EXCEPTIONS

None.

COUNTRY: ITALY

MEASURES

Law No 136 of 10 February 1953 on Establishment of ENI (Ente nazionale Idrocarburi);
Law No 6 of 11 January 1957 on Exploration and Exploitation of Hydrocarbons;
Law No 613 of 21 July 1967 on Exploration and Exploitation of Hydrocarbons in the Territorial Sea and Continental Shelf;
Law No 170 of 26 April 1974 on Storage of Natural Gas;
Law No 9 of 9 January 1991 on Provisions for the Enforcement of the New National Energy Plan;
Legislative Decree No 625 of 25 November 1996 on Application of the EC Directive 94/22.

SECTOR

Prospecting, exploration and exploitation of hydrocarbons; construction and operating hydrocarbons pipelines, storage of natural gas in existing surveyed fields; oil refining.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Exploration and exploitation rights, both in the oil and gas sectors, are granted by the Ministry of Industry to Italian and EU operators, and, under conditions of reciprocity, to other foreign investors.

PHASE OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: ITALY

MEASURES

Law No 752 of 6 October 1982 and Law No 221 of 30 July 1990 on Exploration and Exploitation of Mineral Resources, Article 12.1.

SECTOR

Exploration and exploitation of coal.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Exploration and exploitation rights are granted by the Ministry of Industry to Italian and EU operators and, under conditions of reciprocity, to other foreign investors.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

This provision would be a potential violation of the MFN standard.

COUNTRY: JAPAN

MEASURES

Foreign Exchange and Foreign Trade Control Law No 228 of 1 December 1949;

Cabinet Order No 261 concerning Direct Domestic Investment, etc., of 11 October 1980;

Ordinance concerning Direct Domestic Investment, etc., of 20 November 1980.

SECTOR

Energy sectors, including nuclear energy, electric utility, gas utility, heat supply, oil and mining industry sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

According to the Foreign Exchange and Foreign Trade Control Law, advance notice to the competent agency is required from foreign investors who plan to make the direct domestic investment in Japan's energy sector.

If the competent agency finds a problem from such point as view of the national security, public order, and smooth operation of the national economy, with the result of the evaluation or the contents of the notice, it may request an opinion from the Foreign Exchange Council, and may order the foreign investor to change the contents of the notice or to cease the investment.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: JAPAN

MEASURES

Mining Law No 289 of 20 December 1950.

SECTOR

Mining industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Mining right is granted only to Japanese nationals or Japanese legal entities.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: JAPAN

MEASURES

Alien Land Law No 42 of 1 April 1925.

SECTOR

Land transaction.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

With respect to acquisition or lease of land properties in Japan, prohibitions or restrictions may be imposed by Cabinet Order on foreign nationals or legal entities, where Japanese nationals or legal entities are placed under similar prohibitions or restrictions in the country of the said foreign nationals or legal entities.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: JAPAN

MEASURES

Law Concerning State Liability for Compensation No 125 of 27 October 1947.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

An alien who has suffered damages by unlawful act of a governmental official who is in a position to wield governmental powers of the State or of a public body or by defects in the establishment or management of public installations, may claim the compensation for the damages against the State or the public body, only if a law of the national of the alien permits a claim of a Japanese similar to that permitted by the Law Concerning State Liability for Compensation of Japan.

PHASE - OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: JAPAN

MEASURES

Composition Law No 72 of 25 April 1922.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign nationals or legal entities shall have the same status as Japanese nationals or legal entities in regard to composition only when Japanese nationals or legal entities have the same status under the native laws of the said foreign nationals or legal entities.

PHASE - OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: JAPAN

MEASURES

Bankruptcy Law No 71 of 25 April 1922.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign nationals or legal entities shall have the same status as Japanese nationals or legal entities in regard to bankruptcy only when Japanese nationals or legal entities have the same status under the native laws of the said foreign nationals or legal entities.

PHASE - OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: KAZAKHSTAN

MEASURES

Legislative Decree of the President of the Republic of Kazakhstan of 22 December 1995 "On Land" - Articles 40(2), 36(2), 4(4), 33(2), 35(1) and 41(1).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

1. The right of permanent land use may not be accorded to foreign land users.
2. National land users include citizens of the Republic of Kazakhstan and Kazakh juridical persons including enterprises with foreign participation. Foreign land users include foreign citizens, foreign juridical persons, foreign states and international unions and organisations.
3. Foreign citizens and juridical persons as well as persons without citizenship enjoy the same rights and have the same obligations as citizens and juridical persons of the Republic of Kazakhstan unless otherwise provided by this Legislative Decree or other legislative acts.
4. Citizens and non-governmental juridical persons can possess, in terms of private ownership, building sites or plots of land beneath existing buildings whether houses or other facilities, including plots of land for servicing these buildings and facilities in accordance with their use.
5. The right of land use can be permanent and temporary.
6. The right of temporary land use is short-term (up to 3 years) and long-term (from 3 to 99 years).

PHASE OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **KAZAKHSTAN**

MEASURES

Legislative Decree of the President of the Republic of Kazakhstan on Oil of 28 June 1995, Article 41, paragraphs (6), (7) and (8).

SECTOR

Oil and gas sectors.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

During the realization of the contract the contractor is obliged:

- 6) to give preference to the equipment, materials and production made in the Republic of Kazakhstan provided they are competitive in terms of environmental and technical standards, prices, working parameters and conditions of delivery;
- 7) in carrying out oil operations to give priority to Kazakhstan's enterprises and organizations providing services, including the use of air, railway, water and other types of transport, if these services are competitive in terms of prices, efficiency and quality;
- 8) to give preference to the Kazakstan's personnel in carrying out oil operations.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **KAZAKHSTAN**

MEASURES

Legislative Decree of the President of the Republic of Kazakhstan on Subsoil and Subsoil Use of 27 January 1996, Article 63, paragraph (1), sub-paragraphs (7), (8) and (9).

