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Direct Foreign Investment in the Caribbean: A Legal and Policy Analysis

*Lewis D. Solomon** & *David H. Mirsky***

I. INTRODUCTION

The purpose of this Article is to delineate the central issues facing countries which seek to encourage direct foreign investment¹ in their local economies,² and to suggest which approaches to these issues appear most likely to facilitate the attraction of foreign capital, technology and expertise, while preserving local control over the potentially detrimental effects of such investment.

Legal data from the following countries comprise the subject matter of this Article: Antigua and Barbuda, Belize, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, all of which are members of the Caribbean Community³ (hereinafter CARICOM)

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¹ Investment activity in free trade zones is not considered direct foreign investment because such zones are insulated from the domestic economy. See generally James, *Islands of Industrial Efficiency*, The Financial Times Limited, January 9, 1990 ("The free zones are designated areas outside national customs and tax territories, which offer exemptions on taxes and duties on a range of light industries and services such as garments, electronics, the assembly of electrical appliances, warehousing and packaging. . .The free zones are. . .attacked for contributing little to the transfer of technology and managerial and industrial skills to the host country. . ."). Free trade zones are employed as an investment incentive device in the Dominican Republic, Haiti, Jamaica, St. Lucia, and Trinidad and Tobago. See Caribbean/Central American Action, *C/CAA's 1990 Caribbean and Central American Databook* 130, 204, 229, 323, 354 (1989).

² The focus of this article is on direct foreign investment in manufacturing enterprises (industry).

³ Treaty Establishing the Caribbean Community, July 4, 1973, art. 2, Caribbean Community Secretariat. The Caribbean Common Market regime was established in the Annex to the Treaty Establishing the Caribbean Community, July 4, 1973, Caribbean Community Secretariat.

and are designated as "Less Developed Countries"⁴ (hereinafter LDCs) in the Treaty Establishing the Caribbean Community;⁵ Jamaica, and Trinidad and Tobago, both of which are members of the CARICOM⁶ and are designated as "More Developed Countries" (hereinafter MDCs) in the Treaty Establishing the Caribbean Community; as well as the Dominican Republic and Haiti. A survey of the most recent policy developments in these countries reveals a clear trend in favor of the free enterprise solution to economic problems. This policy outlook appears to include an implicit assumption that direct foreign investment is desirable.

These countries were chosen based on their location in the Caribbean Sea, their status as independent nations, and the absence of offshore financial enterprise as a major component of their domestic economies.⁷ The location criterion was applied in order to eliminate the element of environment from the direct foreign investment policy equation. The independence criterion was applied in order to eliminate from consideration any policy decision which might in some way reflect the interests of an external political entity. Countries with dominant offshore financial sectors were excluded in order to eliminate from consideration any policy decision that assumes the availability of a significant offshore finance alternative.

Despite the inherently favorable disposition of the governments in question toward direct foreign investment, economic realities in the form of budgetary and international monetary concerns often compel policymakers to resort to regulatory and fiscal measures which on the surface

⁴ Treaty Establishing the Caribbean Community, *supra*, at arts. 2, 3.

⁵ *Id.* at art. 2.

⁶ *Id.* at arts. 2, 3.

⁷ See generally Caribbean/Central American Action, *C/CAA's 1990 Caribbean and Central American Databook* 11-17 (1989) (Antigua and Barbuda); U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and their Implications for the United States: Dominica* (February 1989); U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and their Implications for the United States: Dominican Republic* (June 1989); Department of Commerce, International Trade Administration, *Foreign Economic Trends and their Implications for the United States: Grenada*, (September 1989); Department of Commerce, International Trade Administration, *Foreign Economic Trends and their Implications for the United States: Haiti* (May 1989); Department of Commerce, International Trade Administration, *Foreign Economic Trends and their Implications for the United States: Jamaica* (February 1990); MDILC/CAA's *Caribbean and Central American Databook*, *supra* note 1, at 309-316 (St. Kitts and Nevis); Department of Commerce, International Trade Administration, *Foreign Economic Trends and their Implications for the United States: St. Lucia* (September 1988); Department of Commerce, International Trade Administration, *Foreign Economic Trends and their Implications for the United States: St. Vincent and the Grenadines* (April 1989); Department of Commerce, International Trade Administration, *Foreign Economic Trends and their Implications for the United States: Trinidad and Tobago* (February 1990).

appear to operate as disincentives to foreign investment. Since the economic condition of a domestic economy is a controlling factor in determining the eventual success or failure of an overseas enterprise, it is important for potential investors to differentiate between those "disincentives" which reflect governmental indifference toward the needs of foreign entrepreneurs and those which may be more accurately characterized as acts of economic necessity which, in the long run, inure to the benefit of all economic interests concerned. For the most part, the principal impediments to foreign investment imposed by the governments in question fall into the latter category. We have determined these impediments to include the following: restrictions on investor entry, exchange laws which cast doubt on the prospective ability of foreign investors to repatriate capital and profits, and taxes on personal income and corporate profits.

A common aspiration marks the foreign investment policies under consideration in this Article: to achieve a balance between the need for foreign capital and the fear of foreign economic domination. Exacerbating this dilemma is the immutable requirement of all governments for revenues sufficient to maintain necessary functions. As a result of these conflicting concerns, policymakers are continually obliged to confront three economically sensitive and politically charged legal problems: (1) How to attract foreign investment while keeping foreign ownership of domestic resources to a minimum; (2) How to alleviate foreign investors' concerns with respect to their legal rights to repatriate capital and profits without incurring a damaging drain of domestic foreign exchange resources; and (3) How to design their respective tax systems in such a way as to simultaneously foster economic growth and attract foreign investment while concurrently raising enough revenue to meet the budgetary requirements of the central government.

This Article concludes that the policy conundrums facing governments which seek to enhance domestic economic development through foreign direct investment can be adequately addressed through flexible legal mechanisms which provide governments with necessary administrative control over potential sources of economic harm without diminishing their ability to attract direct foreign investment.⁸ To illustrate this point, the laws of the Dominican Republic are postulated, which pertain to direct foreign investment in manufacturing enterprises⁹ as exemplars

⁸ See also Naim, *Government Regulation of Foreign Investment: Emerging Lessons from Latin America*, in *Direct Foreign Investment: Costs and Benefits* 42-43 (R. Robinson ed.) (1987).

⁹ The foreign investment policy of the Dominican Republic is not uniform with respect to every aspect of its domestic economy. For example, the incentives available for investment in tourism-

of the unnecessarily restrictive approach, that is, the approach involving strict statutory definition of the host environment. The relevant laws of the remaining countries under consideration will be compared to this restrictive model, in order to demonstrate the existence of more efficient legislative alternatives. Part II compares the laws employed to regulate the entry of foreign investors into the local economy. Part III briefly describes alternative approaches to the regulation of business operations involving foreign participation. Part IV compares alternative approaches to the problem of repatriation of capital and profits. Part V explores the range of available investment incentive options, while Part VI provides the context for a more thorough understanding of these incentives by providing an overview of the relative tax burdens imposed on personal income and corporate profits.

II. RESTRICTIVE AND PERMISSIVE APPROACHES TO THE REGULATION OF ENTRY

Among the countries under consideration in this Article, the Dominican Republic has adopted the most restrictive laws regulating the entry of new direct foreign investment, while the corresponding laws in effect in Jamaica, Trinidad and Tobago, the LDCs and Haiti are designed so as to allow the respective governments the flexibility to pursue policies which are as restrictive or permissive as may be deemed appropriate. In the Dominican Republic, statutory intrusion into the regulatory process comes in the form of a detailed set of prohibitions against foreign participation in specified areas of business activity.¹⁰ Occupying the opposite end of the restrictive-permissive spectrum, Jamaica's regulation of the entry of foreign investment into the domestic economy is based on a legal structure which does not directly prohibit foreign ownership of local property,¹¹ but instead provides the government with sufficient discretionary authority to deny entry to particular projects.¹² The laws governing the regulation of entry in the LDCs, Trinidad and Tobago, and Haiti provide the respective governments with as much flexibility as is

related enterprises are considerably more generous and accommodating than those pertaining to manufacturing. Compare American Chamber of Commerce of the Dominican Republic, *Dominican Republic Investors Handbook and Business Guide* 277-278 (translation of article 5, section (a) of the Tourism Incentives Law, No. 153 of the Dominican Republic), 281 (translation of article 2, section (a) of the Tourism Incentives Law, *supra*), 283 (translation of article 12 of the Tourism Incentives Law, *supra*) (offering a 10-year, 100 per cent exemption from tax on income derived from new or expanded tourism enterprises).

¹⁰ See *infra* notes 17-35.

¹¹ See *infra* notes 91-96.

¹² See *infra* notes 92-94.

enjoyed by the Jamaican government, however, in these countries the legal authority to regulate entry derives from laws which prohibit alien ownership of property,¹³ while vesting the government with the power to grant specific exceptions to the general prohibition¹⁴.

A. Regulating Entry Through Statutory Restrictions on Foreign Participation in Specific Business Activities

Just as the Dominican Republic is unique among its neighbors in terms of the size of its economy,¹⁵ The Foreign Investment Law, No. 861 of the Dominican Republic ("the Foreign Investment Law of the Dominican Republic") is unique among various foreign investment statutes

¹³ See *infra* notes 37 (LDCs), 60-67 (Trinidad and Tobago), 97 (Haiti).

¹⁴ See *infra* notes 38 (LDCs), 67 (Trinidad and Tobago), 98-108 (Haiti).

¹⁵ The most recent available Gross Domestic Product figures for the countries under consideration in this Article are as follows (in descending order):

<u>Country</u>	<u>Gross Domestic Product</u> <u>(in U.S. \$ Million)</u>
Dominican Republic	\$5222
Trinidad and Tobago	3758.4
Jamaica	3764.4
Haiti	2439.8
Belize	261
Antigua and Barbuda	188.5
St. Lucia	166.1
Grenada	139.4
St. Vincent and the Grenadines	112.5
Dominica	102.5
St. Kitts and Nevis	86.1

U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and Their Implications for the United States: Dominican Republic* 2 (June 1989) (Dominican Republic figure: 1989 estimate); U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and Their Implications for the United States: Trinidad and Tobago*, 2 (February 1990) (Trinidad and Tobago figure: 1988); U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and Their Implications for the United States: Jamaica*, 2 (February 1990) (Jamaica figure: 1989 estimate); U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and Their Implications for the United States: Haiti*, 2 (May 1989) (Haiti figure: Fiscal Year 1988 estimate); U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and Their Implications for the United States: Belize*, 2 (March 1990) (Belize figure: 1989 estimate); Caribbean/Central American Action, *C/CAA's 1990 Caribbean and Central American Databook*, 17 (1989) (Antigua and Barbuda figure: "1986 factor cost at current prices"); U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and Their Implications for the United States: Grenada*, 2 (September 1989) (Grenada figure: 1989 estimate); U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and Their Implications for the United States: St. Vincent and the Grenadines*, 2 (April 1989) (St. Vincent and the Grenadines figure: 1987 estimate); U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and Their Implications for the United States: Dominica*, 2 (February 1989) (Dominica figure: 1987 estimate); U.S. Department of Commerce, International Trade Administration, *Foreign Economic Trends and Their Implications for the United States: St. Lucia*, 2 (September 1988) (St. Lucia figure: 1987 preliminary finding); *C/CAA's 1990 Caribbean and Central American Databook*, *supra* note 1, at 315 (St. Kitts and Nevis figure: 1986).

under consideration in that it provides a definitive description of the scope and character of business activities open to foreign participation,¹⁶ while at the same time establishing a centralized bureaucracy to ensure compliance with applicable legal standards and government policy¹⁷.

The Foreign Investment Law of the Dominican Republic creates three classifications of companies based on the extent of foreign ownership and operational control,¹⁸ and designates specific business activities open to companies in each class¹⁹. These classes are identified and defined as follows: (1) a *national enterprise* is defined as a company incorporated in the Dominican Republic that is at least 70% owned and operated by resident citizens of the Dominican Republic;²⁰ (2) a *mixed enterprise* is a company registered to do business in the Dominican Republic that is at least 51% (but no more than 70%) owned and operated by resident citizens of the Dominican Republic;²¹ and (3) a *foreign enterprise* is a company registered to do business in the Dominican Republic that is less than 51% owned or operated by resident citizens of the Dominican Republic²².

Foreign enterprises and mixed enterprises are prohibited from engaging in production of national defense-related items,²³ the mass communications industry,²⁴ most aspects of the transportation industry,²⁵ and timber production²⁶. Foreign enterprises are additionally prohibited

¹⁶ See American Chamber of Commerce of the Dominican Republic, *Dominican Republic Investors Handbook and Business Guide*, 251-253 (translation of Articles 23-24 of the Foreign Investment Law, No. 861 of the Dominican Republic), 245 (translation of Article 1, section g of the Foreign Investment Law, No. 861 of the Dominican Republic) (1989).

¹⁷ See *id.* at 246 (translation of Article 2 of the Foreign Investment Law, No. 861 of the Dominican Republic).

¹⁸ See *id.* at 245 (translation of Article 1, sections g, h, i of the Foreign Investment Law, No. 861 of the Dominican Republic).

¹⁹ See *id.* at 251-253 (translation of Articles 23-24 of the Foreign Investment Law, No. 861 of the Dominican Republic).

²⁰ *Id.* at 245 (translation of Article 1, section g of the Foreign Investment Law, No. 861 of the Dominican Republic).

²¹ *Id.* at 245 (translation of Article 1, section h of the Foreign Investment Law, No. 861 of the Dominican Republic).

