2013 Investment Climate Statement (Turkmenistan)

January 15, 2013

Openness to, and Restrictions upon, Foreign Investment

Turkmenistan is a relatively large country (slightly larger than the state of California), but sparsely inhabited (about five million), with abundant hydrocarbon resources, particularly natural gas. According to unverifiable Government of Turkmenistan statistics, the country's GDP in 2012 is estimated to be $23.6 billion, a 16 percent increase in growth from $20.2 billion in 2011. In comparison, the 2011 World Bank's data shows Turkmenistan's GDP in current U.S. dollars at $28 billion and the country's gross national income converted to international dollars using purchasing power parity rates (GNI, PPP) at $44.3 billion. Also, in July 2012, the World Bank elevated Turkmenistan from a 'lower middle income' country to an 'upper middle income' country, to reflect the country's recent robust economic growth. Turkmenistan regularly announces its desire to attract more foreign investment, but tight state control of the economy, the slow pace of economic reform, and a restrictive visa regime have hindered the creation of an attractive foreign investment climate. The planned 2013 creation of a new GoTX foreign investment oversight agency will bear watching for possible additional barriers it might create to international investment in Turkmenistan. Historically, the most promising areas for investment are in the oil and gas, agricultural, and construction sectors. The Turkmen government continues to seek foreign technology and investment in order to diversify its economy through the development of domestic chemical and petrochemical industry facilities. As a result of President Gurbanguly Berdimuhamedov's policy of providing "Internet access to every home, school and kindergarten," the visibility of Turkmenistan's communication sector has also risen.

In October 2012 the Chairman of the Central Bank reported that 21 percent of investment in Turkmenistan came from foreign sources and that while the Government of Turkmenistan remained the largest domestic investor (40 percent), sizeable investment came from private enterprises (22 percent). According to government sources, in 2012 the majority of foreign investment was concentrated on the energy (57 percent), chemical (27 percent), and transportation (14 percent) sectors.

President Berdimuhamedov has expressed his intent to improve investment conditions, and since the beginning of 2008, the Government of Turkmenistan (GoTX) has adopted legal reforms on foreign investment and licensing. Nevertheless, the lack of established rule of law, inconsistent regulatory practices, and unfamiliarity with international business norms are major disincentives to foreign investment. Turkmenistan's economy depends heavily on production of natural gas, oil, petrochemicals and, to a lesser degree, cotton and textiles.

The country remains one of the largest gas producers among the former Soviet republics. The country's key industries are still state-owned. According to independent estimates (2011 European Bank of Reconstruction and Development (EBRD) Transition Report), the private-sector share of GDP in 2010 was 25 percent, mostly concentrated in retail trade, services and food processing. No independent estimates are available for 2011 and 2012. The top economic development priority of the GoTX since independence in 1991 has been self-sufficiency in food supplies and an increase in import-substitution production, with a recent emphasis placed on transforming Turkmenistan form a commodity producer to value-added manufacturer. Other industries to which the government has been most receptive to foreign investment are textiles and communications, which acutely need modern technology, knowledge of international markets, and experience with best international business practices.

In May 2010, the GoTX adopted its National Program for Socio-Economic Development of Turkmenistan for 2011-2030. The program envisages diversification of the economy and increased competition, and recognizes the importance of further market and institutional reforms. The program also includes privatization of small and medium enterprises (SMEs). In October 2006, Turkmenistan adopted the Oil and Gas Development Plan for 2007-2030. Despite these initiatives, however, Turkmenistan's investment climate remains generally closed. Decisions to allow foreign investment are politically driven; companies from "friendly" countries are often more successful in winning tenders and signing contracts. A potentially important development in Turkmenistan's investment climate is the December 20 statement by President Berdimuhamedov mandating the establishment of a new government agency to scrutinize the activities of foreign companies operating or seeking to operate in Turkmenistan. The unnamed agency, to be created in 2013, reportedly will offer customized, sector-specific market research to potential foreign investors and grant permits to companies to operate in Turkmenistan, including those seeking GoTX tenders. The agency will also be empowered to levy fines against companies that violate Turkmenistan's business regulations.

In this environment, where the government selectively chooses its investment partners, a strong relationship with the government is essential. Often, government officials expect personal gain for allowing or helping foreign investors enter the local market. One way to penetrate the market has been to work through already-established foreign business representatives, who conduct business through their personal relationships with top leaders, or to secure the advocacy of high-ranking foreign government officials in a bilateral context.

Since independence, Turkmenistan has accepted financing from international financial institutions (IFIs) for a variety of projects. In 2009, the GoTX accepted a reported loan of $4 billion from the Chinese Development Bank to develop the world's second largest Galkynysh (former South Yoloten) gas field and significantly smaller loans for transportation and communication projects from the Chinese Export-Import Bank. In 2011, the GoTX secured a second $4.1 billion loan from the China Development Bank to develop the Galkynysh gas field (formerly South Yoloten). The GoTX also accepted a $1 billion dollar loan from the Islamic Development Bank for road and social infrastructure construction projects in 2010. In July 2011, the Asian Development Bank provided a $125 million loan to the Turkmen government to finance the procurement and installation of a power supply, signaling, and control system at a 311-kilometer section of the Kazakhstan–Turkmenistan– Iran railway. Reportedly, in 2010 and 2011, the GoTX approached a number of international financial organizations and foreign governments attempting to secure more loans to implement large scale government projects. The Government of Turkmenistan sent a delegation to the Asian Development Bank-facilitated Turkmenistan-Afghanistan-Pakistan-India (TAPI) natural gas pipeline road show in September 2012. In meetings in Singapore, New York, and London GoTX representatives met with a number of international oil companies (IOCs) and financial institutions in an effort to attract technical and financial partners to the project.