SECTOR

All energy sectors and mining industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Subsoil user is obliged:

- 7) to give preference to the equipment, materials and production made in the Republic of Kazakhstan provided they are competitive in terms of environmental and technical standards, prices, working parameters and conditions of delivery;
- 8) in carrying out operations on subsoil use to give priority to Kazakhstan's enterprises and organizations providing services, including the use of air, railway, water and other types of transport, if these services are competitive in terms of prices, efficiency and quality;
- 9) to give preference to the Kazakstan's personnel in carrying out operations on subsoil use.

PHASE-OUT

Not plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **KYRGYZSTAN**

MEASURES

Law on Denationalisation and Privatisation of State Property in the Kyrgyz Republic of 12 December 1994, Article 8.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

While denationalising and privatising facilities in specific fields of economy the Government enjoys the right to impose restrictions on the range of buyers to ensure priority rights for the citizens and legal entities of the Kyrgyz Republic.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: LATVIA

MEASURES

Law on Land Privatisation in Rural Areas of 9 July 1992, as amended by Laws of 21 April 1993; 16 December 1993; 8 December 1994; 5 October 1995 and 5 January 1996, Article 28, paragraphs 4 and 5.

Law on Land Reform in the Cities of the Republic of Latvia of 20 November 1991, as amended by Laws of 31 March 1994; 24 November 1994; 12 October 1995; 5 January 1996 and 30 July 1996, Article 20, paragraphs 4 and 5.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

During the period of the land reform, land may be purchased by:

- a) legal entities registered in Latvia including companies where more than half of the paid up fixed capital is owned by the citizens of the Republic of Latvia;
- b) foreign companies registered in Latvia from states with which Latvia has signed and ratified International Agreements on Promotion and Protection of Foreign Investments.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **LIECHTENSTEIN**

MEASURES

Law on Pipelines (Rohrleitungsgesetz).

SECTOR

Oil and gas pipelines.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A concession for the construction and operation of a pipeline that crosses the Liechtenstein border, to transport oil, gas or liquid or gaseous fuels, is accorded only to EEA citizens domiciled in one EEA member state or to legal persons founded according to the law and having their seat in an EEA member state.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: LITHUANIA

MEASURES

Constitutional Law of the Republic of Lithuania adopted on 20 June 1996 on the Subjects, Procedure, Terms and Conditions and Restrictions of the Acquisition into Ownership of Land Plots provided for in Article 47, paragraph 2 of the Constitution of the Republic of Lithuania, Articles 3 to 5.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

(Article 3) Acquisition into ownership of the plots of land required for the construction and operation of buildings and facilities shall be permitted under this Law to:

- 1) national subjects;
- 2) foreign subjects of the origin under Article 4 of the Law, with the exceptions of foreign nationals;
- 3) foreign nationals - not later than after the expiry of the transitional period provided for by the Europe Agreement establishing the Association between European Communities and their members and the Republic of Lithuania.

(Article 4) The criteria of European and transatlantic integration embarked on by Lithuania shall be met by the foreign subjects which, by the patterns of their origin, are from:

- 1) the European Union member states or states parties to the Europe Agreement establishing the Association with the European Communities and their member states;
- 2) states which at the moment of enactment of this Law are members of the Organisation for Economic Co-operation and Development or the North Atlantic Treaty Organisation.

(Article 5) Foreign subjects which do not meet the criteria set forth in Article 4 of this Law and which conduct economic activities in Lithuania may only lease the plots of land required for the construction and operation of buildings and facilities designated for such activities.

PHASE-OUT

From the date of full membership of the Republic of Lithuania in the European Union until the new Law is passed, only those provisions of this Law will remain in force which do not contradict the Agreement of full Lithuania's membership in the European Union.

OTHER EXCEPTIONS

This is an exception to the MFN treatment.

COUNTRY: MALTA

MEASURES

Exchange Control Act (investment by non-residents) enacted by Act XLIX of 1972, amended by Acts XXIV of 1973 and LVIII of 1974; Legal notice No. 148 of 1975; and Acts: XXII of 1976, XXXI of 1981 and XIII of 1983.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Investments made in Malta by non-residents require exchange control approval from the Ministry of Finance. Decisions of approval or non-approval for investment by non-residents under this Act are at the discretion of the Minister who must be satisfied with the purpose of the investment and that the proposed investment is technically feasible, economically viable and will benefit the national economy.

PHASE-OUT

Due to pending Maltese application for membership in the European Union, exchange controls are currently progressively liberalised in line with Union's requirements.

OTHER EXCEPTIONS

None.

COUNTRY: POLAND

MEASURES

Act on Acquisition of Real Estate by Foreign Persons of 24 March 1920, as amended, Articles 1, 3 and 7.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

- Unless otherwise provided for in the Act, the acquisition of real estate (the right of ownership to real estate or perpetual usufruct) and the acquisition or entering into possession of shares/stocks of a commercial company having its seat in Poland which is the owner or perpetual usufruct of real estate, requires permit from the Minister of Interior and Administration:
 - a) if in the effect the company becomes a foreign-controlled company; or
 - b) if the company is a controlled company and its shares/stocks are acquired by a foreigner not being a shareholder or stockholder of that company.

The “foreigner” in the meaning of the Act is:

- i) a natural person not being a Polish citizen;
- ii) legal person having its seat abroad;
- iii) legal person having its seat in Poland directly or indirectly controlled by persons described above in i) and ii).

The company is assumed to be under foreign control if at least 50% of the company’s share capital belongs (directly or indirectly) to a foreign natural or legal person.

- Legal persons registered in Poland controlled by foreigners, in the meaning described in i) and ii) above, may acquire undeveloped real estate for their statutory purposes, the total area of which in the whole country shall not exceed 0,4 ha within cities.
- Authorisation is required for the acquisition of real estate regardless its area in border zones.

The permit is not required for the purchase of residential apartments.

PHASE-OUT

No plans. The Act was liberalised by amendment in March 1996.

OTHER EXCEPTIONS

None.