²² *Id.* at 245 (translation of Article 1, section i of the Foreign Investment Law, No. 861 of the Dominican Republic).

²³ See *id.* at 252 (translation of Article 23 section 1(a) of the Foreign Investment Law, No. 861 of the Dominican Republic).

²⁴ See *id.* at 252 (translation of Article 23 section 1(b) of the Foreign Investment Law, No. 861 of the Dominican Republic).

²⁵ See *id.* at 252 (translation of Article 23, section 1(c) of the Foreign Investment Law, No. 861 of the Dominican Republic).

²⁶ See *id.* at 252 (translation of Article 23 section 1(d) of the Foreign Investment Law, No. 861 of the Dominican Republic).

from engaging in agriculture and livestock enterprise,²⁷ fishing,²⁸ financial services,²⁹ insurance,³⁰ and real estate speculation³¹. No direct foreign investment³² of any form is allowed with respect to utilities,³³ radioactive commodities,³⁴ and the acquisition of any property rights, including shares, held by resident citizens³⁵.

B. Regulating Entry Through the Licensing of Alien Ownership

1. *Licensing of Alien Ownership Among the LDCs*

The LDCs regulate foreign economic entry by means of statutes ("the Alien Land Holding Regulation Acts") which require alien landowners to be licensed.³⁶ Each of the Aliens Land Holding Regulation Acts invokes a general prohibition on the unlicensed ownership of land by alien individuals and by companies under alien control.³⁷ This prohi-

²⁷ See *id.* at 252-253 (translation of Article 23 section 2(a) of the Foreign Investment Law, No. 861 of the Dominican Republic).

²⁸ See *id.* at 252-253 (translation of Article 23 section 1(b) of the Foreign Investment Law, No. 861 of the Dominican Republic).

²⁹ See *id.* at 252-253 (translation of Article 23 section 1(c) of the Foreign Investment Law, No. 861 of the Dominican Republic).

³⁰ See *id.* at 252-253 (translation of Article 23 section 1(d) of the Foreign Investment Law, No. 861 of the Dominican Republic).

³¹ See *id.* at 253 (translation of Article 24 of the Foreign Investment Law, No. 861 of the Dominican Republic).

³² *Id.* at 244 (translation of Article 1 section 1(a) of the Foreign Investment Law, No. 861 of the Dominican Republic) ("*Direct Foreign Investment: Are contributions proceeding from abroad, owned by natural or legal foreigners or by non-resident Dominicans; to the capital of an enterprise in freely convertible currencies, in machinery or equipment, in tools, instruments, or accessories and parts with the purpose of obtaining registration of the investment with the Central Bank. . .*").

³³ *Id.* at 252 (translation of Article 23 section (a) of the Foreign Investment Law, No. 861 of the Dominican Republic).

³⁴ *Id.* at 252 (translation of Article 23 section (b) of the Foreign Investment Law, No. 861 of the Dominican Republic).

³⁵ *Id.* at 252 (translation of Article 23 section (c)(i)-(iv) of the Foreign Investment Law, No. 861 of the Dominican Republic) ("... Excepted are those cases in which the new investment is made in an enterprise to avoid imminent bankruptcy if they meet the following conditions:

- i) The enterprise does not function in those areas indicated in heading a) of this Article.
- ii) The Directories verifies the imminent bankruptcy.
- iii) The enterprise proves that it has offered a preferential purchase option to national investors, and
- iv) The enterprise is important to the national economy."

³⁶ See *infra* notes 37-44.

³⁷ See Non-Belongers Land Holding Regulation Act, 1968, sections 3(a)-(d) (prohibition against alien ownership of companies), 6(a)-(g) (definition of "company under alien control") Antigua Act No. 17 of 1968 (hereinafter Antigua and Barbuda Aliens Land Holding Regulation Act) and Non-Belongers Land Holding Regulation (Amendment) Act, 1977, sec. 2(b), Antigua Act No. 8 of 1977 (repealing and replacing the definition of "non-belonger" in sec. 2(1) of Antigua and Barbuda Aliens Land Holding Regulation Act, *supra*); Aliens Landholding Ordinance, 1973, sections 2(a)-(c) (definition of "alien"), 3(a)-(c) (definition of "company under alien control"), 4(a)-(d) (prohibition against alien ownership of land), 8(2) (prohibition against alien ownership of companies which hold

bition provides the respective governments with the direction to grant ownership rights to aliens on a case by case basis.³⁸ The prohibitions on unlicensed ownership by companies under alien control contained in the Alien Land Holding Regulation Acts of Antigua and Barbuda, Dominica, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines effectively subject prospective foreign ownership of local companies to the licensing procedure since ownership of a local company generally entails ownership of local property.³⁹ The Aliens Land Holding Regulation Act of Belize specifically prohibits the unlicensed alien ownership of companies which hold land.⁴⁰

Under each of the LDC Aliens Land Holding Regulation Acts the decision whether to grant or refuse such licenses is completely discretionary,⁴¹ and the government may grant any license subject to conditions concerning the types of usage allowed for the land in question⁴². If such conditions are breached, forfeiture of ownership rights may result.⁴³

The Aliens Land Holding Regulation Acts of Antigua and Barbuda,

land), Belize Act No. 31 of 1973 (hereinafter Belize Aliens Land Holding Regulation Act); Aliens Land Holding Regulation Ordinance, ch. 203, sections 2 (definition of alien), 3(a)-(e) (prohibition against unlicensed alien ownership of land), 6(a)-(g) (definition of "company under alien control"), Revised Edition of the Laws of Dominica (1961) (hereinafter Dominica Aliens Land Holding Regulation Act); Aliens Land Holding Regulation Ordinance, ch. 11, sections 6(1)(a)-(g), 6(2), Revised Laws of Grenada (1968) (hereinafter Grenada Aliens Land Holding Regulation Act); Aliens Land Holding Regulation Act, sections 2, 3(a)-(e), 6(a)-(g), ch. 102, Revised Laws of St. Christopher, Nevis and Anguilla (1964) (hereinafter St. Kitts and Nevis Aliens Land Holding Regulation Act) (substantially the same as Dominica Aliens Land Holding Act); Aliens (Landholding Regulation) Act 1973, sections 2(1), 3(1), 3(2)(a)-(c), 6(1)(a)-(g), Saint Lucia Act No. 10 of 1973 (hereinafter St. Lucia Aliens Land Holding Regulation Act) (substantially the same as Dominica Aliens Land Holding Regulation Act with respect to the matters cited herein); Aliens (Land-Holding Regulation) Ordinance, ch. 1, sections 2, 3(a)-(e), 6(1)(a)-(e), 6(2), Revised Laws of St. Vincent (hereinafter St. Vincent and the Grenadines Aliens Land Holding Regulation Act) (substantially the same as Dominica Aliens Land Holding Regulation Act).

³⁸ See Antigua and Barbuda Aliens Land Holding Regulation Act, *supra*, at sec. 4(1); Belize Aliens Land Holding Regulation Act, *supra*, at sec. 6(1); Grenada Aliens Land Holding Regulation Act, *supra*, at sec. 4(1); Dominica Aliens Land Holding Regulation Act, *supra*, at sec. 4(1); St. Kitts and Nevis Aliens Land Holding Regulation Act, *supra*, at sec. 4(1); St. Lucia Aliens Land Holding Regulation Act, *supra*, at sections 4(1), 4(2)(a)-(c); St. Vincent and the Grenadines Aliens Land Holding Regulation Act, *supra*, at sec. 4(1).

³⁹ *But cf. supra* note 31.

⁴⁰ See Belize Aliens Land Holding Regulation Act, *supra* note 37, at sections 8(1)-(4).

⁴¹ See *supra* note 38.

⁴² *Id.*

⁴³ See Antigua and Barbuda Aliens Land Holding Regulation Act, *supra* note 37, at sec. 4(2); Belize Aliens Land Holding Regulation Act, *supra* note 37, at sec. 6(4); Grenada Aliens Land Holding Regulation Act, *supra* note 37, at sec. 4(2); Dominica Aliens Land Holding Regulation Act, *supra* note 37, at sec. 4(2); St. Kitts and Nevis Aliens Land Holding Regulation Act, *supra* note 37, at sec. 4(2); St. Lucia Aliens Land Holding Regulation Act, *supra* note 37, at sec. 4(3); St. Vincent and the Grenadines Aliens Land Holding Regulation Act, *supra* note 37, at sec. 4(2).

Dominica, Grenada, St. Kitts and Nevis, and St. Vincent and the Grenadines are substantially identical,⁴⁴ however, there are significant distinctions between the statutes of these countries and those of Belize⁴⁵ and St. Lucia⁴⁶. The most important distinctions concern the statutory definitions of "alien control" with respect to companies.⁴⁷

The Aliens Land Holding Regulation Act of Belize provides the narrowest definition of alien control, theoretically allowing aliens the greatest opportunity to engage in the unlicensed ownership of an interest in a company.⁴⁸ The corresponding statute of St. Lucia provides the broadest definition.⁴⁹ Under the statute of Belize, alien control is deemed to exist where at least half of a company's shareholders or directors are aliens,⁵⁰ where aliens control at least half of the voting shares of a company,⁵¹ or where at least half of a company's share capital is held by an alien (or on behalf of an alien)⁵². The statute of St. Lucia defines alien control as alien ownership of a greater than 25% interest in a local company,⁵³ while the statutes of Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, and St. Vincent and the Grenadines each define alien control and unlicensed alien ownership in excess of a 33 1/3% interest⁵⁴.

The statutes of Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines, contain provisions which deem a company to be under alien control if one of the company's directors is an unlicensed alien.⁵⁵ The statutes of the foregoing

⁴⁴ See generally Antigua and Barbuda Aliens Land Holding Regulation Act, *supra* note 37; Grenada Aliens Land Holding Regulation Act, *supra* note 37; Dominica Aliens Land Holding Regulation Act, *supra* note 37; St. Kitts and Nevis Aliens Land Holding Regulation Act, *supra* note 37; St. Vincent and the Grenadines Aliens Land Holding Regulation Act, *supra* note 37.

⁴⁵ See *infra* notes 50, 51, 52, 57, 58.

⁴⁶ See *infra* notes 53, 55, 56.

⁴⁷ Cf. *infra* notes 48-58.

⁴⁸ Cf. *infra* notes 49-58.

⁴⁹ See *infra* notes 53, 55, 56.

⁵⁰ See Belize Aliens Land Holding Regulation Act, *supra* note 37, at section 3(a).

⁵¹ See *id.* at sec. 3(b).

⁵² See *id.* at sec. 3(c).

⁵³ See St. Lucia Aliens Land Holding Regulation Act, *supra* note 37, at sec. 6(1)(b).

⁵⁴ See Antigua and Barbuda Aliens Land Holding Regulation Act, *supra* note 37, at section 6(b); Grenada Aliens Land Holding Regulation Act, *supra* note 37, at sections 6(1)(b)-(g); Dominica Aliens Land Holding Regulation Act, *supra* note 37, at sec. 6(b); St. Kitts and Nevis Aliens Land Holding Regulation Act, *supra* note 37, at sec. 6(b); St. Vincent and the Grenadines Aliens Land Holding Regulation Act, *supra* note 37, at sec.6(1)(b).

⁵⁵ See Antigua and Barbuda Aliens Land Holding Regulation Act, *supra* note 37, at sec.6(a); Grenada Aliens Land Holding Regulation Act, *supra* note 37, at sec. 6(1)(a); Dominica Aliens Land Holding Regulation Act, *supra* note 37, at sec. 6(a); St. Kitts and Nevis Aliens Land Holding Regulation Act, *supra* note 37, at sec.6(a); St. Lucia Aliens Land Holding Regulation Act, *supra* note 37, at sec. 6(1)(a); St. Vincent and the Grenadines Aliens Land Holding Regulation Act, *supra* note 37, at sec. 6(1)(a).

countries also contain provisions granting local companies the power to prevent alien ownership of their securities.⁵⁶ In contrast, under the statute of Belize, a company is not deemed to be under alien control merely because one of its directors is an alien,⁵⁷ nor are local companies given the power to prevent aliens from holding their securities⁵⁸.

2. *Licensing of Alien Ownership in Trinidad and Tobago*

Under Trinidad and Tobago law, alien ownership of land is regulated according to a statutory framework equivalent to that of the Aliens Land Holding Regulation Acts of the LDCs.⁵⁹ Under the Aliens (Landholding) Act of Trinidad and Tobago, persons who are not citizens of Trinidad and Tobago,⁶⁰ business entities containing any non-citizens,⁶¹ and companies either incorporated outside Trinidad and Tobago⁶² or "deemed to be under alien control"⁶³ are prohibited from owning land⁶⁴, holding a mortgage on land⁶⁵, or owning any interest in a local company⁶⁶ without first obtaining a license from the President⁶⁷. As is the

⁵⁶ See Antigua and Barbuda Aliens Land Holding Regulation Act, *supra* note 37, at sections 7(a)-(d); Grenada Aliens Land Holding Regulation Act, *supra* note 37, at sections 7(1)-(4); Dominica Aliens Land Holding Regulation Act, *supra* note 37, at sections 7(a)-(d); St. Kitts and Nevis Aliens Land Holding Regulation Act, *supra* note 37, at sections 7(a)-(d); St. Lucia Aliens Land Holding Regulation Act, *supra* note 37, at sections 7(1)-(4); St. Vincent and the Grenadines Aliens Land Holding Regulation Act, *supra* note 37, at sections 7(1)-(4).

⁵⁷ See *supra* note 50.

⁵⁸ See generally Belize Aliens Land Holding Regulation Act, *supra* note 37.