Incoming foreign investment is regulated by the Law on Foreign Investment (last amended in 2008), the Law on Investments (last amended in 1993) and the Law on Corporations of 1999, with respect to start-up corporations, acquisitions, mergers and takeovers. Foreign investment activities are affected by appropriate bilateral or multilateral investment treaties, the Law on Enterprises of 2000, the Law on Business Activities (last amended in 2008), and the 2004 Land

Code. Foreign investment in the oil and gas sectors is subject to the 2008 Petroleum Law (also known as Law on Hydrocarbon Resources, amended in 2011 and 2012). The Tax Code provides the legal framework for the taxation of foreign investment. The 2000 Civil Code defines what constitutes a legal entity in Turkmenistan, as well as requirements for registration.

The GoTX has taken a number of steps to promote economic reforms, including a law to combat money laundering and terrorism financing and a presidential decree that mandates the use of International Financial Reporting Standards (IFRS). In January 2010, Turkmenistan established a Financial Intelligence Unit under the Ministry of Finance to strengthen its anti-money laundering (AML) efforts and combating financing of terrorism (CFT). In June 2010, Turkmenistan became a full member of the Eurasian Group (EAG), a regional AML/CFT organization and part of the Financial Action Task Force (FATF). In October 2012, President Berdimuhamedov said that Turkmenistan will join the Egmont Group, an international organization specializing in the exchange of best practices on AML/CFT. Turkmenistan's membership, he said, would demonstrate to the international community its commitment to combating money laundering and terrorism financing.

In July 2010, President Berdimuhamedov signed a decree ordering all Turkmen banks to switch to IFRS beginning January 1, 2011, and ordered other government agencies to gradually introduce IFRS by January 1, 2013, with the goal of completely switching to IFRS by January 1, 2014. Despite these positive steps, Turkmenistan remains one of the most closed economies in the region.

Much foreign investment is governed by project-specific presidential resolutions, which can grant privileges not provided by general legislation. Legally, there are no limits on foreign ownership or control of companies. In practice, however, the government has allowed fully-owned foreign operations only in the oil sector and, in one case, in cellular communications. (NOTE: This cellular company reportedly filed for international arbitration when its license was suspended by the GoTX in December 2010. After months of negotiations, the company re-entered the Turkmenistan market in September 2012. Since re-entry, however, the company has struggled to regain the market share it lost to Turkmen carrier Altyn Asyr. END NOTE.) There are several ways for the government to discriminate against foreign as well as domestic investors: excessive tax examinations, license extension denial, and customs clearance and visa issuance obstacles. In most cases, the government has insisted on maintaining a majority interest in any joint venture (JV). A Western soft drink company has been in Turkmenistan since the mid 1990s in a JV with the government. Foreign investors have been reluctant to enter JVs controlled by the government, as a result of competing business cultures and conflicting management styles. Although there is no specific legislation requiring that foreign investors have to receive government permission to sell shares or divest, de facto they are expected to coordinate such actions with the government.

Government efforts since 1991 to privatize former state enterprises have attracted little foreign investment. Privatization has been limited to the service and trade sectors, with most industry still in state hands. Out-dated technology, poor business infrastructure, and governmental obstacles make privatized firms unattractive as outright purchases for foreign investors.

In November 2012, the Government of Turkmenistan announced plans to undertake a large-scale privatization of state properties under the State Program for Privatization of Enterprises and Objects of State Property (2013-2016). According to the program, privatization is scheduled to be implemented in three phases, in 2013, 2014-2015, and 2016, respectively. The plan calls for the privatization of state enterprises and properties in a variety of sectors including construction, transportation and communication as well as the establishment of joint stock companies. The plan identifies strategic state-owned enterprises and properties that will not be subject to privatization, and calls for the drafting of a new version of the law “on Denationalization and Privatization”.

To date, government privatization efforts have also been stymied by lingering prejudice against the private sector. In cases where there is income potential, the government has been quick to crowd out the private sector as a competitor. Despite official comments regarding the priority of the growth of the private sector, privatization has been low on the government’s agenda. All land is government-owned, for example, and neither domestic nor foreign businesses can receive long-term land-use rights for “non-agricultural” purposes. Private citizens have some land usage rights; however, these rights exclude the sale or mortgage of land. Land rights can be transferred only through inheritance. Foreign companies or individuals are permitted to lease land for non-agricultural purposes, but only the president has the authority to grant the lease.

The government has attempted to introduce an element of competition for state contracts by announcing international tenders for some projects. Often these projects are politically driven and/or economically unsound, and the tender process is badly managed and nontransparent. Following the president's announcement of a potential project, interested foreign investors and/or suppliers often contact the relevant government agency directly in case the tender is not announced publicly. There is one case of a U.S. company being told it was awarded a tender, investing in initial project design, and then being informed the government was considering other options. The tender was offered a second time, and the contract was awarded to a new company at twice the U.S. company's tender price. Foreign businesses should always put agreed upon terms in writing and never act on verbal promises.