COUNTRY: POLAND

MEASURES

Act on Companies with Foreign Participation of 14 June 1991, as amended, Articles 1, 6, 10 and 16.
Regulation of the Council of Ministers of 6 February 1976 on the Conditions, Procedure and Organs Proper to Issue Permits to Foreign Natural and Legal Persons to Establish the Representative Offices and to Conduct the Activity in Poland.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

- To conduct business activity on the territory of Poland, a foreign entity may only establish a limited liability company or a joint stock company having its seat in Poland, or may acquire shares in such a company.
This provision means that foreign parties may not resort to the form of a partnership under the regime of the Polish law (civil, registered or limited partnership), including the acquisition of shares in such companies established in Poland. They can, however, act as mutual fund investors constituting a partnership governed by foreign law.
- Foreign entities may make contributions to the share capital of a company:
 - a) in cash - received from exchange of the foreign currency in the foreign exchange bank or in the Polish currency which was obtained in the circumstances which give ground for the free transfers of this money abroad; or
 - b) in kind - both directly from abroad or purchased in exchange for assets coming from abroad.
The Minister of Finance may permit contributions in Polish currency or in kind obtained under other circumstances.
- The conclusion of a contract or contracts by a company with foreign participation allowing it to use on the Polish territory the property of a state legal person for a period exceeding six months, such as the real estate, the enterprise or a part of the enterprise capable of performing specific economic tasks, or the conclusion of a contract which transfers the ownership rights to the above-mentioned forms of property, requires a permit from the Minister of State Treasury who may determine therein a proportion of shares of Polish and foreign shareholders and a proportion of votes at the shareholders' meeting which the company must maintain.
- Establishing branch offices and representative offices of foreign enterprises, and conducting business activities in Poland through them is allowed only in the sectors of transport and foreign trade. Other sorts of economic activities in the energy sector are not covered unless otherwise provided for in an international agreement between Poland and other country.

PHASE-OUT

At present a draft Act on Industrial Law is being elaborated by the Ministry of Economy. It is assumed that this Law will abolish the Act on Companies with Foreign Participation of 14 June 1991.

OTHER EXCEPTIONS

None.

COUNTRY: POLAND

MEASURES

Act on Commercialisation and Privatisation of State-owned Enterprises of 30 August 1996, as amended, Articles 1, 33, 35, 48, 49, 50, 51, 52 and 55.

Ordinance of the Council of Ministers of 25 September 1997.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

- Privatisation of state enterprises or Treasury-owned companies of strategic importance for the national economy is subject to the consent of the Council of Ministers. The consent of the Council of Ministers is granted upon the Council's full discretion (the list of strategic enterprises and companies is set out in the Ordinance of the Council of Ministers of 25 September 1997 and comprises all energy sub-sectors).
- In case of indirect privatisation, the Council of Ministers may, in particular cases, give consent to sell the State Treasury's shares/stocks in a manner other than public tender, public offering or public invitation to negotiations.
- In case of indirect privatisation, the payment for the shares/stocks owned by the State Treasury may be brought in instalments provided that at least 30% of shares/stocks is acquired by a Polish citizen or a company owned by Polish citizens.
- In case of direct privatisation when the state enterprise is completely or partly brought to a commercial company:
 - i) employees have priority in acquiring shares belonging to the State Treasury;
 - ii) provided that apart from the State Treasury, only employees are shareholders of such a company, the State Treasury shall offer them tranches of shares/stocks to assure their 51% share in the company's capital after 5 years.
- Direct privatisation through the transfer of assets of the enterprise to the non-gratuitous use may take effect only if natural persons residing in the territory of Poland are shareholders/stockholders, unless the Minister of State Treasury decides otherwise. The agreement on the non-gratuitous use may provide for the transfer of the ownership rights or the right to acquiring the enterprise.
- Privatisation vouchers shall be granted on a free of charge basis to the nationals of the Republic of Poland.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: POLAND

MEASURES

Act on National Investment Funds and their Privatisation of 1993, Articles 16 and 19.

Act on Industrial Funds and their Privatisation in Connection with the Reform of the Social Security System of 4 September 1997, Part 3, Articles 14(2), 14(3) and 15(4).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

- At least two thirds of members of the Supervisory Board of an Investment Fund, or Industrial Funds, including their Chairmen, shall be Polish citizens.
- In the initial stage, members of the Industrial Funds' Management Board shall be Polish citizens.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **PORTUGAL**

MEASURES

Decree-Law No 274-B/93 of August 1993.

SECTOR

Gas industry.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

This law provides a public tender for the concession of the public service of import, transport and supply of natural gas. Only companies established in one of the EU Member States territory will be invited. Nevertheless, the invited ones are able to propose consortiums with non invited companies.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: PORTUGAL

MEASURES

Law No 11/90 on Privatisation of Nationalised Companies of April 1990.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In companies to be privatised, the Council of Ministers may impose limits on the acquisition of shares by foreign entities (non-EU Member States) or by Portuguese companies which are owned by foreign entities (non-EU Member States).

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: PORTUGAL

MEASURES

Decree-Law No 65/94 of 28 February 1994.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Companies which have been privatised up to 1994, are allowed under this Decree, to increase foreign participation up to 25% unless the limit applied in particular cases of privatisation was higher.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **PORTUGAL**

MEASURES

Decree-Law No 353/91 of September 1991 (as the only example of the application of Law No 11/90 in the energy sector), altered by Decree-Law No 145-A/95.

SECTOR

Energy sector (Oil).

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In the privatisation of the public petroleum company PETROGAL, only companies constituted under Portuguese law and with head office in Portugal are allowed to apply, provided that at least 50% of their capital is held by national entities and the majority of the members of the Board of Administration and the Audit Board is Portuguese. Foreign companies and foreign controlled enterprises are considered foreign entities.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: ROMANIA

MEASURES

Constitution of Romania, Article 41, paragraph 2.

Land Acquisition Law No 54/1998.

