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Starting a Business

Legal Framework

1. The company law is readily available, clearly drafted, and easy to use.

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- A. Copies of the law are freely available to the public and are normally found in practitioners' offices (lawyers, accountants, etc.).
- B. The law (or laws if there are separate laws or regulations on specific aspects such as registration) cover all subjects that a modern company law should include.
- C. It is user-friendly -- clearly drafted, well organized by subject, with a table of contents at the front, and with article headings.
- D. It is published in all official languages of the country and there is a good English translation.
- E. It is current and is regularly updated by practical-minded experts.

2. The law provides for company types which are practical for all kinds of businesses – small, family, closely held (large or small), single-owner, and widely held.

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- A. The law provides separately for:
 - B. i. general partnerships,
 - C. ii. closely held companies with limited liability (these might be LLCs (limited liability companies), limited partnerships and/or private joint stock companies), and
 - D. iii. joint stock companies which may be widely held and/or publicly traded.
- E. The law's rules for closely held companies are practical for such businesses – they are simpler and more flexible than for widely held companies and are not cluttered with needless formalities.
- F. For closely held companies there are “default” rules which the members can vary by their consent and agreement – for example, rules for weighting votes, restricting share transfers to third parties, having a formal board of directors, etc.
- G. On the other hand, the rules for widely held companies include the full range of formalities and investor-protective provisions which are found in other countries.
- H. Minimum capital is not required or, if it is, it is low enough not to discourage business formation.
- I. It is clear that members/shareholders are not personally liable for company obligations (excepting in general partnerships or in fraud or other cases where “piercing the corporate veil” is usually recognized in other countries).

3. The company law or accompanying regulations clearly define the role and responsibilities of the institution charged with registering companies.

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- A. There is a single governmental body (herein the “company registry”) which has clear and comprehensive authority for implementing the company law.
- B. The company registry's authority includes all aspects of company registration, including registration for initial company formation and registration of later company acts such as charter amendment, designation or change of agent for service of process, merger, dissolution, deregistration, name change, designation of trade or assumed name, and, where mandated, capital increase or decrease.
- C. Its authority also includes maintaining publicly available data regarding registered companies, including their names and any assumed names or registered logos; addresses for service of process; copies of charter documents including amendments; form (partnership, LLC, joint stock company, etc.); names of directors or managers; capital (if the law requires capital); lines of business; shareholders or members; dissolutions or deregistrations; and information regarding ownership such as number of shareholders, extent of state ownership, domestic vs. foreign ownership, and data in companies linked in common ownership.
- D. If it has regulatory powers (issuing orders, imposing monetary penalties, attending board meetings, etc.), those powers are limited and are not arbitrarily exercised or abused.

4. The legal framework for forming agricultural cooperatives and protecting members' rights is sound and supportive of economic growth. 0

- A. Laws governing procedures for registration and de-registration of cooperatives are published, non-discretionary, non-discriminatory and easy to understand.
- B. Laws governing cooperatives provide appropriate flexibility for members to establish or amend by-laws and charters as needed.
- C. Cooperative law permits cooperatives to adopt general purposes rather than requiring explicit statements of each economic activity to be pursued.
- D. Minimum capital requirements for establishing a cooperative are reasonable and do not discourage legitimate collective entrepreneurial activity.
- E. The law establishes and permits expansion of super-majority voting requirements for fundamental changes or transactions.
- F. By law, cooperatives have the right to:
 - G. a. participate in members' meetings, in person or by proxy;
 - H. b. propose resolutions for voting;
 - I. c. vote in person or by proxy;
 - J. d. nominate and vote for directors, using cumulative voting;
 - K. e. participate in profits in the form of dividends or member discounts;
 - L. f. assert claims upon liquidation of the cooperative;
 - M. g. bring suit on behalf of the cooperative if the cooperative management misuses cooperative funds or acts in a manner inconsistent with the by-laws;
 - N. h. inspect the cooperative's general ledger and other records, as well as the member registry of the cooperative upon reasonable notice.

5. The law pertaining to competition is readily available, clearly drafted, and easy to use. 0

- A. Print copies of the laws, including not only anti-monopoly legislation but also laws and regulations pertaining to consumer protection and competition within specific sectors, are readily available to all stakeholders.
- B. The competition law is published in all official languages of the country.
- C. The universe of competition law is available on a regularly updated Internet site.
- D. All regulations of the competition agency and any other implementing institutions are readily accessible to the legal community.

6. The competition law promotes economic efficiency and consumer welfare. 0

- A. The goals of the competition law – whether set forth in the body of the law, regulations, legislative history, or court decisions – are clear and include the promotion of economic efficiency and consumer welfare.
- B. Cartels and cartel-like behavior (e.g., price-fixing, bid-rigging, market divisions, and concerted refusals to deal) are prohibited.
- C. Other non-cartel agreements among competitors that may adversely affect competition are subject to a "rule of reason" analysis.
- D. Vertical restraints (e.g., tying, exclusive dealing, reciprocal dealing) that may adversely affect competition are subject to a "rule of reason" analysis.
- E. Abuse of dominant position (monopolization) that may adversely affect competition is subject to a "rule of reason" analysis.
- F. Mergers and acquisitions that may adversely affect competition are subject to a "rule of reason" analysis.

7. Merger notification procedures use objective criteria and require timely resolution. 0

- A. Sales and/or revenues are the triggering mechanism for requiring notification.
- B. Sufficient local nexus exists with the jurisdiction in which reporting is required.
- C. Clear guidance exists for when the reviewing agency should receive notification.

- D. Materials that must be supplied with notification are clearly spelled out and are not unduly burdensome.
- E. Notification procedures comport with International Competition Network best practices.

8. Exemptions from the competition law are created ex ante and have a sound economic or social basis.

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- A. Natural monopolies are subject to regulation.
- B. Domestic and foreign suppliers are treated equally.
- C. Exemptions to promote societal goals are limited to extent needed to protect such goals.
- D. Specific industries or markets that are exempted are listed in the competition law or in other laws or regulations.
- E. Internationally accepted protections for intellectual property are exempted.

9. The competition law provides the competition agency with reasonable and effective investigative powers.

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- A. The competition agency has the power to compel the submission of documents.
- B. The competition agency has the power to compel oral testimony.
- C. Procedures for compelling compliance with investigative requests for information and oral testimony are speedy and effective.
- D. The competition law provides for investigations to be opened upon a complaint or the competition agency's initiative.
- E. The competition agency has the authority to conduct "dawn raids" with appropriate due process protections.
- F. The competition agency has the authority to offer leniency to conspirator(s) in order to obtain information or evidence

10. The competition law's remedies and sanctions are adequate to deter violations and restore competition.

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- A. The competition law includes the power to undo harmful contracts and agreements or stop harmful conduct.
- B. Mechanisms for enforcing orders are speedy and effective.
- C. The competition law includes provisions for monetary remedies (e.g., fines, penalties, restitution, disgorgement) sufficient to deter violations.
- D. The competition law permits the competition agency to settle alleged violations of the law.
- E. Standards of proof of law violation are proportional to the sanctions.
- F. Criminal penalties, if any, are for limited types of offenses.

11. The legal prerequisites for sound competition law are in place.

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- A. Private property rights are well-defined and there is a system for recording and transferring property rights.
- B. Contract law is well-defined and there are enforcement mechanisms in place that facilitate exchange.
- C. Corporate law is well-defined, including rules governing the formation and operation of business enterprises.
- D. Securities law is well-defined, allowing for capital formation through the sales of securities, issuance of debt, and pledging of assets.
- E. Bankruptcy law is well-defined and facilitates the exit and redeployment of assets.

12. The legal framework for privatization supports an environment conducive to receiving "fair market value" during privatization.

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- A. Rules governing privatization mandate free and open competition for state assets.
- B. Rules governing privatization require public announcement of sale of asset no less than 30 days in advance.

- C. Legal basis exists for scrutiny of financial data prior to sale of State owned assets.
- D. Regulation of privatization mandates independent audit of sale of assets over certain value.
- E. Clear and accessible rules govern the amount that can be borrowed at the national and subnational levels.
- F. Clear and accessible rules govern the type of debt that can be borrowed at the national and subnational levels.
- G. Clear and accessible rules govern the uses for which debt can be raised.

13. The commercial legal framework is accessible to foreigners.

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- A. The body of commercial law is available on a regularly updated Internet site.
- B. The commercial law is available in English.
- C. The commercial law is available in a major second language other than English.
- D. Where the state provides incentives to investors, those incentives are clear and consistent with regional or international norms.
- E. Information about how to take advantage of investment incentives is readily accessible.
- F. All regulations pertaining to the commercial law are readily available to the public, either in print or over the Internet.
- G. All regulations pertaining to the commercial law have been translated to English.

14. The legal framework provides for the equal treatment of foreign investors.

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- A. Laws have been enacted that provide a legal framework for direct investment. The law may include special provisions for foreign direct investment.
- B. Foreign investors may freely invest in any area of economic activity other than those reserved to the state as areas of national security.
- C. There is no requirement of local participation in the ownership of companies or property, including real property, except in areas reserved to the state, if any.
- D. Exceptions to the principle of non-discrimination are clearly spelled out.
- E. The government periodically reviews the costs of reserving certain areas of economic activity to domestic enterprises against the intended public purpose of the restriction(s).
- F. Foreign investors do not perceive the investment law(s) to be unduly cumbersome or complicated with respect to the ability for outsiders to invest in one or more businesses.
- G. The government does not require foreign investors to meet performance targets in terms of output or price of goods and services in order to maintain their investments (except in the context of concession contracts based on performance).
- H. The legal regime for investment does not discriminate in favor of foreign investors or against local investors.

15. The legal framework clearly defines the role and responsibilities of the institution(s) charged with promoting, registering and regulating foreign investment.

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- A. Investment law clearly defines the institution(s) responsible for implementation of laws relating to investment, including foreign investment.
- B. Investment law clearly defines the roles, responsibilities and operational procedures of each relevant implementing institution.
- C. The law provides for the maintenance of publicly available data regarding registered investments.
- D. Where investment-related agencies hold regulatory powers (issuing orders, imposing monetary penalties, etc.), those powers are limited and are not arbitrarily exercised or abused.
- E. The structure, mission and form of the investment promotion agency is informed by and benchmarked against international best practices.

16. The registration process for foreign investors is simple, quick, and inexpensive.

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- A. The law enumerates all steps which are necessary to create a foreign investment.

- B. The steps for foreign investment are simple and objective and are not subject to "interpretation" or "discretion" except for ministerial review and checking. No newspaper publication is necessary.
- C. Those steps are few in number, they may be taken concurrently, and the law mandates that the entire process takes at most a few days.
- D. The law lists the required contents of a foreign investor's organic documents (such as charter, articles of association, etc.), and those contents are simple and objective.
- E. The process of setting up an investment can be completed without a lawyer, notary, "facilitator", or other paid third party.
- F. Rules for later investor acts (such as change of agent for service of process, merger, dissolution, deregistration, name change, designation of trade or assumed name, etc.) are also simple and few in number.
- G. If the law specifies or authorizes fees upon the launch of an investment, those are not so high as to discourage new investments.
- H. In general, the registration rules encourage – or at least do not discourage – foreign investment.

Implementing Institutions

1. The company registry is well organized, well led, and endowed with sufficient resources to fulfill its mandate.

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- A. Its head and management staff are non-political and/or they view their role as administrative and ministerial.
- B. It has sufficient staff.
- C. It has sufficient funding (through direct state budget, fees for registration or other services, or both).
- D. Its physical facilities are accessible and welcoming, and there are branch or regional offices throughout the country offering easy access to services for both rural and urban populations.
- E. It issues official forms (which may or may not be mandatory) for registrations; the forms are available free or at minimal cost from the registry or bookstores; the forms cover all types of registrations; and there is a handbook or other instructions.
- F. It has adequate, formally issued internal regulations and operating procedures.
- G. It has a website which is easy to use and regularly updated, and which contains the company law and relevant Registry regulations, instructions and forms for registration, fee schedules, data on individual companies, and other useful information.
- H. Registration can be done remotely on the internet or by computer at the registry office.
- I. The company registry has an internal improvement plan, setting targets for improvement of procedures, and annually reviewing its operations to identify any systemic weaknesses for improvement.

2. The company registry is efficient and effective in operation.

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- A. The staff know the relevant law, forms and procedures, including both those for initial company formation and for later actions.
- B. The registration experience is efficient and user-friendly – the staff are helpful; they spot and help with technical mistakes; all users are treated the same; there are no long lines, and the entire process takes at most a few days.
- C. If a registration is rejected the staff give a clear explanation based on the law and regulations, and the rejection can be appealed or any defect cured quickly.
- D. All fees are clearly posted and are at a level which does not discourage business formation; and no extra fees, taxes or personal payments to staff are necessary.

3. The agency charged with registering and supporting agricultural cooperatives is well organized, well led, and endowed with sufficient resources to fulfill its mandate.

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- A. Its head and management staff are non-political and/or they view their role as administrative and ministerial.
- B. It has sufficient staff.

- C. It has sufficient funding (through direct state budget, fees for registration or other services, or both).
- D. Its physical facilities are accessible and welcoming, and there are branch or regional offices offering easy access to services for rural populations.
- E. It issues official forms (which may or may not be mandatory) for registration; the forms are available free or at minimal cost from the registry or bookstores; the forms cover all types of registrations; and there is a handbook or other instructions.
- F. It has adequate, formally issued internal regulations and operating procedures.
- G. The staff know the relevant law, forms and procedures, including both those for initial cooperative establishment and for later actions.
- H. The registration experience is efficient and user-friendly – the staff are helpful; they spot and help with technical mistakes; all users are treated the same; there are no long lines, and the entire process takes at most a few days.
- I. If a registration is rejected, the staff give a clear explanation based on the law and regulations, and the rejection can be appealed or any defect cured quickly.
- J. All fees are clearly posted and are at a level which does not discourage formation of cooperatives; and no extra fees, taxes or personal payments to staff are necessary.

4. The bodies that grant approvals and licenses to companies and cooperatives are efficient and business-friendly, and their processes and time frames encourage – or do not discourage – business startup or continuing operation of businesses.

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- A. It is easily ascertainable what approvals, permits, licenses and procedures – in addition to company or cooperative registration -- are needed for startup and continuing operation of any business.
- B. The number of these is the minimum that is necessary for business purposes.
- C. It is clear exactly what body or person is responsible for each grant or procedure, and the number of these is the minimum that is reasonably necessary for business purposes. There are no unnecessary regulatory bodies, offices, bureaucracies, overlapping jurisdictions or inconsistent approaches.
- D. Those bodies and persons are non-political and/or they view their role as technical and as business-friendly.
- E. Their processes have some or all of the following characteristics: i. In the case of company startup, all necessary permits, licenses and procedures can be – and in fact are -- granted or completed within the few-day time period required for company registration.
- F. ii. There is a “one-stop shop” procedure under which company registration and all necessary permits and licenses are sought concurrently and coordinated or done by one body following a uniform and consistent policy.
- G. iii. Where more time is needed (e.g., for industry regulatory purposes), a new company is not prevented from proceeding with interim tasks such as buying equipment, leasing space, hiring employees, etc.
- H. iv. There are statutory time limits within which action must be taken.
- I. v. The process is transparent, inexpensive, and the costs are in any event published with no extra fees, taxes or personal payments to staff necessary.
- J. The bodies referred to here perform adequately their regulatory obligations and their duty to serve and protect the public safety and welfare.

5. The courts are -- and are regarded as -- an effective institution for resolving disputes pertaining to companies, cooperatives, and corporate governance.

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- A. Courts are in fact often used when company disputes are not settled informally.
- B. Company and business cases are heard in a separate court from those which hear other cases.
- C. Lawyers and commercial actors report that, if they go to court, they can expect to receive a just decision, grounded on published laws, regulations and standards, in a timely manner.
- D. Lawyers and commercial actors respect and observe the decisions of judges, even if the decision is adverse to their positions.
- E. Time standards for judges resolving company law and corporate governance disputes are in place and generally observed.

- F. Disputes involving company law typically undergo settlement discussions or mediation prior to trial.
- G. Judges who hear company law cases have formal, university-level training and are required to have practiced before tribunals or, before taking the bench, are required to take relevant courses concerning subjects they will address on the bench.
- H. Judges who hear company law and corporate governance cases receive periodic continuing legal education on issues relating to company law and corporate governance.

6. ADR is regularly used and effective in resolving disputes pertaining to companies, cooperatives, and corporate governance.

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- A. There is an arbitration chamber or other system that is commonly used to resolve disputes arising from companies and cooperatives.
- B. The arbitration chamber(s) is sufficiently funded.
- C. Arbitration chambers handle cases with both foreign and domestic parties.
- D. There is a sufficient supply of qualified local arbitrators.
- E. Arbitration or mediation are in fact often used in preference to court litigation.
- F. Arbitration chambers have a clear and transparent method of certifying and/or licensing arbitrators and provide training for them.
- G. Arbitration chambers or other bodies provide training or outreach services to businesspersons.
- H. Parties are free to choose their arbitrators or mediators.
 - I. There is a set of commonly-used or recognized rules for arbitration and mediation.
- J. The cost of arbitration or mediation is not a disincentive to using it.
- K. Judges who hear appeals from arbitral awards have formal training in the principles of arbitration, mediation and other ADR.
- L. Judges reject arbitral awards on legitimate procedural grounds only, and do not substitute their judgment for that of the arbitrator except where there is demonstrable negligence or fraud on the part of the arbitrator.

7. The competition agency is well organized, well led, and endowed with sufficient resources to fulfill its mandate.

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- A. The competition agency has its own budget line item, and its funding is sufficient.
- B. The competition agency is adequately staffed.
- C. Salaries are adequate to attract and retain qualified staff.
- D. Staff includes lawyers, economists, and accountants.
- E. The competition agency has formal and informal staff training programs in place.
- F. The competition agency has the authority and means to hire additional expertise on an as-need basis (e.g., industry experts, academics, consultants, advisors).
- G. The competition agency draws on the experience of other countries and international organizations.
- H. The competition agency has adequate space and, as appropriate, regional offices.
 - I. The competition agency has an adequate library.
- J. The competition agency has adequate communications and information technology.
- K. Regulations required by the competition law have been promulgated.
- L. The competition agency has a written operating manual.
- M. The competition agency's priorities are clearly spelled out and are made public.
- N. The competition agency's decisions set forth the bases for taking or not taking an enforcement action.
- O. The competition agency's enforcement decisions demonstrate sound application of the competition law and economics.

8. The competition agency's decision making is independent of undue political interference and free from conflicts of interest.

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- A. The head of the competition agency is protected from removal without just cause.

- B. The senior staff of the competition agency is protected from removal without just cause.
- C. The competition agency's leadership and staff are subject to ethical rules barring conflicts of interest.

9. The competition agency's processes, decision making, and enforcement criteria are transparent.

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- A. Regulations required by the competition law have been promulgated.
- B. The competition agency has a written operating manual.
- C. The competition agency's priorities are clearly spelled out and are made public.
- D. The competition agency's decisions set forth the bases for taking or not taking an enforcement action.
- E. The competition agency's enforcement decisions demonstrate sound application of the competition law and economics.

10. The competition agency has procedures and regulations to protect the confidentiality of sensitive business information.

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- A. The competition agency has written regulations or guidelines concerning the collection, storage, and retention of sensitive business documents.
- B. The competition agency has adequate facilities and equipment to secure sensitive business information.
- C. Sensitive business information is kept confidential.

11. Other government institutions whose activities directly affect market competition understand and adhere to the principles underpinning the competition law.

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- A. State-owned enterprises and monopolies are subject to the competition law.
- B. Government procurement and contracting is open and competitive.
- C. Regulatory barriers to entry (e.g., licensing and approvals) are kept to a minimum.
- D. Sector regulators are in place to protect consumer welfare in natural monopoly markets.
- E. The competition agency has the authority to comment on other laws affecting competition and ability to advise other government institutions whose activities may affect competition.

12. Courts understand and support the economic underpinnings of competition law.

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- A. The competition law provides for judicial review of the decisions of the competition agency.
- B. Judges who hear competition cases have formal, university-level training in commercial law.
- C. Judges who hear competition cases receive periodic continuing legal education on issues relating to competition and other relevant areas.
- D. Judges have adequate subpoena, contempt, and enforcement powers, which are used, respected, and supported by other branches of government.
- E. Judges look to and consider the experience of other jurisdictions in rendering their decisions.

13. The agency responsible for privatization is capable of maximizing revenues from sales of state-owned assets.

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- A. The privatization agency is adequately staffed to do thorough financial analyses of saleable state-owned assets.
- B. The privatization agency and related agencies have a clearly defined mandate and have sufficient authority to carry out this mandate.
- C. The privatization agency has detailed internal regulations and operating procedures.
- D. The privatization agency distributes (or makes available for a nominal fee) copies of all procedures, relevant laws, government regulations, fee schedules and other information its work and the implementation of privatizations.
- E. Where there has been a recent history of privatization of state-owned property, the transfer of the property has been transparent and fair, and not reserved for or directed to a limited number of privileged interests.

14. There is adequate oversight of State-Owned Enterprises (and quasi-SOEs) from an independent government body.

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- A. There is a clear distinction between government and public enterprises.
- B. Reporting of government equity holdings is clear and publicly available.
- C. The regulatory authority has a clear and consistent mandate which is supported at the highest political levels.
- D. The budget of the SOE oversight institution is sufficient to provide an adequate level of oversight.
- E. Professional and administrative staff are adequately trained to carry out their mission.
- F. Internal regulations and procedures are clearly defined and observed.
- G. Procedures governing the operation of the regulatory authority are publicly available.
- H. Monitoring of SOEs by an independent auditing body is sufficiently frequent to ensure the goals of the regulatory body.

15. The Investment Promotion Agency (IPA) effectively promotes quality foreign investment and represents and responds to the special interests of foreign investors.

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- A. The IPA promotes and maintains an effective dialogue with investors.
- B. The IPA is adequately funded.
- C. It has sufficient staff.
- D. It has sufficient funding (through direct state budget, fees for registration or other services, or both).
- E. Its physical facilities are accessible and welcoming, and there are branch or regional offices throughout the country to the extent necessary.
- F. The performance of the IPA is regularly reviewed by knowledgeable actors within the government, who use an objective set of monitoring indicators.
- G. The IPA collects and maintains data on foreign investment, including registration, levels of investment, employment, liquidation, and other statistics of interest to policy makers and the private sector.
- H. The IPA (or a related agency) has strategies for developing foreign investment in various sectors of the economy, such as tourism, mining, natural resources, or business process outsourcing. These strategies reflect an understanding of the types of investment that will lead to the strongest prospects for economic growth.
- I. Where certain sectors have been targeted for foreign investment, the IPA works closely with relevant ministries and private-sector institutions to respond to information needs and investment priorities of potential foreign investors.

16. The agency charged with registering foreign investments is well organized, well led, and endowed with sufficient resources to fulfill its mandate.

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- A. Its head and management staff are non-political and/or they view their role as administrative and ministerial.
- B. It has sufficient staff.
- C. It has sufficient funding (through direct state budget, fees for registration or other services, or both).
- D. Its physical facilities are accessible and welcoming, and there are branch or regional offices throughout the country to the extent necessary.
- E. It issues official forms (which may or may not be mandatory) for registrations; the forms are available free or at minimal cost from the registry or bookstores; the forms cover all types of investments; and there is a handbook or other instructions.
- F. It has adequate, formally issued internal regulations and operating procedures.
- G. It has a website which is easy to use and regularly updated, and which contains the company law and relevant regulations, instructions and forms for registration, fee schedules, data on individual companies, and other useful information.
- H. Registration can be done remotely on the internet or by computer at the registry office.

- I. The investment registry has an internal improvement plan, setting targets for improvement of procedures, and annually reviewing its operations to identify any systemic weaknesses for improvement.

Supporting Institutions

1. The legal profession has both expertise and practical experience, and it has a positive influence on company and cooperative law compliance and corporate governance generally.

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- A. Lawyers are required to have a law degree and to pass a bar exam which has transparent rules and is free of corruption.
- B. There is an adequate number of lawyers who have expertise and practical experience in companies, cooperatives, and corporate governance.
- C. Lawyers are in fact regularly used by companies, cooperatives and other persons for advice and representation.
- D. Lawyers regularly provide company registration service at reasonable fees.
- E. There is an established bar association that includes lawyers who represent the business and cooperative community in commercial disputes.
- F. The bar association provides meaningful services to lawyers, including continuing legal education in a variety of commercial law topics, regular updates in the profession and the commercial law, and other opportunities for sharing information.
- G. Lawyers have an effective continuing education system on company law, cooperatives, and corporate governance.
- H. Lawyers have access to an effective system of continuing education about alternative dispute resolution of disputes pertaining to companies, cooperatives, and corporate governance.

2. The accounting profession has both expertise and practical experience, and it has a positive influence on financial reporting and other financial aspects of companies, cooperatives, and corporate governance.

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- A. There is an adequate number of accountants who have expertise and practical experience in audit and financial aspects of company law and corporate governance.
- B. Accountants and auditors are in fact regularly used by companies and other persons for advice and representation in audit and financial aspects of company law and corporate governance best practice.
- C. Accountants and accounting firms regularly provide company registration service at reasonable fees.
- D. Accountants apply internationally recognized accounting standards in audits of company financial statements, and view their role as being independent of the company.
- E. Most companies (or most or all sizeable companies) produce annual independently audited financial statements.
- F. There is an independent association of accountants.
- G. There is an independent association of auditors.

3. Trade and industry associations effectively contribute to a sound environment for companies, cooperatives, and corporate governance.

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- A. Trade and industry associations (including chambers of commerce, bankers associations and business groups) are accustomed to advising their membership on matters of relevant law and corporate governance.
- B. Trade and industry associations have affiliations with international trade organizations and are involved in the harmonization of company law and corporate governance practices with international standards.
- C. Trade and industry associations provide lists of attorneys or law firms that can provide assistance to their members.
- D. Trade and industry associations effectively represent the private sector in public debate over updates and changes in the commercial law.

- E. Trade and industry associations are informed in technology developments as they relate to companies and cooperatives and have advocated new practices and reforms to existing law to accommodate changes (e.g., digital signatures).
- F. Trade and industry associations provide meaningful opportunities in networking, training, and sharing of best practices.
- G. Organizations of foreign investors contribute positively to the business environment, through networking services, training, publications, and other means.

4. Law faculties provide an effective foundation of knowledge to law students about domestic and international commercial law.

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- A. Law schools are adequately funded, with faculties, facilities and other resources that are sufficient to build a well trained and sufficiently competent cadre of lawyers.
- B. The law school curriculum includes classes in commercial law taught by faculty who themselves are educated in contemporary methods of doing business.
- C. Law faculties receive copies of all domestic commercial law and jurisprudence in a timely manner.
- D. Law students are required to receive training in legal research and writing.
- E. To the extent that a mandatory period of apprenticeship is in place, recent law graduates are afforded sufficient opportunity for meaningful exposure to the practice of law.

5. The methods used for drafting, reviewing and updating laws pertaining to companies and cooperatives are effective, open, and free of corruption.

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- A. A good system is in place inside the government (legislature, ministry or elsewhere) for reviewing and updating the law pertaining to companies and cooperatives and inviting participation all constituencies.
- B. Persons who actually draft the company and cooperative laws have expertise and practical experience.
- C. Draft laws are circulated for comment to communities with a stake in their contents.
- D. Public hearings are part of the legislative process.
- E. Votes in the legislature are public and reported in the press.
- F. Legislators are required to publicly disclose their assets on an annual or other regular basis.

6. The donor community is effective in supporting good company law, cooperative law, and corporate governance.

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- A. Local professional and business persons know the donor agencies and the work they do in this area..
- B. Local professional and business persons report satisfaction with donor agencies, if any, which are working to support the business environment.
- C. Coordination of donor activities is -- and is considered to be -- adequate and effective.
- D. Business environment "success stories" reported by donors, in particular those pertaining to company law, agricultural cooperatives, and corporate governance, are substantiated by sustained, positive results on the ground.
- E. Donor activities pertaining to the business environment are regularly subject to monitoring and evaluation and prove responsive to suggestions for change and improvement.

7. Ministries and other government agencies support the economic efficiency and consumer welfare goals of competition.

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- A. Standards and regulations of government ministries are subject to cost-benefit analysis taking into consideration effects on competition.
- B. Ministries ask competition law enforcement authority for input on proposed legislation and regulation.
- C. Joint training programs take place in which the competition agency and other ministries participate.
- D. Privatization of state owned or controlled enterprises attempts to create markets in which competition exists.

E. Government actively supports reduction in trade barriers and encourages trade liberalization.

8. Non-government trade and industry associations support the economic efficiency and consumer welfare goals of competition.

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- A. Trade and industry associations publish materials and incorporate training in the "do's and don'ts" of competition law and policy.
- B. The business or legal community supports one or more specialized publications on the commercial law and other business issues.
- C. Trade and industry associations report suspected law violations.
- D. Trade and industry associations contribute to television and radio programming on the basics of how free markets operate.

9. Educational and research institutions support the economic efficiency and consumer welfare goals of competition.

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- A. Industrial economics is a standard course in the faculty of economics at universities.
- B. Competition law and economics is taught in the country's law schools.
- C. University professors contribute to the national dialogue on competition law and policy through research, publications, and symposia on market-related topics.
- D. There are opportunities for training and continuing education in competition-related topics.

10. Consumer groups support the economic efficiency and consumer welfare goals of competition.

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- A. Consumer groups monitor and report suspected violations of the law.
- B. Consumer groups have established mechanism for providing input into policy making at the competition agency.

Social Dynamics

1. If there is a substantial "informal economy," that problem is understood and the government and the business community are taking effective steps to address it.

