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WORKING PAPER

PERFORMANCE REQUIREMENTS: PROSPECTS FOR THE EDEs

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INTRODUCTION

Developing economies are gradually taking centre stage in global economy through economic growth and improved resource-utilization. The consumer and investment markets of these economies represent an added avenue to facilitate economic ties beyond the developed economies. Engaging emerging and developing economies (EDEs) in mainstream negotiations and policy-making is essential to address their issues through formal as well as informal mechanisms. The cliché notion that EDEs benefit from global economic network has given way to the international community to accept that it is now the global economy, instead, which stands to benefit from participation of EDEs.

Developing countries are now taking the centre-stage in such an approach to global economic growth. A greater participation of developing economies is now accompanied by a greater role of States in their own economic development. The comparative rise of EDEs has given greater impetus to these countries to exercise their right to regulate. Right to regulate may be understood as an expression of sovereignty of countries and implies the freedom of countries to enact legislative measures in a variety of fields within their own jurisdiction (primarily protection of domestic economy and environment).[1] Hence, the requirement for policy-makers to strike the right balance between economic growth and protection of domestic economy arises. Additionally, there is a race to attract foreign direct investment (FDI) with an expectation to have a positive effect of FDI in the host States (FDI-receiving economies). The implications of this development are that the investment regimes are getting more liberalized with lesser stringent regulations and conditions on investors with a belief that greater FDI would bring greater capital inflow which could be directed to finance infrastructure and development projects.

Interestingly, an analysis by UNCTAD on whether BITs fostered bilateral FDI flows from developed to developing economies between 1985-2012 concluded that "*...BITs appear to have no effect on bilateral North-South FDI flows...(and)...the BIT coefficients are not statistically significant; in other words, results do not support the hypothesis that BITs foster bilateral FDI*.[2] Further, policy-makers from EDEs have recognised that FDI inflows do not, in isolation, have a direct positive effect on the host State. For example, in his speech at the session on UNCTAD's Investment Policy Framework for Sustainable Development (IPFSD), the South African Trade and Industry Minister, Mr. Robert Davies, distinguished between the Freedom of Investment Model (FOI) and Investment for Sustainable Development Model (ISD). He stated that the FOI model tends to assume that all investment is good, and that all investment

[1] Satwik Shekhar, "Regulatory Chill: Taking Right to Regulate for a Spin," *Centre for WTO Studies Working Paper Series CWS/WP/200/27* (2016): 19.

[2] United Nations Conference on Trade and Development, *Trade and Development Report* (Geneva: UNCTAD, 2014), 159.

promoted development and the countries should liberalise their investment regimes by limiting regulations. This approach, according to Mr. Davies, is reflected in "first generation" bilateral investment treaties (BITs). On the other hand, the ISD model reflects that the benefits of foreign direct investment to the host countries are not automatic and regulations are needed to balance the economic requirements of investors with the need to ensure that investments make a positive contribution to sustainable development in the host countries.[3]

Yilmaz Akyuz (2014) argues that contrary to what is maintained by the corporate ideology, FDI is "not a recipe for rapid and sustained growth and industrialization" in developing and transitional economies.[4] Akyuz stated that spillovers are not automatic but need to be extracted through policy guidance and intervention. In other words, in an investment environment with greater emphasis on FDI, the developing countries have to ensure that these investments make a positive contribution to sustainable development or risk formation of enclave economies.

[3] An extract of the speech by Mr. Robert Davies can be found here: http://us5.campaign-archive1.com/?u=fa9cf38799136b5660f367ba6&id=eebc192620 (accessed December 28, 2016).

[4] Yilmaz Akyuz, "Foreign Direct Investment, Investment Agreements and Economic Development: Myths and Realities," in *Investment Treaties: Views and Experiences from Developing Countries*, ed. Kinda Mohamadieh, Anna Bernardo and Lean Ka-Min (Geneva: South Centre, 2015), 20.

PERFORMANCE REQUIREMENTS

In order to make foreign investments have positive spillovers for their economy, governments resort to *performance requirements* (PRs) which aim to gain maximum benefits out of the said investments. PRs are defined as "*stipulations, imposed on investors, requiring them to meet certain* specified *goals with respect to their operations in the host country*".[5] Performance requirements are of particular interest to developing countries, since they can be used as a tool to ensure that the incoming foreign investments are guided towards local and national priorities to further environmentally and socially sustainable development.[6] The Agreement on Trade-Related Investment Measures (TRIMs) prohibits the host States (who are Member States of the WTO) from imposing a set of PRs in respect of an incoming foreign investment.[7] This prohibition of PRs has been incorporated in light of their inconsistency with Article III:4 (National Treatment) and Article XI (Prohibition of Quantitative Restrictions) of General Agreement on Trade and Tariffs, 1994 (GATT).

However, it must be noted that not all performance requirements used by countries have been expressly prohibited under TRIMs. A plethora of PRs continue to be used without any restriction, with the only exception being the bilateral investment treaties (BITs) or international investment agreements (IIAs) which countries are a party to. In other words, in order to ensure that maximum benefits are derived by the host country from foreign investments, countries impose PRs (which are neither prohibited under TRIMs nor prohibited under an applicable BIT/IIA) on the foreign investor. Since these performance requirements are not subject to TRIMs, a WTO-covered agreement, these requirements are generally described as "WTO+" measures. Additionally, there are even more PRs which are not regulated/prohibited by or do not fall under either TRIMs or BITs/IIAs. Countries have maximum flexibility to exercise their right to regulate and can opt to impose these kinds of performance requirements with full policy immunity.

The measures establishing the use of PRs could be made effective at the PoE (point of entry) of an investment as well as at a post-entry stage. The PRs at the PoE stage are majorly effective as a

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[5] United Nations Conference on Trade and Development, *Foreign Direct Investment and Performance Requirements: New Evidence from Selected Countries* (Geneva: UNCTAD, 2003).

[6] Nathalie Bernasconi-Osterwalder and Vyoma Jha, *Performance Requirements: An Overview of Approaches*, Investment and Sustainable Development: Developing Country Choices for a Better Future (Kampala: International Institute for Sustainable Development, 2011).

[7] An Illustrative List annexed to the TRIMs Agreement prohibits the following performance requirements:
(i) Local content requirements;
(ii) Trade-balancing requirements;
(iii) Foreign exchange restrictions related to foreign-exchange inflows attributable to the investment; and
(iv) Export controls.

prerequisite to investment. In other words, a foreign investor is required to fulfil such requirements before their investment enters the host State. On the other hand, the PRs which become effective at a post-entry stage are conditions to be fulfilled by the foreign investor for availing an advantage (either for expansion of investment or reaping the benefits of incentives).

Enclave Economies

It must be noted that PRs are prohibited under bilateral and multilateral legal instruments (BITs/IIAs and TRIMs, respectively) and countries use PRs which are not prohibited under either of these. However, a scenario of an *absolute prohibition* on use of PRs by countries could witness emergence of ‘enclave economies’. An enclave is a geographical region (big or small) surrounded by a country but which does not fall within the territorial jurisdiction of that country and has no economic, political and legal connection with it. Likewise, an enclave economy can be understood to be an area within a host State (case in point, the EDEs) which, attributing to an absolute prohibition on use of PRs, has an abundance of foreign investment, either due to the areas being resource-rich or big markets or any other reason, thereby, creating a detach from rest of the host State territory. This detach could be in the form of high levels of employment, technology advancement and better standard of living in enclave economies as compared to rest of the EDEs’ territory having comparatively low employment, obsolete technology and poor standard of living. It must be noted that without PRs, capital generation in enclave economies could be remitted to the home States, thereby leaving the host States (EDEs) devoid of positive contribution from foreign investments.

Kevin Gallagher and Lyuba Zarsky (2007) analyzed the case of the Mexican State of Jalisco where technology related companies had settled. Several multinational companies established themselves in that region and together with the existing companies, formed an enclave economy.[8] The government assisted these multinational companies in establishing themselves. Between 1995 and 1998, foreign investments were tripled. Nevertheless, because the Mexican federal government did not introduce policies, in the form of PRs, to regulate these investments, the benefit for the rest of the economy was limited or null.[9] This is an example of an enclave that does not benefit the surrounding economy in the absence of PRs. Gallagher and Zarsky argued that barriers to entry for domestic firms, compounded by government policies that favored foreign over domestic investment and inadequate research and development

[8] Kevin P. Gallagher and Lyuba Zarsky, “The Enclave Economy: Foreign Investment and Sustainable Development in Mexico’s Silicon Valley,” *International Environmental Agreements* 9(1) (2009): 85. This article was cited in http://economicpoint.com/enclave-economy (accessed January 16, 2017).

[9] Ibid.

spending by both government and firms undercut the potential gains to Mexico.[10] Hence, the importance of PRs in a host State's domestic growth through foreign direct investment is highlighted.

Types of Performance Requirements

There have been a number of studies conducted on performance requirements and it has been observed that different experts have adopted different criteria to analyze the types of PRs. At the outset, the PRs can be categorized on the basis of legal instruments which prohibit these. The first category, as discussed earlier, consists of PRs *prohibited under TRIMs*. These PRs have been covered under the Illustrative List annexed to TRIMs on the basis of their inconsistency with Article III:4 (National Treatment) and Article XI (Prohibition of Quantitative Restrictions) of General Agreement on Trade and Tariffs, 1994 (GATT). The second category covers *WTO+ PRs* which are not prohibited under TRIMs but are expressly prohibited under BITs or IIAs. The parties to a BIT/IIA agree to not impose a set of PRs on FDI (existing or future) with a view to attract investors who could be enticed by such an assurance by the host State. It must be noted that the set of PRs under BITs/IIAs may comprise of PRs already prohibited under TRIMs. So, these "WTO+" PRs are generally the ones in addition to the PRs prohibited under TRIMs. The third category of PRs under this criterion consists of all the PRs not prohibited under either TRIMs or BITs/IIAs. A host State may impose these PRs on foreign investment with complete immunity. UNCTAD (2001) has summarized the above mentioned PRs in the **Table 1** below:

Table 1: Categories of Performance Requirements

Category	Performance Requirement
Prohibited by the TRIMs Agreement	- Local content requirements - Trade-balancing requirements - Foreign exchange restrictions related to the foreign-exchange inflows attributable to an enterprise - Export controls
Prohibited, conditioned or discouraged by IIAs at bilateral or regional levels	- Requirements to establish a joint venture with domestic participation; - Requirements for a minimum level of domestic equity participation; - Requirements to locate headquarters for a specific region; - Employment requirements; - Export requirements; - Restrictions on sales of goods or services in the territory

[10] Discussion on the article by Gallagher and Zarsky with Carnegie Endowment for International Peace was published at http://carnegieendowment.org/2007/10/26/enclave-economy-foreign-investment-and-sustainable-development-in-mexico-s-silicon-valley-event-1072 (accessed January 17, 2017).