Urgency Ordinance on Direct Investments No 92/1997.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign natural persons may not acquire land ownership rights.

Foreign juridical persons may not acquire land in any form.

Any investor, resident or non-resident juridical person, may acquire any real estate ownership rights.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: ROMANIA

MEASURES

Privatisation Law No 40/1998.

Government's Decision No 55/1998.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Associations of employees, members of the Board and/or retirees of the privatising enterprise may purchase shares of the respective enterprise by instalments.

Natural persons having residence in Romania authorised to run business and family partnership may purchase assets by instalments.

Companies established in Romania under the Company law or resulting from the privatisation process, having less than 250 employees and less than 10% of the total voting shares owned by the state or a local administration authority, may purchase assets by instalments.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **THE RUSSIAN FEDERATION**

MEASURES

Law of the Russian Federation on Foreign Investments in the RSFSR of 4 July 1991, Article 39.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The lease of the federal property of the RSFSR exceeding 100 million roubles in value to foreign investors or enterprises with foreign investments requires permission from the State authority empowered to manage such property.

PHASE-OUT

Federal Assembly of the Russian Federation examines a bill on changes and additions to the Law of the Russian Federation on Foreign Investments in the RSFSR.

OTHER EXCEPTIONS

None.

COUNTRY: THE RUSSIAN FEDERATION

MEASURES

Decree of the President of the Russian Federation No 1928 on Private Investments in the Russian Federation of 17 September 1994, paragraphs (1) and (3).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The Government of the Russian Federation is authorised to earmark annually capital resources for financing highly efficient investment projects developed with the participation of commercial organisations provided that the resources are distributed on competitive basis. However, the Government of the Russian Federation has the right to impose additional conditions for projects with the proposed participation of foreign investments.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **THE RUSSIAN FEDERATION**

MEASURES

Basic Criteria (System of Indexes) for Annual Mandatory Accounting (Financial) Auditing of the Economic Subjects approved by the Resolution No 1355 of the Government of the Russian Federation of 7 December 1994, paragraph 3 (basic criteria).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Natural and juridical persons are subject to mandatory annual audit if the registered capital (authorised assets) comprises any share of foreign capital.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: THE RUSSIAN FEDERATION

MEASURES

Land Code of the RSFSR of 25 April 1991, Articles 3, 7, 13 and 14.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Plots of land may not be transferred to foreign citizens into ownership and into inheritable possession for life. Plots of land may only be transferred for lease or temporary use.

However, the Procedure for the Sale of Plots of Land for the Purposes of Privatisation of State and Municipal Enterprises, Expansion and Additional Construction of these Enterprises, as well as of Plots Transferred to Citizens and Associations thereof for Entrepreneurial Activities (approved by the Decree No 631 of the President of the Russian Federation of 14 June 1992, (paragraph 3)) envisages the acquisition or open-ended lease of plots of land by any natural or juridical persons (including foreign) recognised as buyers in accordance with the Law of the RSFSR on Privatisation of State and Municipal Enterprises in the RSFSR.

PHASE-OUT

Draft of a new Land Code of the Russian Federation is currently under consideration by the Federal Assembly of the Russian Federation.

OTHER EXCEPTIONS

None.

COUNTRY: THE RUSSIAN FEDERATION

MEASURES

Federal Law No 225 on Production Sharing Agreements of 30 December 1995, Article 7(2).

SECTOR

All energy and mining sectors.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

A Production Sharing Agreement envisages investor's commitments to accord to Russian juridical persons, provided the other equitable conditions are met, a priority right to participate in the activities stipulated in this Agreement as contractors, suppliers, carriers or in other capacity on the basis of agreements (contracts) with investors.

In production sharing agreements parties should envisage a condition that at least a proportion of technological equipment for production and processing of natural resources (if envisaged by the agreement) procured by an investor against cost recovery through a compensatory share of a product should be produced in the territory of the Russian Federation.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: THE RUSSIAN FEDERATION

MEASURES

Federal Law No 187 on Continental Shelf of the Russian Federation of 30 November 1995, Articles 7, 8, 17(12), 18, 20(4), 23, 27, 28 and 35.

SECTOR

Mineral resources.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

In order to ensure security and development of the Russian industry and the energy sector, in accordance with the relevant Federal executive authority, restrictions may be imposed on the participation of foreign natural or juridical persons in tenders (auctions) for prospecting, exploration and development of mineral resources of certain territories as well as tenders (auctions) with the exclusive participation of Russian natural or juridical persons.

Foreign natural or juridical persons may carry out regional geological studies, prospecting, exploration and development of mineral resources; establish and use artificial isles, installations and structures in the continental shelf; carry out marine research; dispose of waste and other materials at the continental shelf only with permission from the authorised agencies and under the surveillance of their representatives.

In all cases foreign applicants must ensure to the representatives of the Russian agencies free return transport to the location where the work is performed, the use of communication equipment, provide them with full board and lodge at a level similar to their own senior (executive) personnel and ensure access to all premises and facilities, to all data and samples obtained in the course of research and to research results of the international community through national or international channels.

In order to obtain permit, foreign applicants shall submit, through diplomatic channels at least six months prior to a proposed date of the start of respective activities, an application to a specially authorised agencies which shall also issue permits or notify of the rejection.

PHASE-OUT

Federal Assembly of the Russian Federation now examines a bill on amendments to the Continental Shelf Law.

OTHER EXCEPTIONS

None.

COUNTRY: **THE RUSSIAN FEDERATION**

MEASURES

Federal Law No 39 on Securities Market of 22 April 1996, Article 16 (paragraph 14) and Article 24 (paragraph 7).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Securities issued by foreign issuers are allowed for marketing or initial offering in the securities market of the Russian Federation after registration of the offering memorandum of such securities by the Federal Commission on the Securities Market.

It is prohibited, while making public offers or marketing of securities, to give priority to one potential owner before others.