⁵⁹ Compare *infra* notes 60-79 with *supra* notes 37-58.

⁶⁰ See Aliens (Landholding) Act, ch. 58:02, sec.2(1)(a), Laws of Trinidad and Tobago (1980).

⁶¹ See *id.* at sec. 2(1)(b).

⁶² See *id.* at sec. 2(1)(c).

⁶³ *Id.* at sections 2(1)(c), 7(1)(a)-(g) ("For the purposes of this Act, a company shall be deemed to be under alien control (a) if any of its directors is an unlicensed alien; or (b) if more than one-third of the votes exercisable if a meeting of the company, or which would be exercisable if a meeting of the company was held, are vested in unlicensed aliens; or (c) in the case of a company having a share capital, if more than one-third of the nominal amount of its issued shares are held by unlicensed aliens; or (d) in the case of a company not having a share capital, if more than one-third in number of its members are unlicensed aliens; or (e) if the amount paid or payable in any period of twelve months as dividends to those members of the company who are unlicensed aliens exceeds one-third of the total amount paid or payable by the company as dividends in the same period; or (f) if more than one-third of the nominal value of the outstanding debentures of the company are held by unlicensed aliens; or (g) if the annual interest on the debentures of the company for the time being held by unlicensed aliens exceeds one-third of the annual interest on all the debentures of the company for the time being outstanding."), 7(2) (a subsidiary company's treatment as an alien is unaffected by the citizenship of its representative in Trinidad and Tobago).

⁶⁴ See Aliens (Landholding) Act, *supra* note 60, at sections 3(1); see 3(2)(a) ("However (a) land may be acquired and held by an unlicensed alien on an annual tenancy or for any less interest for the purpose of his residence, trade or business, but an unlicensed alien shall not so hold more than five acres of land in all;").

⁶⁵ See *id.* at 3(1).

⁶⁶ See *id.* (" . . . nor any share, debenture nor other interest in a company. . .").

case with Antigua and Barbuda, Dominica, Grenade, St. Kitts and Nevis, and St. Vincent and the Grenadines,⁶⁸ alien control is defined as unlicensed alien ownership of at least 33 1/3% interest in a particular company.⁶⁹ As is the case with all of the Aliens Land Holding Regulation Acts of the LDCs,⁷⁰ such licenses may be granted subject to conditions which, if breached, may lead to the forfeiture of the rights in question⁷¹.

Although there are distinct similarities between the Aliens (Landholding) Act of Trinidad and Tobago and the corresponding statutes of the LDCs, the former is considerably more complex than its LDC counterparts.⁷² For example, under the Aliens (Landholding) Act of Trinidad and Tobago, three distinct types of licenses may be granted in order to confer ownership rights on alien persons and business entities: (1) the license to hold land or mortgages for a period of time not specified by statute,⁷³ (2) the "annual general licen[s]e"⁷⁴ to hold mortgages, and (3)

⁶⁷ See *id.* at sec. 4(1) ("The President may, if he thinks fit, grant to any alien a license to hold land as owner or tenant or mortgagee for any estate or interest, either subject to any conditions or not. . ."), 5(1) ("The President may grant to an alien annual general license to hold as mortgagee, in accordance with the law relating to mortgages, land that is held as security for funds that the alien may from time to time invest on loan in Trinidad and Tobago."), 9(1)(a)-(d) ("The President may, if he thinks fit, grant licenses, either subject to conditions or not, authorizing an alien (a) to be a director of a company; (b) to vote at meetings of a company; (c) to hold shares of debentures; and (d) to be a member of a company having no share capital; However, such a license shall be operative only as to the company named therein and as to the number of votes, shares or debentures specified therein.").

⁶⁸ See *supra* note 54.

⁶⁹ See Aliens (Landholding) Act, *supra*, at sections 7(b)-(g).

⁷⁰ See *supra* note 31.

⁷¹ See Aliens (Landholding) Act, *supra* note 60, at 4(2); see *id.* at sections 5(4)(a)-(b) ("An annual general license granted by the president under subsection (1) is subject to the following conditions; (a) the funds loaned by such an alien upon the security of mortgages on lands in Trinidad and Tobago shall be loaned to residents of Trinidad and Tobago; (b) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien is a company, by a Director and the Secretary: (i) the number of mortgage loan taken by residents of Trinidad and Tobago; (ii) the names of the mortgagors; (iii) the amount loaned; (iv) the rates of interest charged; (v) a full description of each property affected; (vi) the date and registered number of the mortgage; and (vii) the number of mortgaged properties which have become vested in such an alien as owner by virtue of the exercise of his powers as mortgagee, the respective dates on which such properties became so vested, the sum due thereon, and a description of the properties so vested."); see also *id.* at sec. 9(2) ("On breach of any condition in a license granted under this section, the licensee shall forthwith cease to be a director of the company and to be entitled to vote at any meeting of the company, and all shares and debentures in the company held by the licensee shall be forfeited to the State.").

⁷² Compare *infra* notes 73-75 with *supra* note 42.

⁷³ See *supra* note 69; see also Trinidad and Tobago Industrial Development Corporation, *Draft General Guidelines for the Approval of Licenses for Investment in Trinidad and Tobago under the Aliens (Landholding) Act Chapter 58:02 2* ("The Minister may grant approvals for Alien Companies/Firms etc. to hold a 50 year leasehold interest in properties for the purpose of housing person-

the license "to hold shares or debentures"⁷⁵ for a length of time to be determined by the President⁷⁶. The annual general license may be revoked by the President at will.⁷⁷

The government is inclined to grant licenses allowing aliens to control a majority interest where the company in question is relatively large,⁷⁸ a "substantial investment is involved",⁷⁹ and the enterprise has a favorable impact upon "employment; foreign exchange earnings/savings, technological development, use of local raw materials,"⁸⁰ and "linkages with the rest of the economy"⁸¹. Where the government determines that a company will be exporting all of its products⁸² or that its operation will entail "substantial net foreign exchange earnings",⁸³ 100% alien ownership may be sanctioned⁸⁴. In addition, "[a]pproval would normally be granted for aliens to acquire up to 20% of the share capital of companies listed on the Stock Exchange".⁸⁵

3. *Licensing as a Means of Restricting Foreign Participation in Specific Business Activities*

Through the virtually unlimited discretionary authority vested in the authorities responsible for the licensing of foreign ownership in the LDCs⁸⁶ and in Trinidad and Tobago,⁸⁷ the respective governments retain virtually unchecked power to determine which types of business activities

nel, but the number of properties for which such approval may be given would be dependent on the size of staff and housing needs of the company. . . . Firms and Companies incorporated in and operating in Trinidad and Tobago may be granted approval to hold a leasehold interest of up to 50 years. In the case of hotels, approval may be granted for such greater leasehold interest as may be appropriate. . . . Firms, Companies etc. incorporated outside of Trinidad and Tobago will not normally be allowed to hold interest in property in excess of a seven year leasehold interest. . . . Individuals who are residents of Trinidad and Tobago may be granted approval to hold any leasehold interest.").

⁷⁴ Aliens (Landholding) Act, *supra*, at sec. 5(1); *see also supra* note 63.

⁷⁵ Aliens (Landholding) Act, *supra*, at sec. 9(1)(c); *see also supra* note 63.

⁷⁶ *See* Aliens (Landholding) Act, *supra* at sec. 9(4) (citing *id.* at sections 9(s), 9(1)).

⁷⁷ *See* Aliens (Landholding) Act, *supra*, at sec. 5(5) (" . . . such revocation does not affect anything done under that license.").

⁷⁸ *See Draft General Guidelines for the Approval of Licenses for Investment in Trinidad and Tobago under the Aliens (Landholding) Act Chapter 58:02*, at 3.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *See id.*

⁸³ *Id.*

⁸⁴ *See id.*

⁸⁵ *Id.*

⁸⁶ *See supra* notes 36-58.

⁸⁷ *See supra* note 67.

will remain open to potential foreign participation⁸⁸. In Trinidad and Tobago this authority is used to deny foreign participation in certain types of local enterprise which the executive branch has officially deemed to be "reserved for exploitation by nationals of Trinidad and Tobago".⁸⁹ Restricted activities include land development, agriculture, construction, transportation services, petroleum marketing and other petroleum related services which can adequately be conducted by locally owned businesses, advertising and public relations, journalism, management services, business representation of foreign companies, hair styling, hand-craft enterprises, furniture production, cement block production, the manufacture of clothing for the local market, textile screen hand printing, tire retreading, and the manufacture of luggage, purses or wallets for the local market.⁹⁰

C. Regulating Entry Through Exchange Control Procedures

Jamaican law contains no provisions restricting foreign participation in specific business activities.⁹¹ Instead, the Jamaican government is indirectly empowered with the discretion to prevent the introduction of specific enterprises into the local economy by provisions of the Exchange Control Act of Jamaica which prohibit nonresident individuals⁹² and companies effectively controlled by nonresidents⁹³ from purchasing either real property⁹⁴ or control of a local company⁹⁵ without government approval. The statute places no constraints on the government's authority to approve foreign investment in specific types of business activity.⁹⁶

D. Regulating Entry by Requiring Incorporation Under Local Law

The Haitian approach to the regulation of foreign economic entry is

⁸⁸ *Id.*

⁸⁹ *Industrial Development Corporation Guide for Investors 1988, supra*, at 11.

⁹⁰ *Id.*; see also letter from Desmond Edwards for General Manager, Trinidad and Tobago Industrial Development Corporation to Lewis D. Solomon (November 24, 1989) ("It should be noted that no specific administrative order or other official legal instrument is used in the designation of areas of investment reserved for the exploitation by nationals of Trinidad and Tobago.")

⁹¹ Price Waterhouse, *Doing Business in Jamaica* 15-16 (1985) ("The Government welcomes foreign investment and there is no set policy as to what are reserved for Jamaica. Generally the service industries. . . are reserved for the local investor, but each foreign investment proposal is assessed on its own merit.")

⁹² Exchange Control Act, sections 33(1)(a)-(c), FIRST SCHEDULE, Laws of Jamaica (1984).

⁹³ See *id.* at sections 33(1)(a)-(c), 33(3)-(4), FIRST SCHEDULE.

⁹⁴ See *supra* notes 92-93.

⁹⁵ Exchange Control Act, *supra* note 92, at Sec. 32(2), SECOND SCHEDULE.

⁹⁶ See generally, Exchange Control Act, *supra* note 92.

considerably less complicated than the approaches utilized by the remaining countries under consideration in this Article.⁹⁷ Under Haitian law, aliens are prohibited from owning real property⁹⁸ unless they succeed in establishing a domestic corporation.⁹⁹ Foreign-owned companies incorporated in Haiti are entitled to all of the property ownership rights available to Haitian citizens.¹⁰⁰ The government encourages resorting to this method of evading the restrictions on alien ownership.¹⁰¹

III. REGULATING BUSINESS OPERATIONS

The two policy extremes in terms of the regulation of business operations involving foreign participation are evident in the general foreign investment laws of Haiti and the Dominican Republic.¹⁰² In particular, Article 7 of the Industrial Investment code of Haiti expresses the utmost indifference to foreign entrepreneurs,¹⁰³ while the Industrial Incentives Law, No. 299 of the Dominican Republic ("the Industrial Incentives Law of the Dominican Republic") provides the government with the power to interfere with the details of business operations.¹⁰⁴

A. Pledging Non-Intervention

The official Haitian attitude toward foreign investors is clearly expressed in Article 7 of the Industrial Investment Code of December 31, 1984, which guarantees all entrepreneurs, regardless of nationality, the right to engage in business activity without government intrusion into management decisions regarding resource-allocation, choice of suppliers, staffing of senior positions, repatriation of capital and profits, and business relationships with foreign entities.¹⁰⁵ This guarantee may be superseded in the interest of national security or by the contrary dictates of Haitian law.¹⁰⁶

B. Providing for Administrative Oversight of Business Operations

The investment incentive laws of the Dominican Republic are im-

⁹⁷ See *infra* this Article, Section I.

⁹⁸ See Prominex Haiti, *A Practical Guide to Investment Opportunities in Haiti* 49.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 59-60.

¹⁰² *Cf. infra* notes 103-113.

¹⁰³ See *infra* notes 105-106.

¹⁰⁴ See *infra* note 107-113.

¹⁰⁵ See *Decret Portant Constitution du Codes des Investissements Industriels, le 31 Decembre 1984, art. 7, Journal Officiel De La Republique D'Haiti* (31 January 1985).

¹⁰⁶ *Id.*

bued with express requirements for strict administrative oversight over the operations of newly formed enterprises.¹⁰⁷ For example, the Industrial Incentives Law of the Dominican Republic created an entire new tier of bureaucracy, called the Directorate of Industrial Development, for the sole purpose of administering the statute.¹⁰⁸

The Directorate of Industrial Development, a subdivision of the Secretariat of State for Industry and Commerce, retains the legal authority to approve or deny applications for permission to undertake new industrial enterprises pursuant to the provisions of the Industrial Incentives Law of the Dominican Republic, subject to the majority vote of its membership.¹⁰⁹ The Directorate is an interagency board presided over by the Secretary of State for Industry and Commerce.¹¹⁰

The Industrial Incentives Law of the Dominican Republic also establishes a new subdivision within the Department of Industry and Commerce, called the Industrial-Technical Department,¹¹¹ whose functions are to review in detail all applications for permission to undertake new enterprises, to make recommendations to the Directorate of Industrial Development based on their findings, and to supervise all approved enterprises until regular operations have commenced.¹¹² All new direct foreign investments in the Dominican Republic must be approved by the Directorate of Foreign Investment and registered with the Central Bank.¹¹³

IV. REGULATING THE REPATRIATION OF CAPITAL AND PROFITS

An important issue confronting prospective foreign investors involves the question whether the laws of the host country provide reliable assurances that investors will be allowed to repatriate capital and profits without significant regulatory interference. Host governments must be equally concerned with this issue since repatriation entails a loss of wealth on the part of the host country. There are three identifiable basic approaches to the problem of reconciling foreign investors' property interests with the self-preservation concerns of the host governments: (1)

¹⁰⁷ See *infra* notes 108-113.