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- A. The extent and nature of the informal economy is known -- specifically, the extent to which it consists of:
 - B. i. "micro" businesses such as individual vendors or single family stalls, shops or farms,
 - C. ii. larger SMEs such as businesses with up to 50 employees,
 - D. iii. large businesses, or
 - E. iv. specific types of businesses, or businesses in specific geographical regions.
- F. The reasons for the problem, including specific obstacles toward formalization, are generally understood by the following stakeholders:
 - G. i. government officials;
 - H. ii. business leaders and influential players in the private sector;
 - I. iii. the research or academic community.
- J. There is awareness of issues of special interest to entrepreneurs, and schools and training institutions teach these issues.
- K. The government is taking effective steps to address the problem of informality, which may include efforts at law or regulatory reform, improvement and streamlining of registry or other agency procedures at the local level, work with specific industry segments, etc.
- L. The business and professional community is taking effective steps to cure the problem, which may include assisting in law reform, lobbying for regulatory improvement, advising clients of the law and of the benefits from exiting the underground economy, etc.
- M. The donor community is aware of the informal economy problem and the above issues and efforts, and actively and effectively assists in reform efforts.

Score

2. Within the government, there is political will and a sense of urgency for improvement of conditions related to formation and operation of companies, and concrete steps are being taken.

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- A. At the government level, important officials are knowledgeable and active in the area of company law and corporate governance and are business-friendly in general.
- B. There is an effective law reform process including a governmental committee dedicated to company law reform, including drafting of new laws or amendments.
- C. There are programs and initiatives to encourage investment which recognize the importance of good corporate governance for attracting investment.
- D. A formal mechanism exists for reviewing the performance of the company registry on a regular basis, and the director of the Registry is committed to improving its performance and effectiveness.
- E. The government is open and welcoming to private-sector participation and has formal mechanisms for soliciting input from the business and professional community.

3. The state's role in the agricultural and rural sector economy effectively promotes private sector participation and economic growth.

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- A. The national government is considered to be "pro-agriculture" and has an identifiable champion engaged in promoting progress in laws and regulations promoting agriculture and rural sector enterprise.
- B. The agriculture and rural sector communities perceive the government to be "pro-agriculture".
- C. The agriculture and rural sectors actively seek new and better laws and regulations that promote their interests.
- D. The government provides for meaningful agricultural and rural sector participation in the legal and regulatory reform process.
- E. The government clearly states when it is in the public interest to protect at-risk debtors.
- F. There is an explicit dialogue between public and private sectors actor on the need to move up the value chain from low value commodities to higher value, refined products.
- G. The government, public and private sectors understand the threat to agriculture and rural production and trade posed by inefficient production systems, high energy costs, poor infrastructure, agricultural trade insecurity, and inefficient/expensive customs.

4. The government and political leadership support a culture of competition.

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- A. Leading political figures publicly advocate competition as a means to improve the economy.
- B. Legislation to introduce competition into sectors that were previously isolated from competition is usually successful.
- C. Government officials look to and draw from other countries' experiences enacting competition laws.
- D. The overall legal framework does not create or permit unnecessary licensing or market entry restrictions favoring incumbents.
- E. The governmental entity responsible for privatization collaborates with the implementing institution to ensure competitive privatization.

5. Consumers value competition, recognize its potential benefits, and prefer competition to government regulation.

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- A. Where structural adjustments cause social dislocation, social insurance programs or other government safety nets soften the impact.
- B. Consumers have recourse to NGOs and governmental entities to advocate represent their traditional consumer protection concerns.
- C. Small entrepreneurs seek freedom to grow and innovate rather than governmental regulation and protections.

6. The business and legal communities respect the goals of competition law.

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- A. The business and legal communities are aware of the competition law or are concerned about the lack thereof.

- B. Law firms have lawyers who specialize in competition law.
- C. Businesses have competition law compliance manuals or written procedures in place.
- D. Business community pressures government and business associations to free markets by eliminating corruption.

7. The state's role in the economy does not diminish private sector participation in the economy.

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- A. The percentage of total bank loans to governmental or quasi-governmental entities does not exceed international best practice.
- B. State Owned Enterprise production is less than 10% of GDP.
- C. Government borrowing is not perceived to be driving up interest rates.
- D. Government participation in the economy does not prevent competition of wholesale goods or services.
- E. Government participation in the economy does not prevent competition of retail goods or services.
- F. There is private sector participation and competition in the air transport industry.
- G. There is private sector participation and competition in the telecommunications industry.
- H. There is private sector participation and competition in the energy sector.
- I. There is private sector participation and competition in the ground transport industry.
- J. There is private sector participation and competition in the shipping industry.
- K. There is private sector participation and competition in the tourism sector.
- L. There is private sector participation and competition in the banking sector.
- M. There is private sector participation and competition in the agriculture sector.

Dealing with Licenses

Legal Framework

1. The source of legal authority for all licenses and regulations related to doing business – whether dealing with certain technical or professional areas; land use, construction or environmental issues; trade in goods or services, or other pursuits – is clear and accessible.

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- A. The constitution clearly sets forth the law-making rights and responsibilities of the legislative branch.
- B. The constitution clearly enunciates the implementing authority of the executive branch.
- C. The constitution clearly enunciates the authority of the judicial branch, and that authority includes the right to strike down laws or regulations that are deemed unconstitutional or otherwise contrary to law.
- D. The notion of "checks and balances" is enshrined in the constitution.
- E. There is clear legislative basis for the authority of executive agencies to issue decrees, orders, regulations, and other requirements related to doing business. The scope of this authority is clear and unambiguous.
- F. The source of legal authority for regional, provincial or local institutions to regulate certain aspects of doing business is found in the constitution or in other cornerstone legislation. The scope of this authority is clear and unambiguous.
- G. If there is a branch of government charged with engaging in regulatory reform, the source and scope of that authority is clearly set out in empowering legislation.
- H. Access to the chief source of authority for the country's regulatory environment is readily accessible in print and/or electronic form and is available in all national languages of the country.
- I. The country has a single building code that is widely accessible, consistent with international best practice, and routinely updated to account for advances in the construction industry.

2. The law concerning construction licenses fulfills legitimate regulatory purposes.

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- A. The construction licensing law sets forth the objectives behind licensing requirements and specifies the set of national and local regulations that govern different aspects of the construction process for different types of construction (e.g., building, mechanical, plumbing, and electrical codes).
- B. The objectives of the construction licensing law are legitimate objectives, such as ensuring safety and compliance with zoning regulations, and protecting the environment, national security, and/or scarce resources.
- C. The construction licensing law is not used for improper purposes such as managing competition or generating revenue.
- D. The construction licensing law states the principles behind the licensing process (e.g., transparency, ease of use).
- E. Licenses required by the law fulfill a legitimate purpose. No necessary or duplicative licenses are required. That is, each and every other permit that may be required in the construction process, such as utility connection permits, serves a different and legitimate purpose, which is not related to simply allowing the construction of a superstructure in the property in question.
- F. Obtaining a construction license requires a showing of only the plans, specifications, qualifications and certifications (i.e., plans and specs certified by a licensed professional) necessary to fulfill the legitimate regulatory purposes for the license. No overly burdensome or unnecessary steps are required.
- G. A construction license is valid for a limited but relatively long period (i.e., 180-365 days) unless review of the licensing criteria is necessary to fulfill legitimate regulatory purposes, such as complying with changes in zoning and/or related construction codes.
- H. The law provides that the cost of obtaining a license shall be no greater than necessary to cover related administrative costs.

Score

3. With respect to construction and land development projects, the licensing procedures and and post-license inspection functions of the following authorities are lawful, necessary, and business-friendly:

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- A. The national planning authority.
- B. The national environmental authority.
- C. Regional and local planning authorities.
- D. Other regional and local authorities that may inspect, monitor or otherwise be involved in the construction process.
- E. Authorities dealing with water use.
- F. Fire authorities.
- G. Authorities dealing with construction standards.
- H. Authorities dealing with occupational safety and health.
- I. Authorities dealing with infrastructure.
- J. Authorities dealing with utilities and communications.
- K. All other authorities dealing with post-license inspections.

4. The law concerning construction licenses and post-licensing inspections fulfills legitimate regulatory purposes.

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- A. The construction licensing law sets forth the objectives behind licensing and inspection requirements.
- B. The objectives of the construction licensing law are legitimate objectives, such as ensuring protection of the public, the environment, national security, and/or scarce resources.
- C. The construction licensing law is not used for improper purposes such as managing competition or generating revenue.
- D. The construction licensing law states the principles behind the licensing process (ex. transparency, ease of use).
- E. Licenses and inspections required by the law fulfill a legitimate purpose. No unnecessary or duplicative licenses or inspections are required.
- F. Obtaining a construction license requires a showing of only the qualifications necessary to fulfill the legitimate regulatory purposes for the license. No overly burdensome or unnecessary steps are required.
- G. A construction license is valid for an unlimited period unless review of the licensing criteria is necessary to fulfill legitimate regulatory purposes.
- H. The law provides that the cost of obtaining a license or undergoing an inspection shall be no greater than necessary to cover related administrative costs.

5. Laws concerning construction licenses and post-license inspections are clear, accessible, and consistent with international best practices.

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- A. A complete and clear list of all licenses and inspections required to construct a building is included in a single law or regulation.
- B. Up-to-date information pertaining to construction license requirements and procedures is freely available and easy to understand.
- C. Copies of the law on construction licensing and post-license inspection requirements are readily available to the public, either on the Internet or through widely available printed publications.
- D. The law is published in all official languages of the country, and a good English translation is available.
- E. The law pertaining to construction licenses and post-license inspections includes clear definitions for all key terms.
- F. The law pertaining to licenses clearly specifies what activities are subject to licensing and the criteria for acquiring the necessary licenses. This can be provided either through a positive or negative list, but should be provided in a high-level document that cannot be easily altered.

Score

- G. The law pertaining to inspections clearly specifies what activities are subject to inspection. This can be provided either through a positive or negative list, but should be provided in a high-level document that cannot be easily altered.
- H. The criteria for acquiring construction licenses, and which activities are subject to license requirements, are easily accessible by the public, whether on the Internet or through widely available printed publications.
- I. The law on construction licenses clearly specifies why applications may be rejected and/or revoked.
- J. The law on construction licenses addresses the need for environmental impact assessments for any significant construction project.
- K. The law concerning construction licenses specifies who (such as the land owner or the builder) is responsible for obtaining the construction license.
- L. The law states that construction licenses shall be issued by a single office in each region or municipality.
- M. The legal framework incorporates "silence is consent" rules for license applications.

6. There is a clear and accessible body of supporting regulations for all laws pertaining to construction licenses and post-license inspections.

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- A. Copies of regulations on construction licenses are readily available to the public, either on the Internet or through widely available printed publications.
- B. Regulations are published in all official languages of the country.
- C. Changes to the regulations are published promptly and for a reasonable time period prior to going into effect in order to provide for predictability in the regulatory environment.
- D. A standard procedure is used for issuing all required construction licenses (although the level of effort required by the procedure may be proportional to the activity's impact).
- E. The regulations (or law) clearly define the body or individual responsible for issuing construction licenses and the associated rights and duties.
- F. The regulations (or law) clearly define the rights and duties of applicants.
- G. Only one construction license is required for each construction activity, and business owners can easily determine which separate licenses are required for related activities.
- H. If an activity requires more than one license, the regulations clearly explain what additional procedures must be followed and in what order they should be completed.
- I. If an activity requires inspection for a license to be issued, the regulations clearly explain who must provide the inspection, the purpose of the inspection, and what is required for a property to pass the inspection.
- J. The regulations provide the requirements for becoming a qualified inspector, and provides for qualified inspectors within both the public and private sectors.

7. The legal framework clearly defines the jurisdiction and responsibilities of administrative agencies charged with construction licensing activities.

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- A. Administrative bodies that handle licensing disputes:
 - B. a. operate according to clear, transparent, published rules and procedures;
 - C. b. make their rules and procedures available to the public;
 - D. c. issue written decisions based on the published, established law.
- E. Only one body has jurisdiction to license construction activities in each area (whether at the municipal or regional level).
- F. Procedures and time limits for appealing rejections of license applications and revocation of licenses are readily available to the public, whether on the Internet or through widely available printed publications.
- G. Decisions of the administrative bodies responsible for licensing can be appealed to the court system.

8. Laws and other regulations concerning land use and zoning allow adequate commercial development on transparent terms.

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Score

- A. The law permits a wide range of real property development – commercial, residential and agricultural. The use and geographical categories for each type of land use are clearly defined and reasonable.
- B. The law provides for re-categorization and rezoning using objective standards and procedures and reflecting actual local conditions and needs.
- C. The law does not allow regulation using “rational use” or other subjective standards which can be political or corruption-encouraging.
- D. The law does not penalize, or allow loss of, agricultural land for the owners’ non-use or absence.
- E. Zoning maps are updated no less than every 10 years.
- F. Regulations pertaining specifically to the use of farm land and farm-related property are clear and accessible to the constituencies who are most affected by them.

9. The legal framework fosters an efficient market for agricultural inputs.

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- A. Laws regulating the sale and distribution of seeds allow for competitive sourcing, certification of quality, and minimal import tariffs.
- B. Laws regulating the sale and distribution of pesticides and herbicides allow for competitive sourcing, certification of quality, and minimal import tariffs.
- C. Laws regulating the sale and distribution of fertilizer allow for competitive sourcing, certification of quality and minimal import tariffs.
- D. Laws regulating the sale and distribution of agriculture equipment allow for competitive sourcing, certification of quality, and minimal import tariffs.
- E. Laws promote the domestic development of bio-fuels and reasonably priced energy for agricultural and rural-sector production.

Implementing Institutions

1. The national body that manages construction licensing is well organized, well led, and endowed with sufficient resources to fulfill its mandate.

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- A. The head and management staff are non-political and/or they view their role as administrative and ministerial.
- B. It has sufficient staff that has benefited from adequate access to knowledge on construction issues, including urban planning, environmental resource management, mapping, and so forth.
- C. It has sufficient funding (through direct state budget, fees for licenses or other services, or both).
- D. The physical facilities are accessible and welcoming, and there are branch or regional offices offering easy access to rural populations.
- E. It issues official forms (which may or may not be mandatory) for license applicants; the forms are available free or at minimal cost from the agency, online, and/or bookstores; the forms cover all licenses required; and there is a handbook or other instructions.
- F. It has adequate, formally issued internal regulations and operating procedures.
- G. It has access to modern tools of construction planning that are appropriate for the local environment, such as automated mapping capability, integrated software, environmental research tools, etc.

2. Regional and local institutions that are engaged in the construction licensing process are well organized, well led, and endowed with sufficient resources to fulfill their mandates.

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- A. They have sufficient funding (through direct state budget, fees for licenses or other services, or both).
- B. Their physical facilities are accessible and welcoming, and, if necessary, there are branch or regional offices offering easy access to rural populations.
- C. They issue official forms (which may or may not be mandatory) for license applicants; the forms are available free or at minimal cost from the agency, online, and/or bookstores; the forms cover all licenses required; and there is a handbook or other instructions.
- D. They have adequate, formally issued internal regulations and operating procedures.

- E. There are clear lines of communication between local agencies and national agencies that are involved in the licensing process.

3. National, regional and local bodies that participate in the construction licensing process perform their duties efficiently and effectively and ensure that important information pertaining to land use is available to the public.

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- A. There is a national "one-stop shop" for construction licensing requirements that provides all necessary information and assistance pertaining to national licensing authorities and, at the least, direction about how to engage regional and local construction licensing authorities.
- B. Where appropriate, the agencies operate websites that are easy to use and regularly updated, and which contains the relevant law and regulations, instructions and forms for license applications, fee schedules, and other useful information.
- C. Agency staff are knowledgeable and provide assistance to customers concerning the relevant laws, forms, and procedures.
- D. License applications can be submitted on the Internet or at the agencies' offices.
- E. The application experience is efficient and user-friendly – the staff are customer service-oriented; they spot and assist with technical mistakes; all applicants are treated the same; there are no long lines; and the entire process takes no longer than 90 days.
- F. If a license application is rejected, the national, regional or local agency provides a clear explanation based on the law and regulations, and the rejection can be appealed or any defect cured quickly.
- G. National, regional and local bodies that participate in the construction licensing process regularly share information and consult one another about how their processes can be streamlined or improved to reflect advances in technology or other recent changes.

4. A comprehensive and effective system exists for recording construction licenses.

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- A. Construction licenses are either registered in a comprehensive property registry or in a separate construction licenses registry.
- B. The registry is up to date and comprehensive.
- C. The registry is accessible by the public either electronically or at the local office responsible for construction licenses.

5. The bodies that grant construction licenses are efficient and business-friendly, and their processes and time frames encourage – or do not discourage – land use and development for commercial purposes.

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- A. It is easy to determine what licenses and procedures are required for constructing a building.
- B. The number of procedures required to obtain a construction license is the minimum necessary to achieve the legitimate regulatory goals for licensing.
- C. Applicants are not required to provide information necessary for granting construction licenses that can be obtained from other government authorities.
- D. It is clear exactly what body or person is responsible for each procedure, and the number of these is the minimum reasonably necessary to achieve the legitimate regulatory goals for licensing. There are no unnecessary regulatory bodies, offices, bureaucracies, overlapping jurisdictions, or inconsistent approaches.
- E. Those bodies and persons are non-political and/or they view their role as technical and as business-friendly.
- F. Their processes can be – and in fact are – completed within a few-day time period.
- G. If more than one license is required for constructing a building, a "one-stop shop" procedure is available under which all the necessary permits and licenses for constructing a building are sought concurrently and coordinated or done by one body following a uniform and consistent policy.
- H. There are statutory time limits within which action must be taken.
- I. The process is transparent, inexpensive, and the costs are in any event published with no extra fees, taxes or personal payments to staff necessary.
- J. The bodies referred to here perform adequately their regulatory obligations and their duty to serve and protect the public safety and welfare.

- K. Utilities connections can be obtained through agreement with the local suppliers and do not require additional licenses or permits from licensing authorities.

6. The bodies that grant construction licenses employ or have access to technical experts who are capable of making sound and defensible decisions pertaining to planning, land use, quality of construction, and other aspects of compliance with the country's legal framework.

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- A. Zoning
- B. Urban limits
- C. Retention of agricultural lands
- D. Lot size
- E. Ingress
- F. Egress
- G. Traffic flow
- H. Density
- I. Setbacks from roads, gullies, canals, coastal zones, etc.
- J. Open space
- K. Parking
- L. Drainage
- M. Biological resources
- N. Water resources
- O. Protected areas
- P. Sewage treatment and disposal
- Q. Solid waste disposal
- R. Public health
- S. Natural hazards
- T. Air quality
- U. Infrastructure

7. Zoning authorities are efficient and business-friendly, and their processes and time frames encourage – or do not discourage – business operations and construction.

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- A. Most large and mid-sized cities have master plans that are routinely reviewed and updated.
- B. Master plans provide for adequate infrastructure for sustainable development.
- C. Master plans generally reflect the realities of a given environment, but also maintain certain key aspirational principles, such as public safety, presentation of the environment, sufficient recreational opportunities, and appropriate divisions between residential, commercial, and industrial areas.
- D. There is clarity in how land parcels are zoned -- that is, a register or accessible document shows where certain land is zoned commercial, residential, or industrial.
- E. The zoning process is transparent.
- F. Zoning categories are generally respected and enforced. Unlicensed construction of improper categories of building are subject to prosecution and removal.
- G. Zoning authorities apply zoning categories and uses reasonably.
- H. Zoning authorities have simple, standard procedures for reviewing requests to re-categorize and rezone property using objective criteria and reflecting actual local conditions and needs.
- I. Zoning authorities do not arbitrarily deny requests for granting zoning exceptions or re-categorization or rezoning.
- J. Corruption is not perceived as a problem within the zoning authorities or in the zoning or variance process.

8. Agencies charged with inspecting licensed construction projects do so only for lawful, necessary purposes and in a business-friendly manner.

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Score

- A. A holder of a construction license has been duly informed of all post-license inspections that may take place over the course of the construction.
- B. All post-license inspections, whether they pertain to health, safety, or other considerations, take place in accordance with the law.
- C. All post-license inspections, whether they pertain to health, safety, or other considerations, are in fact necessary.
- D. All post-license inspections, whether they pertain to health, safety, or other considerations, are generally considered business-friendly in their implementation.
- E. The integrity of the inspection process is respected by both the inspector and the developer. Informal fees or gifts are neither sought by nor offered to inspectors.
- F. In all respects, inspectors are well trained and professional.
- G. Inspections are not duplicative. That is, two or more agencies do not inspect the same aspect of a licensed construction project.
- H. Results of an inspection are made available within a reasonable period, in most instances no more than two business days following an inspection.

9. The environmental protection agency works with the planning authorities and construction licensing agencies to ensure that all licensed construction projects observe the environmental and natural resource management law and do not interfere with the overall health of humans, plants, animals, and the environment.

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- A. Environmental impact assessors perform their duties efficiently and effectively and promote environmental protection.
- B. Environmental impact assessors do not generally discourage construction or provide negative assessments arbitrarily.
- C. The environmental agency employs or otherwise has sufficient access to expertise in the following topics:
 - D. Setbacks from roads, gullies, canals, coastal zones, etc.
 - E. Open space
 - F. Parking
 - G. Drainage
 - H. Biological resources
 - I. Water resources
 - J. Protected areas
 - K. Sewage treatment and disposal
 - L. Solid waste disposal
 - M. Public health
 - N. Natural hazards
 - O. Infrastructure
 - P. Wildlife protection and management

10. Administrative bodies that deal with disputes arising from the construction licensing process and related issues are seen as effective.

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- A. Administrative tribunals have the following characteristics:
 - B. a. clearly defined mandate to resolve administrative construction-related disputes;
 - C. b. sufficient staffing to carry out their mandate;
 - D. c. sufficient authority and support (from the state) to carry out their mandate, including clear policy statements;
 - E. d. sufficient funding through the state budget, fees collected or a combination of both to maintain its equipment and services at an adequate level; and
 - F. e. independence.
- G. There is a general consistency in the understanding of the role of administrative tribunals in resolving construction license and land use-related disputes.
- H. The salaries of tribunal staff are sufficient to attract and retain qualified personnel.

Score

- I. Procedures to file a claim challenging appropriate of administrative decisions.
- J. The administrative tribunals maintain and provide reasonable public access to, in terms of procedures and costs, records and decisions, to all parties to a dispute, as well as third parties.
- K. Ministries or tribunals have active, current web sites, including contact information and relevant legal materials pertaining to procedures for filing claims or grievances.
- L. Administrative tribunals maintain and publish their decisions and make them available to the public for free or at a relatively low cost.
- M. Administrative tribunals operate effectively, as demonstrated by:
 - N. a. the ability to resolve commercial disputes brought before them efficiently, in a timely manner, and are able to manage their caseload;
 - O. b. following, reviewing and revising as needed detailed internal regulations and operating procedures;
 - P. c. maintaining fees for commencing a proceeding at a relatively reasonable level so as to not act as a disincentive for parties to use the tribunals to resolve disputes; and
 - Q. d. effective enforcement of their decisions.
- R. It is not necessary to retain a lawyer to bring or defend a claim before an administrative tribunal.

Supporting Institutions

1. Utilities suppliers utilize straight-forward procedures to provide utilities connections quickly and with ease.

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- A. Procedures for obtaining the necessary utilities connections are simple and easy to access.
- B. Land owners or builders can apply for utility connections while construction license applications are pending.
- C. Obtaining a water and sewage connection is simple and inexpensive, and does not interfere with acquiring a construction license.
- D. Obtaining a telephone connection is simple and inexpensive, and does not interfere with acquiring a construction license.
- E. Obtaining an internet connection, where such is available, is simple and inexpensive, and does not interfere with acquiring a construction license.

2. The legal profession effectively contributes to an environment that supports a fair and efficient regulatory environment.

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- A. There is an established bar association that includes lawyers who represent the business community in commercial matters.
- B. Lawyers' associations have specialized groups related to commercial law and/or commercial dispute resolution.
- C. Lawyers' associations hold continuing legal education and training programs to educate members about commercial legal developments and commercial dispute resolution.
- D. Lawyers' associations hold continuing legal education and training programs to educate members about alternative dispute resolution including arbitration.
- E. There is an adequate supply of attorneys who can represent business endeavors of all sizes, from sole proprietors to large corporations.
- F. The bar association provides accessible and affordable legal help to small and medium-sized enterprises.
- G. The bar association has formal mechanisms for identifying needs relating to the regulatory environment.

3. Universities, think tanks and other knowledge-oriented institutions provide an effective foundation of knowledge of the relationship between a fair and efficient regulatory system and economic growth.

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- A. Economics faculties incorporate courses relating to policy issues pertaining to regulatory efficiency.
- B. Business schools teach the practical aspects of working within the regulatory environment.

Score

- C. Law faculties provide an effective foundation of knowledge to law students about the regulatory environment.
- D. University professors contribute to the national dialogue on business regulation through research, publications, and symposia.
- E. There are opportunities for training and continuing education in regulatory development, implementation, and compliance.

4. The private sector is active in the promotion of a fair and efficient regulatory environment.

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- A. Chambers of commerce provide their memberships and the public with information and training on the regulatory environment.
- B. The business community regularly reports on developments within the regulatory environment.
- C. Specialized publishers develop and make available standardized forms for most common regulatory requirements.
- D. Trade and industry associations have affiliations with international trade organizations and are involved in the harmonization of regulatory compliance with international standards.
- E. Trade and industry associations provide lists of attorneys or law firms that can provide assistance to their members with respect to credit.
- F. Trade and industry associations effectively represent the private sector in public debate over monetary policy and overall sector development.
- G. There are one or more publications that address the relationship between private sector interests and access to credit.
- H. Trade and industry associations are informed of regulatory development and have advocated new practices and reforms to existing law to accommodate changes.

5. The media report regularly, freely, and accurately on matters related to the regulatory environment for land use and construction.

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- A. The media has sufficient access to all appropriate sources of information concerning the regulatory environment.
- B. The media can report freely on issues pertaining to the regulatory environment without fear of government reprisal.
- C. The private sector considers media coverage of the regulatory environment to be sufficient, accurate and fair.
- D. Government actors consider media coverage of the regulatory environment to be sufficient, accurate and fair.
- E. Reporters have access to training and education in issues pertaining to coverage of the regulatory environment.

Social Dynamics

1. Within the government, there is political will and a sense of urgency for improvement of conditions related to the regulatory environment, and concrete steps are being taken.

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- A. At the government level, important officials are knowledgeable and active in the area of company law and are business-friendly in general.
- B. There is an effective law reform process including a governmental committee dedicated to company law reform, including drafting of new laws or amendments.
- C. A formal mechanism exists for reviewing the performance of the company registry on a regular basis, and the director of the Registry is committed to improving its performance and effectiveness.
- D. The government is open and welcoming to private-sector participation and has formal mechanisms for soliciting input from the business and professional community.

2. Within the private sector there is a sense of urgency and the will for improvement of conditions related to the regulatory environment, and concrete steps are being taken.

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- A. The business community exhibits responsiveness to external pressures to improve knowledge of and execution of principles of corporate governance.

Score

- B. Individuals or organizations within the private sector that actively or passively oppose improvements in corporate governance are known to the stakeholding community, including government officials and private sector leaders.
- C. Efforts are made by government actors, private sector leadership, and/or the donor community to identify and understand vested interests that oppose improved corporate governance and to work to change their attitudes and practices.
- D. The business community regularly provides input including statistics, studies and draft law suggestions.
- E. Banks and other financial institutions demonstrate a commitment to sound practices of corporate governance.
- F. Large NGOs demonstrate a commitment to sound practices of corporate governance.

3. Corruption does not undermine the regulatory environment.

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- A. Under Transparency International's most recent Corruption Perception Index, the country scores better than 4.
- B. If the country's score on the most recent CPI is less than 7, there is a comprehensive, multi-agency program to combat corruption in state institutions.
- C. There is no recent history of major donors or lending institutions cancelling programs, loans or activities on the grounds of official misuse of funds.
- D. Prosecution of corruption is not generally regarded as a means of weeding out political opponents.
- E. The media covers allegations of official corruption in a responsible and thorough manner.
- F. Judges, prosecutors, and media representatives do not significantly risk their personal safety by participating in inquiries or prosecution of official corruption.

Employing Workers

Legal Framework

1. Laws and regulations pertaining to labor and employment are readily available, clearly drafted, and easy to use.

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- A. Print copies of the labor and employment laws, including not only traditional labor and employment legislation, but also laws and regulations pertaining to occupational safety and health, wages and hours, social security, immigration, and employment in specific sectors, are readily available.
- B. New laws are published according to a uniform, timely and consistently implemented procedure (such as through regular publication of an Official Gazette).
- C. The universe of labor and employment law and regulation is published in all official languages of the country.
- D. The universe of labor and employment law and regulation is available on a regularly updated Internet site.
- E. With respect to labor and employment, the licensing and approval functions and procedures of the following authorities are clearly defined:
 - F. a. Labor relations and collective bargaining authority
 - G. b. Wage and hour authority
 - H. c. Occupational Safety and Health authority
 - I. d. Social Security and benefits administration authority
 - J. e. Tax authority (payroll taxes)
 - K. f. Immigration authority
 - L. g. Equal Employment Opportunity authority
 - M. h. All other authorities charged with licensing or regulating labor and employment-related functions

2. The labor law provides for the core labor standards as enunciated by the International Labour Organization.

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- A. The law provides that workers may associate freely without fear of retribution by their employers, including through the formation of labor unions.
- B. The law provides for the right of collective bargaining between labor unions and their employers.
- C. Acts by companies to interfere with or discourage the formation of labor unions are prohibited by law.
- D. The rights of association and collective bargaining extend to agricultural workers.
- E. The law prohibits forced labor.
- F. There is a law that specifically prohibits trafficking in persons.
- G. The law provides for minimum age provisions which are in accordance with International Labor Standards as established by the ILO.
- H. The law observes the ILO conventions and recommendations against the worst forms of child labor, including labor that is abusive, dangerous, or otherwise especially grievous to children.
- I. The law prevents discrimination in employment on the basis of race, color, sex, religion, political opinion, national extraction or social origin.

3. With only narrow exceptions, laws pertaining to job security in the private sector support the principle of at-will employment.

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- A. The law does not restrict employers from hiring and firing employees at will, so long as they observe the core labor standards of free association, collective bargaining, and prohibitions against forced labor, child labor, and discriminatory treatment.
- B. Employers may form fixed-term contracts with their employees, but are not obliged to do so; nor are the terms of labor contracts specifically mandated by the law.