This provision does not apply in the following instances:

- 1) for issuance of Government bonds and securities;
- 2) when accorded to shareholders of joint stock companies a priority in purchasing newly issued shares in the amount proportionate to the quantity of shares they own at the time of a decision on new issuance is made;
- 3) if an issuer introduces restrictions on acquisition of securities by non-residents.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: THE RUSSIAN FEDERATION

MEASURES

Federal Law No. 174 on Environmental Assessment of 23 November 1995, Articles 7(2) and 11(7).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

A specifically authorised Federal government agency in the area of environmental assessment have the right:

- to invite foreign scientists and foreign experts to carry out a State environmental assessment, subject to procedures established by the legislation of the Russian Federation, except for such environmentally assessed facilities, information of which are subject to State, commercial and/or other professional secrecy protected by law.

The following is subject to a mandatory environmental assessment at the Federal level:

- feasibility studies and projects of the construction, reconstruction, expansion, technical modernisation, conservation and liquidation of organisations and other economic facilities of the Russian Federation, as well as other projects regardless of their estimated cost, sector affiliation and type of ownership, the implementation of which may affect natural environment on the territory of at least two subjects of the Russian Federation, including documents concerning the establishment of organisations by citizens or juridical persons of the Russian Federation with the participation of foreign citizens or foreign juridical persons in which foreign investments exceed 500 thousand USD.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: THE RUSSIAN FEDERATION

MEASURES

Federal Law No 123-FZ on Privatisation of State Assets and the Basis for Privatisation of Municipal Assets in the Russian Federation of 21 July 1997, Articles 4, 18 and 21.

Decree No 2284 of the President of the Russian Federation of 24 December 1993 on State Programme of Privatisation of State and Municipal Enterprises in the Russian Federation, Title 10, paragraph 10.1.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

Classification of State assets also envisages “assets to be privatised under prohibition of participation of foreign natural and legal persons and also residents of the Russian Federation whose founders (partners) or affiliated persons include foreign natural or legal persons.”

In the sale of shares of an open joint stock company established through privatisation, the following should be included in the public announcement:

- established restrictions on the resale of shares of such a company;
- restrictions on the participation of non-residents of the Russian Federation as well as of residents of the Russian Federation whose founders include foreign natural and legal persons.

In the sale of privatised entities through a commercial tender, one of the investment conditions may include an obligation on the successful bidder to implement prevailing tariff and non-tariff protectionist measures for the benefit of the Russian producers, including the use of Russian raw materials and semi-finished products if quality characteristics thereof are equal or superior to foreign substitutes or if prices of the above raw materials and semi-finished products are equal to or below such prices.

Foreign investors are allowed to participate in privatisation of trade facilities and enterprises, and small industrial, construction and road transport enterprises (up to 200 of average labour force or a book value up to 1 million roubles as of 1 January 1992) only by a decision of local authorities or their authorised representatives. Decisions on the possibility of foreign investors to participate in the privatisation of facilities and enterprises of oil and gas industries, mining and processing of strategic ores, radioactive and rare-earth elements and of transport and communications enterprises mentioned in Chapter 2.2 of the Programme, shall be taken by the Government of the Russian Federation or by Governments of constituent Republics of the Russian Federation (depending on the type of State property) along with a decision allowing the privatisation of these facilities and enterprises.

PHASE-OUT

Currently the Federal Assembly of the Russian Federation examines the bill on Approval of State Privatisation Programme in the Russian Federation.

OTHER EXCEPTIONS

None.

COUNTRY: **THE RUSSIAN FEDERATION**

MEASURES

Decree of the President of the Russian Federation No. 529 On the Procedure for the Turnover of Shares of the Russian Joint Stock Company "Gazprom" for the Duration of Retaining Shares of the Russian Joint Stock Company "Gazprom" in Federal Ownership, dated May 28, 1997.

SECTOR

National economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

For the duration of the privatisation of the Russian Joint Stock Company "Gazprom" a total share of foreign participants in the Authorised Capital of RAO "Gazprom" shall be limited to 9 percent.

PHASE-OUT

Not envisaged.

OTHER EXCEPTIONS

A special procedure for the acquisition of RAO "Gazprom" shares on securities markets, export and transfer thereof by non-residents has been established.

COUNTRY: THE RUSSIAN FEDERATION

MEASURES

Resolution of the Government of the Russian Federation No. 174 On the Interagency Commission on Competitiveness of the Russian Transport Sector Enterprises and Organisations, dated February 14, 1997.

SECTOR

National economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

In the course of the development of conditions of the use of subsoil and draft production sharing agreements based on the Federal Law of the Russian Federation on Production Sharing Agreements, it should be envisaged that production owned by Federal and Sub-Federal authorities of the Russian Federation in the framework of the said agreements are mainly to be transported from the customs territory of the Russian Federation by Russian carriers.

PHASE-OUT

Not envisaged.

OTHER EXCEPTIONS

None.

COUNTRY: SLOVAKIA

MEASURES

Foreign Exchange Act No 202/1995, paragraph 19.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign natural persons or legal entities classified as non-residents may not purchase real estate in Slovakia. A non-resident other than a non-resident Slovak citizen may acquire real estate only:

- a) by inheritance;
- b) for diplomatic representation of a foreign country under the condition of reciprocity;
- c) if real estate is acquired by a married couple to undivided co-ownership, and one of them is non-resident, or if a non-resident acquires real estate from a spouse, brother or sister, parents or grandparents;
- d) by exchange of real estate in his ownership for another real estate in Slovakia, the value of which, determined under special legislation, shall not exceed the value of original real estate determined under special legislation;
- e) under a pre-emption right ensuing from the shared co-ownership of real estate;
- f) when a building was constructed by non-resident on his own land;
- g) if so explicitly stipulated by a special Act.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: SLOVAKIA

MEASURES

Law on the Securities Market No 214/1992, paragraph 4/3.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign natural persons (non-residents) or legal entities domiciled or having their registered office at Slovak territory with the share of foreign non-resident or legal entity more than 50% of the basic assets can acquire securities, a total price of which shall not exceed one third of the basic assets.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: SLOVAKIA

MEASURES

Energy Law, Article 3, paragraph 1 and Article 4, paragraphs 1 and 2.