Category	Performance Requirement
	where they are produced or provided; - Requirements to supply goods produced or services provided to a specific region exclusively from a given territory; - Requirements to act as the sole supplier of goods produced or services provided; - Requirements to transfer technology, production processes or other proprietary knowledge; - Research and development requirements.
Not restricted	All other performance requirements.

(Source: UNCTAD, 2001a)[11]

The second criterion for classifying PRs is on stage of imposing these requirements. As discussed above, the first category under this criterion is PRs imposed at the point of entry, also called as *PoE PRs*. These PRs have to be fulfilled by the investor as a prerequisite to their investment or operation. Further, PRs are also imposed at a *post-entry* stage. These post-entry PRs are generally required to be fulfilled for expanding existing investment or availing advantages or incentives (tax incentives, location advantages etc.).

The third category of PRs includes *mandatory PRs* and *voluntary PRs*. All PRs (irrespective of the legislations covering them or the stage of their imposition) fall under this category. Mandatory PRs are the ones which have to be compulsorily complied-with by the investor in order to either set up an investment or expand an existing investment or operate under the said investment. Non-compliance could result in rejection of the investment by the host State and the investment could never be materialized. On the other hand, the voluntary PRs are non-mandatory in nature. Though these PRs are required by the States to be fulfilled on part of the investor, the investor can opt to not fulfil these and yet continue with their investment. However, voluntary PRs are generally attached with certain incentives which the host State might offer if the investor complies. These incentives could include tax benefits or subsidies. It is understood that even if voluntary PRs are non-mandatory, the lucrative nature of these incentives and competitive advantage the investor might attain, make it difficult for the investor to choose against fulfilling these.

Aaron Cosbey (2015) and Pierre Sauvé (2016) have classified performance requirements into the following four categories on the basis of the aim behind the PR measures:

11 United Nations Conference on Trade and Development, *Host Country Operational Measures* (Geneva and New York: United Nations), Sales No. E.01.II.D.19.

(a) PRs that aim to strengthen domestic capacity;
(b) PRs that aim to build backward or forward linkages;
(c) PRs that aim to improve social outcomes; and
(d) PRs targeting export performance of local firms.

Cosbey states that different policy tools apply to each of the abovementioned category.[12] **PRs that aim to strengthen domestic capacity** normally include research and development (R&D) requirements, technology transfer requirements and joint venture requirements. PRs requiring developing local R&D facilities and undertaking technology transfer are voluntary PRs which have to be accompanied by policy tools granting incentives to the compliant investor. However, the attraction of incentives would not be sufficient for enabling compliance on part of the investor if the host State is unable to strengthen domestic capacity accordingly. If a host State does not develop a working system of innovation and training, the cost of compliance to these PRs would be greater than the incentives the host State may have to offer.[13]

The joint-venture requirement, albeit an unpopular one among the foreign investors, is a PR imposed by the host State for those sectors where the motive is to build a competitive capacity among domestic players. The foreign investor is required to grant certain percentage of ownership to a domestic partner. This PR is a more common requirement in the developing countries with an intention to give domestic enterprises an exposure to latest technology, better management methods and optimum resource utilization skills. China used these sorts of requirements heavily in its drive to foster globally competitive national champions in the manufacturing and heavy industries sectors, starting as early as the late 1970s.[14]

The second category which Cosbey discusses comprises **PRs that aim to build backward or forward linkages**. These PRs include requirements like local content requirement or domestic procurement of resources and local processing of products from the investment. These PRs are generally imposed by countries intending to attract resource-pursuing foreign investors and are touted for success only if accompanied with policy tools of localization and best practice.[15] This category of PRs is targeted towards investors which operate by importing inputs, experts and technology for core business practices, export largely unprocessed goods and does not prefer hiring locals. Local content requirements are

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12 Aaron Cosbey, "Everyone's Doing It: The Acceptance, Effectiveness and Legality of Performance Requirements," *Investment Treaty News*, IISD, February 19, 2015, https://www.iisd.org/itn/2015/02/19/everyones-doing-it-the-acceptance-effectiveness-and-legality-of-performance-requirements/ (accessed December 26, 2016).

13 UNCTAD, "Foreign Direct Investment and Performance Requirements".

14 Margaret M Pearson, *Joint Ventures in the People's Republic of China: The Control of Foreign Direct Investment under Socialism*, 1st ed. (Princeton, N.J.: Princeton University Press, 1991).

15 Aaron Cosbey, *Everyone's Doing It*.

prohibited under TRIMs but domestic procurement of resources is practiced by a WTO Member which is not a party to the WTO's plurilateral Government Procurement Agreement. Domestic procurement involves the host State to purchase from the investor on a condition that a certain level of local content is used for manufacturing the purchase. It must be noted that to give effect to compliance of this PR, the host State must ensure that its domestic suppliers have the capacity to supply content to the foreign investor. Since the aim is to build backward or forward linkages, the host State must push domestic suppliers towards higher productivity but to an extent which is practically achievable by domestic suppliers.

The third category includes **PRs that aim to improve social outcomes** by employing locally and participating in capacity building to train local populace with skills and technology. These PRs are quasi-voluntary in nature as the investors recognize the need of skilled labour force (or skilled officials at higher management levels). On the one hand, there is a need for the host State to ensure the quality of locals having the specific skill-set to match the investor needs. If the host State fails to provide employees with the required skill, the investor would not find local hiring a lucrative option. Like domestic procurement measures, it is important for the host State to conduct training, capacity building and provide specialized learning to local population. On the other hand, the investor's need for employees with the required skill-set drives them to either train the local population or join the host State in its initiatives in this direction. UNCTAD has noted that countries such as South Africa and Malaysia have established skills development funds into which foreign investors must pay, and these have been relatively successful at improving employee skills.[16] Failure to improve the local workforce could result in diversion of FDI to another country with a better pool of skilled labour. Porter and Kramer (2011) mention the concept of "shared value" between a local supplier firm and the foreign investor.[17] The supplier firms are supported to become more globally competitive, and the foreign investor benefits from higher quality locally sourced inputs (often better adapted to local conditions than what might be available internationally.

Developed countries, too, in the past, have attached employment creation criteria (or requirements) and granting of incentives. For example, in Ireland, the grant cost per job created was the key guideline for offering incentives. The grant level could increase if projects involved, among other aims, higher value-added and increased skill content. The follow-up that occurred was also generally made with regard to the employment goal.[18] PRs had been an important policy tool for developed countries to reap maximum

[16] UNCTAD, "Foreign Direct Investment and Performance Requirements", 31.
[17] Michael E. Porter and Mark R. Kramer, "Creating Shared Value: How to Reinvent Capitalism-- and Unleash a Wave of Innovation and Growth", *Harvard Business Review*, 2011, 63-70.
[18] UNCTAD, "Foreign Direct Investment and Performance Requirements", 31.

gains from FDI. During the 1960s to the 1980s a number of developed countries regulated TNC operations, both at entry to a country and on their subsequent expansion.[19]

Another advanced economy which uses local employment requirement (an form of PR) as a means to derive benefits from inward FDI is the United States. In the renewable energy sector, incentives are granted and/or maintained in the form of renewable energy credits offered for each megawatt hour of electricity generated from a renewable energy system constructed using a *workforce composed of residents of Michigan*.[20]

The fourth and last category is **PRs linked to export performance** of locally established firms. Pierre Sauvé adds this category to the abovementioned categories discussed by Cosbey stating that a wide range of policy measures are applied by host States to promote export-led growth with the involvement of inward FDI.[21] Citing the WTO's ruling on various aspects of Canada's Foreign Investment Regulation Act, Sauvé states that export-related PRs fall under "WTO+" PRs category (see the discussion above) as these were found GATT-consistent by the WTO Panel.[22] Export performance requirements are *requirements to export a certain amount or percentage of output of the investment*. In order to persuade foreign investors to turn to external markets for their products, host States make exporting a contingency for market access. This situation is enticing for first-movers as the foreign investors who are first to invest in the host State have an opportunity to establish new export platforms, triggering subsequent decisions by other firms to do likewise in the same industry.[23] Sauvé cites the experience of Intel in Costa Rica as an example of the powerful signals that a large first mover investor can send about a host State's investment climate. He states that export-related performance requirements help the host States to command a significant share of world market in a specific export, to diversify export mix and to promote internationalization of a specific industry. In India, some domestic-market seeking FDI, for example in the agro-food and automotive industries, has complied with export requirements that were imposed as a condition for market access and resulted in some favourable externalities to the host economy in the form of vertical trade linkages as well as the diffusion of new technology.[24] Such spillovers from FDI are successfully possible in developing countries with large domestic market which give countries a strong

[19] Ibid.
[20] Sections 39(2)(e) of The Clean, Renewable and Efficient Energy Act, Public Act No. 295 of 2008.
[21] Pierre Sauvé, "Life Beyond Local Content: Exploring Alternative Measures of Industry Support in the Context of WTO Accession", *Journal of International Trade*, 2016, 11.
[22] Canada - Administration of The Foreign Investment Review Act, (FIRA), (L/5504 - 30S/140), Report of the Panel adopted on February 7, 1984.
[23] Theodore H. Moran, Edward Montgomery Graham, and Magnus Blomström, ed., *Does Foreign Direct Investment Promote Development?* (Washington, D.C.: Institute for International Economics, 2005).
[24] Pierre Sauvé, *Life Beyond Local Content*, 12.

standing *vis-a-vis* foreign investor. However, it is important for these developing countries to establish a link between export performance requirements with domestic market access.