¹⁰⁸ Dominican Republic Investors Handbook and Business Guide, *supra* note 16, at 259 (translation of Article 4 of the Industrial Incentives Law, No. 299 of the Dominican Republic).

¹⁰⁹ *Id.* at 259 (translation of Article 4, Paragraph II of the Industrial Incentives Law, No. 299 of the Dominican Republic).

¹¹⁰ *Id.*

¹¹¹ Dominican Republic Investors Handbook and Business Guide, *supra* note 16, at 260 (translation of Article 5 of the Industrial Incentives Law, No. 299 of the Dominican Republic).

¹¹² *Id.*

¹¹³ *Id.* at 247 (translation of Article 5 of the Foreign Investment Law, No. 861 of the Dominican Republic).

the statutorily constrained or rigid approach utilized by the Dominican Republic;¹¹⁴ (2) the discretionary or flexible approach in effect in Jamaica,¹¹⁵ Trinidad and Tobago,¹¹⁶ and in the majority of the LDCs;¹¹⁷ and (3) the permissive approach, adopted by Belize, Grenada¹¹⁸ and Haiti,¹¹⁹ whereby the host country allows repatriation to proceed virtually without restriction.

A. Statutorily Limited Rights of Repatriation

Pursuant to the Foreign Investment Law, the Central Bank of the Dominican Republic is required to verify the market value of all plant and equipment included in the investment.¹²⁰ Such verification is significant because registration entitles the foreign investor to repatriate the value of invested capital plus annual net profits not exceeding 25% of the registered value of the investment.¹²¹ No funds may be repatriated without the Central Bank's verification that local taxes have been paid and that the net profit figure is accurate.¹²² Where net profits for a given year exceed 25% of the total investment, repatriation of the excess is permanently prohibited.¹²³

Even where repatriation is permissible, it may be subject to delay as required by the Central Bank for the purpose of ensuring that the level of domestic foreign exchange reserves remains adequate.¹²⁴

B. Discretionary Repatriation Authority

The exchange control statutes of Antigua and Barbuda, Dominica, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago contain virtually identical provisions addressing the issue of repatriation of capital and profits.¹²⁵ These provisions

¹¹⁴ See *infra* notes 120-124.

¹¹⁵ See *infra* notes 125-140.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See *infra* note 142.

¹¹⁹ See *infra* note 143.

¹²⁰ *Dominican Republic Investors Handbook and Business Guide*, *supra* note 16, at 247 (translation of Article 5 of the Foreign Investment Law, No. 861 of the Dominican Republic).

¹²¹ *Id.* at 249-250 (translation of Article 16 of the Foreign Investment Law, No. 861 of the Dominican Republic).

¹²² *Id.*

¹²³ *Id.* at 250 (translation of Article 17 of the Foreign Investment Law, No. 861 of the Dominican Republic).

¹²⁴ *Id.* at 94 (Article entitled "Currency and Exchange" by William C. Headrick).

¹²⁵ See generally Exchange Control Act, ch. 117, Revised Edition of the Laws of Antigua (1962) (hereinafter Antigua and Barbuda Exchange Control Act); Exchange Control Ordinance, ch. 130, Revised Edition of the Laws of Dominica (1961) (hereinafter Dominica Exchange Control Act);

vest the government with the authority to permit or deny overseas payments¹²⁶ (or payments to the accounts of nonresidents¹²⁷) on a case by case basis. The respective governments are empowered to delay repatriation by directing such payments to be made to "blocked accounts"¹²⁸ in which moneys may be impounded until such time as the government

Exchange Control Act, Laws of Jamaica (1984) (hereinafter Jamaica Exchange Control Act); Exchange Control Ordinance, ch. 115, Laws of St. Christopher Nevis and Anguilla (1964) (hereinafter St. Kitts and Nevis Exchange Control Act); Exchange Control Ordinance, ch. 180, Saint Lucia Revised Ordinances (1957) (hereinafter St. Lucia Exchange Control Act); Exchange Control Ordinance, ch. 6, Laws of St. Vincent (1967) (hereinafter St. Vincent and the Grenadines Exchange Control Act); Exchange Control Act, ch. 79:50, Laws of Trinidad and Tobago (1980) (hereinafter Trinidad and Tobago Exchange Control Act).

¹²⁶ See Antigua and Barbuda Exchange Control Act, *supra* note 125, at 8(1); Dominica Exchange Control Act, *supra* note 125, at sec. 8(1); St. Kitts and Nevis Exchange Control Act, *supra* note 125, at sec. 8(1); St. Lucia Exchange Control Act, *supra* note 125, at sec. 8(1); St. Vincent and the Grenadines Exchange Control Act, *supra* note 125, at sec. 8(1); Trinidad and Tobago Exchange Control Act, *supra* note 125, at sec. 12(1).

The following excerpt from the St. Vincent and the Grenadines Exchange Control Act, cited above, is substantially mirrored by the remaining provisions cited herein:

"8.(1) Except with the permission of the Accountant General, no person in [St. Vincent and the Grenadines] shall, subject to the provisions of this section, make any payment outside [St. Vincent and the Grenadines] to or for the credit of a person resident in the scheduled territories shall in [St. Vincent and the Grenadines] do any act which involves, is in association with or is preparatory to the making of any such payment.";

but see infra note 122.

¹²⁷ *Id.*

¹²⁸ See Antigua and Barbuda Exchange Control Act, *supra* note 125, at sections 34(a)-(b), THIRD SCHEDULE; Dominica Exchange Control Act, *supra* note 125, at sections 33(a)-(b), THIRD SCHEDULE; Jamaica Exchange Control Act, *supra* note 125, at sections 34(a)-(b), THIRD SCHEDULE; St. Kitts and Nevis Exchange Control Act, *supra* note 125, at sections 34(a)-(b), THIRD SCHEDULE; St. Lucia Exchange Control Act, *supra* note 125, at sections 34(a)-(b); St. Vincent and the Grenadines Exchange Control Act, *supra* note 125, at sections 34(a)-(b), THIRD SCHEDULE; Trinidad and Tobago Exchange Control Act, *supra* note 125, at sections 14(a)-(b).

The following excerpt from the St. Vincent and the Grenadines Exchange Control Act, cited above, is substantially mirrored by the remaining provisions cited herein.

"34. Where-

(a) under any provision contained in Part III [which contains the provision cited at note 118] of this Ordinance, the permission of the Accountant General is required for the making of a payment or the placing of any sum to the credit of any person resident outside the scheduled territories. . . the Accountant General may direct that the sum payable or to be credited shall be paid or credited to a blocked account only, and, where such a direction is given, the provisions of the Third Schedule to this Ordinance shall have effect in relation to the payment or crediting of the sum. . .

THIRD SCHEDULE (section 34)

Block[ed] Accounts

1. In this Schedule, the expression "a blocked account" means an account opened as a blocked account at an office or branch in [St. Kitts and Nevis] in favor of any person by a banker authorized by the Accountant General to open blocked accounts, and the expression "the banker" means, in relation to any person, a banker who opens a blocked account in favor of that person.

2. Where a direction is given that a payment is to be made to a blocked account only, then, subject to the next following paragraph-

(a) the manner in which the payment may be made shall be either-

(i) to the banker, with a direction that it is to be credited to a blocked account of that person (which direction may, in the case of a payment by means of a cheque or warrant, be

deems repatriation to be in the national interest.¹²⁹

A recent exchange control order by the Central Bank of Trinidad and Tobago demonstrates the effectiveness of this statutory design in terms of providing host governments with the power to restrict the outward flow of foreign-owned funds: the Central Bank has adopted an official policy of providing preferential treatment to the repatriation requests of those foreign investors whose projects earn foreign currency,¹³⁰ which means that foreign investors whose projects do not earn foreign currency can expect delays in repatriation.¹³¹

C. Unrestricted Rights of Repatriation

Among the countries under consideration in this Article, Belize, Grenada and Haiti demonstrate the most permissive policies toward the repatriation of capital and profits by foreign investors.¹³² Both Belize and Grenada guarantee foreign investors who have invested in an approved enterprise the right to repatriate capital and profits at any time,¹³³ while Haiti places no restriction on any overseas payments¹³⁴.

made by marking the cheque or warrant with the words "blocked account of" (naming the person in question) or words to the same effect); or

(ii) by a crossed cheque or warrant drawn in favor of that person, marked with the words "payable only to blocked account of payee" or words to the same effect; and

(b) the sum collected shall be credited by the banker to a blocked account of that person. . .

5. Where a person in whose name a blocked account is standing becomes bankrupt in [St. Vincent and the Grenadines] or dies, the banker may . . . transfer the account to the name of the trustee in bankruptcy or personal representative, but, save as aforesaid, no change shall, except with the permission of the Accountant General, be made in the name in which the account stands; and where any such change is made (whether or not the permission of the Accountant General is necessary therefor) the account shall remain a blocked account notwithstanding the change, and the provisions of the Schedule shall apply accordingly. . ."

¹²⁹ Cf. *id.*

¹³⁰ Trinidad and Tobago Industrial Development Corporation, *Industrial Development Corporation Guide for Investors 1988* 11 (1988).

¹³¹ Cf. *id.*

¹³² *But see* Caribbean/Central American Action, *Investing in Antigua and Barbuda* 9 (1986); Jamaica National Investment Promotion Limited, *Starting and Operating a Business in Jamaica* 10 (1987); Caribbean/Central American Action, *Investing in St. Kitts and Nevis*, 12 (1986); Caribbean/Central American Action, *Investing in St. Lucia* 9 (1986). In promotional literature, Antigua and Barbuda, Jamaica, St. Kitts and Nevis, and St. Lucia state that the respective governments will use their discretionary authority to allow the unrestricted repatriation of capital and profits by foreign investors.

¹³³ See Belize Export & Investment Promotion Unit, *Belize Investment Code 4*; Embassy of Grenada promotional material, source: Grenada Industrial Development Corporation (citing Investment Code Incentives Law 1983 of Grenada); see also Grenada Industrial Development Corporation, *The Isle of Spice: A Business Opportunity is Ready and Waiting for You in Grenada* 16.

¹³⁴ Cf. Prominex Haiti, *A Practical Guide to Investment Opportunities in Haiti* 40-41 ("Under the Haitian system, both the gourde and the U.S. dollar are legal tender for all debts within the territory of Haiti. . . The Haitian system provides for a fixed parity between the gourde and the dollar. . . There are no exchange controls in Haiti, and currency is freely convertible. . .").

V. INVESTMENT INCENTIVES FOR NEW MANUFACTURING ENTERPRISES

Based upon an examination of investment incentive legislation directed at the development of new manufacturing enterprises, there are four legislative models in existence among the countries under consideration. Consistent with the caution which characterizes its direct foreign investment policy in general, the Dominican Republic offers the least in terms of statutory concessions to foreign investors: tax concessions are only made available to enterprises which manufacture products solely for export.¹³⁵ Consistent with the generally flexible nature of the foreign investment legislation utilized by the LDCs, Trinidad and Tobago, and Jamaica to regulate the entry¹³⁶ and the repatriation of capital and profits,¹³⁷ the investment incentive legislation in effect in these countries is designed to allow the respective governments the flexibility to regulate the application of incentives on a case by case basis.¹³⁸ The investment incentive programs offered by Haiti follow the basic pattern utilized by the CARICOM countries, with the added enticement of longer concession periods under prescribed circumstances.¹³⁹

A. The Industrial Incentives Law of the Dominican Republic

The magnitude of tax and customs concessions available to particular enterprises under the Industrial Incentives Law of the Dominican Republic is determined according to three distinct enterprise classifications (Classes "A", "B" and "C").¹⁴⁰ Class "A" refers to any enterprise engaged in the manufacture of products solely for export.¹⁴¹ It should be noted that only Class "A" enterprises qualify for income tax concessions.¹⁴² Class "B" refers to new enterprises which enhance the scope of the nation's manufacturing capabilities, create new jobs, and save foreign

¹³⁵ See *infra* note 144.

¹³⁶ See *infra* Part III of this Article, notes 26-85.

¹³⁷ See *infra* Part V of this Article, notes 114-142.

¹³⁸ See *infra* notes 154-194.

¹³⁹ See *infra* notes 195-226.

¹⁴⁰ *Dominican Republic Investors Handbook and Business Guide*, *supra* note 16, at 261 (translation of Articles 7, 8, 9 of the Industrial Incentives Law, No. 299 of the Dominican Republic).

¹⁴¹ *Id.* at 261 (translation of Article 7 of the Industrial Incentives Law, No. 299 of the Dominican Republic).