Turkmenistan signed a Trade and Investment Framework Agreement (TIFA) with the United States, Kazakhstan, Tajikistan, Kyrgyzstan, and Uzbekistan on June 1, 2004. The TIFA established a regional forum to discuss ways to improve investment climates and expand trade within Central Asia. Historically, the GoTX has not actively engaged in regional efforts designed to boost trade and investment. Recently, however, the government has expressed interest in exploring regional and multilateral trade mechanisms.

Relevant International Rankings and Figures

Measure	**Year**	**Index/Ranking**
TI Corruption Index	2012	170 of 174
Heritage Economic Freedom	2012	168 of 179
World Bank Doing Business	2012	not ranked
MCC Government Effectiveness	2012	-1.11 (0%)
MCC Rule of Law	2012	-0.98 (3%)
MCC Control of Corruption	2012	-0.95 (0%)
MCC Fiscal Policies	2012	6.6 (96%)

MCC Trade Policy	2012	79.2 (76%)
MCC Regulatory Quality	2012	-1.53 (0%)
MCC Business Start Up	2012	n/a
MCC Land Rights Access	2012	n/a
MCC Natural Resource Protection	2012	30.4 (36%)
MCC Access to Credit	2012	n/a
MCC Inflation	2012	4.5 (44%)

Conversion and Transfer Policies

The GoTX maintains tight control over the country's main foreign-exchange flows. On May 1, 2008, the government introduced a single exchange rate, which remained fixed at 14,250 Turkmen Manat (TM) per $1 until January 1, 2009, when it introduced the redenominated manat (Denominated Turkmen Manat, or DTM) at 2.85 manat per $1. The government also opened more than 100 exchange points throughout the country in May 2008. The GoTX allowed “old” manat to remain in circulation until January 1, 2010. Foreign bankers considered the unified exchange rate and expansion of currency exchange points modest steps towards overall liberalization of the foreign exchange market. An unofficial exchange market still operates on a very small scale, and provides exchanges at rates that are very close to official rates. The current unofficial exchange rate is 2.85 DTM per $1. On October 1, 2011, Turkmenistan adopted the Law on Hard Currency Control and Regulation in Foreign Economic Relations as a step towards bringing the national legislation in compliance with international standards. The Central Bank controls the fixed rate by releasing U.S. dollars into the official and unofficial (but legal) exchange markets. Foreign exchange regulations adopted in June 2008 allow the Central Bank to provide banks with ready access to foreign exchange. These regulations also allowed commercial banks to open correspondent accounts.

Along with exchange rate unification on May 1, 2008, limits on foreign exchange transactions were officially lifted. The GoTX has been able to keep up with the growing demand for U.S. dollars to date, however, the currency remains not fully convertible and holdings of excess manat are problematic for many companies operating in Turkmenistan. Oil producers operate under the Petroleum Law of 2008 and receive profit shares in crude oil, which they ship by tankers to other Caspian Sea littoral states. In many cases, petrochemical investors have negotiated deals with the GoTX to recoup their investment in the form of future petroleum products. Foreign investors generating revenue in foreign currency, such as textile factory investors, do not generally have problems with repatriating their profits. Some foreign companies receiving income in local currency seek indirect ways to convert local currency to hard currency through the purchase of petroleum and textile products in manat for resale on the world market.

Turkmenistan imports the vast majority of its industrial equipment and consumer goods. The government's foreign-exchange reserves and foreign loans pay for this industrial equipment and various investment projects. The demand for hard currency in Turkmenistan’s private retail sector seems to be satisfied by the official and unofficial, but legal, exchange markets. Due to continuing concerns about foreign exchange, Turkmenistan is taking some initial steps toward trading in the national currencies of select countries. In January 2012, for example, during a meeting of the Turkish-Turkmen joint inter-governmental economic committee, Turkey's Economic Minister Zafer Caglayan announced that Turkey and Turkmenistan would trade in their national currencies once the central banks of the respective countries made the necessary arrangements. At the Commonwealth of Independent States Heads of States Summit in December 2012, President Berdimuhamedov joined other presidents in signing an agreement to develop an integrated CIS currency market and an agreement to create a coordination council for the heads of member states' financial intelligence services.

Expropriation and Compensation

Turkmenistan's legislation does not provide for private ownership of land, and thus allows the government to force investors to vacate their land. Article 21 of the Investment Law (last amended in 1993) allows investors' property to be confiscated via an official court decision. Although there have been no reported expropriation actions against foreign investors in 2012, the GoTX has a history of arbitrary expropriation of the property of local businesses and individuals. Under President Niyazov, the government often refused to pay any compensation, much less fair market value, when exercising "the right of eminent domain." However, during a March 2007 Cabinet of Ministers meeting, current President Berdimuhamedov stated that residents of affected apartments or houses would be provided alternative housing before their homes were demolished.