EMERGING AND DEVELOPING ECONOMIES APPROACH

Performance requirements are of particular interest to emerging and developing economies (EDEs), since they can be used as a tool to ensure that the incoming foreign investments are guided towards local and national priorities to further environmentally and socially sustainable development.[25] This is because the EDEs view FDI as an important medium to integrate with the global economy and expect the exposure to international market help developing their own economy. However, just like any other exposure, exposure to international market may come with its fair share of risks. Foreign corporate firms, in search of resources or newer markets, are attracted towards resource-rich EDEs or EDEs with large market for their products. Globalization, integrated international investment regime and trade liberalization have resulted in linking corporations with EDEs which could satisfy their need (in terms of resources or market). The risk involved with this set up is that the transnational corporations organize their production activities across borders in accordance with their own corporate strategies and the competitive advantages of EDEs. In order to narrow the gap between the objectives of EDEs and transnational corporations, governments use a variety of policy measures. EDEs reserve a right to impose PRs to enable sustainable development (environmentally, socially and economic). They justify it by arguing that the developed countries or advanced economies (AEs) had used these PR tools during their phase of industrialization and have benefitted from these, whereas the EDEs are yet to attain the same level of industrialization and have an equal right to impose PRs on foreign investments.

This paper studies the pattern of PRs used by the EDEs and study the regulatory flexibility these economies continue to exercise in relation to PRs. As has been discussed earlier in this paper, since TRIMs Agreement has a set of PRs prohibited to be used by WTO Member States, the PRs being used internationally are “WTO+” PRs and those which are not prohibited under any legal instrument. EDEs continue to resort of “WTO+” PRs primarily against foreign investors from the AEs because backed up by financial strength, the multinational corporations from AEs invest aggressively in the EDEs with an intention to exploit the EDEs’ capital need for their private advantage (of profit maximization).

There is no dispute on the fact that EDEs use “WTO+” PRs, but whether there is a need to expand the set of TRIMs PRs to include “WTO+” PRs has been a topic of discussion for a long time now. There have been calls to prohibit all PRs under TRIMs with the argument that in a North-South investment arrangement (BITs/IIAs between AEs and EDEs), the investors from AEs witness a diminishing return from their investments in EDE host States. The cost of complying with PRs imposed sometimes outnumber the benefits (incentives) offered by the host States.

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[25] Bernasconi-Osterwalder and Jha, *Performance Requirements: An Overview of Approaches*.

But before this discussion takes shape, it is important to study the specific PRs the EDEs are using in respect to foreign investments and the sectors which have the maximum incidence of PRs in EDEs. The UNCTAD (2003) cited a research conducted by Kumar and Singh (2002) which stated that the most prominent PR which has been used by the EDEs is local content requirements linked to the automotive sector. However, local content requirements in other industries and other types of requirements have also been imposed by a number of developing countries.[26] **Table 2** below depicts the incidence of PRs in EDEs (as produced in the UNCTAD's 2003 report).

Table 2: Incidence of performance requirements among developing countries

Type of requirement	Economy
Local content in the automotive industry	Argentina, Brazil, Chile, China, Colombia, Ecuador, India, Indonesia, Malaysia, Mexico, Philippines, Republic of Korea, South Africa, Taiwan Province of China, Thailand, Uruguay, Venezuela.
Local content in other industries and other performance requirements	Barbados, Bolivia, Chile, China, Costa Rica, Cyprus, Colombia, Dominican Republic, Egypt, India, Indonesia, Malaysia, Mexico, Nigeria, Pakistan, Peru, Philippines, Republic of Korea, South Africa, Thailand.

(Source: Kumar and Singh (2002) based on notifications under the TRIMs Agreement and WTO/UNCTAD (2002).)

UNCTAD (2003) cited a survey conducted by Taylor Nelson Sofres Consulting (2000) that the largest number of performance requirements and other restrictions were noted for relatively large developing countries.[27] Requirements encountered included joint venture or domestic equity requirements; local content requirements, and more than half the respondents had encountered export requirements.[28] The major intention of EDEs behind attracting FDI is to reap its benefits in the form of, for example, capital generation in order to finance their infrastructure. Mandatory PRs might not be an attractive proposition for a foreign investor who could find it difficult to comply with the said mandatory PRs and hence, lose out on an opportunity to invest in the host State (compliance of mandatory PRs is, by virtue of being mandatory in nature, a prerequisite to establishment, acquirement, expansion, management, conduct, operation or sale etc of an investment). This could render the purpose of attracting FDI useless. Hence, the trend among the EDEs is to impose *voluntary PRs*, instead of riskier *mandatory PRs*, with incentives to enable the investors to comply with voluntary PRs despite these being of non-mandatory in nature.

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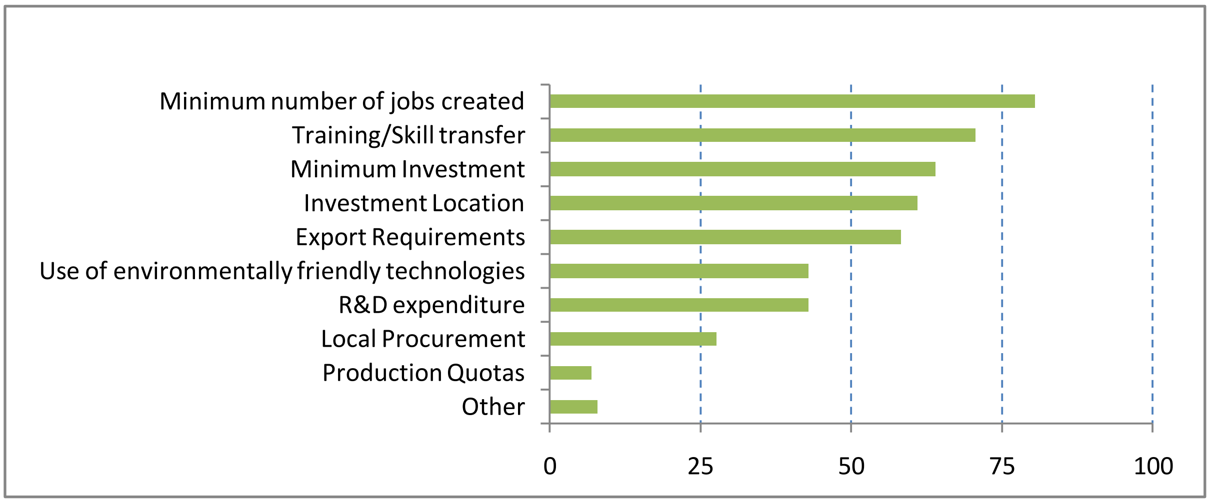
[26] UNCTAD, "Foreign Direct Investment and Performance Requirements", 13.

[27] Taylor Nelson Sofres Consulting (2000). "Survey of the Attitudes of the European Business Community to International Rules". Report prepared for the European Commission, Directorate General of Trade, Brussels, mimeo.

[28] Ibid.

It is crucial to bear in mind that the set of performance requirement measures provided in the illustrative list of the Annex to TRIMs Agreement were prohibited on the basis of the rationale that the imposition of these measures have a trade restrictive effect and also while keeping in mind the development and financial needs of developing country members.[29] This can be better understood from an UNCTAD survey (2014) that focused on the frequency of measures taken by investment promotion agencies to promote sustainable development goals.[30] The survey showed that the most important performance requirements used were the ones that are not prohibited explicitly under TRIMs (**Figure 1**).

Figure 1: Most important performance requirements linked to investment incentives for foreign investors (Percent)



(Source: UNCTAD, World Investment Report 2014)

In light of the above discussion, a review of performance requirements in select EDEs would enable us to study the pattern of the common PRs in use and the sectors which witness incidence of specific PRs.

India

India's large domestic market continues to be an attractive destination for market-seeking foreign investors. As a result, India allows foreign investment in almost all the sectors, albeit with certain limitations.[31] Such limitations are either in the form of investment caps in certain sectors or in the form of

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29 Neeraj R.S., "A Possible WTO Agreement on Investment- Identifying Emerging Issues and their Implications for India," *Centre for WTO Studies Working Paper Series CWS/WP/200/30*, 16.

30 Ibid.

31 FDI is prohibited under the Approval Route as well as the Automatic Route in the following sectors:
a) Atomic Energy;
b) Lottery Business;

"WTO+" performance requirements. Investment in India is made through two routes: automatic route and approval route. Under the automatic route, FDI is allowed without prior approval of the government in all activities/sectors. On the other hand, FDI in activities not covered under the automatic route requires prior approval of the government which are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance.

Annexure I provides the author's compilation of sector-wise performance requirements used by India for foreign investment from the Foreign Direct Investment Policy, 2016 (FDI Policy).

A perusal of Annexure I shows that the most commonly used PRs by India in different sectors are nationality requirement, local incorporation/registration requirement, lock-in period requirement, minimum FDI limit and capitalization norms requirement and local ownership and control requirement.[32] In addition, joint-venture requirements, technology transfer and R&D requirements and employment and training requirements are also used by India. Such requirements are a necessity for a country like India, an EDE, with a high priority given to encourage local sourcing and improving trade balance. The reason is that such a policy approach is impeded by its WTO commitments (TRIMs PRs, for example). Since the TRIMs PRs are prohibited to be used by a WTO Member State, countries are resorting to attract FDI by prohibiting more PRs which are in addition to the PRs prohibited under the Illustrative List of TRIMs. These PRs, as suggested above, are "WTO+" PRs and are prohibited under BITs/IIAs. India has entered into BITs/IIAs with a number of countries in order to attract foreign investment and strengthen economic ties with its trading partners. Inevitably, India and its IIA counterparts have expressly prohibited a set of PRs in their IIAs. **Table 3** below covers the prohibited PRs under select IIAs of which India is a party to.