SECTOR

Electricity, natural gas and heating industries.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A licence for conducting business activities in the power, gas and heating industries may be granted only to natural persons having a permanent residence in Slovakia or to legal persons having a seat in Slovakia and registered in commercial register.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: SLOVENIA

MEASURES

Constitution of the Republic of Slovenia (OGRS 33/1991), Article 68.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreigners can not acquire right of possession of real estate except by inheritance and under a principle of reciprocity.

PHASE-OUT

Article 68 of the Constitution of the Republic of Slovenia will be amended before ratification of Europe Agreement with the EU.

OTHER EXCEPTIONS

None.

COUNTRY: SLOVENIA

MEASURES

Law on the Transformation of Company Ownership (OGRS 55/1992), Articles 20 and 26.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

If the estimated value of shares or assets of the company that is being sold to a foreign investor or to a domestic legal entity with a majority of foreign capital exceeds a tolar value of 10,000,000 ECU, the sale has to be approved by the Government.

When a company is sold as a whole partial sale of social capital to domestic or foreign persons, it is performed on the basis of open competition by the collection of bids, or by public sale of shares at a public auction.

Citizens of the Republic of Slovenia hold under the same conditions pre-purchasing rights.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: SLOVENIA

MEASURES

Law on Commercial Companies (OGRS 30/1993), Article 246.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The director or the procurator of a commercial company shall be a citizen of the Republic of Slovenia. If the executive management has several members, the majority of them shall be citizens of the Republic of Slovenia.

PHASE-OUT

The Government will review this Law and submit to the Parliament all necessary amendments in 1997. The preliminary assessment shows that the adoption procedure may not be completed before 1998.

OTHER EXCEPTIONS

None.

COUNTRY: SLOVENIA

MEASURES

Law on Commercial Companies (OGRS 30/1993), Article 563.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A foreign company may establish a subsidiary or branch if it has been registered in the country where its registered office is located for at least two years.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: SLOVENIA

MEASURES

Law on Environmental Protection (OGRS 32/1993), Article 23.

SECTOR

Management, use or exploitation of natural resources.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The deed of concession is a regulation of the Government or the local authorities. The deed of concession granting a concession to a foreign person may only take the form of a law.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: SPAIN

MEASURES

Royal Decree-Law 7/1996 on Urgent Measures of Fiscal Character and of Encouragement and Liberalization of the Economic Activity (Articles 25 to 29 "Distribution of carburants").

SECTOR

Transportation and retailing of oil products and liquified petroleum gases.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The third party access to large fixed installations of reception, storage and transport of oil products, as well as the large installations of reception and storage of liquified petroleum gases may be refused when the applicant for the transport or service is a national of a State that, according to the principle of reciprocity, does not allow the granting of similar rights.

PHASE-OUT

There is no intention of eliminating the requirement for reciprocity.

OTHER EXCEPTIONS

None.

COUNTRY: SPAIN

MEASURES

Royal Decree 1914/1997 on Third Party Access to Facilities of Natural Gas Delivering, Conversion, Storage and Transport.

SECTOR

Transportation and retailing of natural gas.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The third party access to the basic services of natural gas (conversion, storage and transport) may be refused when the applicant for the service is a resident of a State that, according to the principle of reciprocity, does not allow the granting of similar rights.

PHASE-OUT

There is no intention of eliminating the requirement for reciprocity.

OTHER EXCEPTIONS

None.

COUNTRY: SWITZERLAND

MEASURES

Code of obligations (Law RS 220 of March 1911, Article 708).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The board of directors of a corporation with limited liability (derogations are possible for holding companies) and the administration of a co-operative company must be composed of a majority of Swiss citizens domiciled in Switzerland.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: SWITZERLAND

MEASURES

Legislation on the purchase of real property by foreign nationals (Law RS 211.412.41 of December 1983, Article 4 and Regulation (Ordinance) 211.412.411 of October 1984).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

Federal and cantonal.

DESCRIPTION

Acquisition of real property by a foreign national, a foreign based or foreign-controlled enterprise is subject to an authorisation requirement. Within this legal framework additional criteria may be set in the Cantons.

PHASE-OUT

Legislation under consideration.

OTHER EXCEPTIONS

None.

COUNTRY: SWITZERLAND

MEASURES

Legislation on hydropower (Law RS 721.80 of December 1916, Article 40).

SECTOR

Hydropower.

LEVEL OF GOVERNMENT

Federal and cantonal.

DESCRIPTION

The concession for the use of hydropower is granted only to Swiss citizens domiciled in Switzerland and to Swiss-controlled companies having their seat in Switzerland. Within this legal framework additional conditions may be set in the Cantons.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: SWITZERLAND

MEASURES

Law on Nuclear Energy (Federal Decision RS 732.01 of October 1978).

SECTOR

Nuclear energy.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

The authorisation to build and operate a nuclear plant or a radioactive waste depository is granted only to Swiss citizens domiciled in Switzerland and to Swiss-controlled companies having their seat in Switzerland.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: SWITZERLAND

MEASURES

Law on Pipelines (Law RS 746.1 of October 1963).

SECTOR

Oil and gas pipelines.

LEVEL OF GOVERNMENT

Federal.

DESCRIPTION

A concession for the construction and operation of a pipeline that crosses the Swiss border, to transport oil, gas or liquid or gaseous fuels, is accorded only to Swiss citizens domiciled in Switzerland or to Swiss-controlled companies having their seat in Switzerland.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: SWITZERLAND

MEASURES

Agreement concerning the exploration and exploitation of oil, gas and other hydrocarbons.

SECTOR

Hydrocarbons.

LEVEL OF GOVERNMENT

Cantonal.