The following case can be considered an example of "creeping expropriation." In November 2010, the GoTX reportedly initiated a campaign to force MTS, a Russian cellular phone operator, out of the country. As a result of administrative measures taken by Turkmen government agencies, MTS suspended its services in Turkmenistan on December 21, 2010. According to MTS officials, the company received notifications from Turkmentelecom, other state agencies, and a local state-owned telecommunications company, about early termination of contracts on renting technical bases, digital ports and data transmission lines, and other communication facilities by MTS. According to Russian media, MTS filed a suit against the Turkmen Ministry of Communications, Turkmentelecom, and Altyn Asyr (a local mobile operator) in the International Court of Arbitration of the International Chamber of Commerce. To date, there is no official information which adequately explains the reason for MTS's reported forced exit from Turkmenistan or details regarding the negotiated terms of MTS' return to Turkmenistan in 2012.

Dispute Settlement

Most contracts negotiated with the GoTX have an arbitration clause. The Embassy strongly advises U.S. companies to include an arbitration clause with a venue outside Turkmenistan. There have been commercial disputes over the past few years involving U.S. and other foreign investors or contractors in Turkmenistan, though not all the disputes were filed with arbitration courts. Investment and commercial disputes involving Turkmenistan have three common themes: non-payment of debts, non-delivery of goods or services, and contract renegotiations. The GoTX may claim the provider did not meet the terms of a contract as justification for non-payment. Most disputes have centered on the government's unwillingness to pay in hard currency as contractually required. In cases where government entities have not delivered goods or services, the government has often ignored demands for delivery. Finally, a change in leadership in the government agency that signed the original contract often triggers a government call to re-evaluate an entire contract, including profit distribution, management responsibilities and payment schedules.

A Western oil and gas company and Turkmennebit, the Turkmenistan state-owned oil company, have been in litigation since 1996. Under the auspices of the International Chamber of Commerce, in 2001, the Western company was awarded $495 million in damages. In 2006, the U.S. Court of Appeals upheld the 2001 decision and bound the GoTX to an arbitral award. In November 2006, the U.S. Supreme Court denied Turkmenistan's petition for a writ of certiorari; to date, the award has not been paid.

A U.S. telecommunications company has been pursuing payment from the Ministry of Communications of Turkmenistan since 2006. The Turkmen Ministry acknowledges its contract with the company and that it has an outstanding debt, but disagrees on the amount owed. The issue remains unresolved.

Although Turkmenistan has adopted a number of laws designed to regulate foreign investment, the laws have not been consistently or effectively implemented. The Law on Foreign Investment, as amended in 2008, is the primary legal instrument defining the principles of investment. The law also provides for protection of foreign investors. A foreign investor is defined in the law as an entity owning a minimum of 20 percent of a company's assets.
The following is an ad hoc list of relevant legislation regarding foreign investments:

- According to the 2008 Law on Foreign Investment, all foreign and domestic companies and foreign investments must be registered at the Ministry of Economy (MOE).
- The Petroleum Law of 2008 (Law on Hydrocarbon Resources, last amended in May 2012) regulates offshore and onshore petroleum operations in Turkmenistan, including petroleum licensing, taxation, accounting and other rights and obligations of state agencies and foreign partners. The Petroleum Law supersedes all other legislation pertaining to petroleum activities, including the Tax Code.
- According to the 2004 Land Code, foreign companies or individuals are permitted to lease land for non-agricultural purposes, but only the president has the authority to grant the lease. Foreign companies may own real estate property other than land.
- Turkmenistan adopted a Bankruptcy Law in 1993. Other laws affecting foreign investors include the Law on Investments (last amended in 1993), the Law on Corporations of 1999, the Law on Enterprises of 2000, the Law on Business Activities (last amended in 1993), the Civil Code enforced since 2000, and the 1993 Law on Property.

The commercial law enforcement system includes the Arbitration Court of Turkmenistan (Arachy Kazyyet) which tries 13 categories of disputes, both pre-contractual and post-contractual, including taxation, legal foundations, and bankruptcy issues. The court does not interfere in enterprises' economic relations, but considers disputes upon the request of either party involved. Appeals on decisions of the Arbitration Court can be filed at the Arbitration Committee of the Supreme Court of Turkmenistan. Turkmenistan is not a Party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (also known as the Washington Convention) or the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards or any other internationally recognized arbitration agreement.

Performance Requirements and Incentives

Foreign investors are more disadvantaged because they face higher tax rates than most local companies. The Tax Code adopted in 2005 was amended three times: 2006, 2007, and 2008, but most tax rates remained unchanged. The value added tax rate (VAT) is 15 percent, an income tax of 8 percent is applied to JVs, and an income tax of 20 percent is applied to wholly-owned foreign companies and state-owned enterprises. Dividends are taxed at 15 percent. The personal income tax rate is 10 percent. In 2005, the GoTX amended the Tax Code, giving more concessions to domestic, private companies. The Tax Code exempted domestic, private companies from the VAT and property tax and reduced the income tax from 8 percent to 2 percent. In August 2006, Turkmenistan increased its excise tax on imported beer (50 percent) and wine (100 percent). Similar taxes on domestically produced beer and hard liquor remain at previous rates: 10 percent and 15-40 percent, respectively.

In May 2007, Turkmenistan introduced the Awaza (or Avaza) Tourist Zone (ATZ) to promote the development of its Caspian Sea coast. Tax and other incentives are provided in legislation passed on October 1, 2007, but only to those willing to invest in construction of hotels and recreational facilities. The amendments to the Tax Code passed on October 1, 2007, exempt construction and installation of tourist facilities in the ATZ from VAT. Various services offered at tourist facilities, including catering and accommodations, are also VAT-exempt. Income tax on accommodations and catering at tourist facilities will not be levied for the first 15 years. Equipment purchased by the investor as part of the registered capital, other assets to be used in production, and personal household effects of investors' employees are duty free. In general, tax and investment incentives for ATZ can be negotiated on a case-by-case basis.