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c) Gambling and Betting;
d) Business of Chit Fund;
e) Nidhi Company;
f) Agricultural (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and cultivation of vegetables, mushrooms, etc. under controlled conditions and services related to agro and allied sectors) and Plantations activities (other than Tea Plantations);
g) Housing and Real Estate business (except development of townships, construction of residential/commercial premises, roads or bridges to the extent specified in government notifications).
h) Trading in Transferable Development Rights (TDRs); and
i) Manufacture of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

[32] Please refer to Annexure 1 for a detailed study of all the PRs used by India in different sectors.

Table 3: Performance Requirements prohibited under India's select BITs

S. No.	Performance requirement prohibited	India-Japan CEPA	India-Korea CEPA	India-Singapore CECA
A.	*In connection with establishment, acquisition, expansion, management, conduct, operation or sale etc of an investment if an investor:*			
1.	Export Requirement (a given level or percentage of goods or services)	●	●	
2.	Export restrictions	●		
3.	Achieve a given level or percentage of domestic content	●	●	
4.	Purchase, use or accord preference to domestic or purchased goods or services from persons within the territory	●	●	●
5.	Export-import balance or foreign exchange balance	●	●	
6.	Restriction on sale of goods or services linked to exports/ foreign exchange earnings	●	●	●
7.	Transfer of technology, production process or proprietary knowledge	●	●	
8.	Exclusive supply of goods or services to specific regional or world market	●	●	
9.	Receipt of advantage on compliance with prohibition of transfer of technology and exclusive supply to specific market			
10.	Purchase or use of imported products limited with respect to volume/value of local products exported			●
11.	Restricting imported products for local production to the export of locally produced products			●
12.	Restricting imported products for local production by restricting access to foreign exchange limited to forex inflows attributable to the enterprise			●
13.	Management from a particular nationality	●	● (Article 10.6)	
14.	Requirement relating to purchase, use or accordance of preference			
15.	Amount of royalty under a license contract			
16.	Duration of the term of a license contract			
B.	*In relation to receipt or continued receipt of an advantage in connection with establishment, acquisition, expansion, management, conduct, operation or sale etc of an investment if an investor:*			
1.	Export requirements (export a certain percentage of goods and services)	●	●	

S. No.	Performance requirement prohibited	India-Japan CEPA	India-Korea CEPA	India-Singapore CECA
2.	Export restrictions	●		
3.	Domestic content	●	●	
4.	Purchase, use or accord preference to domestic or purchased goods or services from persons in its territory		●	
5.	Export-import balance/ foreign exchange balance	●	●	●
6.	Restriction on sales of goods or services linked to exports/ foreign exchange earnings	●	●	
7.	Restriction on sale of goods or services linked to exports/ foreign exchange earnings	●	●	●
8.	Transfer of technology, production process or proprietary knowledge			
9.	Exclusive supply of goods or services to specific regional or world market			
10.	Receipt of advantage on compliance with prohibition of transfer of technology and exclusive supply to specific market			
11.	Purchase or use of imported products limited with respect to volume/value of local products exported			●
12.	Restricting imported products for local production to the export of locally produced products			●
13.	Restricting imported products for local production by restricting access to foreign exchange limited to foreign exchange inflows attributable to the enterprise			●
14.	Management from a particular nationality	●		
15.	Requirement relating to purchase, use or accordance of preference			
16.	Amount of royalty under a license contract			
17.	Duration of the term of a license contract			

(Source: Author's analysis of prohibitions of PRs under Article 89 of India-Japan CEPA, Article 10.5 of India-Korea CEPA and Article 6.23 of India-Singapore CECA)

The data under Table 3 above clearly suggests that there is a lack of uniformity in the PRs which India has agreed to prohibit under its select IIAs. Although there is an overlap in prohibited PRs across the table above, there are other PRs which are prohibited under an IIA, on one hand, but countries, on the other hand, exercise full flexibility with respect to the same PRs under other IIAs. This creates complications arising out of uncertainty in overlapping IIAs such as lack of clarity in determining the effective rules that restrict the state's behaviour and difficulties in determining the substantive obligations towards foreign investors.[33] Chaisse and Hamanaka (2014) have coined the expression "noodle-bowl of IIAs" for such a situation where states have chosen to differentiate between their IIA partners in different treaties and tailor-make the performance requirement rules to suit specific objectives.[34] There is no limit to the number of measures which could be used by countries as PRs and each additional PR which is not prohibited under TRIMs becomes a "WTO+" PR. As discussed above, using "WTO+" PRs is an attractive means for EDEs to stipulate FDI's benefits for their domestic economic growth.

Indonesia

The Government of Indonesia's State Department's Office of Investment Affairs' Investment Climate Statement states that "*the government of Indonesia expects foreign investors to contribute to training and development of Indonesian nationals, allowing the transfer of skills and technology required for their effective participation in the management of foreign companies*".[35] Badan Koordinasi Penanaman Modal (BKPM)[36] requires a foreign firm to submit an Expatriate Placement Plan if the firm wants to hire foreign nationals for its investment operations in Indonesia. The general rule in Indonesia is that foreign nationals can be hired by foreign investors only for the positions deemed open to foreigners by the Indonesian government.[37] In addition to training requirement, technology transfer requirement, local management requirement, Indonesia also imposes local content requirement to major new acquisitions (routine or recurring procurements for maintenance and sustainment are left out of this requirement). Offset policy requirement authorizes Indonesian end users to procure defense articles from foreign suppliers *if those*

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33 Julien Chaisse and Shintaro Hamanaka, "The Investment Version of the Asian Noodle-Bowl: The Proliferation of International Investment Agreements," *ADB Working Paper Series on Regional Economic Integration*, no.128, (2014): 14.

34 Ibid; Neeraj, "A Possible WTO Agreement on Investment," 16.

35 The statement on investment climate in Indonesia by Government of Indonesia's State Department's Office of Investment Affairs can be found at http://www.export.gov/article?id=Indonesia-Performance-Requirements (accessed January 4, 2017)

36 Indonesia's Investment Coordinating Board located in Jakarta. It acts as a primary interface between the Government of Indonesia and business with an aim to make Indonesia attractive to FDI and stimulate realization of a more conducive climate for investment.

37 Statement on investment climate in Indonesia by State Department's Office of Investment Affairs (Government of Indonesia).

articles cannot be produced within Indonesia. Such a measure has been adopted in order to build competition between foreign suppliers and domestic producers of defense articles.

The abovementioned requirements are a few examples of the manner in which Indonesia continues to use PRs in order to benefit its domestic economy from FDI. The country has enacted new laws relating to investment, export financing, as well as in agriculture, fisheries, mining, tourism etc. Indonesia aims to strengthen its economic ties with its neighbours bilaterally as well as through Association for South East Asian Nations (ASEAN). The developmental plans of Indonesia aim to increase competitiveness of its local businesses and encourage a shift into higher value-added activities.[38] The WTO Secretariat (2013) notes that a new foreign investment law was enacted in 2007 which represents an improvement over the previous rules (for example, there are no maximum time frames for investment in permitted sectors post-2007). However, the government of Indonesia has released a "*Negative List*" which comprises of a comprehensive list of investment restrictions and performance requirements.[39] Investment restrictions and PRs under the Negative List are of the following nature:

(a) Business Fields reserved for small and medium enterprises (SMEs);
(b) Business Fields with Partnership requirements;
(c) Foreign capital ownership requirements;
(d) Locally-sourced raw materials requirements;
(e) Maximum domestic capital requirement;
(f) Special licensing requirements;
(g) Location requirements;
(h) Special conditions for investors from ASEAN countries;
(i) Monopoly company requirement;
(j) Ministerial permission requirements; and
(k) Other conditions.

It must be noted that the conditions/PRs used by Indonesia under the "Negative List" follow the same pattern as those used by India under its FDI Policy (of 2016) with the exception of special conditions for investors from ASEAN countries investing in Indonesia. **Annexure II** covers an exhaustive list of business fields which are open to foreign investment but with conditions/PRs. The Negative List also consists of the following business fields which are completely closed to foreign investment:

[38] Executive Summary of the WTO Secretariat Report for Trade Policy Review of Indonesia, 2013, WT/TPR/S/278.

[39] Presidential Regulation of the Republic of Indonesia Number 44 Year 2016 Concerning List of Business Fields that are close to and Business Fields that are open with Conditions to Investment.

1. Agriculture Sector: Marijuana Cultivation
2. Forestry Sector:
   a. Capturing of fish species as stated in *Appendix I Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES);
   b. Use (removal) of coral/atoll from nature for construction material/lime/calcium and souvenir/jewelry, also live or dead coral from nature.
3. Industry:
   a. Alcohol beverage industry;
   b. Mercury processed chlorine alkali maker industry;
   c. Chemical material industry that can damage the environment;
   d. Chemical material industry as stated in *Schedule 1 of Chemical Weapons Convention*.
4. Transportation:
   a. Providing and implementation of land terminals;
   b. Implementation and operation of weight stations;
   c. Implementation of motor vehicle type tests;
   d. Implementation of motor vehicle periodic tests;
   e. Telecommunication/supporting facility of shipping navigation;
   f. Vessel traffic information system;
   g. Air traffic guiding system.
5. Communication and informatics: management and implementation of radio frequency and satellite orbit spectrum monitoring stations.
6. Culture and tourism:
   a. Public museums;
   b. Historical and ancient heritage;
   c. Residential/traditional environment;
   d. Monuments;
   e. Gambling/casinos.

It becomes clear that Indonesia, like most EDEs, is vary of the risks involved in opening certain business fields/sectors to foreign investments but is also aware that lack of FDI could hinder its economic growth. Therefore, the government of Indonesia timely revises the Negative List after a detailed cost-benefit analysis of opening or closing business fields to FDI and setting up the conditions for those which are open to FDI.

Republic of South Africa

South Africa does not have stand-alone foreign investment legislation and sector-specific regulations/laws set condition(s) for investment in South Africa. The Company Act, 2008 of South Africa requires a foreign company to register with the Company and Intellectual Property Commission within 20 (twenty) business days of first beginning to conduct business or non-profit activities. For this purpose, the foreign company must be a party to employment contract(s) within the country or must engage in a course of conduct or pattern of activities within South Africa over a period of at least six months. These conditions imposed on a foreign company to operate its investment in South Africa is a form of performance requirement, failing which, the foreign investor may be found in non-compliance of the 2008 Act, thereby risking legal implications.

