

Pacific Basin Charter on International Investments*

Preamble

We, the members of the Pacific Basin Economic Council (PBEC) and as members of the international business community from Australia, Canada, Chile, People's Republic of China, Colombia, Fiji, Hong Kong, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Peru, Republic of the Philippines, Russia, Chinese Taipei, Thailand, United States of America, and the Pacific region, recognizing the vast demands for an increasing flow of private investment capital among economies, and the fundamental importance of improving the investment environment in all Pacific economies, hereby endorse, and invite other organizations - public and private - to embrace a Pacific Basin Charter on International Investments.

We advance the principles of this Charter with high aspirations that they will be increasingly accepted and applied by governments and international business in the Pacific Basin and with a firm belief that these steps will foster more rapid and sound economic and social progress - as well as strengthen business enterprise - in the Pacific economies. Our objective in this initiative is to fulfill a responsibility to governments and private enterprises by indicating the basis on which we believe sound and constructive investment can be attracted and play a constructive part in the economic process in economies subscribing to private enterprise concepts.

We believe that, in line with goals established by the United Nations, the application of the principles of this Charter will increase the contribution of international business toward meeting the needs and aspirations of all peoples and, in particular, will facilitate the flow of capital, both private and public, to the benefit of all economies. In pursuance of that objective both international investors and governments should respect and honor the contractual obligations they freely undertake.

Both international investors and governments should promote and maintain mutual dialogues through which international investments would be furthered in accordance with the principles of this Charter.

International investors should maintain high standards of conduct in all the relationships with governments and other parties, thereby maintaining their enterprises as national and international corporate citizens of high standing and integrity.

BASIC PRINCIPLES

Responsibilities

International investors, in pursuit of their business objectives, should proceed in ways which will contribute to economic and social development, particularly in host economies, and they should maintain a sensitivity to changing domestic goals and aspirations in all economies with which they are concerned.

Governments wishing to receive international investments, realizing that such investments must be

* Source: The text of the Pacific Basin Charter on International Investments was provided by the Pacific Basin Economic Council, United States.

profitable, should develop policies conducive to successful business enterprise which will be consistent with the achievement of their domestic economic and social goals.

Governments of economies from which private capital flows abroad should strive to develop agreements with other governments aimed at encouraging private investments and the growth of international business in mutual interests of the economies concerned.

Policies

International investors should fully recognize the sovereign rights and responsibilities of economies and must accept reasonable obligations that are placed upon business enterprises in the domestic interest, and should act in all ways as a good corporate citizen of the host economy.

Recognizing that performance requirements can distort or limit expansion of trade and investment, governments should refrain from their use.

All enterprises operating in a given economy should have equality of access to domestic markets and resources.

Governments should publicly announce their laws, regulations, administrative guidelines and policies on encouragement and/or limitations on international investments and should make explicit their development priorities and the guidelines which transnational enterprises are expected to meet. These policies and guidelines should be maintained with reasonable consistency and applied to all on an equal basis.

Governments should ensure that their announced policies are applied on a fair basis and that they do not serve to abrogate on a unilateral basis investment agreements entered into in good faith.

Governments should publicly announce policies on the encouragement and/or limitation of international investment, both incoming and outgoing.

Governments - especially those of economies in a creditor or favourable foreign exchange situation - should stimulate and encourage the flow of private investments abroad.

Host governments should treat international investors impartially, in accordance with national and international law.

In selecting projects and in operating their enterprises, international investors should give emphasis to activities that provide long-term net additions to the host economy. They should also utilize and assist in the development of local resources, human and physical, as well as local industrial capabilities to the fullest extent possible.

The terms of investment agreements should be altered only by mutual agreement between the parties, and not by the unilateral act of either government or the investor.

Both international investors and governments in their mutual interest should give special emphasis in their planning and operations (including transfers of funds) to continuity, growth and sound long-range development of international investment projects. Governments wishing incoming international investments only for limited periods of time should announce their policies clearly and explicitly in this respect.