In the past, the president has issued special decrees granting taxation exemptions and other privileges to specific investors while they recoup their initial investment. Assets and property of foreign investors should be insured with the State Insurance Company of Turkmenistan (Article 53 of the 2008 Petroleum Law and Article 3 of Insurance Law of 1995). National accounting and financial reporting requirements also apply to foreign investors. All contractors operating in Turkmenistan for a period of at least 183 days a year must register at the Main State Tax Service. There is a general requirement for foreign investors that 70 percent of the company's personnel be citizens of Turkmenistan. The government has made exceptions for foreign construction and energy companies executing large-scale turnkey projects.

Turkmenistan requires that all export and import contracts and investment projects be registered at the State Commodity and Raw Materials Exchange (SCRME) and the Ministry of Economy. The procedure applies not only to the contracts signed at the SCRME, but also to contracts signed between third parties. The SCRME is state-owned and is the only exchange in the country. The contract registration procedure includes an assessment of “price justification.” All import contracts must be registered before goods are delivered to Turkmenistan. The GoTX generally favors long-term investment projects that do not require regular hard-currency purchases of raw materials from foreign markets. Textile factories operated by Turkish companies using domestic resources and labor serve as model investment projects supported by the government. These companies encounter relatively few currency conversion problems and enjoy tax breaks. Otherwise, there are no set requirements for local sourcing or exporting specific percentages of output.

Petroleum Production Sharing Agreement (PSA) holders are regulated in large part by the 2008 Petroleum Law. They are subject to a 20 percent income tax and royalties ranging from 1 percent to 15 percent, depending on the level of production. The social welfare tax, 20 percent of the total local staff payroll, is paid by all foreign investors and their subcontractors. PSA

holders' employees and their subcontractors pay a personal income tax of 10 percent. Under the Petroleum Law, PSA concessions have been made to eight foreign energy companies: five offshore and three onshore concessions for periods ranging from 20-25 years. Subcontractors of PSA holders can bring their equipment into the country only for the duration of a valid contract. There is no specific legislation that regulates operations of oil and gas subcontractors.
Currently, Turkmenistan lists 49 import and 20 export goods and materials subject to customs duties. Goods and materials not on the lists are subject to a 0.2 percent customs fee payment and a charge of $1.76 to the Customs official for every hour he/she spends inspecting the imported goods. Regarding exports, the Customs Service maintains a list of goods subject to customs duty payment. State enterprises often receive preferential treatment; for example, wool carpets produced at state factories are exempt from customs duties. In contrast, private carpet producers have to pay $20 per square meter of carpet in customs duties in order to export carpets. Foreign investors are required to adhere to the sanitary and environmental standards of Turkmenistan.
Foreign investors' products should be of equal or higher quality than prescribed in national standards. Turkmenistan, while not a member of the World Trade Organization (WTO), has enacted a number of laws which mirror WTO standards including: investment, banking, intellectual property rights, customs, and privatization. However, the legislation is not enforced uniformly. Turkmenistan is not a signatory to and is not in compliance with the Agreement on Trade-Related Investment Measures (TRIMS).

The State Migration Service controls access to the country and the movement of foreign citizens. All visitors are required to register upon entry. Travel to most border areas requires a special permit. Inviting foreigners is often problematic because authorities can and do deny entry visas without explanation. Foreign business persons trying to enter Turkmenistan for the first time often have difficulty obtaining entry visas unless invited by a government agency. Even established investors continue to complain about bureaucratic procedures and delays in entering the country.

Right to Private Ownership and Establishment

Foreign and domestic private entities in Turkmenistan have the right to establish and own business enterprises, subject to bureaucratic requirements. The 2000 Law on Enterprises defines the legal forms of state and private businesses (state enterprises, sole proprietorships, cooperatives, partnerships, corporations and enterprises of non-government organizations). The law allows foreign companies to establish subsidiaries, but the GoTX does not currently register subsidiaries. The Civil Code of Turkmenistan and the Law on Enterprises provide for representative and branch offices to operate in Turkmenistan. Enterprises have to be registered with the Registration Chamber at the Ministry of Economy. The 2008 Law on Licensing Certain Types of Activities lists 44 types of activities that require government licenses. The Law on Enterprises and the Law on Corporations provide for acquisitions and mergers. However, Turkmenistan's legislation is not clear about acquisitions and mergers involving foreign parties, nor does it have specific provisions for disposition of interests in business enterprises, both solely domestic and those with foreign participation. Governmental approval is necessary for acquisitions and mergers of enterprises with state shares.