- C. The law does not mandate terms of employment that indirectly interfere with an employer's right to hire and fire at will, such as required consultations with labor unions prior to lay-offs or unduly long notice periods.
- D. The law does not mandate special treatment of union officials.
- E. The law does not mandate severance pay in an amount that is disproportionate to the worker's period of employment.
- F. The law allows for companies to hire and fire workers without providing written explanations of their decisions to regulatory agencies or other third parties.
- G. The law allows for seasonal employment.
- H. The law does not mandate seniority rules with respect to promotion and firing decisions in the private sector, although seniority policies may be implemented as a result of collective bargaining.
- I. The law does not contain procedural requirements for redundancy, although redundancy policies may be implemented as a result of collective bargaining.
- J. The law does not require labor representation on company boards.

4. Wage and hour laws provide for fair protection of employees, without unduly restricting the operating needs of businesses.

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- A. Minimum wage laws are not considered excessive for the economy and purchasing power of the country's general population.
- B. The law does not mandate specific salaries for specific occupations.
- C. The law does not mandate less than a 40-hour work week.
- D. The law provides for overtime pay for hourly employees after a reasonable number of hours over 40 per week.
- E. The law does not unduly restrict the number of overtime hours an employer may ask from an employee.
- F. The law does not prevent or unduly restrict weekend or holiday work.
- G. The law does not prevent or restrict night work.
- H. The law does not mandate paid annual vacation of more than 21 days.
- I. The law does not mandate extra pay for union officials.
- J. Members of salaried professions that require significant discretion in the execution of duties are generally not entitled to overtime pay.
- K. Wage and hour law applies equally to men and women.
- L. The wage and hour law is clear, consistent, and accessible.

5. Within reasonable limits, the law permits foreigners to travel into the country to work in skilled professions or to conduct business.

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- A. The country has reciprocal visa-free agreements with one or more foreign countries for short-term or visitor stays.
- B. Laws encourage the movement of highly skilled labor through the system to increase knowledge transfer (i.e. awards work permits for approximately four to five years for highly skilled labor).
- C. The law or regulations include country in-transit preclearance agreements with one or more foreign countries.
- D. There is objective criteria for immigration officers and law enforcement officers connected to the immigration process that they can carry out their enforcement demands without impeding trade.
- E. The country has issued provisions that regulate visa procedures, and such laws are clear, transparent, publicized and not applied in a discriminatory manner to different types of immigrants.
- F. Laws conform with the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations' Convention Against Transnational Organized Crime, 2001.
- G. Laws conform with the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations' Convention Against Transnational Organized Crime.

6. Social security laws provide for an overall safety net for workers, without unduly restricting the operating needs of businesses.

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- A. Law and regulations pertaining to social security (including programs pertaining to retirement, unemployment, health, parental benefits, workplace injury, and other obligatory contributions) are simple, clear, and easy to administer.
- B. Law and regulations pertaining to social security are not considered so burdensome as to discourage companies from formally employing workers.
- C. There is a system of unemployment insurance which provides financial support to workers during periods of unemployment.
- D. Social security laws are designed to encourage able-bodied, unemployed workers to seek employment.
- E. Temporary public works programs are in place for unemployed workers.
- F. Non-wage labor costs, including all social security payments and payroll taxes, do not amount to more than 15% of a worker's salary, according to the most recent World Bank Doing Business report.
- G. The universe of social security law is clear, consistent, and accessible.

7. Occupational safety and health laws provide for on-the-job worker protection from illness and injury, without unduly restricting the operating needs of businesses.

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- A. Laws and regulations pertaining to occupational safety and health are based on reasonable standards of sectoral safety (such as mining, agriculture, factory work, etc.)
- B. Laws and regulations pertaining to occupational safety and health are regularly updated to take into account changes in sectoral standards and practices.
- C. The law provides for periods of notice and comment when a significant change is proposed for a safety or health requirement.
- D. The occupational safety and health law provides protections for whistle-blowers, within carefully defined circumstances.
- E. Laws and regulations pertaining to occupational safety and health are clear, consistent, and easily accessible.

Implementing Institutions

1. The role and responsibilities of each institution charged with implementing and enforcing the labor and employment law is clearly defined and understood, with minimal overlap or duplication of these roles and responsibilities.

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- A. The following functions are assigned to specific implementing institutions, agencies or offices, and those functions do not overlap or conflict with those held by other institutions:
- B. i. Oversight of labor relations and collective bargaining;
- C. ii. Oversight of wage and hour law;
- D. iii. Investigation and prosecution of child labor and forced labor abuses;
- E. iv. Implementation and enforcement of equal employment opportunity;
- F. v. Oversight of occupational health and safety;
- G. vi. Oversight of social security law and benefits administration;
- H. vii. Administration and collection of payroll taxes;
- I. viii. Implementation and enforcement of immigration law, including employment of foreign workers;
- J. ix. Assistance to groups with special employment needs, such as women, minorities, or disabled people.
- K. x. Enforcement of anti-trafficking laws.
- L. The activities and authority of these institutions is not undermined by the collection of informal fees or other indicia of corruption.
- M. It is easily ascertainable what approvals, permits, licenses and procedures pertaining to the employment of workers are needed for start-up and continuing operation of any business.

- N. The number of these approvals, permits and licenses is the minimum that is necessary for business purposes.
- O. Provincial or local institutions do not duplicate the licensing or oversight role held by one another or by national institutions.
- P. Where there are administrative tribunals dedicated to resolving labor disputes, their jurisdiction may be supplemented, but is not duplicated, by the courts.

2. Government enforcement of core labor standards is adequate, consistent, and fair.

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- A. Employers are required to post summaries of fundamental rights of workers, including avenues of recourse for alleged violations, at work-sites or common gathering areas.
- B. Individual workers and labor unions report that the right of free association is generally respected by employers and enforced by the government.
- C. Workers and labor unions evidence understanding of recourse when they perceive that their employers are engaging in unfair or unlawful labor practices.
- D. Workers and labor unions report no suppression of their ability to speak about their working conditions to government officials, donors, or non-government organizations interested in labor issues.
- E. Child labor laws are enforced through various methods, including information campaigns, promotion of education, active intervention, and prosecution and punishment of offenders.
- F. Anti-trafficking laws are enforced through various methods, including information campaigns, promotion of education, active intervention, and prosecution and punishment of offenders.
- G. Individuals who feel that they are subject to unlawful discrimination have access to administrative or legal recourse, and information about these processes is required to be posted at work-sites or common gathering areas.
- H. Individuals who feel that they face dangerous or unlawful occupational safety or health conditions have access to administrative or legal recourse, and information about the processes for recourse is required to be posted at work-sites or common gathering places.
- I. Employer compliance with social security and other "safety net" requirements is tracked by the government and, where compliance is weak, there is a program in place for improving compliance.
- J. Employer compliance with wage and hour requirements is tracked by the government and, where compliance is weak, there is a program in place for improving compliance.
- K. Inspectors of labor and employment conditions receive adequate and up-to-date training.
- L. Inspectors of labor and employment conditions are reported by employers to perform their duties honestly and consistently.
- M. Inspectors of labor and employment conditions are reported by workers to perform their duties honestly and consistently.

3. Administrative tribunals charged with resolving labor disputes are considered fair and effective in carrying out their missions.

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- A. The jurisdiction of all administrative tribunals specifically charged with resolving labor disputes is clear and is not duplicative of the functions of any other tribunal.
- B. The tribunals are sufficiently funded.
- C. The rules of procedure of the tribunals are clear and accessible.
- D. Tribunal decision-makers are knowledgeable about the relevant laws and regulations, and have access to supplementary information, such as information pertaining to international best practices, as needed.
- E. Tribunals are perceived as unbiased toward either workers or employers.
- F. Tribunal decisions are issued in a reasonable amount of time, are in writing and include the grounds for the decision.
- G. Tribunal decisions may be appealed to a court.
- H. Tribunal staff do not solicit informal fees or accept gifts.

4. The courts are regarded as an appropriate institution for resolving labor-related disputes, once administrative remedies have been exhausted.

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- A. Lawyers and businesspersons report that, if they go to court to resolve a labor dispute, they can expect a fair decision, based on published laws, regulations and standards, in a timely manner.
- B. Only one appeal is a matter of right, while second and third appeals are at the discretion of the courts.
- C. The appellate process does not permit adding to the factual record from the lower court -- there is no do novo fact finding on appeal.
- D. In cases involving labor and employment, both parties respect and observe the decisions of judges, even if the decision is adverse to their positions.
- E. Judges who hear labor and employment cases have formal, university-level training in commercial law and are required to have practiced before tribunals or, before taking the bench, are required to take relevant courses.
- F. Judges who hear labor and employment cases receive periodic continuing legal education on issues relating to secured transactions and other relevant areas such as bankruptcy and contract law.

5. Legislative systems for creating, updating, and reviewing laws relating to labor and employment are clear, open, and free of corruption.

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- A. Within the legislature, a system is in place for meaningful contributions by all sectors of the economy to development and updating of the labor and employment law.
- B. Persons charged with drafting the labor and employment law have adequate resources and training.
- C. Draft labor and employment laws are regularly circulated to communities with a stake in their contents.
- D. Public hearings are part of the legislative process.
- E. The process of creating legislation involves pre-enactment activities that serve to inform and educate the stakeholding community.
- F. Votes in the legislature pertaining to the commercial law are taken publicly and regularly reported by the press.
- G. Individuals and institutions that participate in the consensus-building process report that their views are given fair consideration in the legislative drafting process.
- H. Law professors are included in the process for creating and updating labor and employment law, with an eye toward educating future generations of lawyers on this issue.
- I. Legislators are required to publicly disclose their assets on an annual basis.

6. Administrative systems for creating, updating, and reviewing labor and employment regulations are clear, open, and free of corruption.

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- A. A formal system is in place for meaningful contributions by the business community to the development and updating of labor and employment regulations.
- B. Persons charged with drafting labor and employment regulations have adequate resources and training.
- C. The process of creating or revising labor and employment regulations involves pre-enactment activities that serve to inform and educate the stakeholding community.
- D. Notice and comment are part of the regulatory process.
- E. Individuals and institutions that participate in the regulatory development process report that their views are given fair consideration.

Supporting Institutions

1. Labor unions honestly and effectively represent the core interests of their members without diminishing the societal interest in flexible labor markets.

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- A. Labor unions are entitled to represent employees as a result of an election process through secret ballot, and they must stand for re-election every few years.
- B. Union leaders are perceived by union membership as loyal and responsive to the interests of the workers.

- C. Where businesses engage in unfair or unlawful labor practices, such as preventing or penalizing the free association of workers, unions understand and fulfill their legal options.
- D. Unions evidence a strong interest in the productivity of workers and competitiveness of the businesses that employ their members.
- E. Union leaders are not entitled to extra pay or benefits from the company for which they work.
- F. Unions support the continued skills training and development of their members.

2. The private sector demonstrates an interest in the long-term welfare and productivity of the country's workforce.

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- A. Mechanisms exist for regular consultations between private sector organizations and labor unions or other organizations representing the interests of workers.
- B. The vast majority of employers do not interfere with the right of workers to associate freely, and those that obstruct this right face legal sanction.
- C. The vast majority of employers do not engage child labor.
- D. The private sector, through trade and professional associations, works with government agencies to streamline bureaucratic labor requirements, in particular to avoid informal employment of workers.
- E. The private sector endeavors to provide safe and healthy work environments for their employees.
- F. The country's larger private employers offer opportunities in continuing education and skills training for their employees.
- G. The private sector, through trade and professional associations, is active in the promotion and practice of equal employment opportunity.
- H. Foreign investors promote improvements in human capital, through such means as domestic and overseas training, investment in literacy, contributions to public health, and so forth.

3. Public and private educational institutions are responsive to the needs of the country's workforce.

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- A. Education for children 6-16 is compulsory and free.
- B. Quality education for all ages is also available through private providers.
- C. There is no institutionalized system of informal payments to teachers or schools.
- D. Mandatory fees -- such as fees for uniforms or books -- do not discourage children from attending school.
- E. There is a public university system that provides four-year programs in major disciplines and offers campuses that are accessible beyond the capital city.
- F. There is a network of formal and informal training institutions that provide continuing education and skill-building opportunities for youth and adults.
- G. Students at the primary, secondary and university level have access to education in major second languages.
- H. Opportunities to study abroad are publicized and utilized, and persons who study abroad typically return to the country.

4. Universities, think tanks and other knowledge-oriented institutions provide an effective foundation of knowledge of the relationship between labor and employment law and market flexibility.

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- A. Economics faculties incorporate courses relating to policy issues pertaining to the flexibility of labor markets.
- B. Business schools teach the practical aspects of applying the labor and employment law.
- C. Law faculties provide an effective foundation of knowledge to law students about labor and employment law, and the relationship of these laws to macroeconomic policy.
- D. University professors contribute to the national dialogue on labor and employment law through research, publications, and symposia.
- E. There are opportunities for training and continuing education in labor and employment law.

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5. The media report regularly, freely, and accurately on matters relating to labor and employment.

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- A. The media has sufficient access to all appropriate sources of information concerning the labor and employment terms and conditions.
- B. The media can report freely on issues pertaining to labor and employment without fear of government reprisal.
- C. The private sector considers media coverage of labor and employment issues to be sufficient, accurate and fair.
- D. Workers and their representatives consider media coverage of labor and employment issues to be sufficient, accurate and fair.
- E. Government actors consider media coverage of labor and employment issues to be sufficient, accurate and fair.
- F. Reporters have access to training and education in issues pertaining to coverage of the regulatory environment.

6. The donor community effectively supports a labor and employment system that aligns with international best practices.

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- A. Local representatives of the business and legal communities are generally aware of the work being done by donor agencies, and in particular with respect to labor and employment issues.
- B. Local representatives of the business and legal communities report general satisfaction and cooperation with donor agencies, if any, working to support the business environment, in particular labor and employment issues.
- C. Coordination of donor activities relating to improving the labor and employment environment is considered by both local actors and donors to be adequate and effective.
- D. Business environment "success stories" reported by donors, in particular those pertaining to labor and employment, are substantiated by sustained, positive results on the ground.
- E. Donor activities pertaining to the business environment are regularly subject to monitoring and evaluation and prove responsive to suggestions for change and improvement.

7. Institutions (health, education, social services) provide services to facilitate cross-sector labor flows.

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- A. Public policy in health, education, and social services supports the transition of labor from less-productive to more-productive uses.
- B. Research institutions lead in identifying and advocating investment in economic sub-sectors that increase labor productivity.

Social Dynamics

1. There is public consensus that the goal of a labor and employment regime is not only that of protecting the interests of incumbent workers, but also supporting market flexibility and employment in the formal sector generally.

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- A. The national legislature does not exhibit an anti-company bias as exhibited through promotion and enactment of restrictive labor legislation.
- B. Top executive branch officials do not promote more restrictive labor and employment practices at the expense of business growth and market flexibility.
- C. Domestic employers report that they are treated fairly by administrative tribunals or courts in the context of labor disputes.
- D. Foreign-owned companies report that they are treated fairly by administrative tribunals or courts in the context of labor disputes.
- E. Employers report that the enforcement of the law is consistent -- that is, regulations as applied to one employment situation are consistently applied in analogous situations.
- F. Implementing institutions do not charge informal fees for the expedition of licenses or other regulatory requirements.
- G. There is an on-going effort within all branches of government to simplify and reduce paperwork requirements and to eliminate regulatory redundancies.

2. Public sector jobs exist for the purpose of sound and productive execution of government functions, and not for purposes of patronage or political influence.

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- A. Public sector agencies are adequately staffed, but not over-staffed.
- B. The number of persons employed by each agency of the government is known and easily accessible.
- C. Public sector employment does not exceed 18% of the workforce.
- D. Public sector jobs are acquired through free and fair competition, based on clear guidance about the qualifications required for the job, and not through patronage or informal fees.
- E. Public sector employees are adequately trained.
- F. Public sector employees are subject to periodic performance reviews, and the process of firing a public employee for poor performance is not unduly burdensome.
- G. The time spent at work by public employees is adequately monitored and enforced.
- H. Salaries for public sector employees are fair and competitive with the private sector.

3. Women and minority groups have equal access to the labor market.

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- A. There are no laws that, in content or effect, restrict or disallow the participation of women in any non-military jobs or sectors.
- B. There are no laws that, in content or effect, restrict or disallow the participation of ethnic or religious minorities in any jobs or sectors.
- C. Under law or common cultural practice, women do not need the permission of a male family member to work.
- D. Women are afforded equal access to on-the-job training opportunities.
- E. Ethnic and minority groups have equal access to on-the-job training opportunities.
- F. Opportunities for primary, secondary and university education are the same for women as they are for men.
- G. Opportunities for primary, secondary and university education are equal among all ethnic and religious groups.

4. The labor force is skilled.

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- A. Adult literacy is 90% or above.
- B. The last 10 years have exhibited improved rates of literacy.
- C. Emigration does not significantly impact the availability of skilled labor.
- D. Foreign investors engage local employees for not only unskilled work, but also for jobs that require higher levels of proficiency.
- E. English, French, Spanish, or Portuguese is a common second language (even where one of these languages is the first language).
- F. A significant portion of the workforce is computer-literate.

5. The labor force is healthy.

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- A. Life expectancy for both sexes is over 70 years.
- B. The prevalence of HIV/AIDS among adults is less than .75%.
- C. Death from malaria is uncommon.
- D. The urban population has access to clean drinking water.
- E. The rural population has access to clean drinking water.
- F. Rates of immunization (1 year olds) against the following diseases are better than 90%:
- G. 1. Tuberculosis
- H. 2. DPT
- I. 3. Polio
- J. 4. Measles
- K. 5. Hepatitis B
- L. 6. Tetanus

- M. Domestic violence is uncommon.
- N. Alcohol and drug abuse is uncommon.

6. Child labor is actively discouraged through legal and cultural means.

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- A. The country is a signatory to the U.N. Convention on the Rights of the Child.
- B. The process of registering the birth of a child is straightforward, easily accessed, and free.
- C. Education for children aged 6-16 is compulsory and free.
- D. Access to education for girls is equal to that of boys.
- E. Programs exist to help working children transition to school.
- F. Exploitative behaviors, such as employment of child labor and physical abuse of children, are not socially tolerated.
- G. The minimum legal age for direct participation in armed hostilities is 18, and this is enforced.
- H. Employers that break child labor laws are routinely prosecuted and punished under the law.

7. Trafficking in humans is actively discouraged through legal and cultural means.

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- A. The country's law includes prohibitions on sexual exploitation, labor exploitation, forced begging and organ transplantation.
- B. Trafficking in humans is not socially tolerated.
- C. Government officials who aid in the trafficking of humans, including border officials, are investigated, prosecuted and punished.
- D. Victims of human trafficking are treated with compassion by both governmental and social entities.
- E. Programs exist to help victims of trafficking or human exploitation join the mainstream labor force.

Registering Property

Legal Framework

1. Individuals and legal entities, domestic or foreign, may freely own land and other real property interests. "Ownership" includes the right to exclusive possession, exclusive use, and free alienation.

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- A. Domestic citizens and legal entities can own land and other real property interests used for residential, commercial and industrial purposes.
- B. Foreign individuals and legal entities can own land and other real property interests used for residential, commercial and industrial purposes.
- C. Domestic citizens and domestic legal entities can own agricultural land.
- D. Foreign citizens and foreign legal entities can own agricultural land.
- E. If foreign ownership is restricted or prohibited, there are alternatives for foreigners which actually work, such as leasing or holding through a domestic individual or company.
- F. Individuals and legal entities can own property in common, including "joint tenancy" (or an equivalent) and ownership by apartment owners organized in condominium associations.
- G. There is a well defined regime of easements and other servitudes affecting land use.
- H. The government may terminate ("condemn") private land rights only for clear public purposes and with payment of reasonable compensation.
 - I. The process and procedures for privatization of land are objective, non-discriminatory, and clear (regarding, for example, the identity of the governmental agency having jurisdiction, bidding or price-negotiation procedures, and time frames).
- J. The law does not discriminate based on gender.
- K. The law applying to real property is the same in all parts of the country.
- L. The law does not punish land-owners for non-use of agricultural land (i.e., fallow or tree-growing).

2. Owners of real property may sell, lease, donate, exchange, and bequeath their interests freely.

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- A. An owner may transfer, by any of such means, to any other domestic or foreign individual or legal entity, without permission from the government or a government official.
- B. The law does not impose minimum or maximum lease terms for agricultural or other specific uses, or for specific industries or types of parties.
- C. Sales and leases are, in fact, commonly executed at freely negotiated prices and other terms and in the "normal course" of business.
- D. The procedure for carrying out land transactions is simple and quick, without needless formalities or documentation and requiring only the signatures of the parties and possibly a notarial and/or land registry official.
- E. Transaction costs such as appraisal, survey, notarial and registry fees, and lawyers' fees do not represent an excessive part of the transaction value, and do not preclude or discourage deals.
- F. The law safeguards the interests of heirs who are late in registering their inheritance of land and other real property.

3. The legal framework provides adequately for both public recording of interests in real property and protection of recorded interests against third parties.

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- A. The law provides for registration of ownership, liens and encumbrances including mortgages and tax liens, servitudes including easements, and (possibly) lease rights.
- B. The law provides clearly for the protection of the interest of owners and others whose interests are registered, and for protection of the interest of buyers who rely on the registry. Disputes on those matters are rare.

- C. The law uses a cadastre or torrens system in which title and ownership are determined by the registry or other public record or, if not, there are other adequate title-protection means such as title insurance.
- D. The law provides for registration of land, buildings and fixtures together (unified registry).
- E. The law provides for an official document to be issued to a land owner which certifies his registered legal rights.
- F. The law requires public access to the registry records.

4. The legal framework provides adequately for mortgages. It encourages – or does not discourage – an active mortgage credit market.

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- A. Under the law, any owner of any land or buildings, including agricultural land, may pledge that property as collateral to secure a loan. The loan need not be for purchase of or other use on the property.
- B. The law states clearly the essential items for a mortgage agreement, including identification of the land or other rights pledged, the identity of the mortgagor and mortgagee, and the obligation being secured.
- C. The law allows second and subordinated mortgages on freely-negotiated terms.

5. The law regulating land use/zoning allows adequate commercial development on transparent terms. It encourages – or does not discourage – land use and development for commercial purposes.

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- A. The law permits a wide range of real property development – commercial, residential and agricultural. The use and geographical categories for each type of land use are clearly defined and reasonable.
- B. The law provides for re-categorization and rezoning using objective standards and procedures and reflecting actual local conditions and needs.
- C. The law does not allow regulation using “rational use” or other subjective standards which can be political or corruption-encouraging.
- D. The law does not penalize, or allow loss of, agricultural land for the owners’ non-use or absence.
- E. Zoning maps are updated no less than every 10 years.

6. Taxation of land is based on market value or other understandable value and is transparent, not arbitrary, and not discriminatory.

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- A. Taxes on real property are determined on an objective, understandable and predictable basis and the tax amounts and basis for determination are easily ascertainable.
- B. Taxes are not so high as to discourage use or development of land for commercial, including agricultural, purposes.
- C. The law clearly prescribes the collection and enforcement mechanisms for taxes on real property. Those are not arbitrary or discriminatory.
- D. The tax law does not punish or otherwise discriminate against land owners whose real property is used in multi-year productive activities (such as tree crops or timber production).

7. There is a clear and accessible body of supporting regulations for all law pertaining to ownership and use of real property.

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- A. The law of civil procedure is supported by rules of procedure that clearly set forth the process for resolving property disputes.
- B. Land registries operate under clear and accessible rules of procedure, including unambiguous rules pertaining to administrative fees and costs.
- C. Notaries operate under clear and accessible rules of procedure, including unambiguous rules pertaining to administrative fees and costs relating to real property.
- D. Tax authorities operate under clear and accessible rules of procedure.
- E. With respect to the use of real property, the licensing and approval functions and procedures of the following authorities are clearly defined:
- F. a. Zoning authority

- G. b. Fire authority
- H. c. Environmental authority
 - I. d. Water and sanitation authority
- J. e. Construction authority
- K. f. Road authority
- L. g. Electricity authority
- M. h. Occupational safety and health authority
- N. i. Health authority
- O. Regulations pertaining specifically to the use of farm land and farm-related property are clear and accessible to the constituencies who are most affected by them.
- P. Regulations are published in all official languages of the country.

8. Laws and regulations foster an active and non-discriminatory land market.

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- A. Up-to-date, accurate, public information pertaining to land sales and sale prices is freely available.
- B. Land ownership or rights are clearly defined.
- C. Where land is acquired under "eminent domain" type procedures, fair market value is paid to landholders.
- D. Laws define real property to include crop and range land, ponds, timber stands, and buildings.
- E. Laws define movable property to include current and future crop production, livestock and agriculture-related equipment.
- F. Laws are in place to allow the consolidation of land parcels for agricultural and other productive purposes, including housing, industrial, and commercial development.
- G. Inheritance laws are designed to promote farms of economically viable size.
- H. Land-use disputes between farmers and pastoralists are adjudicated within a well-understood legal framework
 - I. Inheritance laws are gender neutral.
- J. In countries where polygamy is common, land laws specifically certify each woman's rights to inherit land.

9. The trademark law provides a scope of protection commensurate with international norms.

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- A. Trademark law provides the following exclusive rights:
 - B. A. Reproduction
 - C. B. Distribution
 - D. C. Importation of goods with the mark
 - E. D. Use of the mark in advertising
- F. The following may be protected as trademarks:
 - G. A. Words and phrases
 - H. B. Logos/symbols/emblems
 - I. C. Sound/audio
 - J. D. Colors
 - K. E. Holograms
 - L. F. 3-D images/representations
 - M. G. There are special protections for "famous marks"
 - N. H. Marks identifying services ("service marks")
 - O. I. Packaging ("trade dress") is protected
 - P. J. "Geographic indicators" are protected as such or as trademarks
 - Q. K. "Appellations of origin" are protected as such or as trademarks.
- R. The following marks are prohibited:
 - S. A. Pornographic marks

- T. B. Offensive marks.
- U. There are prohibitions against Internet domain name "cybersquatting."
- V. Trademarks are protected for an initial term of at least 7 years.
- W. Trademark registrations are renewable indefinitely.
- X. Trademarks can be abandoned and abandoned marks can be reinstated.
- Y. A mark may be registered in multiple classes.
- Z. There is an accelerated registration process for marks already registered in another country.
- AA. There are legal remedies/penalties for trademark infringement, including:
- BB. A. Injunctive relief (i.e., an order to cease the infringing action).
- CC. B. Compensatory Damages.
- DD. C. Punitive Damages for intentional/flagrant violation.
- EE. D. Seizure and destruction of goods using counterfeit trademarks.
- FF. E. Seizure and destruction of goods/materials used in the manufacture of counterfeit goods.
- GG. F. Imprisonment for intentional/flagrant violation or counterfeit goods.
- HH. G. Fines for intentional/flagrant violation or counterfeit goods.
- II. There are no compulsory trademark licenses.
- JJ. There are provisions for the "fair use" of trademarks.

10. The copyright law provides a scope of protection commensurate with international norms.

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- A. The copyright law requires that the work be:
- B. A. Original
- C. B. Fixed
- D. Copyright holders have the following exclusive rights:
- E. A. Reproduction
- F. B. Distribution
- G. C. Public performance
- H. D. Translation
- I. E. Adaptation
- J. F. Importation
- K. A copyright comes into being upon the creation of the work and does not require registration or deposit in order to be enforceable.
- L. Computer programs are copyright protected.
- M. Compilations of data are copyright protected with respect to the selection of arrangement of their contents.
- N. National law provides for a "fair use" exception to these exclusive rights that does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the right holder
- O. In general, the term of copyright protection is at least the life of the author plus 50 years.
- P. The circumvention of technological measures used by authors to prevent the unauthorized use of their works is prohibited.
- Q. Unauthorized removal or alteration of electronic rights management information from a copyrighted work is prohibited.
- R. Copyrights are enforceable in court and penalties available for copyright infringement include:
- S. A. Injunctive relief (i.e., an order to cease the infringing action).
- T. B. Compensatory Damages
- U. C. Punitive Damages for intentional/flagrant violation
- V. D. Seizure and destruction of counterfeit goods.
- W. E. Seizure and destruction of goods/materials used in the manufacture of counterfeit goods.
- X. F. Imprisonment for intentional/flagrant violation or counterfeit goods
- Y. G. Fines for intentional/flagrant violation or counterfeit goods

11. The patent law provides a scope of protection commensurate with international norms.

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- A. Patent law requires that:
 - B. A. The invention is new.
 - C. B. The invention involves an inventive step.
 - D. C. The invention has industrial application.
 - E. D. The patent application disclose the invention in a manner sufficiently clear and complete for the invention be carried out by a person skilled in the art.
- F. The patent holder has the following exclusive rights concerning the patent invention:
 - G. A. The right to make the invention.
 - H. B. The right to sell the invention.
 - I. C. The right to distribute the invention.
 - J. D. The right to license the invention
 - K. E. The right to import the patented invention or products made from a patent process.
 - L. Computer-related inventions are recognized as patentable subject matter.
- M. The following types of inventions may be excluded from patentability:
 - N. A. Inventions, the commercial exploitation of which is necessary to protect:
 - O. i. public order or morality (e.g., human or animal life or health, or protection of the environment)
 - P. ii. Diagnostic, therapeutic and surgical methods for the treatment of humans or animals
 - Q. B. Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.
- R. A patent application must be filed within a specified period after the invention has been publicly disclosed or offered for sale or it may not be patented.
- S. A patent applicant need not indicate the best mode for carrying out the invention.
- T. Patent applications are reviewed by a patent examiner, or similar official, before being granted.
- U. The law provides very limited exceptions to patent rights and little or no use by others of the subject matter of the patent without the authority of the patent holder.
- V. Decisions issued as a result of such an appeal are published and made publicly available.
- W. The term of protection for a patent lasts at least 20 years from the filing date.

12. The law provides for the protection of industrial designs and the scope of protection is commensurate with international norms.