DESCRIPTION

An intercantonal agreement among ten cantons (Zürich, Schwyz, Glarus, Zug, Schaffhausen, Appenzell Ausser-Rhoden, Appenzell Inner-Rhoden, St. Gallen, Aargau, Thurgau) provides that a concession for exploration and exploitation of oil, gas and other hydrocarbons may be granted only to companies that are 75 per cent owned by Swiss nationals.

PHASE-OUT

None.

OTHER EXCEPTIONS

None.

COUNTRY: THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

MEASURES

Law on Trade Companies (Official Gazette of the Republic of Macedonia No 28/96), Article 27, paragraph (1).

Law on Trade Companies (Official Gazette of the Republic of Macedonia No 28/96), Article 684, paragraph (2).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign natural or juridical persons cannot perform any economic activity on the territory of the Former Yugoslav Republic of Macedonia unless they establish a company or at least a subsidiary (branch).

The establishment of a company which is entirely owned by one or more foreign natural or juridical persons and/or in which they have the majority of shares, the company transformation into such a company or acquisition of the majority of shares by foreign natural or juridical persons in the company, requires approval by the Ministry of Foreign Affairs.

The establishment of a subsidiary (branch) by foreign natural or juridical persons requires also approval by the Ministry of Foreign Affairs. The foreign natural or juridical person may establish a subsidiary (branch) in the Former Yugoslav Republic of Macedonia only if such person has been registered in the register of the country in which it has a Head Office at least for two years.

In the case of a decision not being made within 60 days of filing an application, the Law stipulates that approval is not granted.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

MEASURES

Law on Trade Companies (Official Gazette of the Republic of Macedonia No 28/96), Articles 307 (paragraph 6), 324 (paragraph 1) and 334 (paragraph 1).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

At least one executive and one non-executive member of the Board of Directors of the joint stock company having single level management system must be a citizen of the Former Yugoslav Republic of Macedonia.

At least one member of the Board of Directors and of the Supervisory Board of the joint stock company having two level management system must be citizens of the Former Yugoslav Republic of Macedonia.

The citizens of the Former Yugoslav Republic of Macedonia who are members of Board of Directors and Supervisory Board are appointed by the joint stock company itself.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

MEASURES

Law on Trade Companies (Official Gazette of the Republic of Macedonia No 28/96), Article 688, paragraph (2).

Governmental Decision (Official Gazette of the Republic of Macedonia No 24/96) on Conditions and Procedures for Leasing of Urban Land, Article 7.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A foreign natural or juridical person, including its organisation unit in the Former Yugoslav Republic of Macedonia, may not acquire ownership of any land whereas national natural or juridical person may acquire ownership of non-urban land.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **TURKEY**

MEASURES

Privatisation Law (Law No 4046), Article 13, paragraph (b).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The Privatisation High Council is authorised to determine strategic subjects and organisations as well as to remove such sectors and organisations determined to be strategic from the scope of the Privatisation Programme.

In the event that the State's shareholdings in organisations determined to be strategic fall below 50%, the Privatisation Council is authorised:

- to determine the number of preference shares granting special management and approval rights to the management bodies and the rights attaching to those shares which the State shall enjoy;
- to change the quantity of these shares and the rights attached thereto.

However, if and when more than 49% of the capital shares of the organisations listed below are decided to be privatised, preference shares must be established in them:

- Turkish Petroleum (TPAO, refineries).

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: TURKEY

MEASURES

Privatisation Law (Law No 4046), Article 14.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Sale and transfer of real estate to foreign natural or juridical persons within the framework of the privatisation process to be conducted in accordance with the provisions of this Law are subject to the provisions of the legislation in force on the basis of rules of reciprocity.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: TURKMENISTAN

MEASURES

Law on Foreign Investments of 19 May 1992 as amended in 1993, Article 8;

Provision on the Procedure for the State Registration of Enterprises (Establishments and Organisations) with Foreign Investments, Affiliates and Representations of Foreign Companies approved by the Ordinance of the President of Turkmenistan No 1987 of 24 November 1994, Article 3.1;

Law on Enterprises of 1 October 1993 as amended in 1994, Article 28.3.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

The State registration of foreign investors is made at the Ministry of External Economic Affairs of Turkmenistan, while the State registration of national enterprises (according to Article 1.1 of the Law on Enterprises, all enterprises have a status of legal persons) is made by the Commissions, established under hakimliks of vulajats (regional authorities) and in the city of Ashgabad, on whose territories enterprises are established.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **TURKMENISTAN**

MEASURES

Law on Lease and Leasing Relations of 1990, Article 4.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

A lease agreement with foreign legal parties and citizens shall be concluded provided there are no persons who wish to enter leasing arrangement among national investors.

PHASE-OUT

31 December 2001.

OTHER EXCEPTIONS

None.

COUNTRY: **TURKMENISTAN**

MEASURES

Law on Divestment and Privatisation of Property of 19 February 1992 as amended in 1993, Article 5.1.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

In the process of acquisition of the property of the enterprises, which are going to be divested or privatised, employees have advantageous rights compared to any other persons, and the citizens of Turkmenistan have advantageous rights compared to citizens and juridical persons of other States.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: UKRAINE

MEASURES

Regulation on the Procedure for the State Registration of Foreign Investments (approved by the Resolution of the Cabinet of Ministers of the Ukraine No 928 of 7 August 1996 “on the Approval of the Regulation on the Procedure for the State Registration of Foreign Investments”), paragraph 3.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

For the purpose of state registration of foreign investments, foreign investors are obliged to submit to a State registration body relevant documents, including those confirming the value of foreign investments.

Confirmation of the value of foreign investments is necessary for the following reasons:

- money orders and rights for the execution of commitments contained in agreements, which are guaranteed by first class banks and which value is in convertible currency;
- any intellectual property rights;
- rights for the implementation of economic activities, including rights for the use of subsoil and natural resources, granted in accordance with the relevant legislation or agreements.

PHASE-OUT

In accordance with foreign investment regime liberalisation.

OTHER EXCEPTIONS

None.