Protection of Property Rights

All land is owned by the government. The 1993 Law on Property defines the following types of property owners: private, state, non-government organizations, cooperative, joint-venture,

foreign states, legal entities and citizens, international organizations and mixed private and state. A significant amount of housing remains state-owned, though a number of dwellings have been privatized, allowing Turkmen citizens to rent and sell apartments and houses.
Turkmenistan adopted a new land code in 2004, addressing farmers' land rights. According to the new land law, citizens may have rights to up to three hectares of land but they cannot sell, exchange, or transfer it, except to their children. Based on the law, foreign citizens and stateless persons, foreign states, and companies and international organizations may only lease land. The October 1, 2007, amendments to the Land Code provide for up to 40-year land leases for hotels and recreational facilities in National Tourist Zones. Land and facilities subsequently built on the parcel must be transferred back to the state after the expiration of the contract. According to the Law on Foreign Investment, foreign investments in Turkmenistan are not subject to nationalization and requisition; foreign properties may be confiscated only by a court decision.
The government has enacted laws designed to protect intellectual property rights (IPR) domestically, but these laws are either arbitrarily implemented or not implemented at all. Among them are the 1993 Law on the Protection of Scientific Research, the 1993 Patent Law and the December 2008 regulation, which includes the Law on Inventions and Industrial Designs and the Law on Trade and Service Marks and Places of Origin. The 2008 regulation provides legal protection of intellectual property upon its registration with the Patent Agency, which was established in 1993. However, due to significant deficiencies in Turkmenistan's intellectual property protection regime, there is an ongoing review of Turkmenistan's status as a beneficiary country under the U.S. Generalized System of Preferences (GSP) Program. Turkmenistan has been on the Special 301 Watch List since 2000.

The Law on Foreign Investment guarantees the protection of intellectual property of foreign investors, including literary, artistic and scientific works, software, databases, patents and other copyrighted items, but Turkmenistan has yet to adopt more explicit and comprehensive administrative and civil procedures and criminal penalties for Intellectual Property Rights (IPR) violations. Turkmenistan has not adopted a separate Copyright Law and consequently does not provide any protection to foreign sound recordings or pre-existing works. The 1993 Most Favored Nation Agreement between the United States and Turkmenistan also provides for favorable treatment of copyrighted materials. The agreement envisages Turkmenistan's accession to the Berne Convention of 1971 for the Protection of Literary and Artistic Works and Creation of a Working Group on Intellectual Property Matters. To date, Turkmenistan has not joined the Berne Convention or the Geneva Phonograms Convention. It is a challenge to purchase legally recorded material in Turkmenistan. Current border enforcement is weak. As a result, pirated recordings freely cross into Turkmenistan for sale. Additional personnel and training courses are needed for more effective border enforcement. Turkmenistan's laws do not provide for either civil or criminal ex parte search procedures needed for effective anti-piracy enforcement.

Turkmenistan signed the World Intellectual Property Organization's (WIPO) documents on industrial property rights and patent cooperation in 1995. Turkmenistan has also joined the Eurasian Patent Organization created as part of the WIPO for the CIS countries. Turkmenistan has not signed the 1996 WIPO Copyright Treaty (WCT), WIPO Performances and Phonograms Treaty (WPPT), or WIPO Internet Treaties. The Copyright Law was enacted in 2000 as part of Turkmenistan's Civil Code. This law defines copyrighted products and the rights of owners of the copyrighted products, and provides their legal protection. In January 2012 the law was amended to include intellectual property rights-related (IPR) provisions, including exclusive rights (absolute title), licensing agreements, and the collective management of ownership rights. Reportedly, Turkmenistan's Parliament was considering a Copyright Law in March of 2011, but it was not adopted. There is a Patent Department in the Ministry of Economy and Development which issues patents on intellectual property, but it does not enforce copyright laws. Turkmenistan has not adopted criminal penalties for IPR violations. Currently articles such as videos, cassette tapes, software, and literature are freely copied and sold. In general, products manufactured by government-owned entities increasingly dominate local markets and are well-protected by law enforcement bodies.

Transparency of Regulatory System

The government does not use transparent policies to foster competition and foreign investment. Laws have frequent references to by-laws that are often not publicly available. Most by-laws are passed in the form of presidential decrees. Such decrees are not categorized by subject, which makes it difficult to find relevant cross references. Personal relations with government officials can play a decisive role in determining how and when government regulations are applied. Bureaucratic procedures are confusing and cumbersome. There is no single body that coordinates registration and activities of domestic and foreign private companies. The GoTX does not generally provide information support to investors, and officials can use this lack of information to their personal benefit. As a result, foreign companies may spend months conducting due diligence in Turkmenistan. A serious impediment to foreign investment is the lack of knowledge of internationally-recognized business practices and concepts, as well as the fact that there are few English speakers. Good quality English-language material on Turkmenistan legislation is scarce, and there are very few business consultants to assist investors. Proposed laws and regulations are not published in draft form for public comment. The general public is not invited to make contributions during parliamentary deliberations on the proposed bills or amendments to legislation.

There are no standards-setting consortia or organizations besides the Turkmen State Standards and the relevant licensing government agency. There is no independent body for filing complaints. Financial disclosure requirements are neither transparent nor consistent with international norms. Government enterprises are not required to publicize financial statements, even to foreign partners. Financial audits are often conducted by local auditors, not internationally recognized firms.

The 2008 Law on Petroleum was a partial step toward creating a more transparent policy in the oil and gas sector. It provides a detailed legal framework for conducting oil and gas business.