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- A. The law provides for the protection for industrial designs either as industrial designs or under copyright, as trade dress, design patents or under competition law.
- B. The law protects industrial design if:
 - C. A. The design is new.
 - D. B. The design is original.
- E. The law for the protection of industrial designs provides that the design owner has the following exclusive rights:
 - F. A. The right to make the design.
 - G. B. The right to sell the design.
 - H. C. The right to import the design.
- I. Textile designs may be protected as industrial designs.
- J. Including renewal periods, the term of protection for industrial designs is at least 10 years.
- K. There are legal remedies/penalties for industrial design infringement, including:
 - L. A. Injunctive relief (i.e., an order to cease the infringing action).
 - M. B. Compensatory Damages
 - N. C. Punitive Damages for intentional/flagrant violation
 - O. D. Seizure and destruction of trademark infringing goods or goods with counterfeit trademarks.

- P. E. Seizure and destruction of goods/materials used in the manufacture of goods with counterfeit trademarks.
- Q. F. Imprisonment for intentional/flagrant violation or counterfeit goods
- R. G. Fine for intentional/flagrant violation or counterfeit goods
- S. H. Penalties are in proportion to violation
- T. The average time that it takes to complete an action for infringement of an industrial designs is reasonable and meets the needs of the business community.

13. The law provides protection for trade secrets through the actions of the owner and the scope of protection is commensurate with international norms.

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- A. The law recognizes that the following factors go toward establishing a trade secret:
 - B. A. Efforts by the rights holder to keep information secret.
 - C. B. Information being kept secret that has a commercial value.
- D. The law prohibits the following unauthorized actions concerning trade secrets:
 - E. A. Disclosure
 - F. B. Acquisition
 - G. C. Use
- H. Trade secrets need not be registered with the government.
- I. There is no time limit on the protection of a trade secret so long as the information in question continues to qualify as a "trade secret."
- J. Confidentiality/non-disclosure agreements are enforceable by the courts.
- K. The law does not permit access to a trade secret without permission of the owner.
- L. There are legal remedies/penalties for trade secret infringement, including:
 - M. A. Injunctive relief (i.e., an order to cease the infringing action).
 - N. B. Compensatory Damages
 - O. C. Penalties are in proportion to violation
- P. The average trade secrets enforcement action is completed in reasonable amount of time and at a reasonable cost to the user.

14. The law provides protection for plant varieties and the scope of protection is commensurate with international norms.

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- A. The law provides that a protected plant variety must:
 - B. A. Homogenous
 - C. B. Stable in its essential characteristics through subsequent generations.
- D. The rights holder has the following exclusive rights:
 - E. A. To produce the plant variety for purposes of commercial marketing.
 - F. B. To sell the plant variety.
 - G. C. To market the plant variety.
- H. The term of protection granted new plant varieties lasts at least 15 years.
- I. A new plant variety must be filed within a year or less after the variety has been publicly disclosed or offered for sale or it may not be protected.
- J. New plant varieties are examined before being granted.
- K. There need not be authorization of the right holder to use the variety in the creation of other varieties unless repeated use of the protected variety is needed in the commercial production of other varieties.
- L. Farmers have the right to save, use and sell seed obtained, or descended from seed obtained, by authority by the right holder, for purposes of reseeded. This in no way gives them rights to produce seed specifically for commercial exploitation.
- M. Any other exceptions to the exclusive rights of plant breeders are limited and are based only on public interest considerations.
- N. There are legal remedies/penalties for plant variety infringement, including:

- O. A. Injunctive relief (i.e., an order to cease the infringing action).
- P. B. Compensatory Damages
- Q. C. Penalties are in proportion to violation

Implementing Institutions

1. The land registry is well organized.

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- A. Its head and management staff are non-political and/or they view their role as administrative and ministerial.
- B. It has sufficient staff.
- C. It has sufficient funding (through direct state budget, fees for registration or other services, or both).
- D. Its physical facilities are accessible and welcoming, and there are branch or regional offices throughout the country, including in rural areas.
- E. It issues official forms (which may or may not be mandatory) for registrations; the forms are available free or at minimal cost from the Registry or bookstores; and the forms cover all types of registrations.
- F. It has adequate, formally-issued internal regulations and operating procedures.
- G. It has a website which is easy to use and regularly updated, and which contains the company law and relevant Registry regulations, instructions and forms for registration, fee schedules, data on individual companies, and other useful information.

2. The land registry performs its registration duties effectively and succeeds in its obligation to ensure that important real property information and data are available to the public.

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- A. The staff know the relevant law, forms and procedures, including both those for initial company formation and for later actions.
- B. The registration experience is efficient and user-friendly – the staff are personally helpful, they will spot and help with technical mistakes, all users are treated the same, there are no long lines, and the entire registration process takes at most a few
- C. If a registration is rejected the staff give a clear explanation based on the law and regulations, and the rejection can be appealed or any defect cured quickly.
- D. All fees are clearly posted and are at a level which does not discourage registration of real property transactions; and no extra fees, taxes or personal payments to staff are necessary.
- E. The land registry provides ready public access to all registered records.
- F. The land registry provides certified extracts and copies of registered records at no charge or minimal charge.
- G. The land registry makes copies of the relevant law and its own forms, regulations and fee schedules freely available to the public at no charge or minimal charge.
- H. The land registry issues and publishes periodic newsletters, reports or other informational pieces intended to increase user awareness.

3. The land use authorities, including those that license or regulate the specific uses of real property, are well organized.

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- A. With respect to the use of real property, the licensing and approval functions and procedures of the following authorities are clearly defined:
 - B. a. Zoning authority
 - C. b. Fire authority
 - D. c. Environmental authority
 - E. d. Water and sanitation authority
 - F. e. Construction authority
 - G. f. Road authority
 - H. g. Electricity authority
 - I. h. Occupational safety and health authority
 - J. i. Health authority

- K. j. Agricultural authorities
- L. Their heads and management staff are non-political and/or they view their role as administrative and ministerial.
- M. They have sufficient staff.
- N. They have sufficient funding (through direct state budget, fees for registration or other services, or both).
- O. They have adequate, formally-issued internal regulations and operating procedures.
- P. There is adequate staff training and education.

4. The authorities that license and regulate the use of real property perform their duties efficiently and effectively and ensure that important information pertaining to land use is available to the public.

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- A. They provide adequate information to the public about zoning, the requirements for obtaining approval of a particular land use or construction permit, and the regulations governing use of any particular property.
- B. Builders have access to a step-by-step procedure chart that directs them to those offices they must visit and what documents they must bring in obtaining approval for a construction project.
- C. The number of government bureaucracies required to approve a land use or construction permit is not excessive and decisions are made promptly.
- D. Land use authorities have consolidated their functions -- fire, worker safety, water, sanitation, project design, health, tax, etc. -- into a single office at a municipal level.
- E. Inspections of land use (such as construction projects) take place based on risk (i.e., following the completion of a specific stage in construction), rather than arbitrary timing.
- F. If an application is rejected, the staff give a clear explanation based on the law and regulations, and the rejection can be appealed or any defect cured quickly.
- G. All fees are clearly posted and are at a level which does not discourage development or real property transactions; and no extra fees, taxes or personal payments to staff are necessary.
- H. The mandate of the land use authorities is administrative and ministerial. They make decisions based on objective criteria based on legitimate commercial and social needs and interests.
- I. The public has reasonable input into the criteria used by land use authorities and their substance of their decisions.
- J. Their activities are carried out at the local (city or district) level, with an emphasis on affording maximum local input.
- K. Their records are required to show and do show, on a current basis, all zoning maps which have been issued or approved together with the applicable use requirements and restrictions.
- L. The land use authorities provide ready public access to all current zoning maps and current land use and construction permits.
- M. The land use authorities make copies of the relevant law and their own forms, regulations, and fee schedules freely available to the public at no charge or minimal charge.
- N. The land use authorities issue and publishes periodic newsletters, reports or other informational pieces intended to increase user awareness.

5. The courts are regarded as an appropriate institution for resolution of real property disputes.

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- A. Courts are in fact often used when real property disputes are not settled informally.
- B. Lawyers and commercial actors report that, if they go to court, they can expect to receive a just decision, grounded on published laws, regulations and standards, in a timely manner.
- C. Lawyers and commercial actors respect and observe the decisions of judges, even if the decision is adverse to their positions.
- D. Time standards for judges resolving real property law disputes are in place and generally observed.
- E. Disputes over real property typically undergo settlement discussions or mediation prior to trial.
- F. Judges who hear real property cases have formal, university-level training and are required to have practiced before tribunals or, before taking the bench, are required to take relevant courses concerning subjects they will address on the bench.

- G. Judges who hear real property cases receive periodic continuing legal education on issues relating to real property.

6. Where customary or traditional institutions play a part in resolving disputes over real property, their activities and decisions are considered to be transparent, consistent, efficient, and fair.

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- A. When accessed to resolve questions of real property ownership and other land-related disputes, the customary institutions weigh evidence presented by all interested parties and issue decisions that are supported by the weight of the evidence.
- B. Where necessary and relevant, customary tribunals access and rely on the country's formal legal framework when considering and resolving disputes.
- C. Customary institutions generally hold the respect of the individuals and communities that are impacted by their authority.
- D. Parties to real property disputes consider customary tribunals to be an efficient and effective resource for resolving their disputes.
- E. Both men and women are represented on customary tribunals.
- F. The decisions of customary tribunals evidence respect for the right of women to purchase, own, and inherit real property.
- G. The decisions of customary tribunals evidence respect for the right of minority groups to purchase, own, and inherit real property.
- H. All issues heard before customary tribunals may also be considered by State administrative bodies or the courts.
- I. When issuing decisions, customary tribunals cite reasons for their decisions.

7. Institutions set up to resolve cases (including real property disputes) through alternative dispute resolution are regularly engaged by the business community and are effective in carrying out their missions.

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- A. A sufficient number of arbitration centers, arbitrators and mediators are available to hear cases, including subject matter/sectoral experts in addition to lawyers.
- B. Parties are encouraged to use ADR prior to entering the court system.
- C. Arbitration or mediation decisions are recognized and respected by the parties as binding.
- D. Arbitration/mediation center(s) have sufficient staff and resources to train businesses regularly on the advantages of ADR and the procedures for employing it.
- E. Arbitration/mediation center(s) have sufficient staff and resources to train arbitrators and mediators.
- F. Arbitration/mediation centers allow parties to choose their arbitrators/mediators.
- G. The rules of procedure of the arbitration/mediation centers are in accordance with relevant international standards and best practice, and encourage the expeditious disposition of cases.
- H. The cost of commencing arbitration/mediation proceedings is not a disincentive to using arbitration as a means for resolving contractual disputes.
- I. Judges have the power to and regularly refer cases to ADR, be it through court-annexed procedures or other private means.
- J. Judges who review appeals from arbitral/mediation awards have formal training in the principles of arbitration.
- K. Judges reject arbitral/mediation awards on legitimate procedural grounds only, and do not substitute their judgment for that of the arbitrator except where there is demonstrable negligence or fraud on the part of the arbitrator.
- L. Parties to commercial disputes regularly seek out ADR as an alternative to using the formal court system.

8. The tax authorities administer land taxation efficiently and in a manner which is transparent and not arbitrary, discriminatory or corrupt.

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- A. The taxing authorities observe and support the principles stated in Legal Framework, Key Indicator Number 7, above.

- B. Their authority, organization and administration are consistent with the principles stated above for the land registry and the land use authorities.
- C. Their appraisals of land value and determination of actual tax levels are transparent and not arbitrary, discriminatory or corrupt.
- D. They are so perceived by owners of land and the business community.

9. Mortgage bankers have sufficient expertise and practical experience and have a positive influence on both legal compliance and the market in land transactions.

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- A. There is an adequate number of mortgage bankers who have expertise and practical experience.
- B. Such persons are in fact regularly used by individuals and companies for assistance in real property transactions.
- C. They provide their services at reasonable fees.
- D. There is an association of mortgage bankers, which provides advocacy, informational, and educational services.
- E. Mortgage bankers are well acquainted with international best practices in the field, including the use of technology in executing mortgages.

10. The courts are regarded as an appropriate institution for resolving disputes regarding IPR, where administrative mechanisms or other approaches are unsuccessful.

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- A. There are special courts or divisions within courts that handle intellectual property cases
- B. Courts resolve cases involving IPR in an efficient and timely manner.
- C. The penalties imposed by courts for violations of IPR generally are appropriate to the violation and serve as effective deterrents to other such violations.
- D. Court decisions concerning IPR result in a written decision that is published and made readily available to the public.
- E. The body of judicial decisions is sufficiently consistent to provide reasonably predictable outcomes in similar circumstances .
- F. Judges (whether on special courts or otherwise), prosecutors and court staff receive periodic training on IPR issues and related technology matters.
- G. Judges (whether on special courts or otherwise), prosecutors and court staff have access to up to date materials on the country's intellectual property laws as well as on international best practices.
- H. There are academic treatises or interpretations of IPR available in the local language to provide courts and lawyers with guidance in implementing the law.

Supporting Institutions

1. Real property brokers, appraisers and surveyors have sufficient expertise and practical experience, and have a positive influence on both legal compliance and the market in land transactions.

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- A. There is an adequate number of such persons who have expertise and practical experience.
- B. Such persons are in fact regularly used by individuals and companies for advice and representation in real property transactions.
- C. Brokers and brokerage groups: i. have developed methods such as multiple listing services to bring together large numbers of buyers and sellers,
- D. ii. usefully gather and disseminate information on prices and trends in the market, and
- E. iii. provide their services at reasonable fees.
- F. iv. Appraisers and surveyors participate in the market and use internationally-recognized appraisal and survey methods.

2. The legal profession effectively contributes to a business environment that supports real property rights.

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- A. Lawyers are required to have a law degree and to pass a bar exam, the execution of which is transparent and free from corruption.

- B. The business community believes that there is an adequate number of lawyers who have expertise in real property law.
- C. There is an established bar association that includes lawyers who represent the business community in real property disputes.
- D. The bar association provides meaningful and valued services to lawyers, including continuing legal education in a variety of commercial law topics, regular updates in the profession and the commercial law, and other opportunities for sharing information.
- E. Lawyers have access to an effective system of continuing education about real property law.
- F. Lawyers have access to an effective system of continuing education about alternative dispute resolution of real property disputes.
- G. The bar association effectively represents the legal community in public debate over updates and changes in the real property law.
- H. Law faculties provide an effective foundation of knowledge to law students about real property.

3. Notaries, whether mandatory or optional, support an effective system of land use and transfer rights.

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- A. Where notarization is required, parties consider notaries to be reasonably available and accessible.
- B. Notary fees are considered reasonable by end-users.
- C. Notaries are reasonably familiar with the standards prescribed by the Civil Code and related laws for written agreements.
- D. Lawyers do not report excessive interference by Notaries with the substance of real property-related documents.
- E. The notarial process does not add excessive time to the process of real property registration, use, or transfer.

4. Private farmers' associations play a meaningful role in the development and fair and effective implementation of real property law and regulations.

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- A. They monitor implementation of the land law as it affects their members and rural society in general, and propose amendments to laws to advance farmers' interests.
- B. They gather and disseminate information about land prices, lease rates, and numbers of transactions.
- C. They facilitate provision of legal assistance to low-income rural landowners.
- D. They are regarded as truly representative of the interests of farmers.

5. Legislative systems for creating, updating, and reviewing laws relating to real property are clear, open, and free of corruption.

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- A. Within the legislature, a system is in place for meaningful contributions by the business community to development and updating of the real property law (including land use law).
- B. Persons charged with drafting the real property law have adequate resources and training.
- C. Draft real property laws are regularly circulated to communities with a stake in their contents.
- D. Public hearings are part of the legislative process.
- E. The process of creating legislation involves pre-enactment activities that serve to inform and educate the stakeholding community.
- F. Votes in the legislature pertaining to the commercial law are taken publically and regularly reported by the press.
- G. Individuals and institutions that participate in the consensus-building process report that their views are given fair consideration in the legislative drafting process.
- H. Law professors are included in the process for creating and updating real property law, with an eye toward educating future generations of lawyers on this issue.
- I. Legislators are required to publicly disclose their assets on an annual basis.

6. The media reports regularly, freely, and accurately on matters related to land use and real property law.

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Score

- A. The media has sufficient access to all appropriate sources of information concerning land use and real property law issues.
- B. The media can report freely on issues pertaining to land use without fear of government reprisal.
- C. The private sector considers media coverage of land use and real property law issues to be sufficient, accurate and fair.
- D. Government actors consider media coverage of land use and real property law issues to be sufficient, accurate and fair.
- E. Reporters have access to training and education in issues pertaining to coverage of business and commercial law topics.

7. The donor community effectively supports a free and fair system of real property law.**0**

- A. Local representatives of the business and legal communities are generally aware of the real property-related work being done by donor agencies.
- B. Local representatives of the business and legal communities report general satisfaction with donor agencies, if any, working to support the real property environment.
- C. Coordination of donor activities relating to improving the real property system is considered by both local actors and donors to be adequate and effective.
- D. "Success stories" reported by donors, in particular those pertaining to real property, are substantiated by sustained, positive results on the ground.
- E. Donor activities pertaining to real property are regularly subject to monitoring and evaluation and prove responsive to suggestions for change and improvement.

Social Dynamics**1. Real property rights are respected by all sectors of society.****0**

- A. The right of individuals to own land is established in the Constitution or a major law.
- B. Where there is a recent history of a very limited number of landholders, whether it be the State or inordinately privileged families or institutions, a program of land reform has resulted in improved and more equitable access to land.
- C. Programs of land reform appropriately balance the food-security needs of individual families with opportunities for larger farms to operate and be oriented toward exports.
- D. The issue of land-grabbing by privileged interests is not considered a major problem.
- E. Where unlawful "land grabs" have taken place, the courts and other government institutions are readily available to hear and resolve the problems.
- F. Squatting on land owned by others is not considered a major problem.
- G. Where squatting has taken place, the courts and other government institutions are readily available to hear and resolve the problem, in a way that does not result in homelessness or otherwise perpetuate poverty.
- H. Where there has been a recent history of privatization of state-owned property, including real property, the sale of the property has been transparent and fair, and not reserved for or directed to a limited number of privileged interests.

2. Within the government there is, in general, political will and an appropriate sense of urgency for improvement of real property rights, and concrete steps are being taken.**0**

- A. Within the government, important officials are knowledgeable and active in the area of property rights and are business-friendly in general.
- B. There are programs and initiatives to encourage investment which recognize the importance of sound real property rights for attracting investment.
- C. A formal mechanism exists for reviewing the performance of the land-related institutions on a regular basis, and the director of these institutions is committed to improving performance and effectiveness.
- D. The government is open and welcoming to private-sector participation and has formal mechanisms for soliciting input from the business and professional community.

3. Within the private sector, there is an appropriate sense of urgency and the will for improvement of real property rights, and concrete steps are being taken.**0**

- A. The business community exhibits responsiveness to external pressures to improve public knowledge about property rights.
- B. The business community regularly provides input to legislative and policy reforms, including statistics, studies and draft law suggestions.
- C. Banks and other financial institutions demonstrate a commitment to sound property rights.
- D. Large NGOs demonstrate a commitment to sound property rights.
- E. The academic community demonstrates a commitment to sound property rights.

4. The land market is active and non-discriminatory.

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- A. Up-to-date, accurate, public information pertaining to land sales and sale prices is freely available.
- B. Where land is acquired under "eminent domain" type procedures fair market value is paid to landholders.
- C. Laws define real property to include crop and range land, ponds, timber stands, buildings, and current production.
- D. Laws are in place to allow the consolidation of land parcels for agricultural and other productive purposes, including housing, industrial, and commercial development.
- E. Inheritance laws are designed to promote farms of economically viable size.
- F. Land-use disputes between farmers and pastoralists are adjudicated within a well-understood legal framework
- G. Inheritance laws are gender-neutral.
- H. In countries where polygamy is common, land laws specifically certify women's rights to inherit land.

Intellectual Property

Legal Framework

1. A legal framework pertaining to Intellectual Property Rights is clearly drafted and accessible.

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- A. Print copies of law pertaining to IPR are readily available to members of the legal profession, the business community, and others with interests in bankruptcy proceedings.
- B. New laws on IPR are published according to a uniform, timely and consistently implemented procedure (such as through regular publication of an official gazette).
- C. Laws related to IPR are published in all official languages of the country and written in plainly understandable language.
- D. Laws and procedures pertaining to IPR are available through a variety of publicly accessible means, including libraries, Internet sites, etc, and these are regularly updated.
- E. Law pertaining to IPR is user-friendly -- clearly drafted, well-organized by subject, with a table of contents at the front, and with article headings.
- F. Courts post or otherwise very clearly identify the fees, procedures, and costs involved with commencing a case involving IPR.

2. The country is a party to all significant international treaties or agreements on intellectual property.

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- A. The country is a member of or party to:
 - B. A. Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement).
 - C. B. The Paris Convention of 1967 relating to the protection of industrial property.
 - D. C. The Berne Convention of 1971 relating to the protection of literary and artistic works
 - E. D. The Treaty of Intellectual Property in Respect of Integrated Circuits of 1989.
 - F. E. The Trademark Law Treaty.
 - G. F. The Madrid System for the International Registration of Marks.
 - H. G. The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.
 - I. H. The Singapore Treaty on Trademarks.
 - J. I. The Patent Law Treaty.
 - K. J. The Patent Cooperation Treaty.
 - L. K. The WIPO Copyright Treaty.
 - M. L. The WIPO Performances and Phonograms Treaty.
 - N. M. International Union for the Protection of New Varieties of Plants.

3. Other legal provisions concerning intellectual property are consistent with international norms.

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- A. The law provides for national treatment for IPR (protection is provided to foreign nationals and entities on the same basis as domestic individuals or entities.)
- B. Customs officials have the authority to inspect imported and exported goods for IP rights violations and have the authority to confiscate IP-infringing goods.
- C. Right holders may initiate procedures with customs for the confiscation of infringing goods.
- D. The law provides for the protection of geographical indications.
- E. The law provides for special protections for geographical indications related to wines and spirits
- F. The law establishes clear ownership rules of intellectual property developed with public funding
- G. Intellectual property registrations may be reviewed internally within the government through an administrative process.
- H. Decisions regarding intellectual property registrations arising from internal administrative process are made publicly available and may be appealed to the courts.

- I. Court decisions related to the registration of IPR are published and made publicly available.
- J. IPR can be owned and registered by:
 - K. A. Legal entities
 - L. B. Foreign Individuals
 - M. C. Foreign Legal Entities
- N. The law establishes clear rules for scientists and companies conducting research on biological resources and builds into the law requirements to share proceeds of any intellectual property resulting from the research with a duly appointed entity.

Implementing Institutions

1. High-level government officials are knowledgeable about the importance of IPR and have taken tangible steps to encourage the observance and enforcement of such rights.

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- A. The government has created an environment generally supportive of recognition and enforcement of IPR including:
 - B. A. clearly stated policies that government will not allow violations of IPR.
 - C. B. use of properly licensed software in all government offices.
 - D. C. programs designed to educate the general public on the importance of IPR.
 - E. D. active initiatives to combat violations of IPR, including effective prosecution of significant violations of IPR.
 - F. E. government broadcasting agencies pay public performance royalties for use of copyrighted works to artists or a collecting society that represents artists.
 - G. F. providing public access to intellectual property databases and services related to securing IPR domestically and abroad.
- H. The government further supports IPR through:
 - I. A. Its trade policies.
 - J. B. Prompt adoption and ratification of applicable international agreements.
 - K. C. Making copies of laws, regulations, instructions, application forms, rules of procedure and other relevant information available to the business community or other end users.
 - L. D. Proposing and promptly adopting appropriate modifications or revisions to bring national laws in conformity with international commitments and best practices.
 - M. E. Proposing and promptly adopting such regulations as may be necessary to implement national laws.

2. The government has an active and effective process for adopting and revising legal requirements concerning intellectual property.

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- A. The government (through a specialized unit or the Ministry of Justice) has the technical capacity to draft laws and regulations necessary for the more efficient registration, identification, and protection of IPR.
- B. The government provides for meaningful private sector participation in the legal reform process regarding IPR by providing the business and legal communities with meaningful notice and opportunity to comment on draft laws.
- C. Formal mechanisms for soliciting input from the business and professional communities for formulating and amending policy concerning IPR:
 - D. A. have been established by the government.
 - E. B. are actively used by the government.
 - F. C. according to the business and professional communities, generally satisfy private sector demand for providing input.

3. There are one or more expert government agencies with trained personnel and adequate resources to satisfactorily handle administrative functions concerning IPR in a transparent and nondiscriminatory fashion.

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- A. There is a designated government agency to handle matters relating to :
 - B. A. Copyrights

- C. B. Trademarks
- D. C. Patents
- E. D. Industrial Designs
- F. E. Plant Varieties
- G. Registration procedures are publicly available and are applied in a transparent, nondiscriminatory fashion for:
 - H. A. Copyrights
 - I. B. Trademarks
 - J. C. Patents
 - K. D. Industrial Designs
 - L. E. Plant Varieties
- M. Registration applications may be filed in a hard copy (i.e., paper) format for:
 - N. A. Copyrights
 - O. B. Trademarks
 - P. C. Patents
 - Q. D. Industrial Designs
 - R. E. Plant Varieties
- S. Registration applications may be filed electronically via the Internet for:
 - T. A. Copyrights
 - U. B. Trademarks
 - V. C. Patents
 - W. D. Industrial Designs
 - X. E. Plant Varieties
- Y. There is a publicly available database of registrations for :
 - Z. A. Copyrights
 - AA. B. Trademarks
 - BB. C. Patents
 - CC. D. Industrial Designs
 - DD. E. Plant Varieties
- EE. This database is available and searchable over the Internet for:
 - FF. A. Copyrights
 - GG. B. Trademarks
 - HH. C. Patents
 - II. D. Industrial Designs
 - JJ. E. Plant Varieties
- KK. The perception of the fees and time associated with completion of the registration process is that it is reasonable and meets the needs of business with respect to:
 - LL. A. Copyrights
- MM. B. Trademarks
- NN. C. Patents
- OO. D. Industrial Designs
- PP. E. Plant Varieties
- QQ. The government regularly trains personnel so that there is an up-to-date expertise in all areas of intellectual property within the relevant registries and other offices.
- RR. Government offices responsible for the registration of patent rights and/or the substantive examination of patent rights, have adequate access to prior art databases.
- SS. Government offices responsible for the registration of IPR are given adequate physical resources and are adequately staffed.
- TT. A body has been appointed or otherwise established to determine royalty rates for mechanical, public performance and any other applicable mandatory copyright and related rights licenses .

UU. This body receives public comment/input in its decision making process; its decisions and rationale for its decisions are published and available to the public.

4. Law enforcement and other government agencies undertake active and effective efforts to enforce IPR.

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- A. The government agencies and law enforcement personnel regularly undertake enforcement actions against large-scale and systematic intellectual property violations.
- B. Government offices responsible for enforcement (i.e., police, customs, IP offices, prosecutors) receive periodic training on how to recognize and identify pirated or counterfeit goods.
- C. Government offices responsible for enforcement (i.e., police, customs, IP offices, prosecutors) communicate and coordinate with one another on matters of IPR violations and enforcement.
- D. Government offices responsible for enforcement (i.e., the police, customs, IP offices, prosecutors) communicate and coordinate with rights holders on matters of IPR violations and enforcement.
- E. Government offices responsible for enforcement (i.e., police, customs, IP offices, prosecutors) communicate and coordinate with their counterparts in other countries and relevant international agencies and matters of IPR violation.
- F. The perception of the fees and time associated with completion of intellectual property enforcement/infringement action is that it is reasonable.
- G. Law enforcement authorities monitor and enforce restrictions on counterfeit and pirated goods.
- H. There is a special unit with the police and/or other law enforcement authorities dedicated to the policing of intellectual property crimes.
- I. Customs officials regularly carry out inspections of suspect imports/exports and where IPR violations are found, seize, impound, and destroy counterfeit or pirated goods in appropriate cases.

5. The courts are regarded as an appropriate institution for resolving disputes regarding IPR, where administrative mechanisms or other approaches are unsuccessful.

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- A. There are special courts or divisions within courts that handle intellectual property cases
- B. Courts resolve cases involving IPR in an efficient and timely manner.
- C. The penalties imposed by courts for violations of IPR generally are appropriate to the violation and serve as effective deterrents to other such violations.
- D. Court decisions concerning IPR result in a written decision that is published and made readily available to the public.
- E. The body of judicial decisions is sufficiently consistent to provide reasonably predictable outcomes in similar circumstances .
- F. Judges (whether on special courts or otherwise), prosecutors and court staff receive periodic training on IPR issues and related technology matters.
- G. Judges (whether on special courts or otherwise), prosecutors and court staff have access to up to date materials on the country's intellectual property laws as well as on international best practices.
- H. There are academic treatises or interpretations of IPR available in the local language to provide courts and lawyers with guidance in implementing the law.

Supporting Institutions

1. The private sector supports the recognition, implementation, and enforcement of IPR.

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- A. There are trade and industry associations that are devoted to the strengthening and protection of IPR.
- B. Trade and industry associations:
 - C. A. have specialized sections or committees focused on the recognition, application, or enforcement of IPR.
 - D. B. have established formal mechanisms with policy makers for providing input and feedback on IPR issues.

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- E. C. have established formal (or informal) mechanisms with IPR enforcement bodies with respect to the detection and prevention of IPR violations and the enforcement of IPR.
- F. D. regularly provide comments on draft laws, regulations, and suggested amendments to lawmakers on matters relating to IPR.
- G. E. conduct programs and events for their members and the general public to promote better understanding of IPR.
- H. F. have affiliations with international organizations and are involved in the harmonization of intellectual property law and practice with international standards.
- I. Associations of foreign investors (including bi-laterals chambers of commerce) lobby for the adoption of international norms and standards for the recognition, application, and enforcement of IPR.
- J. Most businesses use properly licensed software.
- K. Foreign investor associations provide input to policy makers and other trade associations on international standards in IPR.
- L. Organizations (public and private) exist to help train patent examiners.
- M. A body has been established (public or private) to manage the collection of royalties stemming from mandatory licenses, and the distribution of these royalties to artists (a collecting society).