¹⁴² See *infra* notes 146-143. Since Class "A" enterprises "may only be established in Free Zones existing in the Republic", see *supra* note 140, and since investment in Free Zones is not direct investment in the domestic economy, see *supra* Introduction of this Article, note 1, it can be stated that the Dominican Republic does not offer income tax incentives for direct foreign investment.

exchange.¹⁴³ To qualify for Class "B" concessions, enterprises must produce goods not previously produced in the Dominican Republic, meeting the domestic demand for a product which would otherwise be addressed through importation.¹⁴⁴ Class "C" refers to enterprises which fail to meet the standards of Classes "A" or "B", and which either produce goods for domestic consumption, where current local production of such goods has been deemed insufficient by the Directorate of Industrial Development, or employ local raw materials in the manufacturing process.¹⁴⁵

Based on the foregoing classifications, the following investment incentive packages are available under the Industrial Incentives Law of the Dominican Republic:

Class "A" — (1) 100% exemption from income tax (excluding taxes on profits and dividends charged to partners or shareholders, unless the profits are reinvested or the dividends are paid in shares)¹⁴⁶; (2) 100% exemption from all import duties and taxes on raw materials and components used in the manufacturing process;¹⁴⁷ (3) 100% exemption from all import duties and taxes on imported machinery and equipment¹⁴⁸; and (4) 100% exemption from all import duties and taxes on fuel (excluding gasoline) and lubricants used in the manufacturing process.¹⁴⁹

Class "B" — (1) 95% exemption from all import duties and taxes on raw materials and components used in the manufacturing process and not available from domestic sources;¹⁵⁰ and (2) 95% exemption from all import duties and taxes on fuel (excluding gasoline) and lubricants used in the manufacturing process.¹⁵¹

Class "C" — (1) Up to 90% (the exact amount is subject to the discretion of The Directorate of Industrial Development) exemption from import duties and taxes on raw materials and components used in the manufacturing process and not available from domestic sources;¹⁵²

¹⁴³ *Dominican Republic Investors Handbook and Business Guide*, supra note 16, at 261 (translation of Article 8 of the Industrial Incentives Law, No. 299 of the Dominican Republic).

¹⁴⁴ *Id.* at 250 (translation of Article 17 of the Foreign Investment Law, No. 861 of the Dominican Republic).

¹⁴⁵ *Id.* at 261 (translation of Article 9 of the Industrial Incentives Law, No. 299 of the Dominican Republic).

¹⁴⁶ *Id.* at 262-263 (translation of Article 12 of the Industrial Incentives Law, No. 299 of the Dominican Republic).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

and (2) 90% exemption from all import duties and taxes on fuel (excluding gasoline) and lubricants used in the manufacturing process.¹⁵³

B. CARICOM Investment Incentive Legislation

Article 40 of the Annex to the Treaty Establishing the Caribbean Community requires the signatories to "seek to harmonise such legislation and practices as directly affect fiscal incentives to industry",¹⁵⁴ while Article 54 further requires that "in establishment of the Scheme for Harmonisation of Fiscal Incentives to Industry. . .the special needs of the Less Developed Countries shall be taken into account."¹⁵⁵ Within the context of these provisions, the CARICOM member states concluded the Agreement on the Harmonisation of Fiscal Incentives at Georgetown, Guyana on June 1, 1973.¹⁵⁶ Pursuant to this agreement, the LDCs and Trinidad and Tobago adopted similarly worded implementing legislation¹⁵⁷ ("the Fiscal Incentives Acts"), while Jamaica incorporated the harmonization requirements of the agreement into two pieces of existing investment incentive legislation entitled the Industrial Incentives Act¹⁵⁸ (which governs production for the domestic market¹⁵⁹) and the Export Industry Encouragement Act¹⁶⁰ (which governs production for export to countries other than the CARICOM member states¹⁶¹) ("the Jamaican investment incentive statutes").

The Fiscal Incentives Acts and the Jamaican investment incentive statutes grant approved manufacturers the following concessions: (1) an exemption from import duties on items required for the operation of the

¹⁵³ *Id.*

¹⁵⁴ Annex to the Treaty Establishing the Caribbean Community, July 4, 1973 art. 40; *see generally* Treaty Establishing the Caribbean Community, July 4, 1973.

¹⁵⁵ Annex to the Treaty Establishing the Caribbean Community, July 4, 1973, art. 54.

¹⁵⁶ An Agreement on the Harmonisation of Fiscal Incentives, June 1, 1973.

¹⁵⁷ *See generally* Fiscal Incentives Act, 1975, No. 18 of 1975, Laws of Antigua (1975) (hereinafter Antigua and Barbuda Fiscal Incentives Act); Fiscal Incentives (Industrial Enterprises) Ordinance, ch. 45, Laws of Belize, Revised (1980) (hereinafter Belize Fiscal Incentives Act); Fiscal Incentives Act, 1973, No. 42 of 1973, Dominica Laws (1973) (hereinafter Dominica Fiscal Incentives Act); Fiscal Incentives Act, 1974, Grenada Act No. 41 of 1974 (hereinafter St. Kitts and Nevis Fiscal Incentives Act); Fiscal Incentives Act, 1974, St. Lucia Act No. 15 of 1974 (hereinafter St. Lucia Fiscal Incentives Act); Fiscal Incentives Act, 1982, No. 5 of 1982, St. Vincent and the Grenadines Acts For The Year 1982 (hereinafter St. Vincent and the Grenadines Fiscal Incentives Act); Fiscal Incentives Act, ch. 85:01, Laws of Trinidad and Tobago (1980) (hereinafter Trinidad and Tobago Fiscal Incentives Act).

¹⁵⁸ *See* Industrial Incentives Act, Laws of Jamaica (1986) (hereinafter Jamaica Industrial Incentives Act).

¹⁵⁹ *See generally id.*

¹⁶⁰ *See generally* Export Industry Encouragement Act, Laws of Jamaica (1986) (hereinafter Jamaica Export Industry Encouragement Act).

¹⁶¹ *See generally id.*

enterprise;¹⁶² (2) an exemption from tax on corporate profits;¹⁶³ (3) an exemption from tax on dividends;¹⁶⁴ (4) the right to carry forward net losses incurred during the tax concession period, to be set off against chargeable income during the five year period following the end of the tax concessions period¹⁶⁵ (under the Jamaican investment incentives statutes, such losses may be set off against chargeable income during the six year period following the end of the tax concession period¹⁶⁶); (5) tax credits on export income earned following the end of the tax concessions period;¹⁶⁷ and (6) the right to depreciate assets to the extent normally

¹⁶² See Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sections 21(1), 21(2)(a)-(b); Belize Fiscal Incentives Act, *supra* note 157, at sec. 6; Dominica Fiscal Incentives Act, *supra* note 157, at sections 10(1), 10(2)(a)-(b); Grenada Fiscal Incentives Act, *supra* note 157, at sections 7(1), 7(2)(a)-(b); Jamaica Industrial Incentives Act, *supra* note 158, at sections 15(3), SECOND SCHEDULE; Jamaica Export Industry Encouragement Act, *supra* note 160, at sections 9(1), 11(3), 11(4)(c); St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sections 7(1), 7(2)(a)-(b); St. Lucia Fiscal Incentives Act, *supra* note 157, at sections 7(1), 7(2)(a)-(b); St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, sections 7(1), 7(2)(a)-(b); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sec. 5(1)(a)(ii).

¹⁶³ See Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sec. 13; Belize Fiscal Incentives Act, *supra* note 157, at sec. 8(1); Dominica Fiscal Incentives Act, *supra* note 157, at sec. 14(1); Grenada Fiscal Incentives Act, *supra* note 157, at sec. 12(1); Jamaica Industrial Incentives Act, *supra* note 158, at sections 10(1)-(2), 11(a)-(d), 12(a)(i)-(ii), 12(b)-(d), 29(1)(a)(i)-(ii) (*see also id.* at sections 4(2)-(6)); Jamaica Export Industry Encouragement Act, *supra* note 160, at sections 9(1), 11(3), 11(4)(c); St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sec. 12(1); St. Lucia Fiscal Incentives Act, *supra* note 157, at sec. 12(1); St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sec. 12(1); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sec. 5(1)(a)(i).

¹⁶⁴ See Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sections 19(1)-(2); Belize Fiscal Incentives Act, *supra* note 157, at sections 11(2)-(3); Dominica Fiscal Incentives Act, *supra*, at sections 17(2)-(3); Grenada Fiscal Incentives Act, *supra* note 157, at sections 20(2)-(3); Jamaica Industrial Incentives Act, *supra* note 158, at sections 13(1)-(3), 13(4)(a)-(b), 13(5)-(6); Jamaica Export Encouragement Act, *supra* note 160, at sections 9(1), 11(3), 11(4)(c); St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sections 20(2)-(3); St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sections 20(2)-(3); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sections 6(1)-(2), 6(3)(a)-(b), 6(4).

¹⁶⁵ See Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sections 16, 17(1)-(3); Belize Fiscal Incentives Act, *supra* note 157, at sections 10(1)-(2); Dominica Fiscal Incentives Act, *supra* note 157, at sections 16(1)-(2); Grenada Fiscal Incentives Act, *supra* note 157, at sections 15(1)-(2); St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sections 14(2), 15(1); St. Lucia Fiscal Incentives Act, *supra* note 157, at sections 14(2), 15(1); St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sections 14(2), 15(1); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sections 5(1)(b), 24(1)(a)-(b), 24(4)-(6).

¹⁶⁶ See Jamaica Industrial Incentives Act, *supra* note 158, at sections 11(d), 12(d), 29(1)(d); Jamaica Export Industry Encouragement Act, *supra* note 160, at sections 9(1), 11(3), 11(4)(c).

¹⁶⁷ See Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sections 18(1), 18(2)(a)-(b), 18(2)(c)(i)-(ii), 18(3); Belize Fiscal Incentives Act, *supra* note 157, at sections 12(1), 12(2)(a)-(b), 12(c)(i)-(ii), 12(3); Dominica Fiscal Incentives Act, *supra* note 157, at sections 18(1), 18(2)(a)-(b), 18(c)(i)-(ii), 18(3); Grenada Fiscal Incentives Act, *supra* note 157, at sections 16(1), 16(2)(a)-(b), 16(c)(i)-(ii), 16(3); Jamaica Export Industry Encouragement Act, *supra* note 160, at sections 8(3)(c), 8(4)(a)-(b); St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sections 16(1)-(3); St. Lucia

permitted, during the tax concession period.¹⁶⁸

The Jamaican investment incentive statutes depart from the common approach utilized in the Fiscal Incentives Acts to determine the length of concession periods¹⁶⁹ in that the government retains the discretionary authority to grant tax concessions for up to 10 years without reference to statutory guidelines based on particular features of a given enterprise.¹⁷⁰ The Jamaican investment incentive statutes set a 10 year limit on the length of customs concessions periods that may be granted to approved manufacturers.¹⁷¹

In contrast, each of the Fiscal Incentives Acts under consideration in this Article designates five types of manufacturing enterprises which correspond to the maximum allowable length of the concessions period¹⁷² (under these statutes, the period in which tax and customs concessions are in effect is a single unit of time which is termed "the tax holiday"¹⁷³). Three types (Groups I, II and III) are classified according

Fiscal Incentives Act, *supra* note 157, at sections 16(1)-(3); St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sections 16(1)-(3); *cf.* Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sections 23(3) (citing Corporation Tax Act, ch. 75:02, sections 8(1), 8(2)(a)-(b), 8(3)(a)-(b), 8(4), SECOND SCHEDULE, Laws of Trinidad and Tobago (1980)).

¹⁶⁸ See Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sec. 14; Belize Fiscal Incentives Act, *supra* note 157, at sec. 9(1); Dominica Fiscal Incentives Act, *supra* note 157, at sec. 15(1); Grenada Fiscal Incentives Act, *supra* note 157, at sec. 14(1); Jamaica Industrial Incentives Act, *supra* note 158, sections 11(b)-(c), 29(1)(b)-(c); Jamaica Export Industry Encouragement Act, *supra* note 160, at sections 9(1), 11(3), 11(4)(c); St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sec. 13; St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sec. 13; St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sec. 13; *cf.* Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sec. 23(2).

¹⁶⁹ Compare *infra* notes 170, 171 with *supra* notes 150-161.

¹⁷⁰ See Jamaica Industrial Incentives Act, *supra* note 158, at sections 29(a)(i)-(ii); Jamaica Export Industry Encouragement Act, *supra* note 160, at sections 9(1), 11(3), 11(4)(c).

¹⁷¹ See Jamaica Industrial Incentives Act, *supra* note 158, at sec. 18; Jamaica Export Industry Encouragement Act, *supra* note 158, at sections 9(1), 11(3), 11(4)(c); see also Jamaica Industrial Incentives Act, *supra* note 160, at sections 15(1)-(3).

¹⁷² See Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sections 11(a)-(d), 12(1)-(2), SCHEDULE; Belize Fiscal Incentives Act, *supra* note 157, at sections 5(1)(a)-(e), 5(2); Dominica Fiscal Incentives Act, *supra* note 157, at sections 13(1)(a)-(e), 13(2); Grenada Fiscal Incentives Act, *supra* note 157, at sections 10(1)(a)-(b), 12(1), SCHEDULE II; St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sections 10(1)(a)-(b), 11(1)-(2), 12(1), SCHEDULE III; St. Lucia Fiscal Incentives Act, *supra* note 157, at sections 10(1)(a)-(b), 11(1)-(2), 12(1), SCHEDULE III; St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sections 10(1)(a)-(b), 11(1)-(2), SCHEDULE III; Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sections 2(1), 9(2), 10(1)(c), SECOND SCHEDULE.