Efficient Capital Markets and Portfolio Investment

Turkmenistan's underdeveloped financial system significantly hinders the free flow of financial resources. The largest state banks include the following: The State Bank for Foreign Economic Relations (Vnesheconombank), Dayhanbank, Turkmenbashy Bank, Turkmenistan Bank, Halk Bank, and President Bank. These state banks have narrow specializations–foreign trade, agriculture, industry, social infrastructure, savings and mortgages, respectively. There are two smaller state banks: Senagat Bank and Garagum Bank that provide general banking services only. In September 2011, the GoTX established the State Development Bank to provide soft loans to state-owned and private enterprises, which implement projects aimed at increasing production and creating jobs. There are also five foreign commercial banks in the country: a joint Turkmen-Turkish bank (with Ziraat Bank), a branch of the National Bank of Pakistan, the German Deutsche and Commerz Banks, and a branch of Saderat Bank of Iran. The two German banks provide European bank guarantees for companies and for the Turkmen government; they do not provide general banking services.

Total assets of the country’s largest bank, Vnesheconombank, are estimated at $1 billion (2007) at the then official exchange rate of 5,200 manats per dollar. No information is available regarding Vnesheconombank’s current assets. Other banks' assets are much smaller. All banks, including commercial banks, are regulated by the state. Commercial banks are prohibited from providing services to state enterprises. The U.S. Export Import (EXIM) Bank announced on January 4, 2010, that it had extended its available financing to include long-term public sector transactions in Turkmenistan. Previously, EXIM had only been open for short- to medium-term public sector financing. Short-term financing is available for up to two years, medium-term up to seven years, and long-term up to 18 years.

State banks primarily service state enterprises and allocate credit on subsidized terms to the state enterprises. Foreign investors are only able to secure credit on the local market through the Pakistan National Bank and EBRD equity loans. There is no capital market in Turkmenistan, although the 1993 Law on Securities and Stock Exchanges outlines the main principles for issuing, selling and circulating securities. The 1999 Law on Corporations further provides for issuance of common and preferred stock and bonds and convertible securities in Turkmenistan, but in the absence of a stock exchange or investment company, there is no market for securities. In November, 2011, the Turkmen Government approved the State Program for Stock Market Development for 2012 – 2016, which portends that new regulations and procedures might be developed in this area.

Competition from State Owned Enterprises (SOEs)

State-owned enterprises still dominate Turkmenistan’s economy and control the lion's share of the country’s industrial production, especially in such sectors as onshore hydrocarbon production, transportation, refining, electricity generation and distribution, chemical industry, railway and air transportation, and production of construction materials. Education, healthcare, and media enterprises are state-owned and tightly controlled. State-owned enterprises are also heavily involved in agriculture, food processing, textiles, communications, construction, trade, and services. Although state-owned enterprises are often not as efficient as private ones, the GoTX considers them strategically important. Although there are a growing number of small scale private enterprises in Turkmenistan, the GoTX continues to exert significant influence over these enterprises. There are no functioning mechanisms or measures to ensure transparency or accountability in the business decisions or operations of state-owned enterprises.

Corporate Social Responsibility

Corporate social responsibility (CSR) is an unfamiliar concept in Turkmenistan. In the past, foreign companies operating in Turkmenistan did not implement large social projects, neither were they required to do so. The situation seems to be changing, however as the State Agency for Management and Use of Hydrocarbon Resources reportedly now pays more attention to a foreign company’s willingness to contribute to social programs when negotiating production sharing agreements with energy companies. CSR activities in Turkmenistan generally take the form of financial sponsorship of cultural or athletic events, providing scholarships to Turkmen students to study abroad, or the construction of small scale facilities, such as a medical clinic, to benefit the locality around a company’s facilities.

Political Violence

Turkmenistan’s political system has remained stable since Gurbanguly Berdimuhamedov became president in February 2007.

The GoTX does not permit political opposition and maintains a tight grip on all politically sensitive issues by, in part, requiring all organizations to register their activities. The country’s parliament passed a Law on Political Parties in January 2012 that defines the legal grounds for the establishment of political parties, including their rights and obligations. In August 2012, under the directive of President Berdimuhamedov, Turkmenistan created a second political party, the Party of Industrialists and Entrepreneurs. This pro-government party, created from the membership of the Union of Industrialists and Entrepreneurs, has a platform nearly identical to the President’s Democratic Party and is not an opposition party. There have been no incidents involving politically-motivated damage to projects or installations and no politically-motivated demonstrations or violent actions were noted in 2012. Organized crime is rare and authorities have effectively rooted out organized crime groups and syndicates.

The GoTX does not publish crime statistics or information about crime, so it is difficult to assess crime trends.

Corruption

Although Turkmenistan has legislation to combat corruption, laws are not generally enforced, and corruption remains a problem. Formally, the Ministry of Internal Affairs, the Ministry of National Security, and the General Prosecutor’s Office are responsible for combating corruption. President Berdimuhamedov has publicly stated that corruption will not be tolerated. Turkmenistan joined the UN Convention against Corruption in March 2005. Still, the non-transparency of Turkmenistan’s economic, financial, and banking systems provides fertile soil for corruption. The non-government organization, Transparency International, ranked Turkmenistan 170 among 174 countries in the world in its Corruption Perceptions Index for 2012 U.S. firms have identified widespread government corruption, usually in the form of bribe requests, as an obstacle to investment and business throughout all economic sectors and regions. It is most pervasive in the areas of government procurement and performance requirements.