2. The legal profession supports the recognition, application, and enforcement of IPR.

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- A. The practice of IPR law is emerging as a specialized practice of law among law firms and individual practitioners.
- B. Bar associations:
 - C. A. have specialized sections or committees dedicated IPR.
 - D. B. have established formal mechanisms with policy makers for providing input on IPR issues.
- E. C. regularly provide comments on draft laws, regulations, and suggested amendments to lawmakers on matters relating to IPR.
- F. D. conduct programs and events for their members and the general public to promote better understanding of the benefit of IPR and their enforcement.
- G. E. conduct programs for judges or enforcement officials with respect to the detection and prevention of IPR violations and the enforcement of IPR.

3. The media reports regularly, freely and accurately on matters related to IPR.

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- A. The media has sufficient access to all appropriate sources of information concerning land use and real property law issues.
- B. The media can report freely on issues pertaining to IPR.
- C. The private sector considers media coverage of IPR issues to be sufficient, accurate and fair.
- D. Government actors consider media coverage of IPR to be sufficient, accurate and fair.
- E. Reporters have access to training and education in issues pertaining to coverage of business and commercial law topics.

4. Foreign governments and agencies help create a supportive environment for the recognition and enforcement of IPR.

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- A. International lending institutions and donor agencies have instituted assistance programs with the government to upgrade and improve the public and private sectors' activities concerning IPR.
- B. Foreign governments or international organizations seek to include the country in international agreements addressing the recognition of enforcement of IPR.
- C. International financial institutions, donor agencies, or foreign governments provide assistance or condition loans upon the recognition or enforcement of IPR.

Social Dynamics

1. If there are widespread abuses of IPR throughout the economy, that problem is understood and the government and the business community are taking effective steps to address it.

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- A. The extent and nature of IPR abuse is known.
- B. The reasons for the problem are generally understood.
- C. The government is taking effective steps to address the problem, which may include active efforts at law reform or reform of regulations, improvement and streamlining of registry or other agency procedures at the local level, work with specific industry s
- D. The business and professional community is taking effective steps to cure the problem, which may include assisting in law reform, lobbying for improvement in regulation, advising clients of the law and of the many benefits to be obtained from exiting the
- E. The donor community is aware of the informal-economy problem and the above issues and efforts, and actively and effectively helps.

2. Within the government there is, in general, political will and an appropriate sense of urgency for improvement of IPR law and enforcement, and concrete steps are being taken.

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- A. At the government level, important officials are knowledgeable and active in this area and are business-friendly in general.
- B. There is an effective law reform process including a governmental committee dedicated to IPR reform including drafting of new laws or amendments.
- C. There are programs and initiatives to encourage investment which recognize the importance of good IPR for attracting investment.
- D. A formal mechanism exists for reviewing the performance of the IPR agency or agencies on a regular basis, and the director(s) of the agency is committed to improving performance and effectiveness.
- E. The government is open and welcoming to private-sector participation and has formal mechanisms for soliciting input from the business and professional community.
- F. The government does not itself engage in abuses of IPR.
- G. Official corruption does not undermine efforts to guard against IPR violations.

3. Within the private sector, there is an appropriate sense of urgency and the will for improvement of IPR law and enforcement, and concrete steps are being taken.

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- A. The business community exhibits responsiveness to external pressures to improve knowledge of and execution of principles of IPR.
- B. The business community regularly provides input to the public dialogue, including statistics, studies and draft law suggestions.
- C. Large NGOs demonstrate a commitment to sound practices of IPR.

Getting Credit**Legal Framework**

- | | |
|---|----------|
| <p>1. There is a law on secured transactions, and it is readily available, clearly drafted, and easy to use.</p> | 0 |
| <p>A. There is a law on secured transactions that specifically allows for the use of movable property as collateral to secure a loan.</p> <p>B. The law is current and is regularly updated by practical-minded experts.</p> <p>C. Print copies of law pertaining to secured transactions are readily available to members of the legal profession, the business community, and important interested sectors, including the agricultural sector.</p> <p>D. Laws related to secured transactions are published in all official languages of the country and written in plain, understandable language.</p> <p>E. The law is user-friendly -- clearly drafted, well-organized by subject, with a table(s) of contents at the front, and with article headings.</p> <p>F. Laws pertaining to secured transactions are available through a variety of publicly accessible means, including libraries, Internet sites, etc, including in rural areas, and these are regularly updated.</p> | |
| <p>2. The law on secured transactions enables quick, inexpensive, and simple creation of a proprietary security right without depriving the person giving the security of the use of his or her assets.</p> | 0 |
| <p>A. A framework law on secured transactions (found in a stand-alone law, a Law on Obligations, commercial code, etc.) contains all elements necessary for two or more parties (either individuals or corporations) to create a legally binding exchange of promises.</p> <p>B. The framework law facilitates the creation of multiple kinds of relationships regarding secured interests, including direct personal guarantees, third-party guarantees, bank guarantees, etc.</p> <p>C. The law on secured transactions protects property interests that allow at-risk collateral owners legal protection and insurance for collateral subject to acts-of-God events (e.g., typhoons, drought, illness).</p> <p>D. The framework law provides for adequate legal remedies for breach of a secured transactions contract as well as clear measures for calculating monetary damages if possession of the secured property is not reasonably possible.</p> <p>E. The law allows for non-possessionary pledges in a variety of tangible and intangible property interests, including pledges of after-acquired property, values expressed in foreign currency, inventory, equipment, warehouse receipts, future harvests, and other property.</p> <p>F. A general rather than specific description of assets is permitted in collateral agreements.</p> <p>G. A general rather than specific description of debt is permitted in collateral agreements.</p> <p>H. Any legal or natural person may grant or take security in the property.</p> <p>I. The law recognizes that ownership or title is not necessary for a borrower to seek creation of a secured interest, instead recognizing that lawful possession can allow for the creation of such interest.</p> <p>J. The law allows for public notice of a security interest to be attained through means other than only through a registration at a collateral registry, such as through possession of the collateral by a creditor or third party.</p> <p>K. A law on civil procedure (or commercial procedure) is clear, accessible, and consistent with other laws as they pertain to secured transactions.</p> <p>L. The law establishes that courts have a clear mandate, which is understood and accepted by the other bodies of the state, to interpret, apply, and enforce secured transactions law.</p> | |
| <p>3. There is a clear and accessible body of supporting regulations for all law pertaining to secured transactions.</p> | 0 |

- A. The law and related regulations create clear and easily understandable rules and procedures for registering a security interest and outline the consequences for registration and non-registration of such interests.
- B. The fees associated with the registration of a secured interest do not discourage parties from registering such interests with the registry.
- C. Collateral registries operate under clear and accessible rules of procedure, including unambiguous rules pertaining to administrative fees and costs.
- D. Notaries and other officials involved in the creation of security interests operate under clear and accessible rules of procedure, including unambiguous rules pertaining to administrative fees and costs.
- E. The role of bailiffs and other officials who are involved in the enforcement of secured transactions is clearly defined and accessible.
- F. Copies of regulations pertaining to secured transactions -- including sales of goods, secured transactions on services, real property secured transactions, insolvency and other contract-related law -- are readily available to the public in both rural and urban areas.
- G. Regulations are published in all official languages of the country.

4. The legal framework is forward-looking in that it anticipates and provides for non-traditional types of secured transactions.

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- A. There is a law on franchising agreements that is in-line with international best practices.
- B. There are modern leasing and factoring laws which support the creation of secured interests using those assets for security.
- C. Various laws exist to protect consumers who may be damaged in the course of completing a contract based on a secured transaction (i.e., consumer protection laws and data protection/secretcy laws).
- D. Private credit providers, such as leasing companies, may initiate the development of new forms of secured transactions and establish industry-wide standards for these transactions.
- E. The types of property that can be used as collateral are clearly outlined in the law and include agricultural equipment, livestock, and current and future crops.
- F. The law allows for financing leases on agriculture equipment.
- G. In clearly defined instances, the law allows farmers to pay off debt with future crop earnings as an alternative to eviction in the event of default.
- H. The law anticipates special needs and interests of agricultural borrowers, including seasonal constraints on the ability to repay loans.
- I. The law adequately addresses electronic transactions of all kinds, including electronic signatures of contracts, to allow for use of those transactions to complete secured transactions.

5. One or more laws support a clear and effective structure for credit reporting.

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- A. Credit information may be gathered on both business entities and individuals.
- B. The law outlines the kinds of information that can be gathered for individuals and entities and at a minimum ensures that each entry can be uniquely identified.
- C. The law places a reasonable limit on the amount of time that credit information can be maintained so that adequate credit information is accessible but negative information eventually is removed from the credit report and rehabilitation of the creditor is possible over time.
- D. The law allows for the creation of either (or both) public and private owned/operated credit bureaus.
- E. Privacy and confidentiality of persons and entities whose information is held in a credit bureau are protected through the relevant governing laws, such a consumer protection laws, identity theft laws, etc.
- F. The law supports multiple sources of credit information, including utilities, retailers, lenders, cooperatives, etc.
- G. The law provides for sufficient oversight and regulation of bureaus to ensure transparency and neutrality in the credit bureau's operations.
- H. The law and regulations on credit bureaus clearly outline who can request and access credit information. The law allows individuals and businesses to request their own credit information.

I. The law and regulations provide for means to appeal and correct erroneous credit information.

6. Owners of real property may sell, lease, donate, exchange, and bequeath their interests freely.

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- A. An owner may transfer, by any of such means, to any other domestic or foreign individual or legal entity, without permission from the government or a government official.
- B. The law does not impose minimum or maximum lease terms for agricultural or other specific uses, or for specific industries or types of types of parties.
- C. Sales and leases are, in fact, commonly executed at freely negotiated prices and other terms and in the "normal course" of business.
- D. The procedure for carrying out land transactions is simple and quick, without needless formalities or documentation and requiring only the signatures of the parties and possibly a notarial and/or land registry official.
- E. Transaction costs such as appraisal, survey, notarial and registry fees, and lawyers' fees do not represent an excessive part of the transaction value, and do not preclude or discourage deals.
- F. The law safeguards the interests of heirs who are late in registering their inheritance of land and other real property.

7. The legal framework provides adequately for both public recording of interests in real property and protection of recorded interests against third parties.

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- A. The law provides for registration of ownership, liens and encumbrances including mortgages and tax liens, servitudes including easements, and (possibly) lease rights.
- B. The law provides clearly for the protection of the interest of owners and others whose interests are registered, and for protection of the interest of buyers who rely on the registry. Disputes on those matters are rare.
- C. The law uses a cadastre or torrens system in which title and ownership are determined by the registry or other public record or, if not, there are other adequate title-protection means such as title insurance.
- D. The law provides for registration of land, buildings and fixtures together (unified registry).
- E. The law provides for an official document to be issued to a land owner which certifies his registered legal rights.
- F. The law requires public access to the registry records.

8. The legal framework provides adequately for mortgages. It encourages – or does not discourage – an active mortgage credit market.

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- A. Under the law, any owner of any land or buildings, including agricultural land, may pledge that property as collateral to secure a loan. The loan need not be for purchase of or other use on the property.
- B. The law states clearly the essential items for a mortgage agreement, including identification of the land or other rights pledged, the identity of the mortgagor and mortgagee, and the obligation being secured.
- C. The law allows second and subordinated mortgages on freely negotiated terms.

9. A nationally applicable bankruptcy law exists that includes the key elements of an effective and efficient insolvency law.

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- A. Bankruptcy proceedings can be initiated by both the creditor and debtor, and, with limited discretion, the government (in the form of a prosecutor, etc.).
- B. The law defines who is eligible to file for bankruptcy (both liquidation and reorganization).
- C. The role of the courts or implementing institutions is clearly defined in the bankruptcy law.
- D. The bankruptcy law treats all parties equally, including foreign creditors/debtors, domestic parties, and non-for-profits/for-profits.
- E. The bankruptcy law does not allow for government parties to be given higher priority.
- F. The bankruptcy law and related laws concerning secured transactions, banking, real property, and collateral do not contradict each other.

- G. All legal entities are within the scope of the bankruptcy law, including individuals, businesses, government-owned enterprises, financial institutions, etc.
- H. Bankruptcy proceedings allow a debtor to stay in business and use revenue generated to resolve his or her debts.
 - I. Once declared, a debtor is not allowed to transfer any property that is part of the bankruptcy proceedings (unless done as part of the proceedings).
- J. Bankruptcy fraud, e.g. the concealment of assets, conflicts of interest, providing false claims or information, fee fixing and/or redistribution arrangements is a specific crime part of the bankruptcy or criminal statute.
- K. Directors or management of the company may be held liable for continuing to do business before a company is declared legally bankrupt if they have knowledge that the company has no reasonable prospect of meeting its obligations.
- L. The law protects debtors against creditors filing specious or abusive petitions that could result in harm to the debtor.

10. The law regarding liquidation of insolvent companies aligns with international best practices.

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- A. The law allows for both commercial enterprises to terminate the business as well as individuals to file for liquidation of assets.
- B. The law provides for protection against discrimination for individuals who have filed for bankruptcy, and in particular liquidation (e.g. they cannot be released from employment).
- C. Bankruptcy, in particular liquidation, is not a criminal offense. (i.e. there are no 'debtors prisons').
- D. Limitations exist as to who can file for liquidation protections based on recent income levels (e.g. the last six months), if another such claim was recently dismissed, or if a similar claim was completed in the last 5-8 years.
- E. Fraud or concealing of assets is a crime in a liquidation proceeding and is grounds to dismiss the case. Examples of such activities include rapid unloading of assets or buying of goods made part of the liquidation claim with no intent to pay for them.
- F. A bankruptcy administrator is empowered to sell debtor assets as needed to pay off creditors.
- G. The procedures and costs associated with a bankruptcy liquidation created by law and regulation are not a disincentive to filing such a claim.
- H. Filing for liquidation of assets creates an automatic stay which stops most creditors for collecting on the debtor's assets. A secured creditor has the power to request that a stay is lifted in order to repossess the collateral.
- I. Filing for liquidation puts the assets in question in the control of a sanctioned bankruptcy court, administrator, or trustee.
- J. Certain property can be deemed exempt from a liquidation proceeding (i.e. the debtor maintains ownership) as follows:
 - K. 1) The law gives basic descriptions of what this property is but specific properties are determined on a case-by-case basis.
 - L. 2) Such exempt property can include agriculture land and assets collateralized by at-risk borrowers, e.g., traditional associations and subsistence producers.
- M. If a business or individual owes money on a secured debt, a debtor has the choice of allowing the creditor to repossess the property; continuing payments on the property under the contract (if the lender agrees); or paying the creditor a lump sum amount e
- N. By law, upon completion of a liquidation proceeding, all debts are discharged, except those which by law cannot be (for example, taxes, child support, etc.) and the debtor is allowed to keep those debts which may be deemed exempt.

11. The law regarding reorganization of insolvent companies aligns with international best practices.

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- A. The laws regarding bankruptcy allow for reorganization whereby a majority of the creditors can reach a settlement with the debtor that is binding on all creditors.
- B. The laws regarding bankruptcy encourage reorganization of companies whose liquidation value is less than the value of the going concern.

- C. The laws regarding bankruptcy allow for debt forgiveness in reorganization situations.
- D. No more than a two-thirds majority vote of the shareholders is required for approval of a reorganization plan.
- E. The voting requirements for creditor approval of a reorganization proposal are defined in the bankruptcy laws.
- F. The laws regarding bankruptcy provide for a stay of legal proceedings by all creditors during a reorganization.
- G. The laws regarding bankruptcy require an expert opinion regarding the feasibility of a reorganization plan.
- H. The bankruptcy law provides for the concept of a "debtor in possession", where the debtor continues to operate the enterprise on a day-to-day basis during reorganization and the execution of a related plan, but under close supervision of a bankruptcy administrator.

12. The legal framework pertaining to commercial dispute resolution is readily available, clearly drafted, and easy to use.

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- A. Print copies of law pertaining to commercial dispute resolution are readily available to members of the legal profession, the business community and the general public, including in rural areas.
- B. New laws are published according to a uniform, timely and consistently implemented procedure (such as through regular publication of an Official Gazette).
- C. Law is published in all official languages of the country.
- D. The law is user-friendly -- clearly drafted, well-organized by subject, with a table(s) of contents at the front, and with article headings.
- E. Law pertaining to all aspects of commercial dispute resolution is available on a regularly updated Internet site.
- F. Courts post or otherwise very clearly identify the fees and costs involved with commencing commercial cases.

13. The process for the enforcement of judgments is clearly defined in the law.

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- A. The procedures for court enforcement of a judgment are clearly outlined in the relevant law or in court procedure.
- B. The institution responsible for enforcing court judgments, often the "Bailiff's office," is vested with clear authority for enforcing court judgments.
- C. The law clearly defines specific procedures for attachment of cash, accounts, intangibles, movable property, and real property.
- D. The law adequately define the roles of bailiffs (or similar judicial officers) in the enforcement process.
- E. The law establishes a market-oriented system of auctions and evaluations.
- F. The law provides for the use of self-enforcing judgment orders instead of new and separate actions for enforcement.
- G. The framework laws provide for judicial enforcement of domestic and foreign arbitral awards, and establish the procedures for such enforcement.
- H. The framework laws establish a system of sanctions for delays and failure to comply with procedure, rules or court orders, which, if applied, provide sufficient disincentives to discourage inappropriate behavior by parties and their attorneys.

14. The legal framework provides for the formation of well governed bank and non-bank institutions that foster financial intermediation and broaden access to financial services.

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- A. There are laws allowing for the formation and operations of various financial institutions, including:
 - B. (a) commercial banks
 - C. (b) savings banks, including rural banks
 - D. (c) credit unions or cooperatives
 - E. (d) microfinance institutions
 - F. (e) leasing companies
 - G. (f) factoring companies

- H. (g) insurance companies
- I. (h) pensions funds
- J. Laws pertaining to the above institutions are current and regularly updated by practical-minded experts.
- K. Laws pertaining to the above institutions provide clear guidance pertaining to their internal governance that is consistent with international standards.
- L. The laws allow for multiple suppliers of the same financial products and services.
- M. The laws do not artificially restrict competition among various suppliers of financial products and services.
- N. The legislative framework clearly defines the process for entry and exit of banks and non-bank financial institutions, as well as minimum capital requirements, prudential regulations, and reporting obligations.
- O. There is a legal distinction between a microfinance institution and a commercial bank or cooperative.
- P. The laws provide for exceptions or exemptions for intermediaries operating below established minimum capital, or other thresholds, where activities present limited risk to financial sector stability.
- Q. There are one or more laws to protect personal credit information data security.
- R. There are one or more laws that protect electronic transfer security.
- S. There are one or more laws that protect against unfair or excessive fees for service.

15. The legal framework empowers banking and financial sector regulators to maintain stability through reasonable regulation and enforcement.

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- A. The law clearly identifies the financial system regulators, their powers, and the scope of their authority as the supervising agency.
- B. The law clarifies the roles and responsibilities of different agencies involved in financial sector supervision.
- C. The authority of various financial system regulators does not conflict with, duplicate or overlap the authority of one another.
- D. The law specifies a clear and consistent process for the issuance of financial-sector regulations and guidance.
- E. The law authorizes the necessary tools and resources to verify compliance with regulations.
- F. The law provides the regulators with sufficient authority to take action to remedy and enforce compliance with regulations.
- G. The law provides authority to suspend or terminate the operating license with due process.

16. Development of financial sector law and policy is prioritized around increasing access to financial services.

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- A. There is a regulatory impact analysis process for proposed reforms prior to adoption.
- B. Reform initiatives are examined against risk management capabilities and institutional capacity to supervise and monitor implementation.
- C. Proposed reforms are consistent with the objective of expanding financial sector development while protecting financial sector stability.
- D. The pace of financial sector reforms is balanced against the financial condition and preparedness of sector participants to restructure.
- E. Proposed legislation or regulation considers effect on and does not discriminate against foreign owned financial intermediaries.
- F. Development of financial sector law and policy is mindful of the beneficial aspects of accessible new technologies, such as cell phones and internet-based services.

17. The legal framework fosters a financial sector supportive of the agriculture-based and rural economies.

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- A. Laws do not set interest rate caps or create other unnecessary obstacles to serving high-cost clients.

- B. Laws permit flexible loan structures suitable for agriculture cyclicalities, including loans payable at end of season.
- C. Laws permit value-chain finance including:
 - D. a. Trader credit.
 - E. b. Contract Farming/Outgrowing schemes.
 - F. c. Use of warehouse receipts.
- G. NGOs are permitted to operate in the microfinance sector.
- H. There is a legal basis for the provision of crop insurance.
- I. Laws enable access to funds from remote locations, such as through the use of cell phones and other electronic services.

Implementing Institutions

1. Credit bureaus support the efficient dissemination of credit information.

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- A. The public has been afforded sufficient notice and information pertaining to the existence of credit bureaus, including their role and operations.
- B. The physical facilities of the credit bureau(s) are accessible and welcoming, and there are branch or regional offices throughout the country offering easy access to services for both rural and urban populations.
- C. The credit bureau has sufficient information technology (IT) capacity to meet operational needs, including a public website that contains sufficient information on services and fees. It has the ability to update its IT capacities to improve service.
- D. Credit bureau staff is sufficient, adequately trained to ensure strong customer service, high levels of integrity, and has the ability to help in the improvement of the bureau's operations.
- E. Credit bureau management and directors are adequately trained for their roles and are not just political figures.
- F. The credit bureau has sufficient funding to meet operational needs.
- G. The information contained in a credit bureau is secure both as a result of the integrity of the bureau staff as well as the quality of the IT systems.
- H. Forms and fees associated with credit bureau services are accessible and understandable.
- I. While providing information to be included in an individual or entities' credit report to a credit bureau is a voluntary act, the credit bureau can accept information from a variety of sources including banks, utilities, retailers.
- J. The credit bureau goes through periodic reviews of its processes and procedures.
- K. Three process for review of a negative, adverse, or erroneous credit report is accessible, understandable, transparent and can be completed in a reasonable amount of time.
- L. Credit reports are provided in a reasonable amount of time for a reasonable fee through a straightforward process.

2. A collateral registry or system of registries enables the creation and security of secured transactions contracts.

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- A. Sufficient notice and information has been given to the public of the existence of the collateral registry, its role and its operations.
- B. The physical facilities of the collateral registry are accessible and welcoming, and there are branch or regional offices throughout the country offering easy access to services for both rural and urban populations.
- C. The procedures necessary for registering a security interest are straightforward.
- D. The fees to register a security interest are reasonable.
- E. The time to register a security interest is reasonable.
- F. Procedures for amending or challenging a security registration are straightforward and easily understandable.
- G. Registry staff is adequately trained to ensure strong customer service, high levels of integrity, and the ability to help in the improvement of the registry's operations.

- H. Registry management and directors are adequately trained for their roles and are not just political figures.
- I. The registry has sufficient funding to meets operational needs.
- J. The information contained in the registry is secure both as a result of the integrity of the registry staff as well as the quality of the IT systems.
- K. The registry has sufficient information technology (IT) capacity to meet operational needs, including a public website which explains its fees and processes. It has the ability to update its IT capacities to improve service.
- L. The registry goes through periodic reviews of its processes and procedures.
- M. If more than one registry is used for different kinds of property, then the registries are able to share information, and do so in a timely manner.

3. Mortgage bankers have sufficient expertise and practical experience and have a positive influence on both legal compliance and the market in land transactions.

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- A. There is an adequate number of mortgage bankers who have expertise and practical experience.
- B. Such persons are in fact regularly used by individuals and companies for assistance in real property transactions.
- C. They provide their services at reasonable fees.
- D. There is an association of mortgage bankers, which provides advocacy, informational, and educational services.
- E. Mortgage bankers are well acquainted with international best practices in the field, including the use of technology in executing mortgages.

4. Commercial banks, rural banks, credit unions, microfinance institutions and other formal lending institutions are knowledgeable and capable of efficiently and transparently executing loans based on moveable property.

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- A. Banks and other financial institutions only require a general description of moveable property to be used as collateral, e.g. the overall value of a herd of cattle as opposed to specifically identified individual cattle.
- B. Banks and financial institutions are able to readily and easily discover whether prior and superior claims exists on a security interest in question.
- C. Banks and financial institutions make loans to secured and unsecured creditors based on established criteria such a credit histories, proof of title to the property in question, and other standardized, predictable factors, and not only personal knowledge of the loan applicant.
- D. Banks and other financial institutions issue loans at interest rates that are low enough so as to not be a disincentive for businesses, including agriculture and rural enterprises, from seeking a loan.
- E. Banks and other financial institutions provide clear and consistent information to borrowers about their obligations, the mechanics of repayment, and the consequences of default.
- F. Banks and other financial institutions are willing to accept as collateral a wide variety of agriculture-related movables, including equipment, livestock, and current and future crops.
- G. SMEs, including farms and rural enterprises, have relatively equal access to loans in comparison to large companies and multinationals.
- H. Loans to SMEs, including farms and rural enterprises, are issued at reasonable rates.

5. The courts are regarded as an appropriate institution for resolving disputes regarding secured transactions, where self-help or informal means of enforcement are not successful or available.

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- A. Lawyers and commercial actors report that, if they go to court, they can expect to receive a just decision, grounded on published laws, regulations and standards, in a timely manner.
- B. Court fees for commencing a lawsuit regarding secured transactions are relatively inexpensive and do not act as a disincentive for parties to use the courts for contract disputes.
- C. Lawyers and commercial actors report specific examples of having secured transactions cases resolved and enforced by the courts.

- D. In cases involving secured transactions, lawyers and commercial actors respect and observe the decisions of judges, even if the decision is adverse to their positions.
- E. Judges who hear cases involving secured transactions have formal, university-level training in commercial law and are required to have practiced before tribunals or, before taking the bench, are required to take relevant courses.
- F. Judges who hear secured transactions cases receive periodic continuing legal education on issues relating to secured transactions and other relevant areas such as bankruptcy and contract law.
- G. Parties to cases involving secured transactions have ample access to the information they need to support their case, including relevant documentary information from the collateral registry and other relevant institutions.

6. The institution charged with enforcement of judicial decisions (such as a bailiff service) is fair and effective in the implementation of its duties.

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- A. The enforcing agency is sufficiently funded.
- B. The enforcing agency is sufficiently staffed.
- C. The enforcing agency tracks its rate of enforcement and regularly seeks ways to make the procedure faster, less costly, or otherwise more efficient.
- D. Parties with experience in executing contracts report a high degree of satisfaction with the enforcing agency.
- E. The enforcing agency does not have a reputation for charging informal fees.
- F. Bailiffs enforce judgments in a consistent and fair manner, in accordance with law, and in a peaceable manner.
- G. Bailiffs receive adequate training in order to perform their duties.
- H. Bailiffs are familiar with their duties and responsibilities as set forth by law or regulation.
- I. Bailiffs are subject to licensing or another type of credentialing process.
- J. Bailiffs have a professional membership organization that provides educational and training opportunities to its members.
- K. The cost of enforcing a judgment is minimal so as to encourage parties to enforce judgments.

7. The government has a fair and effective process for adopting and revising policy and law pertaining to banking and financial services.

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- A. There is a well understood financial sector policy development process.
- B. The policy development process includes mandatory assessments of expected impact, performed by qualified professionals.
- C. The government (through a specialized unit or formal committee structure) has the technical capacity to draft laws and regulations that are needed for a modern financial sector.
- D. The government provides for meaningful private sector participation in the policy development and legal reform process providing the banking, business and legal communities with adequate notice and opportunity to comment on draft laws.
- E. Formal mechanisms for soliciting input from the banking, business and professional communities for formulating and amending policy and law concerning the financial sector:
- F. (a) have been established by the government.
- G. (b) are actively used by the government.
- H. (c) according to the banking, business and professional communities, generally satisfy private sector demand for providing input.
- I. The policy and legal development process offers sufficient time for review and comment by sector participants.
- J. International financial institutions support the policy and legal development process through the provision of international expertise, experiences and sharing of relevant information.

8. Regulators of banks and other financial sector institutions are well organized, well led, and endowed with sufficient resources to fulfill their mandates.

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- A. Regulators and supervisory agencies have clear mandates consistent with international best practices that are understood by their constituencies.

- B. Regulators and supervisory agencies have sufficient funding to effectively fulfill their mandates.
- C. The agencies have clearly defined and published the information requirements necessary and required from financial system participants.
- D. The agencies have the tools needed to collect and aggregate data about financial system and financial organization performance.
- E. The agencies are able to analyze the data, assess trends and detect potential weaknesses and vulnerabilities.
- F. The agencies provide all information required by the international organizations monitoring financial sector trends and stability.
- G. Sector performance results are published on regular schedule.
- H. Regulators and supervisory agencies have clearly defined policies and execute them with consistency.
- I. Regulators and supervisory agencies have sufficient authority under the law and support from the government to execute it.
- J. Regulators and supervisory agencies have competent and well trained staff.

9. There is a competitive, functioning commercial banking sector with services that meet the needs of different segments of the population.

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- A. Banks operate within a clear regulatory framework.
- B. There is significant breadth within the banking sector that enables competition for the provision of services to the private sector.
- C. Banks, at a minimum, are able to offer depository and credit services.
- D. The banking sector is predominantly privately owned.
- E. The banking sector observes high standards of corporate governance, consistent with international standards.
- F. Fees for services are reasonable.
- G. Banking services are available in all regions of the country, including urban, suburban, and rural areas.
- H. Banks are an integral part of an efficiently functioning payment system.
- I. Where there is a significant Muslim population, banks offer loans and other services that are Shari'ah-compliant.

10. There is a vibrant microfinance sector that includes providers of credit, insurance and savings products for the poor.

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- A. Very small, uncollateralized, or less-than-normally collateralized loans are available and accessible to low-income clients through microfinance institutions.
- B. Microfinance is available in all regions of the country, including urban, suburban, and rural areas.
- C. The number of microfinance clients or accounts that are currently active is sufficient to contribute to economic growth.
- D. Microfinance services reach the poorest segments of the population.
- E. Loan repayment and collection is sufficient to maintain the long-term sustainability of most microfinance institutions.
- F. Unsubsidized microfinance institutions are generally profitable, as documented by credible measures of Return on Equity and Return on Assets.
- G. Microfinance institutions that are subsidized by donors generally are considered financially self-sufficient -- that is, their business revenues (excluding grants) entirely cover their costs.
- H. Where subsidized microfinance institutions are not self-sufficient, they nonetheless have exhibited improved sustainability over a period of 5-10 years.
- I. Non bank financial institutions are allowed to accept savings deposits.
- J. There are no interest rate caps that could prevent microfinance institutions from working in rural areas.
- K. At least one microfinance institutions provides access to microinsurance.