The government of South Africa has introduced the Protection of Investment Act, 2015[40] wherein the government has been provided with an authority to exercise its right to regulate in a list of fields, including rights guaranteed in the Constitution (of South Africa), fostering economic development, industrialization and benefication and achieving the progressive realisation of socio-economic rights.[41] Additionally, the government can take measures that are necessary for the, inter alia, "*...financial stability of the Republic*".[42]

The Broad-Based Black Economic Empowerment (B-BBEE) Act, 2003[43] was enacted by South Africa in furtherance to its policy to advance economic transformation and enhance economic participation of black people in the South African economy. In this regard, the Minister of Trade and Industry has issued Codes of Good Practice as an implementation framework of B-BBEE policy and legislation. Institutional mechanisms were established for monitoring and evaluation of B-BBEE in the entire economy.[44] Additionally, Spatial Development Initiatives (SDIs) have been adopted by South Africa to create employment through innovative methods of investment facilitation.

Despite not having a stand-alone legislation on foreign investment, like India and Indonesia, South Africa has enacted many domestic legislations and policies which lay certain conditions (or PRs) on foreign investors in connection with establishment, acquisition, expansion, management, conduct, operation or sale etc of their investment.

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[40] Act No. 39514, Government Gazette, Vol. 606, Republic of South Africa.
[41] Section 12(1) of the Protection of Investment Act, 2015.
[42] Section 12(2) of the Protection of Investment Act, 2015.
[43] Act No. 55 of 2003, Vol. 583, Republic of South Africa.
[44] Information from the website of Department of Trade and Industry, Republic of South Africa, http://www.thedti.gov.za/economic_empowerment/bee.jsp (accessed January 17, 2017).

EU-Canada CETA

After studying the pattern of use of "WTO+" PRs by three EDEs and their prohibitions under select IIAs or under their domestic regulations, it is of paramount importance to consider an IIA which has AEs as parties to it. The increased use of "WTO+" PRs by developing countries (EDEs), howsoever beneficial to the host State's economic development, are countered by prohibition of a majority of those PRs under modern model BITs proposed by the AEs and IIAs signed among the AEs.

The EU-Canada Comprehensive Economic and Trade Agreement (CETA) is a case in point. The CETA has been aggressively negotiated by policy makers of both EU and Canada keeping the interests of corporate investor firms in serious consideration. As seen in **Table 4** below, the number of performance requirements prohibited under CETA far exceeds the TRIMs PRs and the prohibitions under select IIAs involving EDEs (case in point are the select IIAs entered into by India).

Table 4: “WTO+” Performance Requirements prohibited under EU-Canada CETA

S. No.	Performance requirement	Prohibition
In connection with establishment, acquisition, expansion, management, conduct, operation or sale etc of an investment:		
1.	**Technology Transfer**	Transfer of technology, production process or proprietary knowledge to a natural person or enterprise in its territory.
2.	**Exclusive Supply**	Exclusive supply of goods or services to specific regional or world market
3.	**Local Management**	A Party shall not appoint natural persons of any particular nationality to senior management or board of director positions.
4.	**Research and Development**	A Party is not prevented from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory, on compliance with requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.
With respect to Market Access, a Party shall not adopt a measure that imposes limitations on:		
5.	**Number of firms or employees in a sector**	The number of enterprises that may carry out a specific economic activity (numerical quotas, monopolies, exclusive suppliers or the requirement of an economic needs test).
6.	**Numerical quota**	The total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test.
7.	**Entry quota**	The total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test.
8.	**Local minimum equity requirement/ maximum foreign limit**	The participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.
9.	**No. of Employees**	The total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.
10.	**Joint Venture requirement**	Restricts or requires specific types of legal entity or joint venture through which an enterprise may carry out an economic activity.

(Source: Articles 8.4 and 8.5 of EU-Canada CETA)

CONCLUSION

Higher the number of PRs prohibited under a BIT/IIA, greater is the rigidity to use such measures as economic policy tools. This is exactly the case in CETA. The large number of PRs prohibited under the CETA eliminates the flexibility for states to regulate incoming investment, thereby reducing the overall scope of their policy discretion. It must be noted that not all countries in EU can afford an unregulated (or minimum regulations) FDI inflow due to their varied capabilities to benefit from FDI. A country which has a resource-rich economy might find it difficult to counter the cost of protecting incoming investments without a policy space to regulate optimum and judicious utilization of its resources. It must be noted that Canada, on the other hand, has prohibited use of similar PRs in its previous treaties and been subject to investor-state dispute settlement arbitrations brought by US oil companies relating to this provision in NAFTA.[45]

As the benefits of FDI to the host countries are not automatic and regulations are needed to balance the economic requirements of investors with the need to ensure that investments make a positive contribution to sustainable development in the host countries,[46] a shift from use of PRs towards a greater prohibition of PRs may be damaging to the domestic economic growth of the host States as the States could either freeze their right to regulate or risk facing expensive international investment arbitration under the IIAs prohibiting the said PRs. Yet another disadvantage looming over the EDEs is the call for expanding the set of PRs prohibited under TRIMs from the developed countries. In case such an effort is successful, it could be lead to an uncertainty in EDEs-involving investment arrangements due to the fact that EDEs have chosen to differentiate between their IIA partners in different treaties and tailor-make the performance requirement rules to suit specific objectives. Additionally, there is a considerable variation, in terms of scope and the degree of prohibition between extant BITs. Hence, the push by developed countries for including more prohibited PRs under the Illustrative List of TRIMs (or AE-EDE IIAs) might risk the global economic equilibrium which has found the EDEs at its central circle since the establishment of WTO.

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45 Nathalie Bernasconi-Osterwalder, "The Draft Investment Chapter of the Canada-EU Comprehensive Economic and Trade Agreement: A Step backwards for the EU and Canada?," *Investment Treaty News*, IISD, June 26, 2013, http://www.iisd.org/itn/2013/06/26/the-draft-investment-chapter-of-canada-eu-comprehensive-economic-and-trade-agreement-a-step=backwards-for-the-eu-and-canada/ (accessed January 04, 2017).

46 An extract of the speech by Mr. Robert Davies can be found here: http://us5.campaign-archive1.com/?u=fa9cf38799136b5660f367ba6&id=eebc192620 (accessed December 28, 2016).

Annexure I

Sector-wise performance requirements for foreign investment in India

S. No.	Sector and FDI cap	Performance requirements permitted
1.	**Agriculture**	
	Plantation (100% through automatic route)	Prior approval of the concerned State Government is required in case of any future land use change.
2.	**Mining and Petroleum and Natural Gas**	
(a)	Mining of coal and lignite (100% through automatic route)	Setting up coal processing plants like washeries subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply to those parties who are supplying raw coal to coal processing plants for washing or sizing.
(b)	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities (100% through approval route)	FDI for separation of titanium bearing minerals & ores will be subject to (inter alia) the condition that value addition facilities are set up within India along with transfer of technology. *Clarification*: The objective is to ensure that the raw material available in the country is utilized for setting up downstream industries and the technology available internationally is also made available for setting up such industries within the country. Thus, if with the technology transfer, the objective of the FDI Policy can be achieved, the condition prescribed above shall be deemed to be fulfilled.
3.	**Defence** (49% through automatic route) Above 49% under Government route on case to case basis, wherever it is likely to result in access to modern and 'state-of-art' technology in the country.	Investee company should be structured to be self-sufficient in areas of product design and development. The investee/joint venture company, along with the manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.
4.	**Broadcasting** <u>Broadcasting Carriage Services:</u> 100% (through automatic route upto 49%) <u>Broadcasting Content Services:</u> 49% (through approval route)	(i) CEO, CSO and Chief Officer in-charge of technical network operations of the company shall be Indian citizens; (ii) Majority of the Directors of the Board shall be Indian citizens; (iii) Officers of licensee company dealing with lawful interceptions shall be Indian citizens; and (iv) Transfer of subscriber database to persons/place outside India not allowed unless permitted by relevant law;
5.	**Print Media** <u>Publishing of newspaper and periodicals dealing with news and current affairs:</u>	Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, 2013, as applicable.

S. No.	Sector and FDI cap	Performance requirements permitted
	26% (approval route) <u>Publication of Indian editions of foreign magazines dealing with news and current affairs:</u> 26% (approval route) <u>Publishing/printing of scientific and technical magazines/specialty journals/ periodicals:</u> 100% (approval route) <u>Publication of facsimile edition of foreign newspapers:</u> 100% (approval route)	
6.	**Civil Aviation** (49% through automatic route) (Investment by foreign airlines: 49% of the paid up capital of domestic investee company through approval route)	A Scheduled Operator's Permit can be granted only to a company: (i) that is registered and has its principal place of business within India; (ii) the Chairman and at least two-thirds of the Directors of which are citizens of India; and (iii) the substantial ownership and effective control of which is vested in Indian nationals.
7.	**Construction Development: Townships, Housing, Built-up Infrastructure** (100% through automatic route)	(i) A foreign investor will be permitted to exit and repatriate foreign investment *before the completion of project* under automatic route, provided that a lock-in-period of three years, calculated with reference to each tranche of foreign investment has been completed; (ii) *Consequent to foreign investment in completed projects* for operation and management of townships, malls/ shopping complexes and business centres, transfer of ownership and/or control of the investee company from residents to non-residents is also permitted. However, there would be a lock-in period of three years, calculated with reference to each tranche of FDI, and transfer of immovable property or part thereof is not permitted during this period.
8.	**Industrial Parks (new and existing)** (100% through automatic route)	FDI in industrial parks not subjected to performance requirements under S. no. 7. if the following conditions are met: (i) It would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area; and (ii) The minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.
9.	**Wholesale Trading/ Cash and Carry Wholesale Trading (including sourcing from**	Wholesale trading of group companies should not cumulatively exceed 25% of the turnover of the wholesale venture.