Bilateral Investment Agreements

The governments of Turkmenistan and the United States began negotiations on a bilateral investment treaty after 1991, but talks were suspended in early 1994. The GoTX expressed interest in renewing the talks in 1998, but negotiations have not recommenced. The United States government considers the Convention with the Union of Soviet Socialist Republics on Matters of Taxation, which entered into force in 1976, to continue to be in effect and applicable between the United States and Turkmenistan. There have been no discussions on a new dual taxation treaty.

Turkmenistan has signed bilateral investment agreements with Armenia, China, Egypt, France, Georgia, Germany, India, Iran, Ireland, Malaysia, Pakistan, Romania, Slovakia, Turkey, Ukraine, the United Arab Emirates, the United Kingdom, and Uzbekistan. In July 2009, EU Ministers passed a trade agreement with Turkmenistan reasoning that economic and trade engagement with the country would stimulate political reforms in Turkmenistan.

OPIC and other Investment Insurance Programs

Turkmenistan signed an Investment Incentive Agreement with the U.S. Government in 1992, but there has been no investment insurance, investment guarantees or financing provided by the Overseas Private Investment Corporation (OPIC) for Turkmenistan.

Labor

Labor issues are governed by the Labor Code of Turkmenistan (last amended in July 2009), the Social Welfare code, and a number of regulations approved by presidential resolutions. Turkmenistan joined the International Labor Organization in 1993. Unemployment and underemployment are major problems. No official unemployment figure is available. Current unofficial estimates range from 35- 50 percent. Unemployment appears to be more of a problem among Turkmenistan's youth and among rural residents. The Law on Child Labor of May 2004 prohibits the employment of children under the age of 16 and makes employment in hazardous and harmful labor illegal for children under the age of 18. The GoTX continues to be the largest employer in the country, with seventy to eighty percent of employment originating in the public sector.

Turkmenistan's labor regulations require that all vacancies be posted at local employment offices. Most vacancies are low-skilled jobs. Employment offices have not been effective tools in reducing unemployment, or in providing suitable candidates for international companies. Investors recruit directly, although candidates still pay a nominal fee to the relevant employment office. The government requires the work force of foreign companies to have 70 percent local employees. The Association of Trade Unions of Turkmenistan -- successor to the Soviet-era system of government-controlled trade unions-is the only trade union allowed in the country. The Association's unions are divided along both sectoral and regional lines.

Officially, the normal workday in Turkmenistan is eight hours, and the standard workweek is 40 hours over five days. In practice, government and many private sector employees are required to work 10 hours a day or a sixth day without compensation. The new Labor Code of 2009 reconfirmed a 40-hour work week, protected worker's rights by promoting the role of trade unions, guaranteed job security by restricting short-term contracts, and extended the duration of annual leave from 24 calendar days to 30 calendar days. Teachers of all types of educational institutions were entitled to 45 days of annual leave. Scientists with a doctoral degree holding posts in research institutions were also entitled to the same amount of annual leave. Health and safety regulations exist, but are commonly not enforced. Foreigners with government permission to reside in Turkmenistan may work, but are subject to the same labor regulations as citizens unless otherwise specified by law.

Foreign-Trade Zones/Free Ports

The Law on Economic Zones for Free Enterprise was enacted in 1993. The law guarantees the rights of businesses -- foreign and domestic -- to operate in free economic zones (FEZs) without profit ceilings. The law forbids nationalization of enterprises operating in the zones and discrimination against foreign investors. Other rights guaranteed include:

- Preferential tax status, including exemption from profit tax if profits are reinvested in export-oriented, advanced technology enterprises;
- Repatriation of after-tax profits;

- Exemption from customs duties, except on products of foreign origin;
- Export of products; and
- Setting product prices.

There are ten FEZs in Turkmenistan: Mary-Bayramaly; Ekerem-Hazar; Turkmenabat-Seydi; Bakharly-Serdar; Ashgabat-Anew; Ashgabat-Abadan; Saragt; Guneshli; Ashgabat International Airport; and Dashoguz Airport. These FEZs have not been successful in drawing increased economic activity. Despite legal guarantees, the government interferes in business decisions of firms located in the FEZs. Moreover, FEZs have not been financially supported by the government and lack infrastructure, such as advanced telecommunications, to attract businesses. The infrastructure of the Ashgabat International Airport is more developed and has modern transit facilities.

In September 2011, the GoTX announced it was working on a new Law on Special Economic Zones. The new Law has not been passed yet.

Foreign Direct Investment Statistics

State data on most economic indicators, including Foreign Direct Investment (FDI) remain unreliable and mostly unavailable. However, according to various independent analysts, most foreign investment is directed toward the country's oil and gas sector. Such investments include three onshore Production Sharing Agreements (PSAs): the Nebitdag Contractual Territory operated by Burren Energy UK/ENI; the Khazar project operated jointly by the Turkmennebit state oil concern and Mitro International of Austria; and the Bagtyarlyk Contractual Territory operated by the Chinese National Petroleum Corporation (CNPC). In addition, there are six PSAs for offshore operations: Block I operated by Petronas of Malaysia; Block II (Cheleken Contractual Territory) operated by Dragon Oil (UAE); Block III operated by Buried Hill (Canada); Blocks 11 and 12 operated jointly by Maersk Oil of Denmark and Wintershall of Germany; Block 23 operated by RWE of Germany; and Block 21 operated by Itera of Russia.