- L. Where there is a significant Muslim population, microfinance institutions offer loans and other services that are Shari'ah compliant.

11. Banks and other financial institutions offer adequate and varied services to their customers engaged in international trade.

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- A. Financial institutions offer trade finance to domestic importers and exporters on reasonable terms.
- B. Traders exporting to country consider trade finance services to be:
 - C. a. sufficient in quantity.
 - D. b. professionally competent.
 - E. c. reasonably priced.
- F. Traders importing into the country consider trade finance services to be:
 - G. a. sufficient in quantity.
 - H. b. professionally competent.
 - I. c. reasonably priced.
- J. Fees for wiring money abroad are less than 10% of the amount of money to be wired.
- K. Users' impression of cost and efficiency of domestic banks is positive.
- L. Users' impression of cost and efficiency of foreign banks is positive.
- M. Private sector financial institutions:
 - N. a. facilitate access to foreign credit information.
 - O. b. facilitate the availability of information on credit insurance to their clients.
 - P. c. provide advice to exporters, in particular new exporters, for adequate use of credit insurance in light of the method of payment of the commercial transaction and potential risk.
 - Q. d. are prepared to advise clients on the pre-shipment financing facilities available in their country or region.
 - R. e. facilitate access to export factoring services for their export clients.
 - S. f. are able to refer clients to qualified forfeiters and assist client importers in obtaining the requisite guarantees.
 - T. g. are able to refer clients to qualified counter trade brokers and financial institutions which specialize in facilitating countertrade transactions.
 - U. h. have established computerized databases for providers of financing, payment services, credit insurance, and credit information.
 - V. Staff are trained in laws governing financial exchange and overseas trade, and in facilitating overseas trading transactions.

12. There are a broad range of institutional financial sector participants contributing to effective financial intermediation and offering a wide range of financial services.

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- A. Alternative options for private sector savings (deposits/investments) are available.
- B. There are vibrant non-bank financial intermediaries offering competing financial services and products to the private sector.
- C. Non-bank financial intermediaries are present in all regions of the country, including in rural areas, and are reasonably accessible to all.
- D. A variety of financial instruments offering different levels of risk, return and maturities are available to the private sector.
- E. Insurance is available to companies at all sectors of the economy -- large, SME, and micro.
- F. Consumers have options to choose among product and service offerings.
- G. The transfer of remittances into the country is considered inexpensive, accessible, and easily managed within the formal sector.
- H. Cell phones are widely available and can be used for legal transfers of money.
- I. Insurance is available to companies at all sectors of the economy -- large, SME, and micro.

13. Banks provide the agriculture-based and rural sectors with savings and investment instruments.

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- A. Banks, credit unions, and micro-finance institutions provide financial services including credit, savings, and insurance to the agricultural and/or rural economy.
- B. Quick, low-cost loans are provided by the formal banking sector to the agricultural and rural sector communities.
- C. The formal banking sector is preferred to the informal banking sector for seasonal crop and marketing loans.

Supporting Institutions

1. The business community promotes and supports access to credit.

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- A. Chambers of commerce provide their memberships and the public with information and training on the use, need, importance and operation of credit bureaus and credit services.
- B. Rural institutions, including rural banks and cooperatives, provide their stakeholders with relevant information about credit opportunities.
- C. The business or legal community regularly reports on developments in credit-related services.
- D. Specialized publishers develop and make available standardized forms for most common, credit-related transactions.
- E. Trade and industry associations have affiliations with international trade organizations and are involved in the harmonization of contract and commercial law and practice with international standards.
- F. Trade and industry associations provide lists of attorneys or law firms that can provide assistance to their members with respect to credit.
- G. Trade and industry associations effectively represent the private sector in public debate over monetary policy and overall sector development.
- H. There are one or more publications that address the relationship between private sector interests and access to credit.
- I. Trade and industry associations are informed of developments in credit-related laws and have advocated new commercial practices and reforms to existing law to accommodate changes (e.g. electronic commerce).

2. The financial sector promotes and supports access to credit.

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- A. There are one or more associations of bankers that effectively represent the interests of commercial banks with respect to sound governance, best practice dissemination, education and innovation, and prudent sector development.
- B. There are one or more associations of microfinance professionals that effectively represent their members' interests with respect to sound governance, best practice dissemination, education and innovation, and prudent sector development.
- C. Lawyers that represent banks have the opportunity to share information and collectively engage in professional development.
- D. Consumer groups adequately represent the interests of banking consumers and contribute positively to the national discussion on monetary policy and financial sector development.
- E. Organizations of foreign investors contribute positively to the national discussion on monetary policy and financial sector development.

3. The legal profession effectively supports access to credit.

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- A. Lawyers are required to have a law degree and to pass a bar exam, the execution of which is transparent and free from corruption.
- B. The business community believes that there is an adequate number of lawyers who have expertise in credit-related transactions.
- C. There is an established bar association that includes lawyers who represent the business community in credit-related disputes.
- D. The bar association provides meaningful and valued services to lawyers, including continuing legal education in a variety of commercial law topics, regular updates in the profession and the commercial law, and other opportunities for sharing information.
- E. Lawyers have access to an effective system of continuing education about credit-related topics.

- F. Lawyers have access to an effective system of continuing education about alternative dispute resolution.
- G. The bar association effectively represents the legal community in public debate over updates and changes in the law.

4. Education, training, and research institutions contribute the required knowledge and skills necessary for a society to support broad-based access to credit.

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- A. Within university education, core curriculum pertaining to law, economics, or business includes classes pertaining directly and indirectly to access to credit.
- B. Faculty who teach banking and finance are educated in contemporary methods and issues.
- C. Faculties receive copies of all domestic commercial law and jurisprudence in a timely manner pertaining to the financial sector.
- D. University faculty are regularly consulted during the process of drafting new commercial laws, including new laws pertaining to banking and finance.
- E. University faculty or other qualified members of academia regularly publish commentary or speak on needed developments, recent decisions, or draft laws and regulations relating to access to credit.
- F. Opportunities for continuing education and skills training in specific credit-related topics is available to working professionals.
- G. Operators of community-based microfinance projects have access to training in loan administration and operations.
- H. A community of economists, through channels such as universities, NGOs, or public-private forums, regularly review and comment on monetary policy, banking and finance.
- I. Opportunities for continuing education and skills training in specific credit-related topics is available in all geographic areas of the country.

5. Notaries are perceived as contributing positively to, rather than impeding, access to credit.

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- A. If notarization is required to validate or to make a credit-related contract enforceable, contracting parties consider notaries to be reasonably available, accessible, transparent and that they charge reasonable fees.
- B. Notaries are reasonably familiar with the standards prescribed by the Civil Code and related laws for secured transactions.
- C. Lawyers do not report excessive interference by notaries with the substance of contracts.
- D. The role of the notary in the secured transactions process is understood and valued by stakeholders.
- E. The notarial process does not add excessive time to the process of completing a credit-related contract.

6. Financial and other relevant institutions voluntarily provide information to the credit bureaus.

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- A. Banks provide information on borrowers to the credit bureau.
- B. Retailers provide information on borrowers to the credit bureau.
- C. Utility providers provide information on borrowers to the credit bureau.
- D. Rural cooperatives are accustomed to sharing relevant information with credit bureaus.
- E. Other entities engaged in commercial transactions, such as private credit providers (microfinanciers, leasing companies, etc.) provide information on borrowers to the credit bureau.

7. Accountants and auditors are available in sufficient number and level of expertise to support the broad-based access to credit.

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- A. There is an adequate number of accountants who have expertise and practical experience in audit and financial aspects of small, medium-sized and large companies.
- B. Most companies (or most or all sizeable companies) produce annual independently audited financial statements.
- C. Accountants and appraisal firms apply generally accepted accounting principles (GAAP) or other internationally recognized standards and norms to asset valuations.

- D. Accountants and auditors are in fact regularly accessed by companies and others for advice and representation pertaining to the financial aspects of company law and valuation of its assets.
- E. Appraisal or accounting firms are perceived by the business community as providing fair valuation of debtor assets.
- F. Accountants apply internationally recognized accounting standards in audits of company financial statements, and view their role as being independent of the company.
- G. There is an association of accountants that effectively represents its members' interests with respect to sound governance, best practice dissemination, education and innovation, and prudent sector development.
- H. There is an association of auditors that effectively represents its members' interests with respect to sound governance, best practice dissemination, education and innovation, and prudent sector development.

8. The media reports regularly, freely and accurately on matters related to access to credit.

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- A. The media has sufficient access to all appropriate sources of information concerning the activities of the financial sector.
- B. The media can report freely on issues pertaining to the financial sector without fear of government reprisal.
- C. The private sector considers media coverage of the financial sector to be sufficient, accurate and fair.
- D. Reporters have access to training and education in issues pertaining to coverage of the financial sector.
- E. The media has sufficient access to all appropriate sources of information concerning land use and real property law issues.
- F. The media can report freely on issues pertaining to land use without fear of government reprisal.
- G. The private sector considers media coverage of land use and real property law issues to be sufficient, accurate and fair.
- H. Government actors consider media coverage of land use and real property law issues to be sufficient, accurate and fair.
- I. Reporters have access to training and education in issues pertaining to coverage of business and commercial law topics.

Social Dynamics

1. The domestic business and legal communities respect the legitimacy and enforceability of secured transactions agreements.

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- A. Foreign investors report strong compliance by local companies with secured transactions agreements.
- B. Even where there is not a strong tradition of secured transactions involving movable property, local businesspeople demonstrate understanding of the value of secured transactions in terms of accessing credit and how that can lead to economic growth.
- C. Commercial actors are generally willing to seek and implement legal advice with respect to completing secured transactions arrangements.
- D. State institutions, including arms of the Government and State-Owned Enterprises, generally comply with the terms of secured transactions arrangements.
- E. Judges are accustomed to enforcing the terms of secured transactions.

2. Micro, small, and medium-sized enterprises have the opportunity and means to take advantage of the benefits of secured transactions arrangements.

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- A. Within the past five years, secured transaction arrangements based on moveable property have increased.
- B. There is an effort to educate such businesses about the benefits of greater access to credit.
- C. For MSMEs, microfinance organizations exist that offer loans under reasonable terms.
- D. In general, micro-enterprises and small businesses understand the benefits of completing formal secured transactions arrangements.

- E. Small and medium-sized farms have the opportunity to take advantage of the benefits of secured transactions arrangements.

3. There is, in general, political will and an appropriate sense of urgency for improvement of access to credit through the use of secured transactions, and concrete steps are being taken.

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- A. At the government level, important officials are knowledgeable and active in this area.
 B. There is an effective law reform process that carries a clear mandate to address issues related to access to credit reform, including drafting of new laws or amendments.
 C. A formal mechanism exists for reviewing the performance of the company registry on a regular basis, and the director of the Registry is committed to improving its performance and effectiveness.
 D. The government is open and welcoming to private-sector participation and has formal mechanisms for soliciting input from the business and professional community.
 E. Business and professional communities (i.e. end users of the credit bureaus and collateral registry system) are aware of issues regarding the status of issues surrounding access to credit and have access to relevant officials to suggest reforms.

4. Access to banking and other financial services is universally available.

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- A. Financial service providers do not discriminate against women, ethnic or religious minorities.
 B. Bank accounts, loans and other financial products and services are freely available irrespective of gender, ethnic or religious affiliation.
 C. Equal access to financial products and services is legally protected under the law and there are no patterns of systematic discrimination.
 D. Financial services are available throughout metropolitan, urban and rural regions.
 E. Financial service providers are utilizing contemporary product and service delivery methods to reach traditionally underserved population groups.
 F. Non-bank financial intermediaries are an integral part of the financial services sector.

5. The private sector trusts and possesses a high level of confidence in the financial sector's service and product providers.

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- A. The population willingly chooses to store assets with depository institutions.
 B. The private sector entrusts its investable assets in the formal banking and financial system.
 C. The formal financial sector is the primary source of financial intermediation.
 D. Shocks to the financial system, if they have occurred, have not substantially undermined the credibility of the financial sector.

6. A stable macroeconomic environment is creating the conditions for prudent financial sector policy development.

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- A. Unstable macroeconomic conditions are not distorting financial sector policy development.
 B. Macroeconomic conditions are not creating disincentives to lending to the private sector.
 C. Macroeconomics conditions are fostering the willingness for private sector risk taking.
 D. Macroeconomic conditions are providing incentives for foreign capital investment in the financial sector.

7. If there is a substantial "informal economy," that problem is understood and the government and the business community are taking effective steps to address it.

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- A. The extent and nature of the informal economy is known -- specifically, the extent to which it consists of:
 B. i. "micro" businesses such as individual vendors or single family stalls, shops or farms,
 C. ii. larger SMEs such as businesses with up to 50 employees,
 D. iii. large businesses, or
 E. iv. specific types of businesses, or businesses in specific geographical regions.

- F. The reasons for the problem, including specific obstacles toward formalization, are generally understood by the following stakeholders:
- G. i. government officials;
- H. ii. business leaders and influential players in the private sector;
- I. iii. the research or academic community.
- J. There is awareness of issues of special interest to entrepreneurs, and schools and training institutions teach these issues.
- K. The government is taking effective steps to address the problem of informality, which may include efforts at law or regulatory reform, improvement and streamlining of registry or other agency procedures at the local level, work with specific industry segments, etc.
- L. The business and professional community is taking effective steps to cure the problem, which may include assisting in law reform, lobbying for regulatory improvement, advising clients of the law and of the benefits from exiting the underground economy, etc.
- M. The donor community is aware of the informal economy problem and the above issues and efforts, and actively and effectively assists in reform efforts.

8. Real property rights are respected by all sectors of society.

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- A. The right of individuals to own land is established in the Constitution or a major law.
- B. Where there is a recent history of a very limited number of landholders, whether it be the State or inordinately privileged families or institutions, a program of land reform has resulted in improved and more equitable access to land.
- C. Programs of land reform appropriately balance the food-security needs of individual families with opportunities for larger farms to operate and be oriented toward exports.
- D. The issue of land-grabbing by privileged interests is not considered a major problem.
- E. Where unlawful "land grabs" have taken place, the courts and other government institutions are readily available to hear and resolve the problems.
- F. Squatting on land owned by others is not considered a major problem.
- G. Where squatting has taken place, the courts and other government institutions are readily available to hear and resolve the problem, in a way that does not result in homelessness or otherwise perpetuate poverty.
- H. Where there has been a recent history of privatization of state-owned property, including real property, the sale of the property has been transparent and fair, and not reserved for or directed to a limited number of privileged interests.

9. Within the private sector, there is an appropriate sense of urgency and the will for improvement of real property rights, and concrete steps are being taken.

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- A. The business community exhibits responsiveness to external pressures to improve public knowledge about property rights.
- B. The business community regularly provides input to legislative and policy reforms, including statistics, studies and draft law suggestions.
- C. Banks and other financial institutions demonstrate a commitment to sound property rights.
- D. Large NGOs demonstrate a commitment to sound property rights.
- E. The academic community demonstrates a commitment to sound property rights.

10. The land market is active and non-discriminatory.

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- A. Up-to-date, accurate, public information pertaining to land sales and sale prices is freely available.
- B. Where land is acquired under "eminent domain" type procedures fair market value is paid to landholders.
- C. Laws define real property to include crop and range land, ponds, timber stands, buildings, and current production.
- D. Laws are in place to allow the consolidation of land parcels for agricultural and other productive purposes, including housing, industrial, and commercial development.
- E. Inheritance laws are designed to promote farms of economically viable size.

- F. Land-use disputes between farmers and pastoralists are adjudicated within a well-understood legal framework
- G. Inheritance laws are gender-neutral.
- H. In countries where polygamy is common, land laws specifically certify women's rights to inherit land.

11. Within the government there is, in general, political will and an appropriate sense of urgency for improvement of IPR law and enforcement, and concrete steps are being taken.

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- A. At the government level, important officials are knowledgeable and active in this area and are business-friendly in general.
- B. There is an effective law reform process including a governmental committee dedicated to IPR reform including drafting of new laws or amendments.
- C. There are programs and initiatives to encourage investment which recognize the importance of good IPR for attracting investment.
- D. A formal mechanism exists for reviewing the performance of the IPR agency or agencies on a regular basis, and the director(s) of the agency is committed to improving performance and effectiveness.
- E. The government is open and welcoming to private-sector participation and has formal mechanisms for soliciting input from the business and professional community.
- F. The government does not itself engage in abuses of IPR.
- G. Official corruption does not undermine efforts to guard against IPR violations.

12. Within the private sector, there is an appropriate sense of urgency and the will for improvement of IPR law and enforcement, and concrete steps are being taken.

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- A. The business community exhibits responsiveness to external pressures to improve knowledge of and execution of principles of IPR.
- B. The business community regularly provides input to the public dialogue, including statistics, studies and draft law suggestions.
- C. Large NGOs demonstrate a commitment to sound practices of IPR.

Protecting Investors

Legal Framework

1. A commercial legal framework is in place that generally reflects international standards and best practices.

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- A. The company law generally reflects international best practices of company formation and corporate governance.
- B. The law of contracts generally reflects international best practices of contract formation and enforcement.
- C. A law of secured transactions is in place and generally reflects international best practices.
- D. The real property law allows for private ownership of real property and, in general, does not discourage foreign investment.
- E. A law on competition is in place and generally reflects international best practices, particularly as they concern the interests of foreign investors.
- F. The tax law is clear, consistent with international best practices, and generally supportive of foreign investment.
- G. Intellectual property law reflects international best practices and generally encourages innovation and investment by domestic and foreign firms.
- H. Notarial law, including its implementation, does not undermine or unduly complicate foreign investment.
- I. In general, international trade law supports quality investment, through predicatability and conformity with international best practices.
- J. A law on civil procedure (or commercial procedure) is clear, accessible, and consistent with the substantive commercial law.

2. The company law imposes fiduciary duties in all company types and provides for their monitoring and enforcement.

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- A. The law states the duties of care and good faith of a company's directors and managers as those duties are internationally recognized.
- B. The law states the duty of loyalty, including elements of that duty such as the duties not to compete, not to take corporate opportunities, not to use company property for personal needs, not to disclose company confidential information or use it for personal reasons.
- C. The duty of loyalty applies to controlling members/shareholders of a company as well as to directors and managers of the company.
- D. Directors and managers must formally disclose personal conflicts of interest.
- E. Conflict-of-interest transactions must be approved by disinterested managers/directors or members/shareholders, and the law specifically states the consequences if they are not (e.g., that the transaction is void or voidable at the company's option).
- F. The law provides companies and members/shareholders with adequate remedies for breaches of fiduciary duty including both direct and derivative lawsuits against directors and managers personally.
- G. The above rules apply to all types of companies – partnership, LLC (or other closely held), and widely held companies.

3. The company law mandates member/shareholder rights, including minority rights, which are consistent with international corporate governance best practices.

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- A. All members/shareholders have access to material information about the company (subject to reasonable notice, confidentiality and other restrictions, particularly in widely held companies).
- B. In the case of widely held companies: i. the company may have only one class of voting stock with "one-share-one vote" and no floor or ceiling on the voting power of any particular shareholder or group of shareholders.
- C. ii. all shares are freely transferable (and the company may not impose restrictions on transfer),

- D. iii. if there is preferred or non-voting stock, all of its rights and preferences must be made known to all shareholders and prospective shareholders (for example, by being set out in the company charter publicly filed with the company registry),
- E. iv. there may not be "bearer" or anonymously held shares.
- F. v. the company must have annual, independently audited financial statements which are made public, and
- G. vi. there must be an annual shareholder meeting within a reasonable time after issuance of those statements, at which the agenda includes election of directors and appointment of the company's independent auditor.
- H. vi. The law has detailed rules for advance notice and conduct of shareholder meetings, including rules for agenda-setting, proxies, quorum, vote counting, secret ballots for director election and possibly other matters, etc.
- I. Shareholders of widely held companies have the following rights which may not be restricted, and members of closely held companies have those rights mutatis mutandis except that members may vary certain items by free and informed agreement:
 - J. i. to attend and participate in all shareholder meetings in person or by proxy;
 - K. ii. to receive dividends and distributions (including distributions in liquidation) pro rata with all other holders of the same class of shares;
 - L. iii. to propose resolutions at shareholder meetings, including nominations of directors and proposals for removal of directors (possibly subject to reasonable notice and minimum shareholding requirements);
 - M. iv. to call a "special" or "extraordinary" shareholder meeting to consider any matter on which they have the right to vote (subject to reasonable notice and minimum shareholding requirements);
 - N. v. to vote cumulatively in elections of directors unless the company's charter provides otherwise;
 - O. vi. to require supermajority or unanimous vote on major company matters (for example, charter amendment, merger, major sales of company assets) and to dissent and be bought out at market value from such transactions.
- P. Foreign investors in any company are treated the same by the law as domestic investors.

4. The company law provides a clear governance and management structure for all types of companies, consistent with international corporate governance best practices.

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- A. In widely held companies:
 - B. i. Only the shareholders can decide stated major matters; other interest groups such as employees or the State have no vote.
 - C. ii. There must be a board of directors elected by the shareholders only, which has a clearly defined competence, and
 - D. iii. There must be a separate management (officer) body appointed by the board of directors.
- E. In closely held companies:
 - i. As a default provision, unanimous or supermajority member consent is required for matters as above and for admission of new members.
 - ii. It is clear who has management authority and authority to bind the company as against third parties, and it is clear how those persons are chosen.

5. One or more laws support a clear and effective structure for credit reporting.

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- A. Credit information may be gathered on both business entities and individuals.
- B. The law outlines the kinds of information that can be gathered for individuals and entities and at a minimum ensures that each entry can be uniquely identified.
- C. The law places a reasonable limit on the amount of time that credit information can be maintained so that adequate credit information is accessible but negative information eventually is removed from the credit report and rehabilitation of the creditor is possible over time.
- D. The law allows for the creation of either (or both) public and private owned/operated credit bureaus.

- E. Privacy and confidentiality of persons and entities whose information is held in a credit bureau are protected through the relevant governing laws, such as consumer protection laws, identity theft laws, etc.
- F. The law supports multiple sources of credit information, including utilities, retailers, lenders, cooperatives, etc.
- G. The law provides for sufficient oversight and regulation of bureaus to ensure transparency and neutrality in the credit bureau's operations.
- H. The law and regulations on credit bureaus clearly outline who can request and access credit information. The law allows individuals and businesses to request their own credit information.
- I. The law and regulations provide for means to appeal and correct erroneous credit information.

6. Where incentives to foreign investors are offered, they are consistent with regional norms and ultimately result in a net fiscal benefit to the country.

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- A. The following tax incentives designed to promote foreign direct investment are consistent with regional norms and ultimately result in a net fiscal benefit:
 - B. a. Tax holidays
 - C. b. Investment allowances and tax credits
 - D. c. Timing differences
 - E. d. Reduced tax rates
 - F. e. Free economic zones
- G. The Tax Authority has analyzed all tax incentives to fully understand:
 - H. a. The profile of the beneficiaries
 - I. b. The specific revenue impact
 - J. c. Administration and tax-avoidance issues
- K. The Tax Authority has considered special purpose tax incentives:
 - L. a. for regional development
 - M. b. for sectoral development
 - N. c. for employment creation
 - O. d. for export promotion
 - P. e. for free trade or export processing zones
- Q. Incentive structures for foreign investment are regularly reviewed and reconciled with overall national fiscal policy.

7. The commercial legal framework is accessible to foreigners.

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- A. The body of commercial law is available on a regularly updated Internet site.
- B. The commercial law is available in English.
- C. The commercial law is available in a major second language other than English.
- D. Where the state provides incentives to investors, those incentives are clear and consistent with regional or international norms.
- E. Information about how to take advantage of investment incentives is readily accessible.
- F. All regulations pertaining to the commercial law are readily available to the public, either in print or over the Internet.
- G. All regulations pertaining to the commercial law have been translated to English.

8. The legal framework provides for the equal treatment of foreign investors.

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- A. Laws have been enacted that provide a legal framework for direct investment. The law may include special provisions for foreign direct investment.
- B. Foreign investors may freely invest in any area of economic activity other than those reserved to the state as areas of national security.
- C. There is no requirement of local participation in the ownership of companies or property, including real property, except in areas reserved to the state, if any.
- D. Exceptions to the principle of non-discrimination are clearly spelled out.

Score

- E. The government periodically reviews the costs of reserving certain areas of economic activity to domestic enterprises against the intended public purpose of the restriction(s).
- F. Foreign investors do not perceive the investment law(s) to be unduly cumbersome or complicated with respect to the ability for outsiders to invest in one or more businesses.
- G. The government does not require foreign investors to meet performance targets in terms of output or price of goods and services in order to maintain their investments (except in the context of concession contracts based on performance).
- H. The legal regime for investment does not discriminate in favor of foreign investors or against local investors.

9. The legal framework respects and protects the interests of foreign investors.

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- A. The investment framework freely permits regular, periodic transfer of the wages and savings of foreign personnel.
- B. The investment framework freely permits transfer of offshore of net (after-tax) revenues realized from the investment.
- C. The investment framework permits free transfer of net proceeds on liquidation of investment (except in cases of foreign exchange exigencies).
- D. The investment framework expressly prohibits expropriation except under prescribed circumstances in keeping with generally accepted principles of international law.
- E. In the event of expropriation, the law provides for just, adequate and speedy compensation.
- F. The law clearly defines the mechanism or methodology for determining what constitutes "adequate" compensation in the event of expropriation.

10. The legal framework clearly defines the role and responsibilities of the institution(s) charged with promoting, registering and regulating foreign investment.

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- A. Investment law clearly defines the institution(s) responsible for implementation of laws relating to investment, including foreign investment.
- B. Investment law clearly defines the roles, responsibilities and operational procedures of each relevant implementing institution.
- C. The law provides for the maintenance of publicly available data regarding registered investments.
- D. Where investment-related agencies hold regulatory powers (issuing orders, imposing monetary penalties, etc.), those powers are limited and are not arbitrarily exercised or abused.
- E. The structure, mission and form of the investment promotion agency is informed by and benchmarked against international best practices.

11. The legal framework provides foreign investors with fair and effective means of dispute resolution.

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- A. There are no provisions in the law of civil or commercial procedure that directly or indirectly discriminate against foreigners.
- B. The law allows for Alternative Dispute Resolution of commercial disputes involving foreign investors, including the enforcement of decisions reached through ADR.
- C. The International Convention for the Settlement of Investment Disputes (ICSID) has been ratified.

12. The legal framework is forward-looking in that it anticipates and provides for non-traditional types of investment.

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- A. Where suitable for the existing business environment, the law and regulatory framework anticipates foreign investment in services, such as business process outsourcing.
- B. International franchises are allowed.
- C. The law supports a robust environment in the area of telecommunications.
- D. The law contemplates the use of leases by foreign investors.
- E. The law adequately addresses electronic transactions.
- F. The law provides for e-signatures.

13. Courts are fair and efficient in their treatment of disputes involving foreign investors.

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- A. Foreign investors report that, if they go to court, they can expect to receive a just decision, grounded on published laws, regulations and standards, in a timely manner.
- B. First-instance and appellate jurisdiction over commercial disputes involving foreigners is clear.
- C. Courts recognize and enforce foreign judgments in a non-bureaucratic, effective manner.
- D. Courts recognize and enforce the awards of international arbitration tribunals in a non-bureaucratic, effective manner.
- E. Judges make decisions independently, without regard to inappropriate political pressures or non-judicial considerations.

Implementing Institutions

1. The company registry assures that important information on companies is readily and publicly available.

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- A. It makes copies of the company law and its own forms, regulations and fee schedules freely available to the public at no charge or minimal charge.
- B. It keeps and provides ready public access to information and data on companies of the kinds referred to in item 9 of Legal Framework above.
- C. It issues and publishes periodic newsletters, reports or other informational pieces intended to increase end-user awareness.

2. The courts are -- and are regarded as -- an effective institution for resolving disputes pertaining to corporate governance.

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- A. Courts are in fact often used when corporate governance disputes are not settled informally.
- B. Company and business cases are heard in a separate court from those which hear other cases.
- C. Lawyers and commercial actors report that, if they go to court, they can expect to receive a just decision, grounded on published laws, regulations and standards, in a timely manner.
- D. Lawyers and commercial actors respect and observe the decisions of judges, even if the decision is adverse to their positions.
- E. Time standards for judges resolving corporate governance disputes are in place and generally observed.
- F. Disputes involving company law typically undergo settlement discussions or mediation prior to trial.
- G. Judges who hear corporate governance cases have formal, university-level training and are required to have practiced before tribunals or, before taking the bench, are required to take relevant courses concerning subjects they will address on the bench.
- H. Judges who hear company law cases receive periodic continuing legal education on issues relating to company law and corporate governance.

3. ADR is regularly used and effective in resolving matters pertaining to corporate governance.

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- A. There is an arbitration chamber or other system that is commonly used to resolve corporate governance disputes.
- B. The arbitration chamber(s) is sufficiently funded.
- C. Arbitration chambers handle cases with both foreign and domestic parties.
- D. There is a sufficient supply of qualified local arbitrators.
- E. Arbitration or mediation are in fact often used in preference to court litigation.
- F. Arbitration chambers have a clear and transparent method of certifying and/or licensing arbitrators and provide training for them.
- G. Arbitration chambers or other bodies provide training or outreach services to businesspersons.
- H. Parties are free to choose their arbitrators or mediators.
- I. There is a set of commonly-used or recognized rules for arbitration and mediation.
- J. The cost of arbitration or mediation is not a disincentive to using it.

- K. Judges who hear appeals from arbitral awards have formal training in the principles of arbitration, mediation and other ADR.
- L. Judges reject arbitral awards on legitimate procedural grounds only, and do not substitute their judgment for that of the arbitrator except where there is demonstrable negligence or fraud on the part of the arbitrator.