S. No.	Sector and FDI cap	Performance requirements permitted
	MSEs) (100% through automatic route)	
10.	**E-commerce** (100% through automatic route)	(i) E-commerce entities would engage in only B2B e-commerce and not B2C e-commerce; (ii) FDI permitted in only marketplace model of e-commerce (no FDI permitted in inventory-based model); and (iii) An e-commerce entity shall not permit more than 25% of the sales affected through its marketplace from one vendor or their group companies.
11.	**Single Brand Product Retail Trading** (100% through automatic route till 49% and approval route beyond 49%)	FDI in single brand product retail trading to meet the following requirements: (i) 'Single brand' product-retail trading would cover only products which are branded during manufacturing; and (ii) For proposals involving foreign investment beyond 51%, sourcing of 30% of value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, in all sectors; • Procurement requirement to be met, in the first instance, as an average of 5 years' total value of goods beginning April 1 of the year of opening of the first store. Thereafter, it would have to be met annually.
12.	**Multi Brand Retail Trading** (51% through approval route)	(i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded; (ii) Minimum FDI amount by the foreign investor to be USD 100 million; (iii) At least 50% of total FDI brought in the first tranche of USD 100 million shall be invested in 'back-end infrastructure' within three years; (iv) At least 30% of value of procurement of manufactured/processed products purchased to be sourced from Indian MSMEs, including agricultural cooperatives and farmer cooperatives, having total investment in plant and machinery up to USD 2 million; (v) Government to have first right to procurement of agricultural products; and (vi) Retail sales outlets to be opened only in cities with a population of more than 10 lakhs (according to the 2011 census) or other cities as notified by the respective State Governments;
	Financial Services	
13.	**Banking- Private** (74% through automatic route till 49% and approval route beyond 49% and to 74%)	(i) The aggregate FDI in a private bank from all sources will be allowed up to 74% of the paid up capital of the bank. At all times, at least 26% of the paid up capital will have to be held by residents, except in regard to a WOS of a foreign bank; (ii) In the case of FIIs/FPIs, individual FII/FPI holding to be restricted to below 10 % of the total paid-up capital, aggregate limit for all FIIs/FPIs cannot exceed 24 % of the total paid-up capital, which can be raised up to sectoral limit of 74 % of the total paid-up capital by the bank concerned through a Board resolution followed by a special resolution to that effect by its General Body; (iii) A foreign bank may operate in India through only one of the three channels viz., (a) branches (b) a WOS and (c) a subsidiary with aggregate foreign investment up to a maximum of 74 % in a

S. No.	Sector and FDI cap	Performance requirements permitted
		private bank; (iv) Foreign banks will be permitted to either have branches or subsidiaries but not both; and (v) A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 % of the paid capital of the private sector bank is held by residents at all times.
14.	**Credit Information Companies** (100% through automatic route)	FII/FPI investment would be permitted subject to the conditions that: (i) A single entity should directly or indirectly hold below 10% equity; (ii) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and (iii) FIIs/FPIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.
15.	**Infrastructure Company in Securities Market** (49% through automatic route)	(i) FII/FPI can invest only through purchases in the secondary market; and (ii) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in commodity exchanges.
16.	**Insurance** (49% through automatic route)	The Indian insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by Department of Financial Services/IRDAI.
17.	**Power Exchanges** (49% through automatic route)	(i) FII/FPI purchases shall be restricted to secondary market only; and (ii) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in power exchange companies.
18.	**White Label ATM Operations (WLA)** (100% through automatic route)	(i) Any non-bank entity intending to set up WLAs should have a minimum net worth of Rs. 100 crore as per the latest financial year's audited balance sheet, which is to be maintained at all times; (ii) Where the entity is also engaged in any other 18 NBFC activities, then the foreign investment in the company setting up WLA, shall also have to comply with the following minimum capitalization norms for foreign investments in NBFC activities: a. USD 0.5 million for foreign capital up to 51% to be brought upfront; b. USD 5 million for foreign capital more than 51% and up to 75% to be brought upfront; and c. USD 50 million for foreign capital more than 75% out of which USD 7.5 million to be brought upfront and the balance in 24 months.
19.	**NBFCs** (100% through automatic route)	Minimum capitalization norms: (i) USD 0.5 million for foreign capital up to 51% to be brought upfront; (ii) USD 5 million for foreign capital more than 51% and up to 75% to be brought upfront; (iii) USD 50 million for foreign capital more than 75% out of which USD 7.5 million to be brought upfront and the balance in 24 months; (iv) Non- Fund based activities: USD 0.5 million to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of foreign investment; • It would not be permissible for such a company to set up any subsidiary for any other activity, nor can it participate in any equity of an NBFC holding/operating company.

S. No.	Sector and FDI cap	Performance requirements permitted
	Others	
20.	**Pharmaceuticals** Greenfield: 100% through automatic route; Brownfield: 100% through approval route	'Non-compete' clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board; • Not applicable to the industry of manufacturing medical devices (in both greenfield and brownfield projects)

Annexure II

List of Business Fields in Indonesia open for investment but with conditions

S. No.	Sectors and Business Fields	Performance Requirements permitted
I.	**Agriculture Sector**	
1.	Main crop plant cultivation (corn, soy, peanuts, green beans, rice, cassava, sweet potato) for an area ≤ 25 Ha.	Reserved for micro, small, medium enterprises and cooperatives.
2.	Other crop plant cultivation for a land that is ≤ & ≥25 Ha.	
3.	Crop plant cultivation area ≤ 25 Ha.	
4.	Seeding plantation business for a land area ≤ 25 Ha.	
5.	Pig breeding and farming in a quantity ≤ 125.	
6.	Free range chicken and its cross breeding and farming.	
7.	Pig breeding and farming for quantity of more than 125.	Location requirements shall not contradict with local regulation.
8.	Use of genetic agriculture resources	Foreign Capital Ownership: maximum 49%. Special license: recommendation of Minister of Agriculture.
9.	Use of GMO products (genetic engineering)	
10.	Main crop cultivation in an area more than 25 Ha.	
11.	Main crop plant culturing medium/nursery business.	
12.	Other crop culturing medium/nursery businesses.	Foreign Capital Ownership: maximum 95%. Obligation of 20% Plasma Plantation. Special license: recommendation of Minister of Agriculture.
13.	Other plant cultivation for an area of more than 25 Ha.	
14.	Plantation business for an area of 25 Ha. or over, up until a certain area, according to Agriculture Ministry Regulation No. 26 of 2007, without a processing unit.	
15.	Product processing plantation business industry (similar capacity or exceeding certain capacity according to Agriculture Ministry Regulation No. 26 of 2007).	
16.	Plantation business for 25 Ha. area of land or more, integrated to the processing unit by the same capacity or exceeding certain capacity according to Agriculture Ministry Regulation No. 26 of 2007.	
II.	**Forestry Sector**	
17.	Capturing and propagating plants and wildlife from natural habitat except reptiles.	Domestic 100% Local Capital. Special license: recommendation of the Minister of Forestry.
18.	Other forest plantation businesses.	Reserved for micro, small, medium enterprises and cooperatives.
19.	Forest processing prime product industry other log (pine sap, bamboo).	
20.	Swallow's Nest business in nature.	
21.	Saw mill industry (production capacity up to 2000M^3/year).	

S. No.	Sectors and Business Fields	Performance Requirements permitted
22.	Rattan processing prime industry.	
23.	Mangrove semi finished goods industry.	
24.	Rattan business.	Partnership.
25.	Pine sap business.	
26.	Bamboo business.	
27.	Resin business.	
28.	Eaglewood business.	
29.	Shellac business.	
30.	Alternative crop plant business (sago).	
31.	Bee business.	
32.	Latex business.	
33.	Silk worm cocoon/chrysalis business (natural silk).	
34.	Hunting business in hunting parks and hunting blocks.	Foreign Capital Ownership: maximum 49%.
35.	Raising wildlife and plants.	
36.	Coral Raising/Cultivating.	Recommendation from the Ministry of Environment and Forestry.
37.	Nature tourism business such as facility, activity and ecotourism business in forest areas	a. Foreign Capital Ownership: maximum 49%. b. Foreign Capital Ownership: maximum 70% for investors from ASEAN.
38.	Development of technology use on plant and wildlife genetics. (two items below omitted in new list)	Special License: Statement on partnership with accredited institution/ laboratory in Indonesia/national research and development institutions appointed by the Minister of Forestry.
39.	Veneer industry.	Special license: recommendation on sustainable raw material supply from the Minister of Forestry and regulated according to Govt. Regulation No. 6 of 2007 and/or its amendment(s). 100% local capital requirement.
40.	Saw mill industry (production capacity above 2000m^3/year)	Special license: recommendation on sustainable raw material supply from the Minister of Forestry and regulated according to Govt. Regulation No. 6 of 2007 and/or its amendment(s).
41.	Plywood industry.	
42.	Laminated veneer lumber industry.	
43.	Wood chip industry.	
44.	Wood pellet industry.	
45.	Forest plant's seeds and seeding export and import.	100% local capital requirement.
46.	Water environment use service business in forest area.	100% local capital requirement.
III.	**Maritime and Fishery Sector**	
47.	Fishery capture uses, fish capturing ship of the size up to 30 GT, in water territory up to 12 miles or less.	Reserved for micro, small, medium enterprises and cooperatives. Except fish preservation industry all fishing related activities are in form of partnership (Page No. 18, Item No. 79)
48.	Fishery processing business conducted in an integrated manner by	