¹⁷³ See Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sec. 11(1); Belize Fiscal Incentives Act, *supra* note 157, at sec. 2(1); Dominica Fiscal Incentives Act, *supra* note 157, at sec. 14(1); Grenada Fiscal Incentives Act, *supra* note 157, at sec. 12(1); St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sec. 12(1); St. Lucia Fiscal Incentives Act, *supra* note 157, at sec. 12(1); St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sec. 12(1); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sec. 2(1).

to the percentage of "local value added"¹⁷⁴ to the sales price of finished products. The fourth type of enterprise common to all of these Fiscal Incentives Acts is labeled an "enclave enterprise",¹⁷⁵ denoting an enterprise which produces solely for export outside CARICOM.¹⁷⁶ With the exception of the statutes of Antigua and Barbuda, Belize, and Trinidad and Tobago, the Fiscal Incentives Acts under consideration do not extend import duty concessions to enclave enterprises.¹⁷⁷ The fifth type is

¹⁷⁴ See Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sec. 2 (a "Member State" is any state which is a party to the Treaty Establishing the Caribbean Common Market; 'local value added' means the amount (expressed as a percentage of the total sales of an approved product) by which the amount realised from the sales of an approved product over a continuous period of 12 months, exceeds the aggregate amount of the following (a) the value of imported raw material, components and parts of components, fuels and services; (b) wages and salaries paid during the period to persons who are nationals of the member States; (c) profits distributed and remitted directly or indirectly to persons who are not resident in a Member State; (d) interest, management charges and other income payments or any of them accruing directly or indirectly to persons not resident in a Member State other than a branch or agency of banks not resident in a Member State; (e) depreciation of imports of plant, machinery and equipment;"), 3(1) ("The local value added shall be weighted by the wages or salaries paid to nationals of A Member State expressed as a percentage of the total sales of the approved product and calculated in accordance with the formula

$$\frac{V(100+W)}{100},$$

3(2)(a)-(b) (. . . V represents the local value added expressed as a percentage of the total sales of the approved product; and . . . W represents the wages and salaries paid to nationals of a Member State and expressed as a percentage of the total sales of the approved product."), 4 (the value of a component produced in a Member State means "the value of [its] imported raw material content"); Belize Fiscal Incentives Act, *supra* note 157, at sections 2(2)(i)-(v), 3, 2(1), SCHEDULE (substantially the same as in Antigua and Barbuda Fiscal Incentives Act); Dominica Fiscal Incentives Act, *supra* note 157, at sections 2, 3(1)-(2), 4(1) (substantially the same as in Antigua and Barbuda Fiscal Incentives Act); Grenada Fiscal Incentives Act, *supra* note 157, at sections 2, 3(1)-(2), 4(1) (substantially the same as in Antigua and Barbuda Incentives Act); St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sections 2(1), 3(1)-(2) (substantially the same as in Antigua and Barbuda Fiscal Incentives Act); St. Lucia Fiscal Incentives Act, *supra* note 157, at sections 2, 3(1)-(2), 4(1) (substantially the same as in Antigua and Barbuda Fiscal Incentives Act); St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sections 2(i)-(v), 2(m), 3(1)-(2), 4(1) (substantially the same as in Antigua and Barbuda Fiscal Incentives Act); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sections 3(1)(a)-(e), 3(2)-(4) (substantially the same as in Antigua and Barbuda Fiscal Incentives Act).

¹⁷⁵ See *infra* note 176.

¹⁷⁶ Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sec. 2; Belize Fiscal Incentives Act, *supra* note 157, at sec. 5(1)(d); Dominica Fiscal Incentives Act, *supra* note 157, at sec. 2; Grenada Fiscal Incentives Act, *supra* note 157, at sec. 2; St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sec. 2(1); St. Lucia Fiscal Incentives Act, *supra* note 157, at sec. 2; St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sec. 2(f); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sec. 2(1).

¹⁷⁷ Compare Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, Belize Fiscal Incentives Act, *supra* note 157, and Trinidad and Tobago Fiscal Incentives Act, *supra* note 157 (each containing no restrictions on import duty concessions to enclave enterprises), with Dominica Fiscal Incentives Act, *supra* note 157, at sec. 10(4); Grenada Fiscal Incentives Act, *supra* note 157, at sec. 7(4); St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sec. 7(4); St. Lucia Fiscal Incentives

labeled either an "capital intensive enterprise"¹⁷⁸ or "highly capital intensive industry",¹⁷⁹ denoting an enterprise with a capital investment of at least U.S. \$9.25 million.¹⁸⁰ Using the preceding terminology, concessions under the Fiscal Incentives Acts of the LDCs¹⁸¹, and Trinidad and Tobago¹⁸² may be granted as follows:

<u>Type of Enterprise</u>	<u>Local Value Added</u>	<u>LDC Acts</u>	Maximum Length of the Tax Holiday (in years)
			<u>Trinidad and Tobago Act</u>
Group I	50% or more	15	9
Group II	25% - 49%	12	7
Group III	10% - 24%	10	5
Enclave	Not Applicable	15	10
Capital Intensive	Not Applicable	15	10

The Fiscal Incentives Acts and the Jamaican investment incentive statutes all require government approval before a particular manufacturing enterprise can qualify for any of the available incentives.¹⁸³ In making the determination to grant approval, government officials¹⁸⁴ in

Act, *supra* note 157, at sec. 7(4); St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sec. 7(4).

¹⁷⁸ See Belize Fiscal Incentives Act, *supra* note 157, at sections 5(1)(e), 5(2) ("Capital intensive enterprise"); Dominica Fiscal Incentives Act, *supra* note 157, at sections 13(e), 13(2) ("Capital intensive enterprise").

¹⁷⁹ See Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sections 12(1)-(2), SCHEDULE ("highly capital intensive industry"); Grenada Fiscal Incentives Act, *supra* note 157, at sections 2, 11, SCHEDULE III ("highly capital intensive industry"); St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sections 11(1)-(2), 12(1), SCHEDULE III ("highly capital intensive industry"); St. Lucia Fiscal Incentives Act, *supra* note 157, at sections 11(1)-(2), 12(1), SCHEDULE III ("highly capital intensive industry"); St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sections 11(1)-(2), 12(1), SCHEDULE III ("highly capital intensive industry"); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sec. 2(1), SECOND SCHEDULE ("highly capital intensive enterprise").

¹⁸⁰ See *supra* notes 178-179.

¹⁸¹ See *supra* note 174.

¹⁸² See Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sections 2(1), 9(2), 10(1)(c), SECOND SCHEDULE.

¹⁸³ Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sections 6(1)(a)-(b), 6(2), 6(3)(a)-(d), 7(1)(a)-(e); Belize Fiscal Incentives Act, *supra* note 157, at sections 4(1)(a)-(c); Dominica Fiscal Incentives Act, *supra* note 157, at sections 5, 6, 7(1)(a)-(b); Grenada Fiscal Incentives Act, *supra* note 157, at sections 5, 6(1), 6(2)(a)-(b); Jamaica Industrial Incentives Act, *supra* note 158, at sections 3(1)(a)-(b), 3(2), 3(3)(a)-(d), 3(4), 4(1)(a)-(e); Jamaica Export Industry Encouragement Act, *supra* note 160, at sections 3(1), 3(1A), 3(2), 3(3)(a)-(b), 4(1)(a)-(f), 4(1A)-(1B), 7, 8(1); SCHEDULE; St. Kitts and Nevis Fiscal Incentives Act, *supra* note 157, at sections 5, 6(1), 6(2)(a)-(b); St. Lucia Fiscal Incentives Act, *supra* note 157, at sections 5, 6(1), 6(2)(a)-(b); St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sections 5, 6(1)(i)-(ii), 6(2)(a)-(c); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sections 4(1)-(3), 10(1)(a)-(d).

¹⁸⁴ See Dominica Fiscal Incentives Act, *supra* note 157, at sections 2, 5 ("the member of the

Dominica, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia, and Trinidad and Tobago are required to consider whether the proposed product is already produced in sufficient quantities by domestic manufacturers¹⁸⁵ and whether the company seeking concessions would likely to cause a glut in the market for the proposed product based on its projected production schedule¹⁸⁶.

In addition to the foregoing criteria, the statutes of Antigua and Barbuda, and Jamaica require consideration of "whether manufacture of the product would utilize raw materials of skills available in the [State]"¹⁸⁷ and "the element of risk involved in establishing a successful manufacture of the product",¹⁸⁸ but also grant the approving author-

Cabinet to whom responsibility for industry is assigned); Grenada Fiscal Incentives Act, *supra* note 157, at sections 2, 5 ("the member of the Cabinet to whom responsibility for industry is assigned"); St. Kitts and Nevis Fiscal Incentives Act at sec. 5 ("[t]he Governor"); *see also* Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sections 6(1)(a)-(b) (the "Cabinet" *but see infra* note 168); Belize Fiscal Incentives Act, *supra* note 157, at sections 2, 4(1)(a)-(c) ("the Minister of Government responsible for industry"); Jamaica Industrial Incentives Act, *supra* note 158, at sections 2, 3(1)(a)-(b), 3(3)(a)-(d), 3(4), 4(1)(a)-(e) and Jamaica Export Industry Encouragement Act, *supra* note 160, at sections 2, 3(1), 3(1A), (2), 3(3)(A)-(B), 4(1)(A)-(F), 4(1A)-(1B), 7, 8(1) ("the Minister responsible for industrial development"); St. Vincent and the Grenadines Incentives Act, *supra*, at sec. 5 (the "Cabinet"); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sections 4(1)-(3), 10(1)(a)-(d) ("the President").

¹⁸⁵ *See* Dominica Fiscal Incentives Act, *supra* note 157, at sections 7(1)(a)-(b); Grenada Fiscal Incentives Act, *supra* note 157, at sections 6(2)(a)-(b); Jamaica Industrial Incentives Act, *supra* note 158, at sec. 3(3)(c); St. Kitts and Nevis Fiscal Incentives Act at sections 6(2)(a)-(b); St. Lucia Fiscal Incentives Act, *supra* note 157, at sections 6(2)(a)-(b); Trinidad and Tobago Fiscal Incentives Act, *supra* note 157, at sections 10(3)(a), 10(3)(c). A commensurate criterion appears in the Jamaica Export Industry Encouragement Act, *supra* note 160, at sec. 3(a) ("the effect which approval would have on existing industries"). The Jamaica Export Industry Encouragement Act sets forth the following criteria for the determination of whether or not a particular company may qualify for approval as an "approved export manufacturer":

"4.-(1) Subject to the provision of section 7, the Minister may, by order, declare that a company which is manufacturing, or proposes to manufacture, an approved export product declared under subsection (1) of section 3 is an approved export manufacturer for the purposes of this Act if he is satisfied that the company-

(a) proposes to manufacture the approved product exclusively for export from this Island in countries other than those belonging to the Caribbean Common Market;

(b) is adequately financed;

(c) has adequate trained personnel in its employ or is able to obtain the services of such personnel;

(d) has access to the necessary technical information;

(e) is able to obtain adequate raw materials;

(f) possesses, or will possess, the necessary."

Id. at sections 4(1)(a)-(f).

¹⁸⁶ *See id.*

¹⁸⁷ Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sections 6(3)(a)-(b); Jamaica Industrial Incentives Act, *supra* note 158, at section 3(3)(b); St. Vincent and the Grenadines Fiscal Incentives Act, *supra*, at sections 6(2)(a)-(b); *but see supra* note 187 for criteria applied under the Jamaica Export Industry Encouragement Act.

¹⁸⁸ Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sec. 6(3)(d); Jamaica Industrial Incentives Act, *supra* note 158, at section 3(3)(d); *Cf.* Jamaica Export Industry Encouragement Act,

ity¹⁸⁹ “absolute discretion to grant or refuse approval”¹⁹⁰. The statute of St. Vincent and the Grenadines requires a finding by the Minister that the proposed enterprise will be viable.¹⁹¹ The statute of Belize is unique in requiring that “a company has been incorporated in Belize which will establish or conduct the enterprise”¹⁹² and that the government has determined that the proposed enterprise will be beneficial to the local economy¹⁹³ and “in the public interest”¹⁹⁴.

C. The Industrial Investment Code of Haiti

The Industrial Investment code of Haiti allows the government to offer the foreign investor some of the more generous incentives available from the countries under consideration in this Article.¹⁹⁵ However, the level of generosity embodied in particular incentive packages depends on two principal factors: (1) the intended market for which the goods are produced, which determines the magnitude of customs duty,¹⁹⁶ value added tax,¹⁹⁷ and other domestic tax (excluding income tax)¹⁹⁸ concessions; and (2) the location of the enterprise, which determines the magnitude of income tax concession¹⁹⁹.

Production for the local market: New enterprises devoted to the manufacture of goods for distribution in the local market qualify for permanent, 100% exemption from customs duties, value added tax, and other domestic taxes, on machinery and equipment (including transportation vehicles) used in the process of production.²⁰⁰ Such enterprises also qualify for a 10 year, 66 2/3% exemption from custom duties, turnover tax, and other domestic taxes on raw materials, components used in

supra note 160, at section 3(b) (“the amount of risk involved in establishing a successful manufacture and export of the product”).

¹⁸⁹ See *supra* note 184.

¹⁹⁰ Antigua and Barbuda Fiscal Incentives Act, *supra* note 157, at sec. 10; Jamaica Industrial Incentives Act, *supra* note 158, at section 4(4); Jamaica Export Industry Encouragement, *supra* note 160, at sections 8(1).

¹⁹¹ See St. Vincent and the Grenadines Fiscal Incentives Act, *supra* note 157, at sec. 2(c).

¹⁹² Belize Fiscal Incentives Act, *supra* note 157, at sec. 4(1)(a).

¹⁹³ *Id.* at sec. 4(1)(b).

¹⁹⁴ *Id.*

¹⁹⁵ Compare *infra* notes 200-216 (incentives offered by Haiti) with *supra* (incentives offered by the Dominican Republic) and 163-182 (incentives offered by CARICOM member states under consideration in this Article).