COUNTRY: **UKRAINE**

MEASURES

Law on Treatment of Foreign Investments No 93/96-VR of 19 March 1996, Article 3.

Land Code No 561-XII of 18 December 1990, Article 6, part 13.

Law on Property No 697-XII of 7 February 1991, Article 11, paragraph 3.

Forestry Code No 3852-XII of 21 January 1994, Article 9, paragraph 2.

Decree of the President of the Ukraine No.612/93 on Privatisation of Filling Plants that Sell Fuel and Lubricants Solely to the Population of 29 December 1993.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Ownership of plots of land may not be given to foreign citizens or stateless persons, except in the cases of acquiring plots of land during the privatisation of gas filling plants that sell fuel and lubricants solely to population by such foreign persons.

PHASE-OUT

Phase-out of this specific exception depends on the progress of the land reform of the Ukraine and liberalisation of land relations. Higher state authorities of the Ukraine have declared their intention to gradually liberalise land relations.

OTHER EXCEPTIONS

None.

COUNTRY: UKRAINE

MEASURES

State Privatisation Programme of State Enterprises, Article 4.3, parts 1 and 2 (approved by the Resolution No 2545-XII of the Supreme Soviet of the Ukraine of 7 April 1992);

Law No 2163-XII on Privatisation of State Enterprises' Assets of 4 March 1992, Article 21, part 3;

Provisions on the Implementation of Procedures for the Privatisation of the State Enterprises' Assets, Article 1.4, paragraph 1.4.4, parts 2 and 3 (approved by the Order No 56 of State Property Fund of the Ukraine of 4 February 1993).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Non-resident buyers may freely without any additional permission take part in the purchase of the property of enterprises in national or community ownership in all instances when privatisation is implemented through a competition or an auction. Price of the property is paid for in freely convertible currency. Evaluation of privatised facilities in freely convertible currency is made according to the exchange rate of the National Bank of the Ukraine.

In the event when the sale of a state enterprise to foreign persons is made without a competition or auction (when only one foreign buyer applied to participate in a competition or an auction or a facility is sold without an auction against investment commitments) a special evaluation of the property value is made in freely convertible currency.

PHASE-OUT

Phase-out of this exception depends on the progress of market reform in the Ukraine and on liberalisation of privatisation legislation.

OTHER EXCEPTIONS

None.

COUNTRY: UKRAINE

MEASURES

Regulation Concerning the Procedure of Preparation, Organisation and Conduct of International Competitions in the Area of Privatisation in the Ukraine, Chapter III, paragraph 5, part 1 (approved by the Order No 242 of State Property Fund of the Ukraine of 27 April 1994).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Decisions to call an international competition in the area of privatisation in the Ukraine are taken by the Order of the State Property Fund of the Ukraine based on a feasibility study (business plan) of the facility development. In this case the share of state property offered for sale to a foreign investor should be clearly specified.

PHASE-OUT

Phase-out of this specific exception depends on the progress of market reform in the Ukraine and liberalisation of privatisation legislation.

OTHER EXCEPTIONS

None.

COUNTRY: UKRAINE

MEASURES

Law No 93/96-VR on Treatment of Foreign Investments of 19 March 1996, Article 22.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign investors are accorded the rights to exploit and develop renewable and non-renewable natural resources and conduct economic activities related to use of facilities owned by State, which have not been transferred to enterprises, establishments or organisations into full economic or operational management, on the basis of concession agreements concluded with foreign investors by the Cabinet of Ministers of the Ukraine or by a duly authorised body in accordance with the Ukrainian legislation. Duration of a concession agreement is determined in accordance with the nature and conditions of a concession, but may not exceed 99 years. Provided that concession agreements contain conditions which are not envisaged under the Ukrainian legislation, such agreements are subject to approval by the Supreme Soviet of the Ukraine.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: **UKRAINE**

MEASURES

Subsoil Code No 132/94-VR of 27 July 1994, Article 68.

SECTOR

Subsoil and exploitation of mineral resources.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Rights to use subsoil, specifically for geological studies, including research and industrial development of mineral deposits of national and local importance, mining of natural resources, construction and operation of underground structures not related to mining of mineral resources, including structures for underground storage of oil, gas and other substances and material, and process mineral resources are accorded to foreign legal persons and citizens on a competitive basis through conclusion of agreements (contracts).

Procedure for concluding contracts for subsoil use and processing of mineral resources with the participation of foreign legal persons is set by the Cabinet of Ministers of the Ukraine.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: UKRAINE

MEASURES

Procedures for Foreign Subjects of Economic Activities carrying out Operations with Goods of the Ukraine Origin on the Territory of the Ukraine without their Exportation from the Customs Territory of the Ukraine, paragraphs 3 and 4 (approved by the Resolution No 853 of the Cabinet of Ministers of the Ukraine of 30 June 1996).

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Operations with goods of the Ukrainian origin which have become a property of a foreign subject of an economic activity on the territory of the Ukraine and have not been exported from the customs territory of the Ukraine and which is being sold, exchanged or transferred to other persons (except operations with raw materials) are considered entrepreneurial activity on the territory of the Ukraine and are subject to taxation under the Ukrainian legislation.

Foreign subjects of economic activities may carry out operations with goods of the Ukrainian origin which have become their property on the territory of the Ukraine and have not been exported from the customs territory of the Ukraine and which is being sold, exchanged or transferred to other persons only in the case if they have properly registered representation in the Ukraine.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

COUNTRY: UZBEKISTAN

MEASURES

Act on Land of 1990, as amended in 1991, 1993, 1994, 1995 and 1996, Article 11.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Land can be given, for a specified period of time and on the basis of an agreement, to:

- citizens of the Republic of Uzbekistan by self-government bodies of villages and kishlaks, authorities of the regions and cities;
- joint ventures, international amalgamations and organisations with the participation of the national and foreign legal persons, as well as to foreign States, international organisations, foreign legal persons and citizens by the Cabinet of Ministers of the Republic of Uzbekistan.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.