Governments and international investors should support the principle of multinational efforts to create and maintain a feasible and mutually acceptable international investment insurance or reinsurance program.

International investors and governments should ensure that investment projects will have minimum adverse effect on the environment.

Governments should simplify entry and exit procedures to assist international investors in familiarizing themselves with international, industrial, technical and commercial situations, to permit trainees to receive technical and job training in relevant economies, and to allow entry of foreign technical and managerial personnel.

Governments and investors should support efforts of the World Trade Organization to establish model investment policies which serve to promote the free flow of international investment.

OPERATIONS

Ownership, Management, Employment

Host governments should adopt policies which permit international investors to own and manage their enterprises to the extent necessary to maximize their ability to obtain an adequate return on the investment and thus to contribute to the host economy. Ample opportunities should be available to domestic investors so that they may participate through joint ventures or otherwise, in ownership and management of international enterprises operating in their economies.

International investors should train and utilize local personnel in their enterprises so that such personnel might enhance to the greatest possible extent their technical, managerial and other potential employment skills. Nevertheless, particularly during the early stages of development, international investors should be permitted to employ foreign personnel, particularly when such personnel have technological or other knowledge necessary for the success of the enterprise.

Governments should levy taxes on international investors and their employees from abroad on a basis no less favourable than those levied on domestic investors and their local employees. Governments should strive through international agreements to avoid double taxation between economies.

Capital transmitted to an economy through recognized banking channels, dividends or profits thereon, as well as license and royalty fees owed outside the host economy, should be freely transferable by international investors. In international transfers of funds, governments and international investors should proceed in a manner consistent with the Articles of the International Monetary Fund and with international banking practices, and as may be fair and reasonable to both parties concerned.

International investors should observe all policies and requirements of governments pertaining to the protection of life and property. Governments should ensure that adequate protection of this type is available to international investors.

Property

Only when a host government finds it necessary in the furtherance of a public purpose, should it expropriate an enterprise belonging to international investors. When expropriation, or any other measure having a similar effect is carried out, it should be done so on a nondiscriminatory basis and provide for full and prompt settlement to the international investors. In the event of disagreements as to the amount of compensation, it should be established without right of appeal by submission to an arbitrator acceptable to both parties. The arbitrator should take into account, inter alia, potential earnings of the enterprise so taken as if it were the subject of a Buy and Sell Agreement between consenting parties.

Legislation

International investors should comply fully with legislation, regulations and international agreements within and among the governments concerned.

Legislation affecting international investment should be fair and reasonable among all types of investors.

Governments should respect the jurisdictional integrity of those economies in which its nationals operate and should not attempt to extend to international enterprises the jurisdiction of their laws and regulations in such a way as to influence business activities in other economies.

Technology

Governments and international investors should stimulate the flow of technology and sound managerial concepts and practices across international boundaries which will serve to improve the technical and managerial capabilities of recipient economies.

Governments should recognize the rights of international investors to receive reasonable payment covering the use of their proprietary technology.

Information Disclosure

Host governments should not require more information from an enterprise belonging to an international investor than it does from one belonging to a domestic investor, it always being remembered that the requirement for unwarranted public disclosure can affect the competitive position of such enterprises.

Consultations

Governments and international investors should give sympathetic consideration to, and adequate opportunity for, consultations on any policy or operating problems raised by one party with the other. In the event a mutually satisfactory solution to given problems cannot be reached, the parties concerned should seek suggestions from a mutually acceptable third party such as the International Center for the Settlement of Investment Disputes.

The Future

The preceding principles are intended as basic guidelines in the international investment process. Additions, modifications, amplifications may be appropriate from time to time to reflect changing

conditions and circumstances. The Charter can be altered through the same review process as applied to its original establishment. Action can be initiated (if considered advisable) on development of a series of Supplements. These would elaborate on various topics in the Charter, e.g. responsibilities, investment policies, investment agreements, ownership and management, personnel, taxation, capital markets, foreign exchange, protection of life and property, marketing, legislation and technology.

* * *