4. Credit bureaus support the efficient dissemination of credit information.

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- A. Sufficient notice and information has been given to the public of the existence of a credit bureau, its role and its operations. The credit bureau is sufficiently accessible and has adequate nationwide coverage, both in terms of persons being able to acc
- B. The credit bureau has sufficient information technology (IT) capacity to meet operational needs, including a public website the contains sufficient information on services and fees. It has the ability to update its IT capacities to improve service.
- C. Credit bureau staff is sufficient, adequately trained to ensure strong customer service, high levels of integrity, and has the ability to help in the improvement of the bureau's operations.
- D. Credit bureau management and directors are adequately trained for their roles and are not just political figures.
- E. The credit bureau has sufficient funding to meets operational needs.
- F. The information contained in a credit bureau is secure both as a result of the integrity of the bureau staff as well as the quality of the IT systems.
- G. Forms and fees associated with credit bureau services are accessible and understandable.
- H. While providing information to be included in an individual or entities' credit report to a credit bureau is a voluntary act, the credit bureau can accept information from a variety of sources including banks, utilities, retailers.
- I. The credit bureau goes through periodic reviews of its processes and procedures.
- J. Three process for review of a negative, adverse, or erroneous credit report is accessible, understandable, transparent and can be completed in a reasonable amount of time.
- K. Credit reports are provided in a reasonable amount of time for a reasonable fee through a straightforward process.

5. The government promotes and supports foreign investments that are best suited to the country's resources, advantages, and opportunities.

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- A. The government has a policy strategy that sufficiently addresses investment promotion and facilitation.
- B. The government's investment promotion strategy incorporates a strong understanding of which kinds of investments would best support economic growth.
- C. The government has prioritized the streamlining of administrative procedures to quicken and improve the process of investment.
- D. The government regularly consults the Investment Promotion Agency for information and guidance pertaining to the development of a strong environment for investment.
- E. The country's leadership is not perceived as hostile to -- in word or in deed -- the presence of foreigners in the country's economy.
- F. The government has made effective use of international and regional investment initiatives aimed at building investment promotion expertise.

6. The Investment Promotion Agency (IPA) effectively promotes quality foreign investment and represents and responds to the special interests of foreign investors.

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- A. The IPA promotes and maintains an effective dialogue with investors.
- B. The IPA is adequately funded.
- C. It has sufficient staff.
- D. It has sufficient funding (through direct state budget, fees for registration or other services, or both).
- E. Its physical facilities are accessible and welcoming, and there are branch or regional offices throughout the country to the extent necessary.

Score

- F. The performance of the IPA is regularly reviewed by knowledgeable actors within the government, who use an objective set of monitoring indicators.
- G. The IPA collects and maintains data on foreign investment, including registration, levels of investment, employment, liquidation, and other statistics of interest to policy makers and the private sector.
- H. The IPA (or a related agency) has strategies for developing foreign investment in various sectors of the economy, such as tourism, mining, natural resources, or business process outsourcing. These strategies reflect an understanding of the types of investment that will lead to the strongest prospects for economic growth.
- I. Where certain sectors have been targeted for foreign investment, the IPA works closely with relevant ministries and private-sector institutions to respond to information needs and investment priorities of potential foreign investors.

7. The agency charged with registering foreign investments is well organized, well led, and endowed with sufficient resources to fulfill its mandate.

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- A. Its head and management staff are non-political and/or they view their role as administrative and ministerial.
- B. It has sufficient staff.
- C. It has sufficient funding (through direct state budget, fees for registration or other services, or both).
- D. Its physical facilities are accessible and welcoming, and there are branch or regional offices throughout the country to the extent necessary.
- E. It issues official forms (which may or may not be mandatory) for registrations; the forms are available free or at minimal cost from the registry or bookstores; the forms cover all types of investments; and there is a handbook or other instructions.
- F. It has adequate, formally issued internal regulations and operating procedures.
- G. It has a website which is easy to use and regularly updated, and which contains the company law and relevant regulations, instructions and forms for registration, fee schedules, data on individual companies, and other useful information.
- H. Registration can be done remotely on the internet or by computer at the registry office.
- I. The investment registry has an internal improvement plan, setting targets for improvement of procedures, and annually reviewing its operations to identify any systemic weaknesses for improvement.

8. Courts are fair and efficient in their treatment of disputes involving foreign investors.

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- A. Foreign investors report that, if they go to court, they can expect to receive a just decision, grounded on published laws, regulations and standards, in a timely manner.
- B. First-instance and appellate jurisdiction over commercial disputes involving foreigners is clear.
- C. Courts recognize and enforce foreign judgments in a non-bureaucratic, effective manner.
- D. Courts recognize and enforce the awards of international arbitration tribunals in a non-bureaucratic, effective manner.
- E. Judges make decisions independently, without regard to inappropriate political pressures or non-judicial considerations.

9. Various ministries and agencies support a strong environment for foreign investment.

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- A. The Customs Service properly applies the customs and tariff laws to the imports and exports of foreign investors.
- B. The Customs Service does not require unduly burdensome registration, application or filing procedures.
- C. The Customs Service is generally supportive when investors need assistance or clarification regarding the clearance of goods or payments of tariffs and duties.
- D. Where special export zones have been created, they are perceived by foreign investors as useful, efficient, and generally supportive of foreign investment in the country.
- E. The tax agency is perceived as fair and consistent in its collection of corporate tax from foreign investors.

- F. There is an active tourism agency that encourages foreign investment, through outreach, information, and assistance.
- G. Ministries concerned with higher education are active in promoting linkages between the foreign investment community and state-funded universities.
- H. Ministries or agencies concerned with the interests of SMEs endeavor to connect domestic SMEs with business opportunities presented by foreign investment.

Supporting Institutions

1. The legal profession has both expertise and practical experience, and it has a positive influence on company and cooperative law compliance and corporate governance generally.

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- A. Lawyers are required to have a law degree and to pass a bar exam which has transparent rules and is free of corruption.
- B. There is an adequate number of lawyers who have expertise and practical experience in companies, cooperatives, and corporate governance.
- C. Lawyers are in fact regularly used by companies, cooperatives and other persons for advice and representation.
- D. Lawyers regularly provide company registration service at reasonable fees.
- E. There is an established bar association that includes lawyers who represent the business and cooperative community in commercial disputes.
- F. The bar association provides meaningful services to lawyers, including continuing legal education in a variety of commercial law topics, regular updates in the profession and the commercial law, and other opportunities for sharing information.
- G. Lawyers have an effective continuing education system on company law, cooperatives, and corporate governance.
- H. Lawyers have access to an effective system of continuing education about alternative dispute resolution of disputes pertaining to companies, cooperatives, and corporate governance.

2. The accounting profession has both expertise and practical experience, and it has a positive influence on financial reporting and other financial aspects of companies, cooperatives, and corporate governance.

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- A. There is an adequate number of accountants who have expertise and practical experience in audit and financial aspects of company law and corporate governance.
- B. Accountants and auditors are in fact regularly used by companies and other persons for advice and representation in audit and financial aspects of company law and corporate governance best practice.
- C. Accountants and accounting firms regularly provide company registration service at reasonable fees.
- D. Accountants apply internationally recognized accounting standards in audits of company financial statements, and view their role as being independent of the company.
- E. Most companies (or most or all sizeable companies) produce annual independently audited financial statements.
- F. There is an independent association of accountants.
- G. There is an independent association of auditors.

3. Trade and industry associations effectively contribute to a sound environment for companies, cooperatives, and corporate governance.

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- A. Trade and industry associations (including chambers of commerce, bankers associations and business groups) are accustomed to advising their membership on matters of relevant law and corporate governance.
- B. Trade and industry associations have affiliations with international trade organizations and are involved in the harmonization of company law and corporate governance practices with international standards.
- C. Trade and industry associations provide lists of attorneys or law firms that can provide assistance to their members.

- D. Trade and industry associations effectively represent the private sector in public debate over updates and changes in the commercial law.
- E. Trade and industry associations are informed in technology developments as they relate to companies and cooperatives and have advocated new practices and reforms to existing law to accommodate changes (e.g., digital signatures).
- F. Trade and industry associations provide meaningful opportunities in networking, training, and sharing of best practices.
- G. Organizations of foreign investors contribute positively to the business environment, through networking services, training, publications, and other means.

4. A community of supporting institutions effectively supports strong companies, cooperatives, and corporate governance.

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- A. A system of credit bureaus is in place and regularly accessed by the business community.
- B. The media reports regularly, freely and accurately on matters related to company law and corporate governance law (such as business mergers and deals, as well as changes in the law).
- C. The business or legal community supports one or more specialized publications on the commercial law and other business issues.
- D. A registry of secured transactions is in place and accessible at a reasonable cost so that companies can check for the reliability of movable collateral.
- E. A real property registry is accessible at a reasonable cost so that parties can check for liens and other restrictions on real property.
- F. Sufficient business support services that are known to adhere to international business standards are available for multinational corporations seeking to do business in the country.
- G. Agricultural cooperatives participate in organizations or other mechanisms for sharing information and best practices pertaining to their interests.
- H. Market brokers exist and are active.
- I. Associations for the promotion of particular products (crops, livestock, fish, transformed products) exist and are active.
- J. Associations exist for the promotion of industrial development for the transformation of raw agricultural products into higher valued goods.

5. The donor community is effective in supporting good company law, cooperative law, and corporate governance.

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- A. Local professional and business persons know the donor agencies and the work they do in this area..
- B. Local professional and business persons report satisfaction with donor agencies, if any, which are working to support the business environment.
- C. Coordination of donor activities is -- and is considered to be -- adequate and effective.
- D. Business environment "success stories" reported by donors, in particular those pertaining to company law, agricultural cooperatives, and corporate governance, are substantiated by sustained, positive results on the ground.
- E. Donor activities pertaining to the business environment are regularly subject to monitoring and evaluation and prove responsive to suggestions for change and improvement.

6. Various public and private actors provide timely, accurate and effective information for foreign investors to make informed assessments of investment risks and obligations.

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- A. A system of credit bureaus is in place and regularly accessed by the community or foreign investors.
- B. The accounting profession is regularly called upon to provide pre-contract valuation information and other financial data that serves to develop an accurate assessment of risk.
- C. The media reports regularly, freely and accurately on matters related to foreign investment.
- D. The business or legal community supports one or more specialized publications on the commercial law and other business issues.
- E. A registry of secured transactions is in place and accessible at a reasonable cost so that investors can check for the reliability of movable collateral.

- F. A real property registry is accessible at a reasonable cost so that parties can check for liens and other restrictions on real property.
- G. Legal services are accessible and affordable to foreign investors.
- H. Registries of names, copyrights, trademarks, patents and other intellectual property are up-to-date and readily accessible to the business community.

7. Trade and industry associations effectively contribute to a business environment that supports foreign investment.

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- A. Trade and industry associations have affiliations with international trade organizations and are involved in the harmonization of contract and commercial law and practice with international standards.
- B. Trade and industry associations provide lists of attorneys or law firms that can provide assistance to their members.
- C. Trade and industry associations effectively represent the private sector in public debate over updates and changes in the commercial law.
- D. Trade and industry associations are informed in technology developments as they relate to contract law and have advocated new commercial practices and reforms to existing law to accommodate changes (e.g., digital signatures).
- E. Trade and industry associations provide meaningful opportunities in networking, training, and sharing of best practices.
- F. Organizations of foreign investors contribute positively to the business environment, through networking services, training, publications, and other means.

8. Law faculties provide an meaningful foundation of knowledge to law students about domestic and international commercial law.

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- A. Law schools are adequately funded, with faculties, facilities and other resources that are sufficient to build a well trained and sufficiently competent cadre of lawyers.
- B. The law school curriculum includes classes in trade and investment law taught by faculty who themselves are educated in contemporary methods of trade and investment.
- C. Law faculties receive copies of all domestic commercial law and jurisprudence in a timely manner.
- D. Law students are required to receive training in legal research and writing.
- E. To the extent that a mandatory period of apprenticeship is in place, recent law graduates are afforded sufficient opportunity for meaningful exposure to the practice of law.

9. The legal profession effectively contributes to a business environment that supports foreign investment.

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- A. Lawyers are required to have a law degree and to pass a bar exam, the execution of which is transparent and free from corruption.
- B. The investment community believes that there is an adequate number of lawyers who have expertise in foreign investment.
- C. There is an established bar association that includes lawyers who represent the business community in commercial disputes.
- D. The bar association provides meaningful and valued services to lawyers, including continuing legal education in a variety of commercial law topics, regular updates in the profession and the commercial law, and other opportunities for sharing information and supporting best practices.
- E. Lawyers have access to an effective system of continuing education about foreign investment.
- F. Lawyers have access to an effective system of continuing education about alternative dispute resolution of contractual disputes involving foreign investors.
- G. The bar association effectively represents the legal community in public debate over updates and changes in the commercial law.

10. Legislative systems for creating, updating, and reviewing laws relating to investment are clear, open, and free of corruption.

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- A. Within the legislature, a system is in place for meaningful contributions by the business community to development and updating of the commercial law.

Score

- B. Persons charged with drafting the commercial law have adequate resources and training.
- C. Draft commercial laws are regularly circulated to communities with a stake in their contents.
- D. Public hearings are part of the legislative process.
- E. Votes in the legislature pertaining to the commercial law are taken publically and regularly reported by the press.
- F. Legislators are required to disclose their assets on an annual basis.

11. The donor community is effective in supporting the development and implementation of a sound environment for foreign investment.

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- A. Foreign investors are generally aware of the business environment support work being done by donor agencies.
- B. Foreign investors report general satisfaction with the work of donor agencies, if any, in support of the business environment.
- C. Coordination of donor activities relating to improving the business environment is considered by both local actors and donors to be effective.
- D. Business environment "success stories" reported by donors, in particular those pertaining to foreign investment, are substantiated by sustained, positive results on the ground.
- E. Donor activities pertaining to the business environment are regularly subject to monitoring and evaluation and prove responsive to suggestions for change and improvement.

12. National implementing institutions ably support the need for targeted and efficient use of public funds in support of agriculture and rural-sector growth.

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- A. There exists a well articulated, national strategy for agriculture, either stand-alone or as part of a national economic growth and/or poverty reduction strategy, which guides agriculture development, programs and planning.
- B. Policy supports active involvement in regional and/or global agriculture institutions and initiatives.
- C. The universe of institutions charged with implementing agricultural policy, including executive and legislative branch institutions, universities, and independent agencies, are clearly delineated and widely understood by both state actors and informed observers.
- D. Poverty reduction and economic growth are clearly defined in the mandates of the national institutions charged with implementing agricultural and rural development policy.
- E. National institutions charged with implementing agricultural and rural development policy have sufficient professional and administrative capacity to carry out this mandate.
- F. Institutions responsible for implementing agricultural and rural development policy have sufficient authority and support to carry out its mandate, including clear policy statements and support from the government.
- G. National institutions responsible for implementing agricultural and rural development policy have sufficient funding through government budgets to maintain both equipment and services.
- H. National institutions responsible for implementing agricultural and rural development policy have clearly delineated parameters and authority with respect to other government bodies whose actions and decisions directly affect government spending.
- I. Supply chain enhancements, such as cold chain construction or modification, is ably supported by relevant government entities.
- J. Data sharing among implementing institutions is routine.

Social Dynamics

1. Official corruption does not discourage foreign investment.

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- A. Under Transparency International's most recent Corruption Perception Index, the country scores better than 4.
- B. If the country's score on the most recent CPI is less than 7, there is a comprehensive, multi-agency program to combat corruption in State institutions.
- C. There is no recent history of major donors or lending institutions cancelling programs, loans or activities on the grounds of official misuse of funds.

- D. Prosecution of corruption is not generally regarded as a means of weeding out political opponents.
- E. The media covers allegations of official corruption in a responsible and thorough manner.
- F. Judges, prosecutors, and media representatives do not significantly risk their personal safety by participating in inquiries or prosecution of official corruption.

2. Foreign investors contribute to an atmosphere of innovation and sound business practices. 0

- A. Multinational foreign investors are public and unequivocal about their unwillingness to pay bribes or other types of informal fees.
- B. Foreign investors expect and receive responsiveness from the government institutions with which they must deal.
- C. Foreign investors are accessible and responsive to questions about their business practices and long-term goals for investment.
- D. Foreign investors use innovative methods of "leapfrogging" over old systems and technologies to implement new methods of doing business.
- E. Foreign investors contract with domestic businesses to provide necessary goods and services.
- F. Foreign investors are perceived by local government officials, private sector actors, and the public as making a positive contribution to the business environment at large.
- G. Foreign investors promote improvements in human capital, through such means as domestic and overseas training, investment in literacy, contributions to public health, and so forth.

3. Human capital is perceived as meeting the long-term interests of foreign investors. 0

- A. Literacy in the country is better than 90% for both sexes.
- B. The last 10 years have exhibited improved rates of literacy.
- C. Foreign investors perceive the local work ethic as strong, with workers generally exhibiting an understanding of the importance of timeliness and productivity.
- D. The HIV/AIDS adult prevalence rate is less than 1%.
- E. With respect to HIV/AIDS, there are Government or donor-sponsored efforts to prevent growth in the rate of infection.
- F. Emigration from the country is not perceived as undermining the presence of a skilled workforce.
- G. Students at the primary, secondary and university level have access to education in major second languages.
- H. Where there is diversity among ethnic groups, foreign investors do not hesitate to include all groups within their workforces (i.e., mixed groups will not be perceived to create conflict).

4. The domestic market is attractive to foreign investors. 0

- A. The per capita income in the country is perceived by investors as capable of supporting internal markets for outside goods and services.
- B. The labor force is perceived by foreign investors as capable of supporting investments aimed at taking advantage of the local market.
- C. There is a dynamic market for technology projects.
- D. The real GDP growth rate is more than twice the population growth rate.
- E. There is no evident distrust of foreigners generally.
- F. The security of foreign investments -- such as retail outlets and factories -- is not considered vulnerable to anti-foreigner-inspired attacks.

5. The political and security environment does not discourage foreign investment. 0

- A. Foreign companies doing business in the country are not vulnerable to sabotage or other security issues based on their foreign ownership.
- B. Foreigners are not dissuaded from living and working in the country due to high rates of crime.
- C. There are no legal or practical bars against the exercise of religious freedom.
- D. There are no legal or practical bars against the free movement of women in business and social circles.

Score

- E. The government does not require or otherwise pressure foreign investors to divulge private information about their clients or business partners without a clear and compelling interest.

Paying Taxes

Legal Framework

- | | | |
|--|---|----------|
| <p>1. The legal framework supports the development of a budget that is realistic and implemented as intended.</p> <p>A. There is a clear legal and administrative framework for budgetary and extrabudgetary activities.</p> <p>B. There is a clear legal basis for expenditure responsibilities at both the national and sub-national levels.</p> <p>C. National legislation exists that gives the legislature oversight duties with respect to the budget.</p> <p>D. The legal framework clearly supports aggregate expenditure out-turn in line with the original approved budget.</p> <p>E. The legal framework clearly supports consistency in actual expenditure out-turn compared with the original, approved budget.</p> <p>F. There is a clear legal and administrative framework in place to monitor and limit expenditure arrears.</p> <p>G. Within the legislative and administrative framework, the budget-related responsibilities of the respective ministries, committees and other participating institutions are clearly delineated.</p> <p>H. Legislation exists mandating forecasting of the national budget at least two years into the future.</p> | <table border="1" style="margin: auto;"> <tr> <td style="padding: 5px 20px;">0</td> </tr> </table> | 0 |
| 0 | | |
| <p>2. The legal framework supporting budgetary and fiscal risk-oversight is comprehensive and consistent with international standards.</p> <p>A. There is a clear legal and administrative framework that supports a consistent and logical budget classification system.</p> <p>B. The legal and regulatory framework mandates comprehensive information be included in actual budget documentation.</p> <p>C. External reporting during the spending year is obligatory, including a cash-budgeting system of reporting.</p> <p>D. Accurate information on extra-budgetary spending is included with the budget.</p> <p>E. Legal basis is provided for independent budget oversight authority.</p> <p>F. Ethical standards of behavior for public servants are clear and well publicized.</p> <p>G. The rules governing transfers to sub-national government entities are transparent.</p> <p>H. The rules governing fiscal risk from public entities provide for regular and detailed submissions of fiscal reports to government.</p> | <table border="1" style="margin: auto;"> <tr> <td style="padding: 5px 20px;">0</td> </tr> </table> | 0 |
| 0 | | |
| <p>3. The legal framework supports timely and transparent dissemination of fiscal and budget information to the public.</p> <p>A. Legislation and/or regulation sets out transparency requirements for the executive branch of government with regard to budgeting activities.</p> <p>B. Legislation and/or regulation sets out transparency requirements for the legislative branch of government with regard to budgeting activities.</p> <p>C. Expenditure of public funds is governed by comprehensive budget laws and openly available administrative rules.</p> <p>D. Public officials, including high-level Ministry officials and elected officials, are required to file annual public disclosure forms.</p> <p>E. There is a Freedom of Information Act or another type of legislation which provides for public access to non-classified Government documents and information.</p> <p>F. Comprehensive, reliable, and useful budget information is made available to the public through clear and consistent channels of distribution.</p> | <table border="1" style="margin: auto;"> <tr> <td style="padding: 5px 20px;">0</td> </tr> </table> | 0 |
| 0 | | |
| <p>4. The legal framework governing the preparation of the budget allows for sufficient incorporation of government policy.</p> | <table border="1" style="margin: auto;"> <tr> <td style="padding: 5px 20px;">0</td> </tr> </table> | 0 |
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- A. Budget documentation includes fiscal policy statements explaining the policy basis for allocation decisions.
- B. Sustainability of fiscal decision-making is supported by a legal framework that seeks to maximize the use of budget projections.
- C. The legal framework supports a multi-year perspective on fiscal expenditures.
- D. Legal and administrative rules are inclusive of line Ministries for budget process.
- E. Rules governing budget process allow for sufficient time between the period in which Ministries receive budget circulars and the deadline for submission.
- F. There are clear rules governing delays in the budget approval process.
- G. Rules provide for annual analysis of debt sustainability.

5. The budget is executed in a predictable and orderly manner and there are arrangements for the exercise of control and stewardship in the use of public funds.

0

- A. The laws and administrative rules governing cash-flow forecasting are sound.
- B. The legal framework strongly supports the predictability in the availability of funds through specific expenditure commitment provisions.
- C. The rules governing the recording and management of cash balances, debt and guarantees are sound.
- D. The law for contracting loans and issuance of guarantees is clear, and specific with regard to who is the entity responsible for approvals.
- E. There is a sound legal basis for expenditure commitment controls at the central level.
- F. The legal framework supports the use of international accounting standards in the annual financial statements.
- G. A consolidated government statement must be produced annually with information on government and public enterprise revenue, expenditure, bank balances, and financial assets.
- H. Annual audits of all government entities are mandated by law.
- I. The legislature scrutinizes fiscal policies, the medium term fiscal framework and medium term priorities as well as details of expenditure and revenue on an annual basis.
- J. The procedures adopted for the scrutiny of budget proposals are firmly established and respected.

6. Law and regulations concerning government procurement are clear, accessible, and consistent with international best practices.

0

- A. Law pertaining to government contracts aims to prevent misappropriation of funds and ensure uniform procurement policies and practices across agencies.
- B. Up-to-date information pertaining to government contract opportunities, procedures for bidding, and results of contract decisions is freely available.
- C. Administrative bodies that handle commercial disputes between the government and private sector:
 - D. a. operate according to clear, transparent, published rules and procedures;
 - E. b. make their rules and procedures available to the public;
 - F. c. issue written decisions based on the published, established law.
- G. Decisions of the administrative bodies responsible for government contracts can be appealed to the court system.
- H. If the country is a member of the WTO, it has accepted the Plurilateral Agreement on Government Procurement, or, if it is a candidate for WTO membership, there is evidence of its intention to accept that agreement.
- I. Rules governing government procurement promote competition amongst bidders.
- J. Micro and small enterprises are specifically encouraged to participate in government procurements.
- K. The rules governing government procurement are publicly available and in multiple local languages, if applicable.

7. Criminal prosecution for misdeeds related to collection and disbursement of government funds has been effectively structured within the legal framework.	0
<ul style="list-style-type: none"> A. The relevant code and supporting regulations clearly delineate criminal penalties for misuse of public funds. B. An independent auditor exists to investigate fraudulent matters related to fiscal expenditures. C. The state has successfully prosecuted criminal cases pertaining to waste, fraud or abuse of public funds. D. The relevant code and supporting regulations clearly delineate criminal penalties for fraudulent filing, payment or reporting of taxes. E. The Tax Authority has established a Criminal Investigation Unit to investigate fraudulent matters pertaining to tax collection. F. The state has successfully prosecuted criminal tax fraud cases. 	
8. Tax policy constraints have been identified and are being addressed.	0
<ul style="list-style-type: none"> A. The Tax Authority (TA) periodically addresses number of taxes and duties being administered. B. The Ministry of Finance and TA review rates and exemptions for major taxes on periodic basis. C. The government has conducted studies on how taxpayers assess the stability of the tax system. D. The TA has gathered and assessed taxpayer burden data on time, costs and taxpayer attitudes toward complexity for compliance. E. The TA has identified simplification efforts including various schemes for small business. F. Revenue estimates are made from solid base of tax statistics. G. The TA has linked taxation issues with environmental issues. H. The TA has enacted tax legislation in favor of lower income citizens. I. The TA has integrated national tax policy with regional and local efforts. J. The TA has assessed frequency and results of tax amnesties with MoF. 	
9. The legal framework for corporate and personal income taxes is sound.	0
<ul style="list-style-type: none"> A. Tax legislation encompasses best international practices for key areas of direct taxes, such as: <ul style="list-style-type: none"> B. a. employment, income, fringe benefits and stock options C. b. family taxation, personal deductions, credits and rates D. c. financial sector, financial instruments, and income from capital E. d. capital gains F. e. corporate taxation G. f. determination of business profits H. g. partnerships, trusts & special entities I. h. presumptive and minimum taxes J. i. pension and pension funds K. j. exempt organizations 	
10. The legal framework for Value Added Taxes and general sales taxes is sound.	0
<ul style="list-style-type: none"> A. Tax legislation encompasses best international practices for key areas of indirect taxes, such as: <ul style="list-style-type: none"> B. a. VAT / GST rates, exemptions, and refund schemes C. b. sub national level administration issues for VAT D. c. taxation of international transactions for imports / exports 	
11. The legal framework for other taxes is sound.	0
<ul style="list-style-type: none"> A. Tax legislation encompasses best international practices for key areas such as: <ul style="list-style-type: none"> B. a. excise & other taxes on specific goods C. b. estate, gift and inheritance taxes 	

- D. c. taxes on land & buildings
- E. d. other taxes on capital
- F. e. transfer taxes and stamp duties
- G. f. social security taxes
- H. g. other taxes minimized

12. Where incentives to foreign investors are offered, they are consistent with regional norms and ultimately result in a net fiscal benefit to the country.

0

- A. The following tax incentives designed to promote foreign direct investment are consistent with regional norms and ultimately result in a net fiscal benefit:
 - B. a. Tax holidays
 - C. b. Investment allowances and tax credits
 - D. c. Timing differences
 - E. d. Reduced tax rates
 - F. e. Free economic zones
- G. The Tax Authority has analyzed all tax incentives to fully understand:
 - H. a. The profile of the beneficiaries
 - I. b. The specific revenue impact
 - J. c. Administration and tax-avoidance issues
- K. The Tax Authority has considered special purpose tax incentives:
 - L. a. for regional development
 - M. b. for sectoral development
 - N. c. for employment creation
 - O. d. for export promotion
 - P. e. for free trade or export processing zones
- Q. Incentive structures for foreign investment are regularly reviewed and reconciled with overall national fiscal policy.

Implementing Institutions

1. The government's public financial management system is efficient, effective, and disciplined.

0

- A. The budget is realistic and implemented as intended.
- B. The budget and fiscal risk oversight are comprehensive.
- C. The budget is prepared with due regard for government policy.
- D. The budget is executed in an orderly, disciplined, and predictable manner and there are arrangements for the exercise of control and stewardship in the use of public funds.
- E. Adequate records and information are produced, maintained and disseminated to meet decision-making control, management and reporting purposes.
- F. Arrangements for scrutiny of public finances and follow up by executives are operating.

2. Government bodies ably support the need for targeted and efficient use of public funds in support of economic growth.

0

- A. The universe of institutions charged with implementing fiscal policy, including executive and legislative branch institutions and independent agencies, have clearly defined mandates widely understood by both state actors and informed observers.
- B. National institutions charged with implementing the national budget have a clearly defined mandate to focus on poverty reduction and economic growth.
- C. National institutions charged with implementing the national budget have sufficient professional and administrative capacity to carry out this mandate.

- D. Institutions responsible for implementing the national budget have sufficient authority and support to carry out their mandate, including clear policy statements and support from the executive and legislative branches.
- E. National institutions responsible for implementing the budget have sufficient funding to maintain both equipment and services.

3. A national auditing body is able to minimize chances of misappropriation of public funds.

0

- A. The structure, mission and form of the national auditing body is informed by and benchmarked against international best practices.
- B. The independence of the national auditing body is ensured by legislation, regulation, and actual practice.
- C. The national auditing body is adequately funded.
- D. The national auditing body is staffed by a cadre of qualified professionals, including auditors, accountants, and other critical staff.
- E. The recommendations and findings of the national auditing body are consistently reviewed and implemented.
- F. There is evidence of public confidence in the national auditing body.

4. National institutions charged with raising money through debt or donor assistance are sufficiently structured to finance country's needs.

0

- A. Debt-raising institutions and institutions that receive donor monies have a clear mandate from public policy, implementing legislation, and appropriate regulations.
- B. Debt-raising institutions and institutions that receive donor monies have sufficient professional and administrative staff to successfully carry out their duties.
- C. Debt-raising institutions and institutions that receive donor monies rely appropriately on the support and expertise of private sector institutions in implementing their responsibilities.
- D. Debt-raising institutions and institutions that receive donor monies have detailed internal rules that are publicly available.