S. No.	Sectors and Business Fields	Performance Requirements permitted
	catching fish in public water.	
49.	Rearing of marine fish.	Partnership.
50.	Marine fish hatchery.	
51.	Rearing of brackish water fish.	
52.	Brackish water fish hatchery.	
53.	Rearing of fresh water fish.	
54.	Fresh water fish hatchery.	
55.	Fish processing business.	
56.	Fish processing business, fermentation, reduction/chemical process, Surimi and jelly fish process.	
57.	Fish product marketing, distribution.	
58.	Fish catching business using catching ship of a size of 100 GT and/or over in ZEEI catching territory. (two items removed below)	Special license: terms and conditions have been regulated in accordance with the Minister of Maritime and Fishery Regulation No. PER 12/MEN/2009 on fishing catching business.
59.	Fishery catching business using a catching ship of 100GT size and/or bigger in open sea catching areas.	100% local capital requirement.
60.	Fishery catching business using a catching ship of 30 GT size and/or bigger in water areas beyond 12 miles.	
61.	Sea sand extraction.	
IV.	**Energy and Mineral Resources Sector**	
62.	Power Plant (< 1 MW).	100% local capital requirement.
63.	Small Scale Power Plant (1-10 MW).	Foreign Capital Ownership: maximum 49%.
64.	Operation and Maintenance Service of Geothermal Facility.	Foreign Capital Ownership: maximum 90%.
65.	Geothermal Drilling Service	Foreign Capital Ownership: maximum 95%.
66.	Geothermal Power Plant with a capacity of ≤ 10MW	Foreign Capital Ownership: maximum 67%.
67.	Oil and Gas Drilling Service (Offshore)	Foreign Capital Ownership: maximum 75%.
68.	Oil and Gas Drilling Service (Onshore)	100% local capital requirement.
69.	Oil and Gas Construction Services - Platform. - Spherical Tank. - Onshore oil and gas upstream production installation. - Onshore pipeline installation.	 Foreign Capital Ownership: maximum 75%. Foreign Capital Ownership: maximum 49%. 100% local capital requirement. 100% local capital requirement.

S. No.	Sectors and Business Fields	Performance Requirements permitted
	- Offshore pipeline installation. - Horizontal/vertical tank, onshore oil and gas storage and marketing installation.	Foreign Capital Ownership: maximum 49%. 100% local capital requirement.
70.	Power Plant (< 1MW)	100% local capital requirement.
71.	Small-scale power plant (1-10 MW)	Foreign Capital Ownership: maximum 49%.
72.	Geothermal power plant with a capacity of ≤ 10 MW	Foreign Capital Ownership: maximum 67%.
73.	Power Plant (> 10 MW)	Foreign Capital Ownership: maximum 49%. (Maximum 100% for the purpose of Public Private Partnership / KPS during concession period)
74.	Nuclear Power Plant	
75.	Power Plant Transmission	Foreign Capital Ownership: maximum 67%. (Maximum 100% for the purpose of KPS during concession period)
76.	Electricity Distribution	Foreign Capital Ownership: maximum 67%. (Maximum 100% for the purpose of KPS during concession period)
77.	Constructing and Installing Electric Power - Installation of electric power supply. - Installation of high/extra–high voltage electric power utilization-Foreign Capital Ownership 49% - Installation of low/medium voltage electric power utilization	 Foreign Capital Ownership: maximum 95%. Foreign Capital Ownership: maximum 49%. 100% local capital requirement.
78.	Electric Power Installation Operation and Maintenance	Foreign Capital Ownership: maximum 95%.
79.	Electric power installation examination and testing on: - high/extra high voltage electric power supply or utilization - low/medium voltage electric power utilization (removed two items below)	 Foreign Capital Ownership: maximum 49%. 100% local capital requirement.
V.	**Industrial Sector**	
80.	Salting/drying fish and other water biota industry and smoked fish industry.	Reserved for micro, small, medium enterprises and cooperatives.
81.	Processed Food from seeds and roots, sago, *Gnetum gnemon* nut and copra industry.	
82.	Roots Peeling and Cleaning Industry.	
83.	Palm Sugar.	
84.	Thread coloring from natural and artificial fiber to be	

S. No.	Sectors and Business Fields	Performance Requirements permitted
	patterned/dipped/tied thread, performed by hand work tools.	
85.	Cloth printing industry especially Batik and traditional patterns.	
86.	Hand painted batik industry.	
87.	Knitted cloth industry especially Lace.	
88.	Handy craft industry that carries specific cultural asset, art value using natural or artificial raw material.	
89.	Moslem woman's praying cloth, scarf, head scarf, and other traditional industries.	
90.	Rubber curing industry.	
91.	Clay made household necessities industry especially pottery.	
92.	Manual or semi mechanical processed hand tool industry for handwork and cutting.	
93.	Hand tool industry needed for farming to prepare land, process production, post harvest and processing except hoe and shovel.	
94.	Motorcycle Maintenance and Repairing Industry except the one integrated to motorcycle sales business (agent/distributor) and personal and household necessities repairing industry.	
95.	Sweetening and saline fruits and vegetable industry.	Partnership.
96.	Processed Food from seeds and roots, sago, *Gnetum gnemon* nut and copra industry.	
97.	Milk powder process and condensed milk industry.	
98.	Tobacco drying and processing Industry.	
99.	Printed batik industry.	
100.	Rattan processing industry and rattan, bamboo and the like, preserving industry.	
101.	Mangrove wood industry.	
102.	Essential oil industry.	
103.	Construction material made from clay industry, goods made from lime industry and goods made from cement industry.	
104.	Nail, nuts and bolts industry, Component and spare parts to start up motor industry, pump and compressor industry, components and two and three wheels vehicles accessories industry, bike and *becak* accessories industry.	
105.	Agricultural machinery industry using medium technology such as rice peeler, corn peeler and hand tractor.	
106.	Maritime tourism, wooden ship and fish catching industry including its tools and equipment.	

S. No.	Sectors and Business Fields	Performance Requirements permitted
107.	Silver jewelry industry.	
108.	Other hand craft industries.	
109.	Non metal recycle goods.	
110.	Car maintenance and repair.	Foreign Capital Ownership: maximum 49%.
111.	Cigarette industry.	Required to obtain recommendation from the Minister of Industry for: 1) Cigarette company having industrial business license that is expanding; or 2) Small and medium scale cigarette industry that partners with large scale cigarette industry that has industrial business license for similar business sector.
112.	Pulp industry (from wood).	Raw material is from Industrial Forest Plant (HTI) or from imported chip if the domestic raw material is insufficient.
113.	Valuable paper industry such as Bank Note Paper, Cheque Paper, Watermark Paper.	1) Required to obtain operational license from BOTASUPAL/BIN; and 2) Required to obtain recommendation from the Minister of Industry.
114.	Special Printing Industry/Security Documents such as stamp, stamp duty, valuable paper, passport, demography documents and holograms.	
115.	Special Ink Industry.	
116.	Money Printing Industry.	
117.	Cyclamate and saccharin industry.	According to the requirement stipulated by BPOM and Ministry of Trade.
118.	Crumb rubber Industry.	Specific license from the Minister of Industry only if integrated into the development of rubber estates: a. Sourcing of raw materials at least 20% of the production capacity comes from own rubber farms, and b. Sourcing of raw materials not exceeding 80% in a partnership system, at least 20% of the total farm area shall be a plasma farm.
119.	Lead smelting Industry.	Required to obtain recommendation from State Minister for the Environment and Minister of Industry especially for the industry using used car batteries as raw material.
120.	Sugar Industry (white crystal sugar, refined crystal sugar and raw crystal sugar) based on partnership in the form of nucleus plasma, in an area 20% of the farmland area.	Partnership
VI.	**Defense Sector**	
121.	Raw material for explosives.	Foreign Capital Ownership: maximum 49%; and 51% for State-Owned Enterprises Special license: recommendation of Minister of Defense.
122.	Main and/or supporting component industry	
123.	Component and/or support (supply) industry	
124.	Main equipment industry.	100% local capital requirement; Special license: recommendation of Minister of Defense.

S. No.	Sectors and Business Fields	Performance Requirements permitted
125.	Security consulting services.	Foreign Capital Ownership: maximum 49%; Operational license: from National Police Headquarters.
126.	Security guard provider, money and valuable goods transportation guard, security service using animals.	
127.	Security service of equipment application.	
128.	Security education and training services.	
VII.	**Public Work Sector**	
129.	Construction Service (Construction Implementation Service) using Simple Technology and/or Low Risk and/or Work Value up to Rp. 1.000.000.0000/-.	Reserved for micro, small, medium enterprises and cooperatives.
130.	Drinking Water Business.	Foreign Capital Ownership: maximum 95%.
131.	Construction Service (Construction Implementation Service) using Advanced Technology and/or High Risk and/or the Work Value is more than Rp. 50.000.000.000/-	(a) Foreign Capital Ownership: maximum 67%. (b) Foreign Capital Ownership by ASEAN countries' investors: maximum 70%.
132.	Business Service/Construction Consultant Service using Advanced Technology and/or High Risk and/or the Work Value is more than Rp. 10.000.000.000/- (two items below deleted)	
VIII.	**Trade Sector**	
133.	Direct Selling through marketing network developed by business partner.	Foreign Capital Ownership: maximum 95%.
134.	Private Cleaning Service.	100% local capital requirement.
135.	Retail Business.	
136.	Large trade based on fee or contract (agency service/agent commission).	
137.	Survey Service.	
138.	Property/real estate broker based on fee or contract.	
139.	Rental Service of Land Transportation Equipment (Rental Without Operator).	
140.	Rental Agriculture Machinery and its Equipment Rental Construction Machinery and Civil Engineering and its Equipment Rental Office Machinery and its Equipment (including computers) Other Rental Machinery that is not Classified in Other Locations.	
141.	Building Cleaning Service.	100% local capital requirement.