¹⁹⁶ See *infra* notes 206-209, 200-204.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ See *infra* notes 211-216.

²⁰⁰ See *Decret Protant Constitution du Code des Investissements Industriels*, *supra* note 105, at art. 23, sections 1(a)-(b).

production,²⁰¹ and on spare parts for machinery used in production²⁰².

Production for export: New enterprises producing solely for export qualify for permanent, 100% exemption from customs duties, turnover tax, and other domestic taxes, on raw materials and components used in production,²⁰³ and on spare parts for machinery used in production²⁰⁴.

The magnitude of income tax concessions is determined according to three classifications based on the location of the enterprise.²⁰⁵ "Privileged Status A" denotes an enterprise located in the metropolitan area of Port-au-Prince,²⁰⁶ the capital city of Haiti²⁰⁷. "Privileged Status B" denotes an enterprise located outside the metropolitan area of Port-au-Prince.²⁰⁸ "Privileged Status C" denotes an enterprise located in government owned industrial space facilities.²⁰⁹ In order to qualify for income tax concessions, income must be earned from activities carried out at the designated privileged status location.²¹⁰

Based on the foregoing classifications, income tax concessions are allocated as follows:

Privileged Status A enterprises: Such enterprises qualify for 100 per cent exemption from income tax for the first 5 years of production;²¹¹ and partial exemption from income tax over the next five years of production, according to the following schedule.²¹²

²⁰¹ See *id.* at art. 23, sections 2(a)-(b).

²⁰² See *id.* at art. 23, sec. 2(c).

²⁰³ See *id.* at art. 22, sections (a)-(b).

²⁰⁴ See *id.* at art. 22, sec. (c).

²⁰⁵ See *infra* notes 206-216. But see *Decret Protant Constitution du Code des Investissements Industriels*, *supra* note 105, at arts. 9, 32-35 (Projects deemed to be of special interest to Haiti which do not qualify for incentives under a privileged status may be granted incentives by agreement with the government).

²⁰⁶ See *Decret Protant constitution du Code des Investissements Industriels*, *supra* note 105, at art. 10.

²⁰⁷ *C/CAA's 1990 Caribbean and Central American Databook*, *supra* note 1, at 199.

²⁰⁸ See *Decret Protant Constitution du Code des Investissements Industriels*, *supra* note 105, at art. 10.

²⁰⁹ See *id.*

²¹⁰ See *infra* notes 211-216.

²¹¹ See *Decret Protant Constitution du Code des Investissements Industriels*, *supra* note 105, at art. 20.

²¹² *Cf. id.*

<u>Production Year</u>	<u>Magnitude of Income Tax Exemption (percentage of income exempted)</u>
6	85%
7	70
8	55
9	40
10	20
11	0

Privileged Status B enterprises: Such enterprises qualify for 100% exemption from income tax for the first 15 years of production;²¹³ and partial exemption for the next five years according to the following schedule:²¹⁴

<u>Production Year</u>	<u>Magnitude of Income Tax Exemption (percentage of income exempted)</u>
16	85%
17	70
18	55
19	40
20	20
21	0

Privileged Status C enterprises: Such enterprises qualify for 100% exemption from income tax for the first 8 years of production;²¹⁵ and partial exemption for the next five years according to the following schedule:²¹⁶

<u>Production Year</u>	<u>Magnitude of Income Tax Exemption (percentage of income exempted)</u>
9	85%
10	70
11	55
12	40
13	20
14	0

Applications for incentives granted under the Investment Incentive Code of Haiti undergo consideration by an Interagency board called "*La Commission Consultative des Investissements Privileges*"²¹⁷ ("the Advisory Commission on Privileged Investments"). The Advisory Commis-

²¹³ See *Decret Protant Constitution du Code des Investissements Industriels*, *supra* note 105, at art. 29 (citing *id.* at art. 20).

²¹⁴ See *id.* at art. 20.

²¹⁵ See *id.* at art. 31 (referring to the laws on Industrial Parks) and *la Loi du 27 Aout 1974 instituant et reglementant sur le territoire de la Republique d'Haiti des zones cloturees denommees PARCS INDUSTRIELS*, art. 14, *Journal Officiel De La Republique D'Haiti*, le 26 Septembre 1974.

²¹⁶ See *la Loi du 27 Aout 1974*, *supra*, at art. 14.

²¹⁷ See *Decret Protant Constitution du Code des Investissements Industriel*, *supra* note 105, at arts. 36, 37.

sion on Privileged Investments is empowered to make recommendations to the Minister of the Economy and Finance²¹⁸ who is responsible for granting or denying concessions to particular enterprises²¹⁹. The statute requires the Minister of the Economy and Finance to give preferential consideration to enterprises deemed likely to assist the Haitian economy by improving the utilization of national resources;²²⁰ by creating new jobs;²²¹ by creating jobs involving advanced levels of training;²²² by earning foreign currency;²²³ by leading to the diminished dependency on imported goods;²²⁴ by improving the local technological capability;²²⁵ and by decentralizing the geographical distribution of manufacturing enterprises²²⁶.

VI. AN OVERVIEW OF CURRENT TAXES ON INCOME AND PROFITS

As is evident from an examination of the investment incentive legislation discussed in Part V of this Article, the normal tax burden a country places on personal and corporate income can be just as significant to the attractiveness of the investment environment as the magnitude of statutory incentives expressly offered. For example, hypothetical Country A whose legal system includes an irrevocable prohibition on the taxation of corporate income offers essentially the same incentive as an identical hypothetical Country B which imposes an annual corporate income tax at a flat rate of 99% of chargeable income, yet offers the incentive of a permanent waiver of corporate income taxes on approved foreign-owned enterprises. Therefore, in conjunction with a comparison of the investment incentives offered by the countries under consideration in this Article, a comparison of relative tax burdens on income and profits is necessary in order to determine which of these countries have developed the more felicitous business environments.

A. Corporation Taxes

Each of the CARICOM member states applies an annual flat rate corporate income tax,²²⁷ while the Dominican Republic²²⁸ and Haiti²²⁹

²¹⁸ See *id.* at 42.

²¹⁹ See *id.*

²²⁰ See *id.* at art. 11, sec. (a).

²²¹ See *id.* at art. 11, sec. (b).

²²² See *id.*

²²³ See *id.* at art. 11 sec. (c).

²²⁴ See *id.*

²²⁵ See *id.* at art. 11, sec. (d).

²²⁶ See *id.* at art. 11, sec. (e).

²²⁷ See *supra* notes 234-245.

tax corporate income according to graduated rate schedules. For purposes of comparison with the corporate income taxes of the CARICOM member states, the graduated rates of the Dominican Republic and Haiti have been converted into effective rates on chargeable annual income of U.S. \$1,000,000. Haiti, Jamaica, and St. Lucia charge the lowest rates of corporate income tax.²³⁰ Haiti charges an effective rate of 33.1%²³¹ (U.S. \$331,000 on U.S. \$1,000,000 of chargeable income²³²) while Jamaica²³³ and St. Lucia²³⁴ charge flat rates of 33.3%. Grenada charges companies incorporated overseas a rate of 35% of net profits,²³⁵ while charging local companies a minimum flat rate of 33.3%²³⁶ (however, under the Grenada Business Levy Act, a higher effective rate is possible²³⁷). In ascending order, the corporate tax rates of the remaining countries under consideration in this Article are as follows: Dominica - 35%²³⁸ Antigua

²²⁸ See *infra* note 242.

²²⁹ See *infra* note 231.

²³⁰ See *infra* note 231-245.

²³¹ See *Decret Relatif A L'Impot Sur Le Revenu, art. 150, Journal Officiel De La Republique D'Haiti, le 29 Septembre 1986* (hereinafter *Haiti Income Tax Act*).

Rate schedule for personal and corporate income taxes:

Income Bracket	Rate
U.S.\$0.20 to U.S.\$4000	0%
4000.20 to 20,000	10%
20,000.20 to 50,000	15%
50,000.20 to 150,000	25%
over 150,000	30%

See also *C/CAA's Caribbean and Central American Databook, supra* note 1, at 207 ("Currency: Gourdes. . .1 gourde = U.S.\$0.20").

²³² See *id.*

²³³ Pursuant to the Income Tax (Amendment) Act, 1987, corporations are subject to income tax through the statutory mechanism of the general income tax. *Cf.* Income Tax (Amendment) Act, 1987, sec. 2(c) (amending sec. 2(1) of the Income Tax Act by replacing the definition of the term "body subject to company profits tax" with the definition of the term "body corporate subject to income tax"); Income Tax Act, sec. 2(1), 1981 (definition of "person") and Income Tax (Amendment) Act, 1987, sec. 6(c) (repealing and replacing sec. 30 (1)(b) of the Income Tax Act) (income tax is levied on the chargeable income of "all other persons").

²³⁴ Income Tax Act, 1989, sections 68(1), FIFTH SCHEDULE, St. Lucia Act No. 1 of 1989 (hereinafter *St. Lucia Income Tax Act*).

²³⁵ See Business Levy (Amendment) Act, 1988, sec. 6, Grenada Act No. 13 of 1988 (adding sec. 16A to the Business Levy Act, 1986); see also Business Levy Act, 1986, Grenada Act No. 16 of 1986.

²³⁶ See Business Levy (Amendment) Act, sections 4(2)-(3) of the Business Levy Act, 1987, Grenada Act No. 5 of 1987, and adding sections 4(4)-(6), THIRD SCHEDULE thereto; see also Income Tax (Repeal) Act, 1986, sec. 2(b), Grenada Act No. 12 of 1986 (repealing corporate income tax).

²³⁷ See Business Levy Act, 1987, *supra* note 236, at sec 4(1) and Business Levy (Amendment) Act, 1987, *supra* note 236, at sec. 2, SCHEDULE (adding rate schedule) and Business Levy (Amendment) Act, 1989, sec.3 (repealing and replacing sections 4(2)-(3) of Business Levy Act, 1987, *supra* note 236, and adding sections 4(4)-(6), SECOND SCHEDULE, THIRD SCHEDULE, denoting rate schedule as FIRST SCHEDULE).

²³⁸ See Income Tax Act, 1982, sec. 69(1), Dominica Act No. 37 of 1982 (hereinafter *Dominica Income Tax Act*) and Income Tax (Amendment) Act, 1987, sec. 5, Dominica Act No. 21 of 1987

and Barbuda - 40%;²³⁹ Trinidad and Tobago - 40%;²⁴⁰ St. Vincent and the Grenadines - 45%;²⁴¹ Dominican Republic - 48.95%²⁴² (tax on U.S. \$1,000,000 = U.S. \$489,507.99²⁴³); Belize - 49.5%;²⁴⁴ and St. Kitts and Nevis - 50%²⁴⁵.

B. Withholding Taxes

Antigua and Barbuda,²⁴⁶ Belize²⁴⁷ and Grenada²⁴⁸ do not impose

(hereinafter Dominica Income Tax (Amendment) Act, 1987) (repealing and replacing FIFTH SCHEDULE of Dominica Income Tax Act).

²³⁹ See Income Tax Act, ch. 266, sections 5(a)-(g), 40 Revised Laws of Antigua (1965) (hereinafter Antigua and Barbuda Income Tax Act).

²⁴⁰ Republic of Trinidad and Tobago Act No. 9 of 1990, sec. 6 (amending FIRST SCHEDULE of Corporation Tax Act, ch. 75:02, Laws of Trinidad and Tobago (1980)) and Corporation Tax Act, at sections 3(a)-(g), 3(h)(i)-(ii), 3(i)-(m).

²⁴¹ Income Tax Act, 1979 sec. 66(1), St. Vincent and the Grenadines Act No. 2 of 1979 (hereinafter St. Vincent and the Grenadines Income Tax Act) and Income Tax (Amendment) Act, 1984, sec.8, St. Vincent and the Grenadines Act No. 34 of 1984 (repealing and replacing FIFTH SCHEDULE of St. Vincent and the Grenadines Income Tax Act).

²⁴² See *Ley No. 72 que introduce modificaciones a la Ley 5911 del ano 1962 de Impuesto sobre la Renta, articulo I (amending articulo 55 of Ley 5911 del ana 9162 de Impuesto sobre la Renta)* (basic rate schedule of corporate income tax). See also *C/CAA's Caribbean and Central American Databook, supra* note 1, at 133 ("Currency (Average 1989): Dominican Republic Peso; U.S. \$1.00=D.R. Peso \$6.35"). See also *Ley No. 48 del 6 de noviembre de 1970, G.O. No. 9171 del 21 de noviembre de 1970, que establece una contribucion anual sobre toda personal natural o juridica, nacional o extranjera, domiciliada o no en el pais y sobre las sucesiones indivisas, art. 2, para. (b)* (imposing additional corporate income tax at a flat rate of 2 % of chargeable income); *Ley No. 190 Contraloria y Auditoria General de la Republica, creada por el Art. 14 de la Ley No. 692, del 2 de abril de 1965 que deroga, y dicta otras disposiciones, art. 2, apra. (b)* (imposing a 3 % surcharge on income tax owed under *Ley No. 5911, supra*). See also *Dominican Republic Investors Handbook and Business Guide, supra*, at 81. Effective rates (including additional tax under *Ley No. 48, supra*, and surtax under *Ley No. 190, supra*):

On the first U.S. \$787.40- 10%
on the next U.S. \$787.40- 13%
on the next U.S. \$1574.80- 16%
on the next U.S. \$1574.80- 19%
on the next U.S. \$1574.80- 22%
on the next U.S. \$1574.80- 27%
on the next U.S. \$1574.80- 31%
on the next U.S. \$6299.21- 36%
on the next U.S. \$23,622.04- 41%
on the amount exceeding \$39,370.07- 46%.