S. No.	Sectors and Business Fields	Performance Requirements permitted
142.	Other Activity Services.	
143.	Large Trade of Liquor (importer, distributor and sub-distributor) Liquor Retail Business Side walk vendor liquor business	Must have Business License Certificate (SIUP), Business License Certificate of Liquor Business (SIUP-MB), have distribution network and a special place.
IX.	**Culture and Tourism Sector**	
144.	Homestay.	Reserved for micro, small, medium enterprises and cooperatives.
145.	Tour Agent.	
146.	Tour Guide Service Business.	
147.	Art Studio.	
148.	Art Gallery.	Foreign Capital Ownership: maximum 67%.
149.	Film Technique Service: - Film Taking Studio - Film Processing Laboratory - Fill Dubbing Facility	 Foreign Capital Ownership: maximum 49%. Foreign Capital Ownership: maximum 49%; 100% local capital requirement. Foreign Capital Ownership: maximum 49%.
150.	Art Performance Building.	Foreign Capital Ownership: maximum 67%.
151.	Film Making.	100% local capital requirement.
152.	Film Distribution (export, import and distribution).	
153.	Viewing: movie theatre.	
154.	Recording Studio.	
155.	Film promotional facility.	
156.	Hotel (Non-star/1 Star/2 Star).	Foreign Capital Ownership: maximum 67%;
157.	Other Accommodation Service.	Foreign Capital Ownership: maximum 49% (51% if in partnership with micro, small, medium enterprises and cooperatives); Location requirements shall not contradict with local regulation. For investments in Eastern Indonesia from ASEAN countries: Foreign Capital Ownership: maximum 51%; Location requirements shall not contradict with local regulation.
158.	Guest House.	Foreign Capital Ownership: maximum 51%; Location requirements shall not contradict with local regulation.
159.	Restaurant/*Talam*.	
160.	Restaurant/Non *Talam* Restaurant.	Foreign Capital Ownership: maximum 49% (51% if in partnership with micro, small, medium enterprises and cooperatives);
161.	Catering.	

S. No.	Sectors and Business Fields	Performance Requirements permitted
162.	Outbound Tour Operator.	Location requirements shall not contradict with local regulation.
163.	Bar/Café/Singing Room.	
164.	Convention, Exhibition and Incentive Tour Service.	Foreign Capital Ownership: maximum 51%; Location requirements shall not contradict with local regulation.
165.	Cultural Tourism Object Business.	
166.	SPA.	
167.	Impresario Business Service.	Foreign Capital Ownership: maximum 49% (51% if in partnership with micro, small, medium enterprises and cooperatives); Location requirements shall not contradict with local regulation. <u>For investments from ASEAN countries:</u> (a) Investment in Eastern Indonesia: Foreign Capital Ownership: maximum 100%; Location requirements shall not contradict with local regulation. (b) Investment in areas other than Eastern Indonesia: Foreign Capital Ownership: maximum 51%; Location requirements shall not contradict with local regulation.
168.	Recreational and Entertainment Business.	
169.	Dexterity.	Foreign Capital Ownership: maximum 67%; Location requirements shall not contradict with local regulation.
170.	Natural tourism Object business outside Conservation Areas.	Foreign Capital Ownership: maximum 51%.
X.	**Transportation Sector**	
171.	Container Transportation.	Foreign Capital Ownership: maximum 49%.
172.	General Cargo Transportation.	
173.	Dangerous Cargo Transportation.	
174.	Special Cargo Transportation.	
175.	Heavy Equipment Transportation.	
176.	Sea Transportation (domestic and overseas).	
177.	Sea Transport: Overseas (excluded *cabotage*).	<u>For investment from ASEAN countries</u>: Foreign Capital Ownership: maximum 60%.
178.	Ferry.	Foreign Capital Ownership: maximum 49%.
179.	River and Lake Boat Transportation < 30 GT.	
180.	Providing port facility.	
181.	Providing port facility such as waste storing.	
182.	Salvage service and/or underwater work.	
183.	Terminal Supporting business.	
184.	Airport Service.	
185.	Air Transportation Supporting Service.	
186.	Air Transportation Non- Commercial.	

S. No.	Sectors and Business Fields	Performance Requirements permitted
187.	Services Related to Airport.	
188.	Unloading/loading Cargo.	(a) Foreign Capital Ownership: maximum 67%. (For investment from ASEAN countries) (b) Applicable only for ASEAN countries in 4 (four) ports: Bitung Seaport, Ambon Seaport, Kupang Seaport and Sorong Seaport
189.	Transportation Arrangement Service.	Foreign Capital Ownership: maximum 49%.
190.	Airplane Cargo Service.	
191.	General Selling Agent (GSA) of Foreign air transport company.	
192.	Provision and Business for Crossing Harbor.	Special License requirement: must collaborate with a company appointed by the government.
193.	Provision and Business for river and lake harbor.	
194.	Passenger Transportation (on-route and not-on-route).	100% local capital requirement
195.	People's Shipping.	
196.	Commercial Air Transportation (scheduled and unscheduled).	Foreign Capital Ownership: maximum 49%; Special License: The national capital owner must remain larger than the entire foreign capital owner (single majority)
XI.	**Communication and informatics sector**	
197.	Community Broadcasting Agency (radio and television).	Reserved for micro, small, medium enterprises and cooperatives.
198.	Telecommunication Service.	
199.	Telephone Value Added Service Provider.	Partnership.
200.	Telecommunication Network Provider: - Fixed Network Provider - Closed Fixed Network Provider - Mobile Network Provider	Foreign Capital Ownership: maximum 49%; maximum 65%; maximum 65%.
201.	Multimedia Service, Internet Service Provider.	Foreign Capital Ownership: maximum 49%.
202.	Multimedia Service Provider: - Data communication system service - Telephone internet service for public need - Internet connection service (NAP) - Other multimedia services	Foreign Capital Ownership: maximum 95%; maximum 49%; maximum 65%; Maximum 49%.
203.	Establishment of Testing Telecommunication Device Agency.	Foreign Capital Ownership: maximum 95%.
204.	Public Broadcasting Agency (LPP) Radio and Television.	Special License: Monopoly only for Public Broadcasting Agency Radio Republic of Indonesia (RRI), Television Republic of Indonesia (TVRI), and

S. No.	Sectors and Business Fields	Performance Requirements permitted
		Local Public Broadcasting (LPPL).
205.	Management and Construction Service Provider for Telecommunication Tower.	100% local capital requirement.
206.	Press Company.	
207.	Private Broadcasting Agency (LPS).	100% local capital requirement; [May create additional development in order to meet capital originating from foreign capital where the amount does not exceed twenty percent (20%) of the total capital and a minimum ownership of two (2) shareholders.]
208.	Subscription Broadcasting Agency (LPB).	
209.	Mail Provider.	Foreign Capital Ownership: maximum 49%; Special License: According to regulatory terms in Postal sector.
XII.	**Finance Sector**	
210.	Leasing.	Foreign Capital Ownership: maximum 85%.
211.	Non-leasing Funding.	
212.	Venture Capital.	
213.	General Insurance Company.	Foreign Capital Ownership: maximum 80%.
214.	Life Insurance Company.	
215.	Reinsurance Company.	
216.	General Insurance Adjuster Company.	
217.	Insurance Agent Company.	
218.	Insurance Broker Company.	
219.	Reinsurance Broker Company.	
220.	Actuary Consulting Company.	
221.	Guarantee Company.	Foreign Capital Ownership: maximum 30%.
222.	Pension Fund.	100% local capital requirement.
XIII.	**Banking Sector**	
223.	Sharia Bank.	Special License: from the Financial Services Authority.
224.	Money Market Broker Company.	
225.	Conventional Bank.	
226.	Conventional smallholder’s credit bank	100% local capital requirement.
227.	Sharia smallholder’s credit bank	
228.	Non-Bank Foreign Exchange Trader.	
XIV.	**Manpower and Transmigration Sector**	
229.	Indonesian Worker Placement Service in the country.	Foreign Capital Ownership: maximum 49%.
230.	Worker/Labor Service Provider.	
231.	Work Training. (one item below removed)	Foreign Capital Ownership: maximum 67%.
232.	Indonesian Worker Placement Service for Overseas.	100% local capital requirement.
XV.	**Education Sector**	

S. No.	Sectors and Business Fields	Performance Requirements permitted
233.	Early Education. (one item above removed)	Special License: According to Law No. 20 of 2003 on National Education System (*Sisdiknas*) and its implementation regulations.
234.	Basic and Secondary Education.	
235.	Higher Education.	
236.	Private tertiary education service for degree program	Special License: According to Law No. 12 of 2012 on National Education System and its implementation regulations.
237.	Private tertiary education service for non-degree program	
XVI. Health Sector		
238.	Patent medicine industry.	Foreign Capital Ownership: maximum 85%.
239.	Medical equipment testing institution.	Foreign Capital Ownership: maximum 67%.
240.	Pest control/fumigation service.	
241.	Acupuncture Service.	Foreign Capital Ownership: maximum 49%.
242.	Medical and ambulatory evacuation service	Foreign Capital Ownership: maximum 67%.
243.	Narcotic manufacturer (pharmaceutical industry)	Special License from the Minister of Health
244.	Narcotic pharmaceutical wholesaler	
245.	Traditional Medicine Process	100% local capital requirement.
246.	Traditional Medicine/Natural Extract Business Industry	
247.	Pharmacy	
248.	Drug Store /Public Pharmacy, health equipment store and optician.	
249.	Basic medical clinic service	
250.	Hospital	(a) Foreign capital ownership: maximum 67% (70% for investments from ASEAN); (b) Can be conducted in all capital cities of provinces in Eastern Indonesia, except Makassar and Manado.
251.	Basic and Special Medical Clinics (medical services, dental services, nursing services, other hospital services)	
252.	Medical equipment supplier	(a) Foreign Capital Ownership: maximum 49%; (b) Special License: from Ministry of Health
253.	Medical equipment industry: - Class A - Class B - Class C - Class D	(a) Foreign Capital Ownership: maximum 49%; (b) Special License: from Ministry of Health. Subject to a special license from the Ministry of Health Subject to a special license from the Ministry of Health Subject to a special license from the Ministry of Health
254.	Bank and laboratory of tissue and cellular.	Subject to a special license from the Ministry of Health
XVII. Security Sector		
255.	Security Consulting Service	Foreign Capital Ownership: maximum 49%; Special License: Operational License from National Police Headquarters.
256.	Security Worker Provider Service	

S. No.	Sectors and Business Fields	Performance Requirements permitted
257.	Money and Valuable Goods Transport Escorting Service	Foreign Capital Ownership: maximum 49%; Special License: Operational License from National Police Headquarters.
258.	Security Service of Equipment Application	
259.	Security Education and Training Service	
260.	Animal Provider Service	