²⁴³ See *id.*

²⁴⁴ See Income Tax Act, ch. 46, sections 5(1)(a)-(e), 26 Revised Laws of Belize (1980) (hereinafter Belize Income Tax Act); Income Tax (Amendment) Act, 1987, sec. 5, Belize Act No. 27 of 1987 (repealing and replacing sec. 26 of Belize Income Tax Act, as amended).

²⁴⁵ Income Tax Ordinance, 1966, sec. 30, St. Christoph, Nevis and Anguilla Act No. 17 of 1966 (hereinafter St. Kitts and Nevis Income Tax Act) and Income Tax Ordinance (Amendment) Act, 1908, sec. 3(a), St. Christopher, Nevis and Anguilla Act No. 14 of 1980 (hereinafter St. Kitts and Nevis Income Tax Ordinance (amendment) Act, 1980) (repealing and replacing sec. 30(1)(b) of St. Kitts and Nevis Income Tax Act).

²⁴⁶ See Price Waterhouse, *Corporate Taxes A Worldwide Summary* 3 (1990).

²⁴⁷ See *id.* at 44.

withholding taxes on dividend distributions to nonresident corporations and individuals, while Dominica, the Dominican Republic, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, and Trinidad and Tobago do impose such taxes²⁴⁹. It should be noted that the statutory withholding tax rates of Dominica, Haiti, St. Lucia, St. Vincent, and Trinidad and Tobago may be subject to reduction where the country in which the taxpayer resides and the host country are bound by a double taxation treaty.²⁵⁰

Among the countries imposing taxes on dividend distributions to nonresidents, St. Kitts and Nevis charges the lowest basic rate,²⁵¹ at 10%²⁵². Among the remaining countries under consideration, the basic rates of withholding tax dividend distributions are as follows: Dominica,²⁵³ Haiti,²⁵⁴ and St. Vincent and the Grenadines²⁵⁵ - 15%; Dominican Republic - 20.6%²⁵⁶; St. Lucia²⁵⁷ and Trinidad and Tobago - 25%²⁵⁸, Jamaica - 33.33%²⁵⁹.

²⁴⁸ See Caribbean/Central American Action, *Investing in Grenada* 9 (1986).

²⁴⁹ Jamaica imposes a withholding tax on all corporate distributions, regardless of the domicile of the recipient. See Income Tax Act, sec. 38(1), 1983; Income Tax (Amendment) Act, 1987, sec. 16(a)(ii) (amending sec. 38(1) of the Income Tax Act) (rate of withholding tax is 33 1/3 %). See *infra* notes 252-259.

²⁵⁰ See Dominica Income Tax Act, *supra*, at sec. 65(3) (citing *id.* at sections 58(1)(a)-(e), 58(2), 58(3)); Haiti Income Tax Act, *supra*, at art. 4(c); St. Lucia Income Tax Act, *supra*, at sec. 64(3) (citing *id.* at sections 59(1)(a)-(e), 59(2), 59(3)); St. Vincent Income Tax Act, *supra*, at sec. 62(3) (citing *id.* at sections 56(1)(a)-(e), 56(2), 56(3)); Income Tax Act, ch. 75:01, sec. 50(3); Laws of Trinidad and Tobago (1983) (citing *id.* at sections 93(1)(a), 93(1)(b)(i)-(ii), 93(2)-(6)); see also *infra* notes 258, 259.

²⁵¹ Compare *infra*, note 252 with *infra* notes 253-259.

²⁵² St. Kitts and Nevis Income Tax Ordinance (Amendment) Act, (1980), *supra*, at sec. 4 (repealing sec. 35 of St. Kitts and Nevis Income Tax Act, and replacing with sections 35(1)(a)-(g), 35(2)).

²⁵³ Dominica Income Tax Act, *supra*, at sections 65(1)-(3), THIRD SCHEDULE at sec. 3(a).

²⁵⁴ Haiti Income Tax Act, *supra*, at art. 114.

²⁵⁵ St. Vincent Income Tax Act, *supra*, at sections 62(1)-(3), THIRD SCHEDULE at sec. 3(a).

²⁵⁶ See Ley No. 72, *supra*, at articulo I (amending art. 45 of Ley No. 5911, *supra*) and Ley No. 190, *supra*, at art. 2, para. (b).

²⁵⁷ St. Lucia Income Tax Act, *supra*, at sections 64(1)-(4), THIRD SCHEDULE at sections 1(1)(f)(i), 3.

²⁵⁸ Income Tax Act, ch. 75:01, sections 49(1)(a), 50(1)(a), THIRD SCHEDULE -Part II(i), Laws of Trinidad and Tobago (1983). Trinidad and Tobago and the United States are bound by a double taxation treaty whereby the rate of withholding tax on a corporation residing in the United States which owns at least 10 per cent of a local company's voting stock may not exceed "10 per cent of the gross amount actually distributed", an individual U.S. resident may not exceed "25 per cent of the gross amount actually distributed", *Tax Convention Between the United States and Trinidad and Tobago for the Avoidance of Double Taxation, the Prevention of Fiscal Evasion, and the Encouragement of International Trade and Investment*, enter into force on December 30, 1970, art. 12, paragraph 1, subsection (b)(i), and the rate of withholding tax on all other U.S.-resident corporate shareholders and on U.S.-resident individuals may not exceed "25 per cent of the gross amount actually distributed", see *id.* at art. 12, paragraph 1, subsection (a); see generally *id.* at art. 12, paragraph 1, subsections (a), (b)(i)-(ii).

C. Personal Income Taxes

Antigua and Barbuda,²⁶⁰ Grenada,²⁶¹ and St. Kitts and Nevis²⁶² do not impose a personal income tax. The Dominican Republic taxes earnings derived from the active conduct of an unincorporated business at a flat rate of 9.24%.²⁶³ Jamaica imposes a personal income tax at a flat rate of 33.33 % of chargeable income.²⁶⁴

The remaining countries impose annual²⁶⁵ personal income taxes at graduated rates.²⁶⁶ For purposes of comparison, we have calculated the effective tax rate on \$100,000 of chargeable income under each system: Haiti - 18.6%²⁶⁷ (tax = U.S. \$18,600 on \$100,000;²⁶⁸ however, it should be noted that the top rate is 30% on chargeable income exceeding U.S. \$150,000²⁶⁹); St. Lucia - 28.33%²⁷⁰ (tax = U.S. \$28,335²⁷¹); Dominica -

²⁵⁹ See Jamaica Act amending Income Tax Act, Laws of Jamaica (1985). Jamaica and the United States are bound by a double taxation treaty whereby the rate of withholding tax on a U.S. resident who is the beneficial owner of 10 per cent of the company's voting stock may not exceed "10 per cent of the gross income of the dividend", *Convention between the Government of the United States of America and the Government of Jamaica for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion*, entered into force on December 29, 1981, art. 10, paragraph 2, subsection (a), and the rate of withholding tax on all other U.S. residents may not exceed "15 per cent of the gross amount of the dividends", *id.* at art. 10, paragraph 2, subsection (b).

²⁶⁰ See Antigua and Barbuda Act no. 22 of 1976, sec. 3(b) (adding, *inter alia*, sections 5(2)(a)-(d) to Antigua and Barbuda Income Tax Act, *supra*, thereby repealing personal income tax).

²⁶¹ See Income Tax (Repeal) Act, 1986, sec. 2(a), Grenada Act No. 12 of 1986 (repealing personal income tax).

²⁶² See St. Kitts and Nevis Income Tax Ordinance (Amendment) Act, 1980, *supra*, at sec. 2 (repealing personal income Tax).

²⁶³ See *Dominican Republic Investors Handbook and Business Guide*, *supra*, at 80-81 (summary of Category III taxes under Ley No. 5911, *supra*, and reference to additional 1% tax under Ley No. 48, *supra*, at art. 2, para. (a), and surtax under Ley No. 190, *supra*, at art. 2, para. (b)) (rate given is effective rate including additional tax under Ley no. 48 and surtax under Ley 190).

²⁶⁴ Income Tax (Amendment) Act, 1987, sec. 6(c) (repealing and replacing sec. 30(1)(b) of the Income Tax Act).

²⁶⁵ See Belize Income Tax Act, *supra*, at sections 5(1)(a)-(e); Dominica Income Tax Act, *supra*; St. Lucia Income Tax Act, *supra*, at sec. 68(1); St. Vincent and the Grenadines Income Tax Act, *supra*, at sec. 66(1).

²⁶⁶ See Belize Income Tax Act, *supra*, at sec. 25; Dominica Income Tax Act (Amendment) Act, 1987, *supra*, at FIFTH SCHEDULE; St. Lucia Income Tax Act, *supra*, at FIFTH SCHEDULE; St. Vincent and the Grenadines Income Tax Act, *supra*, at FIFTH SCHEDULE.

²⁶⁷ See *supra* note 231.

²⁶⁸ See *id.*

²⁶⁹ *Id.*

²⁷⁰ See St. Lucia Income Tax Act, at FIFTH SCHEDULE

("On the first [U.S. \$3,700] and under	10%
On the next [U.S. \$3,700]	15%
On the next [U.S. \$3,700]	20%
On the remainder	30%;

see also C/CAA's *Caribbean and Central American Databook*, *supra* note 1, at 324 (Currency is the East Caribbean Dollar (EC); exchange rate is U.S. \$1.00 = EC \$2.70).

²⁷¹ See *id.*

42.89%²⁷² (tax = U.S. \$42,891)²⁷³; Trinidad and Tobago - 43.2%²⁷⁴ (tax = U.S. \$43,206)²⁷⁵; Belize - 48.09%²⁷⁶ (tax = U.S. \$48,097.50)²⁷⁷; St. Vincent and the Grenadines - 51.72%²⁷⁸ (tax = U.S. \$51,725.50)²⁷⁹.

²⁷² See Dominica Income Tax (Amendment) Act, 1987, *supra*, at FIFTH SCHEDULE

("On the first [U.S. \$5,920] 25%
on the next [U.S. \$9,250] 35%
for every dollar over [U.S. \$15,170].... 45%");

see also C/CAA's *Caribbean and Central American Databook*, *supra* note 1, at 119 (Currency is the East Caribbean Dollar (EC); exchange rate is U.S. \$1.00 = EC \$2.70).

²⁷³ See *id.*

²⁷⁴ Finance Act, 1989, sec. 58, Republic of Trinidad and Tobago Act No. 6 of 1989 (repealing and replacing Part I of THIRD SCHEDULE of Income Tax Act, ch. 75:01); see also Finance Act, 1989, *supra*, at sec. 29)

Chargeable Income	Rate of Tax
(a) for every dollar of the first [U.S. \$12,000]5 cents
(b) for every dollar of the next [U.S. \$8000]	20 cents
(c) for every dollar of the next [U.S. \$8000]	40 cents
(d) for every dollar thereafter45 cents);

See also C/CAA's *Caribbean and Central American Databook*, *supra* note 1, at ("Currency ; Trinidad and Tobago dollar (TT) . . TT \$1.00 = U.S. \$0.23").

²⁷⁵ See *id.*

²⁷⁶ See Belize Income Tax Act, *supra*, at sec. 25

("On the first [U.S. \$500] of chargeable income	5%
On the next [U.S. \$500] up to [U.S. \$1,000]	6%
On the next [U.S. \$500] up to [U.S. \$1,500]	8%
On the next [U.S. \$500] up to [U.S. \$2,000]	10%
On the next [U.S. \$1,000] up to [U.S. \$3,000]	15%
On the next [U.S. \$1,000] up to [U.S. \$4,000]	20%
On the next [U.S. \$1,000] up to [U.S. \$5,000]	25%
On the next [U.S. \$2,000] up to [U.S. \$7,000]	30%
On the next [U.S. \$2,500] up to [U.S. \$9,500]	35%
On the next [U.S. \$5,000] up to [U.S. \$14,500]	40%
On the next [U.S. \$15,500] up to [U.S. \$30,000]	45%
On the remainder 50%");	

See also C/CAA's *Caribbean and Central American Databook*, *supra*, at 60 (Currency is the Belize Dollar (BZ); exchange rate is U.S. \$1.00 = BZ \$2.00).

²⁷⁷ See *id.*

²⁷⁸ See St. Vincent and the Grenadines Act No. 34 of 1984, sec. 8 repealing and replacing FIFTH SCHEDULE of *St. Vincent and the Grenadines Income Tax Act*

("On the first [U.S. \$740]	10%
On the next [U.S. \$740]	15%
On the next [U.S. \$740]	20%
On the next [U.S. \$1,480]	25%
On the next [U.S. \$1,850]	30%
On the next [U.S. \$3,700]	35%
On the next [U.S. \$3,700]	40%
On the next [U.S. \$3,700]	50%
On the remainder	55%");

See also C/CAA's *Caribbean and Central American Databook*, *supra* note 1, at 333 (Currency is the Eastern Caribbean Dollar (EC); Exchange rate is U.S. \$1.00 = EC \$2.70).

²⁷⁹ See *id.*

VII. CONCLUSION

As demonstrated, it is quite possible for countries desiring direct foreign investment to construct legislation which facilitates the protection of the host economy without arbitrarily diminishing the attractiveness of said economy to foreign investors. Therefore, we believe that it is unnecessary, and therefore unwise, for such governments to enact statutory constraints which are likely to act as disincentives to direct foreign investment, where legislative devices which provide for the flexible administration of basic policies allow for an equivalent degree of protection against economic harm without subverting the goals of government investment incentive programs.