5. The Tax Authority is well organized, well led, and endowed with sufficient resources to fulfill its mandate.

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- A. Its head and management staff are non-political and/or they view their role as administrative and ministerial.
- B. It has sufficient staff.
- C. It has sufficient funding (through direct state budget, fees for registration or other services, or both).
- D. Senior TA leadership exhibits a strong commitment to a fair and effective tax system, and has the qualifications necessary to do the job.
- E. Its physical facilities are accessible and welcoming, and there are branch or regional offices throughout the country if and to the extent necessary.
- F. It issues official forms (which may or may not be mandatory) for taxes; the forms are available free or at minimal cost from the registry or bookstores; the forms cover all types of registrations; and there is a handbook or other instructions.
- G. It has adequate, formally issued internal regulations and operating procedures.
- H. It has a website which is easy to use and regularly updated, and which contains the tax law and regulations, instructions and forms for compliance, and other useful information.
- I. The Tax Authority has an internal improvement plan, setting targets for improvement of procedures, and annually reviewing its operations to identify any systemic weaknesses for improvement.

6. The Tax Authority has a strategy for tax administration that is comprehensive, forward-looking, and fair.

0

- A. There is demonstrated, sustained political commitment for tax administration by legislative bodies.
- B. In a multi-year, strategic plan, the TA publishes well defined and appropriate strategies.

- C. The Ministry of Finance follows best practices for resource allocation methodology for TA staffing.
- D. Changes and incentives are routinely considered by the Government for both taxpayers and the TA.
- E. General data on tax performance (i.e. tax to GDP ratios and indirect vs. direct tax revenues) indicate a competitive position with comparable economies.

7. Continuous improvement is sought for Tax Authority organization and resource utilization.

0

- A. The TA has established a strategic management approach to assess compliance risks, provide customer service and improve voluntary compliance.
- B. The TA has adopted a functional approach for tax administration -- i.e., formulation of Collection, Audit, Taxpayer Service, Submissions Processing, and Criminal Investigation functions.
- C. The TA has identified major sources of revenues and plans tax administration accordingly, including through the establishment of a Large Taxpayer Office.
- D. The TA is vested with sufficient independence for critical administrative areas, including organizational structure; staffing; salaries and incentives; and personnel and budget.
- E. The TA has implemented sound position management practices for utilization of human resources, such as management to employees ratios; percentage of staffing across compliance functions; percentage of administrative overhead; etc.
- F. The TA has adequately organized headquarters, regional, and field offices, in relationship to taxpayer populations being administered.
- G. The TA has created and implementation is in process for a strategic approach for technology infrastructure and required training in support of tax administration.
- H. The TA has established taxpayer service programs addressing the needs of taxpayer market segments; i.e., educational outreach for applications; efficient risk based methods implemented for dealing with small and medium sized companies.
- I. The TA has a Code of Conduct for all employees to adhere to, and it is administered on a thorough basis.
- J. The TA has a strategic initiative for the hiring, development and knowledge management of its workforce.

8. The Tax Authority has developed and implemented effective compliance strategies to address Domestic Tax Avoidance and Evasion schemes.

0

- A. The TA conducts annual environmental scans as part of its strategic planning efforts to identify compliance strategies as needed to address the following areas:
- B. a. anti avoidance rules
- C. b. abusive tax shelter promotions
- D. c. underground economy and related tax gap
- E. d. tax fraud awareness by auditors and referral to criminal investigation division
- F. e. non-filer strategy
- G. f. globalization strategy for multinational corporate presence
- H. g. high-wealth individual taxpayer strategy

9. The Tax Authority has enacted an International Taxation Framework following international best practices to ensure harmonization with other jurisdictions.

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- A. The TA has established tax treaties with appropriate jurisdictions, covering key income; capital; estate and gift; and other matters.
- B. The TA has addressed best practices for taxation of multinationals, including concepts such as:
- C. a. transfer pricing
- D. b. permanent establishments
- E. c. thin capitalization
- F. The TA has addressed necessary framework for other international key issues:
- G. a. taxation of foreign-source income

- H. b. taxation of non residents
- I. c. international tax avoidance and evasion
- J. d. established formal exchange of information programs with other treaty partners
- K. e. well defined laws for controlled foreign corporations and other anti-avoidance rules
- L. f. VAT / GST, tariff, customs, and other trade tax laws
- M. g. follow best international practices for e-commerce activities
- N. TA has established an international dispute resolution process.

10. The Tax Authority has implemented best international practices to perform key tax procedures.

0

- A. The Ministry of Finance and the TA have established one-stop service and single issuance of taxpayer registration process and issuance of taxpayer identification numbers.
- B. The TA has established a self-assessment regime for tax administration through which taxpayers have options for filing, payment and reporting tax obligations (e.g., walk-in, postal delivery or electronic submission).
- C. The TA has established a submissions-processing function for receipt, processing and posting of tax returns and tax payments to accurate master file accounts for both individuals and businesses.
- D. The TA has established compliance-risk programs to run annually, including software cross-matching routines to identify and pursue both non-filers and stop filers.
- E. The TA has an effective collection management function to address enforced collection procedures on delinquent accounts and filers.
- F. The TA has identified and publicized "taxpayers rights" in dealing with the tax authorities for all related tax administration items.
- G. The TA has established an audit function through which risk-based workload selection systems are in place to identify the most non-compliant returns.
- H. The TA has established a formal internal appeals function to allow taxpayers internal administrative pursuit of unagreed issues and proposed tax deficiencies, prior to litigation rights.
- I. The TA has an effective strategy and work procedures in place to address timely refund of VAT/GST claims.
- J. The TA has adequately addressed the concept of tax amnesties for certain problem areas, where taxpayer voluntary disclosures for omissions, errors, or non-filing may be resolved without penalties and interest during the limited amnesty period.

11. Administrative tribunals charged with resolving tax disputes are considered fair and effective in carrying out their missions.

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- A. The jurisdiction of all administrative tribunals specifically charged with resolving tax disputes is clear and is not duplicative of the functions of any other tribunal.
- B. The tribunals are sufficiently funded.
- C. The rules of procedure of the tribunals are clear and accessible.
- D. Tribunal decision-makers are knowledgeable about the relevant laws and regulations, and have access to supplementary information, such as information pertaining to international best practices, as needed.
- E. Tribunals are perceived as unbiased toward either tax payers or the government.
- F. Tribunal decisions are issued in a reasonable amount of time, are in writing and include the grounds for the decision.
- G. Tribunal decisions may be appealed to a court.
- H. Tribunal staff do not solicit informal fees or accept gifts.

12. The courts are regarded as an appropriate institution for resolving tax-related disputes, once administrative remedies have been exhausted.

0

- A. Companies report that, if they go to court to resolve a tax dispute, they can expect a fair decision, based on published laws, regulations and standards, in a timely manner.

- B. Only one appeal is a matter of right, while second and third appeals are at the discretion of the courts.
- C. The appellate process does not permit adding to the factual record from the lower court -- there is no do novo fact finding on appeal.
- D. In tax cases, both parties respect and observe the decisions of judges, even if the decision is adverse to their positions.
- E. Judges who hear tax cases have formal, university-level training in commercial law and are required to have practiced before tribunals or, before taking the bench, are required to take relevant courses.
- F. Judges who hear tax cases receive periodic continuing legal education on issues relating to secured transactions and other relevant areas such as bankruptcy and contract law.

13. National implementing institutions ably support the need for targeted and efficient use of public funds in support of agriculture and rural-sector growth.

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- A. There exists a well articulated, national strategy for agriculture, either stand-alone or as part of a national economic growth and/or poverty reduction strategy, which guides agriculture development, programs and planning.
- B. Policy supports active involvement in regional and/or global agriculture institutions and initiatives.
- C. The universe of institutions charged with implementing agricultural policy, including executive and legislative branch institutions, universities, and independent agencies, are clearly delineated and widely understood by both state actors and informed observers.
- D. Poverty reduction and economic growth are clearly defined in the mandates of the national institutions charged with implementing agricultural and rural development policy.
- E. National institutions charged with implementing agricultural and rural development policy have sufficient professional and administrative capacity to carry out this mandate.
- F. Institutions responsible for implementing agricultural and rural development policy have sufficient authority and support to carry out its mandate, including clear policy statements and support from the government.
- G. National institutions responsible for implementing agricultural and rural development policy have sufficient funding through government budgets to maintain both equipment and services.
- H. National institutions responsible for implementing agricultural and rural development policy have clearly delineated parameters and authority with respect to other government bodies whose actions and decisions directly affect government spending.
- I. Supply chain enhancements, such as cold chain construction or modification, is ably supported by relevant government entities.
- J. Data sharing among implementing institutions is routine.

Supporting Institutions

1. With respect to fiscal matters, legislators have developed wide-ranging, professional relationships with affected constituencies.

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- A. Legislative bodies including committees relating to trade, banking, agriculture and industry have effective strategies to solicit and partner with external stakeholders (trade lawyers/bankers/farm associations) to provide education and supporting publications to targeted market segments.
- B. Legislative bodies including committees relating to trade, banking, agriculture and industry have effective strategies to solicit and partner with other government stakeholders (Ministries of finance, agriculture, transportation, customs, etc) to provide support and to jointly address policy problems.
- C. The legislature has an effective strategy to respond to the needs of large and small businesses.
- D. The legislature has an effective strategy to respond to the needs of the informal economy.
- E. The legislature has established a strategic initiative to reduce bureaucratic obstacles including business registration, trade licenses and customs documentation.
- F. Members of the legislature have established professional relationships with local think tanks and industry associations.

2. The legislative and executive branches have implemented strategic measures to consider and incorporate the private sector's priorities and concerns with respect to fiscal matters.

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- A. Within the legislature, a system is in place for meaningful contributions by the business community to development and updating of fiscal policy.
- B. Within the executive branch, a system is in place for meaningful contributions by the business community to development and updating of fiscal policy.
- C. Persons charged with drafting the national budget have adequate resources and training.
- D. Proposed fiscal policy or major budgeting decisions are regularly shared with communities with a stake in their contents and feedback is solicited.
- E. Public hearings are part of the budgeting process.
- F. The process of budget development includes hearing from both rural and urban constituencies.
- G. Votes in the legislature pertaining to the national budget are taken publically and regularly reported by the press.

3. Various public and private actors provide timely, accurate and effective information that supports informed public assessments of fiscal priorities.

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- A. A community of economists, through channels such as universities, NGOs, or public-private forums, regularly review and comment on fiscal policy, including tax administration.
- B. The accounting profession is sufficiently developed to provide, when called upon, accurate assessments of topics relevant to fiscal policy.
- C. The media reports regularly, freely and accurately on matters related to fiscal policy.
- D. Trade and industry associations effectively represent the private sector in public debate over fiscal policy.
- E. The business or legal community supports one or more publications that address the relationship between private sector interests and fiscal policy.
- F. Organizations of foreign investors contribute positively to the national discussion on fiscal policy.

4. Faculties of economics provide an effective foundation of knowledge to university students about modern systems of economics generally and fiscal policy specifically.

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- A. The process of admission to the faculty of economics is open, transparent and based on merit.
- B. Faculties of economics are adequately funded, with faculties, facilities and other resources that are sufficient to build a well trained and sufficiently competent cadre of economists and public budget officials.
- C. Students receive their grades according to a clear and transparent system of examinations and other objective measure of understanding and achievement.
- D. The core economics curriculum includes classes in macro and micro economics by faculty who themselves are educated in the principles and details of free-market economics.
- E. Undergraduate students of economics are required to take and pass statistics.
- F. Undergraduate students of economics are required to engage in independent research, supervised and evaluated by a member of the faculty, as a requirement for graduation.
- G. Graduate students of economics have access to an integrated set of courses in economic theory, mathematics for economists, econometrics, and economic history.
- H. Theses written by graduate students of economics are routinely published.

5. The Tax Authority engages in meaningful and effective relationships with affected constituencies.

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- A. The Tax Authority has an effective strategy to solicit and partner with external stakeholders (accountants/attorneys/other tax professionals) to provide education and supporting publications to targeted market segments.
- B. The TA has an effective strategy to respond to the needs of large businesses with proper technical guidance on: transactions undertaken; identification of proper risk-based methods of dealing with compliance issues for prompt resolution.

- C. The TA has established a strategic initiative to develop key electronic tax services for: registration, filing, payment, and customer information / technical guidance.
- D. The TA has established an outreach program for relationships with tax and industry professionals such as: SME associations; bankers associations; manufacturers associations; chambers of commerce; accountants association; etc.
- E. The TA has established professional relationships with world-class tax administration contributing organizations such as: IMF, World Bank, OECD, and regional tax authority associations.
- F. The TA has developed a strategic alliance with local accounting or tax software developers to enable more advanced electronic initiatives for tax administration.

6. The Tax Authority has developed and fostered strategic relationships with other key public agencies.

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- A. The Tax Authority consults and shares information with the following key government agencies:
 - B. a. The Customs Department, for proper tax administration of export and import data and joint technology strategy.
 - C. b. The National Statistical Service, for uniformity in monitoring industry financial data and reduction of taxpayer burden.
 - D. c. Social Security Administration for critical relationship on developing employer withholding and reporting requirements.
 - E. d. The Central Bank, to establish procedures for tax payments and development of compliance information strategy to maintain taxpayer master file accounts.
- F. Appropriate Liaisons have been formed with other similar tax authorities for sharing of best practices.

7. The agriculture and rural sector communities provide timely, accurate and effective information that supports informed public assessments of fiscal priorities.

0

- A. A community of economists, through channels such as universities, NGOs, or public-private forums, farmer associations, market development organizations, credit institutions regularly review and comment on fiscal policy, including tax administration.
- B. The agricultural and rural sector community supports one or more publications that address the relationship between their interests and fiscal policy.
- C. Organizations of foreign investors contribute positively to the national discussion on fiscal policy.

Social Dynamics

1. Where tax reform is warranted, pre-conditions for reforms are being addressed.

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- A. Existence of political and managerial commitment to tax reform has been documented.
- B. A reform management strategy has been identified where needed, following World Bank guidance for: simplification of tax laws; ease in filing requirements; and consolidation of taxes.
- C. An assessment of the extent of politicized tax administration has been made.
- D. Frequency of changes in senior management of TA have been assessed.
- E. Viewpoints of senior TA management for tax reform have been identified.
- F. Perceptions of the business community have been gathered regarding both the integrity and efficiency of TA.

2. If there is a substantial informal economy, the government is taking effective steps to address issues inhibiting formalization of enterprises.

0

- A. The extent and nature of the informal economy is known -- specifically, the extent to which it consists of:
 - B. i. "micro" businesses such as individual vendors or single family stalls, shops or farms.
 - C. ii. larger SMEs such as businesses with up to 50 employees,
 - D. iii. large businesses, or
 - E. iv. specific types of businesses, or businesses in specific geographical regions.

Score

- F. The reasons for the "informality" are generally understood.
- G. The government is taking effective steps to address the issue, which may include legal or regulatory reform, improvement of registry or other agency procedures at the local level, including titles and finance.
- H. The business and professional community is taking positive and proactive steps to address informality, including assisting in law reform, lobbying for improvement in regulation, advising clients of the law and of the many benefits to be obtained from exiting the informal sector.
- I. The donor community is aware of the importance of the informal-economy and actively and effectively helps to remedy the situation.

Trade Policy**Legal Framework**

1. The legal framework pertaining to international trade is readily available, clearly drafted, and easy to use.

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- A. Copies of all laws and regulations that comprise the country's regime pertaining to trade in goods are widely available to all interested stakeholders.
- B. Copies of all laws and regulations that comprise the country's regime pertaining to trade in services are widely available to all interested stakeholders.
- C. All laws and regulations specifically pertaining to trade in agricultural products are readily accessible to stakeholders.
- D. The legal framework pertaining to international trade is user-friendly -- clearly drafted, well organized by subject, with proper indexing, and with article headings.
- E. The legal framework pertaining to international trade is published in all official languages of the country and there is a good English translation.
- F. The legal framework pertaining to international trade is current and is regularly updated by practical-minded experts.

2. The country has established a regime of treaties and agreements that supports international trade.

0

- A. The country is a member of the WTO.
- B. The country is a member of a regional trade regime.
- C. If there is a relatively large economy in the region (i.e., China, India, South Africa, the United States), the country has developed bi-lateral trade relations with that economy.
- D. The country has bilateral trade agreements with all or most of the G8 countries.
- E. The country's regime of agreements and treaties is thorough and forward-looking with respect to trade in services.

3. The domestic legal framework promotes and supports international trade in services.

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- A. With only narrow exceptions, the domestic legal framework allows for trade in services that affords most favored nation treatment to services and service providers of any other country. (GATS).
- B. Laws encourage the movement of highly skilled labor through the system to increase knowledge transfer (i.e. awards work permits for approximately four to five years for highly skilled labor).
- C. Laws are in conformity with the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations' Convention Against Transnational Organized Crime, 2001.
- D. Laws are in conformity with the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations' Convention Against Transnational Organized Crime.

4. The Customs tariff schedule is based on the Harmonized Tariff System.

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- A. Tariffs are calculated on ad valorem basis.
- B. Preferences are extended to trading partners under the Global System of Trade Preferences.

5. The legal framework conforms with GATT provisions pertaining to non-tariff barriers.

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- A. No special registration requirements are imposed for import/export activities (except with regard to "sensitive" or quota products).
- B. Import licenses are required only for enumerated "sensitive" goods (e.g., weapons, explosives, toxins).
- C. No quantitative restrictions are placed on importation of goods (except where criteria for safeguard measures are met).

- D. National domestic technical standards are in conformity with practices and procedures of the International Standards Organization (ISO).
- E. Regional (sub-national) standards are in substantial conformity with national domestic standards (i.e., no additional rules imposed internally by regions or states).
- F. Goods are accorded national treatment for the purpose of applying technical standards.
- G. The principle of non-discrimination exists in definition of technical standards.
- H. The principle of non-discrimination exists in definition of sanitary and phyto-sanitary standards.
- I. Rules of origin are in place and consistent with internationally accepted practice.
- J. Anti-dumping provisions are enacted.
- K. Countervailing duty provisions are enacted.
- L. The overall commercial law regime supports secured trade finance on imported and exported goods.
- M. Safeguards provisions enacted.
- N. Rules for establishing free trade zones and other preferential trade zones are enacted.

6. The legal framework conforms with GATS and is generally supportive of trade in services.

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- A. The country's commitments and/or practice regarding GATS mode one (cross-border supply) are adequate.
 - B. The country's commitments and/or practice regarding GATS mode two (consumption abroad) are adequate.
 - C. The country's commitments and/or practice regarding GATS mode three (commercial presence) is adequate.
 - D. The country's commitments and/or practice regarding GATS mode four (i.e., presence of natural persons) are adequate.
 - E. Quantity restrictions (i.e., quotas, local contents and prohibitions) do not overly burden trade in services.
 - F. Price-based instruments (i.e., price controls, tariffs) do not overly burden trade in services.
 - G. Discriminatory access (i.e., advertising restrictions) to local networks do not overly burden trade in services.
 - H. Standards, licenses and procurement (i.e., unjust licensing procedures) do not overly burden trade in services.

Implementing Institutions

1. A Trade Commission, Ministry of Foreign Trade, and/or other institution(s) hold a clearly defined and adequately supported mandate to implement the country's trade regime.

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- A. The trade authority has sufficient professional and administrative staffing to carry out its mandate.
 - B. The trade authority has sufficient funding through state budget, fees collected, or a combination of both to maintain its equipment and services.
 - C. The trade authority has detailed internal regulations and operating procedures.
 - D. The trade authority has an active staff training and development program utilizing appropriate training materials, guidebooks or procedural manuals to improve staff competency and service.
 - E. There is general consistency in understanding the trade authorities' roles and functions among the government, the trade authorities themselves, and the end users.
 - F. The trade authorities have adopted a "customer-oriented" approach to fulfilling its mandate.
 - G. The trade authorities are sufficiently decentralized to enable users throughout the country to have reasonable access.
 - H. The trade authorities have an active, current web site, including contact information, trade legislation and policy papers, and other relevant materials.
 - I. The following government institutions have a direct line of communication and a high level of coordination with the Trade Authority:
 - J. a. The Customs Authority
 - K. b. All agencies concerned with trade in services (immigration, tourism, etc.)

- L. c. All agencies concerned with trade in agricultural goods.
- M. d. The Investment Promotion Agency
- N. e. Law enforcement agencies
- O. f. Agencies concerned with protection of intellectual property rights

2. The operations of the trade authorities are consistent with international best practices and principles.

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- A. The trade authorities maintain active contacts with counterpart organizations in other countries to ensure compliance with international standards.
- B. The trade authorities distribute (or makes available for a nominal fee) copies of all procedures, relevant laws, government regulations, fee schedules and other information governing trade and related activities.
- C. The trade authorities actively monitor levels of compliance with terms of WTO accession requirements and other trade agreements.
- D. The trade authorities actively pursue increased compliance with trade agreements.
- E. A separate or special unit is specifically responsible for interpretation and enforcement of defensive instruments (i.e., antidumping, countervailing, safeguards) and implementation and coordination of customs policy and administration.
- F. The special unit has established mechanisms for private sector enterprises to seek protection from unfair trade practices through enforcement of defensive instruments.
- G. Private-sector businesses generally consider the special unit to provide satisfactory protection from unfair trade practices.

3. Appropriate tribunals -- whether judicial or administrative -- efficiently and effectively resolve disputes related to trade matters.

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- A. The jurisdiction of all administrative tribunals specifically charged with resolving trade-related disputes is clear and is not duplicative of the functions of any other tribunal.
- B. The tribunals are sufficiently funded.
- C. The rules of procedure of the tribunals are clear and accessible.
- D. Tribunal decision-makers are knowledgeable about the relevant laws and regulations, and have access to supplementary information, such as information pertaining to international best practices, as needed.
- E. Tribunals are perceived as unbiased toward either the government or the prospective trader.
- F. Tribunal decisions are issued in a reasonable amount of time, are in writing and include the grounds for the decision.
- G. Tribunal decisions may be appealed to a court.
- H. Tribunal staff do not solicit informal fees or accept gifts.
- I. Courts consistently adjudicate appeals from administrative decisions in a transparent, impartial manner.
- J. Courts make decisions regarding trade issues independently, without regard to inappropriate political pressures or non-judicial considerations.
- K. Decision-makers in trade cases are adequately trained in relevant law and procedures.
- L. The decisions of trade tribunals are respected by the parties and enforced by a sufficiently empowered agency.

4. With respect to services, the country applies GATS and has business and administrative practices that are consistent with GATS requirements.

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- A. The country applies GATS mode one commitments (cross-border supply).
- B. The country applies GATS mode two commitments (consumption abroad).
- C. The country's practice applies GATS mode three (commercial presence) is significantly beyond its commitments.
- D. The country applies GATS mode four commitments (i.e., presence of natural persons) is adequate.

- E. Administrative and business practices do not exhibit pervasive quantity restrictions (i.e., quotas, local contents and prohibitions) that overly burden trade in services.
- F. Administrative and business practices do not exhibit pervasive price-based instruments (i.e., price controls, tariffs) that overly burden trade in services.
- G. Administrative and business practices do not exhibit pervasive discriminatory access (i.e., advertising restrictions) to local networks that overly burden trade in services.
- H. Administrative and business practices do not exhibit pervasive restrictions regarding standards, licenses and procurement (i.e., unjust licensing procedures) that overly burden trade in services.

5. The tourism authority is active in promoting efficient flows of people into and out of the country for the purpose of consuming services.

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- A. There is an agency that is charged with promoting tourism in the country.
- B. The agency is well staffed and has sufficient resources to perform its mandate.
- C. The agency is active in promoting the efficient flows and friendly treatment of tourists through the nation's borders.

6. Public subsidies, tariffs, duties, or other marketing practices do not distort the agricultural market.

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- A. Government does not provide subsidies that distort producer incentives or have an effect on prices.
- B. Government does not place high tariffs or duties on agricultural products or their input components.
- C. Government takes diplomatic steps to guarantee that national production, marketing, and trade is not distorted by subsidies and other discriminatory practices of international partners and competitors.
- D. There is a free and fair market for fuel.

Supporting Institutions

1. Trade and industry associations effectively contribute to a business environment that supports international trade in goods and services.

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- A. In all viable sectors, trade and industry associations are active in public dialogue pertaining to opportunities in international trade.
- B. Local trade and industry associations support free trade and otherwise do not promulgate a "protectionist" mindset within local industry and commerce.
- C. Trade and industry associations have affiliations with international trade organizations and are involved in the harmonization of contract and commercial law and practice with international standards.
- D. Trade and industry associations provide lists of professional service providers including lawyers and accountants that can provide assistance to their members.
- E. Trade and industry associations effectively represent the private sector in public debate over updates and changes in legal framework pertaining to international trade.
- F. The business or legal community supports one or more specialized publications on international trade.
- G. Trade and industry associations provide meaningful opportunities in networking, training, and sharing of best practices with respect to international trade.
- H. Organizations of foreign investors contribute positively to the international trade environment, through networking services, training, publications, and other means.
- I. Business associations support research useful for determining appropriate trade policy.
- J. There is an active association of tourism companies and professionals that promotes favorable and streamlined operations affecting tourists, including transportation, lodging, food and entertainment.
- K. Associations for the promotion of particular agricultural products (crops, livestock, fish, transformed products) exist and are active.

- L. Associations exist for the promotion of industrial development for the transformation of raw agricultural products into higher-valued goods.

2. Universities provide an effective foundation of knowledge to students of law, economics, and business about the theories and mechanics of international trade.

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- A. Faculties of economics, law, and business are adequately funded, with faculties, facilities and other resources that are sufficient to build a well trained and sufficiently competent cadre of professionals.
- B. The core economics curriculum includes classes in macro and micro economics by faculty who themselves are educated in the principles and details of free-market economics.
- C. Undergraduate students of economics are required to take and pass courses that address the topic of international trade.
- D. Undergraduate students of economics are required to engage in independent research, supervised and evaluated by a member of the faculty, as a requirement for graduation.
- E. Graduate students of economics have access to an integrated set of courses in trade theory, econometrics, economic history.
- F. Theses written by graduate students of economics are routinely published.
- G. Business students are educated in the mechanics of international trade, including sectoral aspects of trade.
- H. The law school curriculum includes classes in trade and investment which are taught by faculty who themselves are educated in contemporary methods of trade and investment.
- I. Law faculties receive copies of all domestic commercial law and jurisprudence in a timely manner.

3. The legal profession effectively contributes to a business environment that supports international trade.

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- A. The business community believes that there is an adequate number of lawyers who have expertise in the law of international trade.
- B. There is an established bar association that includes lawyers who are capable of representing clients in international trade transactions and disputes.
- C. The bar association provides meaningful and valued services to lawyers, including continuing legal education in a variety of topics pertaining to international trade.
- D. The bar association effectively represents the legal community in public debate over updates and changes in the international trade regime.
- E. There is an adequate community of lawyers available to assist foreigners who wish to trade in services.

4. The media report regularly, freely and accurately on matters related to international trade.

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- A. The media has sufficient access to all appropriate sources of information concerning international trade.
- B. The media can report freely on issues pertaining to international trade without fear of government reprisal.
- C. The private sector considers media coverage of the financial sector to be sufficient, accurate and fair.
- D. Reporters have access to training and education in issues pertaining to coverage of international trade.
- E. The private sector considers media coverage of international trade issues to be sufficient, accurate and fair.
- F. Government actors consider media coverage of international trade issues to be sufficient, accurate and fair.
- G. The media pick up on stories of interest from the business community relating to global trade.

Social Dynamics

1. One or more high-level government officials champion the cause of international trade as a development strategy.

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- A. Government officials actively seek free trade agreements with other countries.
- B. Government officials are knowledgeable about and propose changes to laws and/or institutional processes affecting international trade.
- C. At least one high-level government official seeks to reform inter governmental coordination processes that govern trade.
- D. At least one high-level government officials seeks to institute programs educating the private sector and civil society about international trade.
- E. At least one high-level official is known to educate other government officials on the importance of international trade, the agreements governing it and how best to use it as a tool for development.

2. The government and political leadership support a culture of competition, including competition from foreign sources of goods and services.

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- A. Leading political figures publicly advocate competition among goods and services as a means to improve the economy.
- B. Legislation to introduce competition into sectors that were previously isolated from competition is usually successful.
- C. Government officials look to and draw from other countries' experiences with foreign competition.
- D. The overall legal framework does not create or permit unnecessary licensing or market entry restrictions favoring incumbents over foreign competitors.
- E. The entity responsible for privatization of public enterprises collaborates with the implementing institution to ensure competitive privatization, including through foreign ownership.

3. Businesses are aware of global trends in trade.

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- A. The business community is generally knowledgeable about global trends affecting terms of trade for their country.
- B. The business community actively seeks to reform trade policy based on evidence of policies that have worked in other countries.
- C. The business community is generally supportive of reducing barriers to trade in goods.
- D. The business community is generally supportive of reducing barriers to trade in services.
- E. Businesses are sufficiently flexible to be able to partner with international firms seeking to do business in their country.

4. The government has an active dialogue with foreign governments and other external actors on the role of trade and how to maximize assistance to the country.

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- A. The government actively engages foreign governments in discussions relating to free trade agreements and bilateral liberalization agreements.
- B. The government has policies in place that limit the need to use anti-dumping or countervailing measures.
- C. The government requests specific technical assistance from international donors in the areas of tariff and non-tariff barriers to trade.

Trade Facilitation

Legal Framework

1. The domestic legal framework supports international trade of goods, based on international principles provided by the WTO and WCO.

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- A. In general, the legal framework conforms with the GATT.
- B. The legal framework conforms with the General Annex of the Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures, including the following:
 - C. Clearance and other formalities
 - D. Duties and taxes
 - E. Security
 - F. Customs control
 - G. Application of information technology
 - H. Relationship between Customs and third parties
 - I. Information, decisions and rulings by Customs
 - J. Appeals in Customs matters
- K. The legal framework conforms with the Specific Annex of the Kyoto Convention on the Simplification and Harmonization of Customs Procedures:
 - L. Arrival of goods in Customs territory
 - M. Importation
 - N. Exportation
 - O. Customs warehouses and free zones
 - P. Transit
 - Q. Processing
 - R. Temporary admission
 - S. Offenses
 - T. Special procedures
 - U. Origin
- V. The legal framework conforms with practices and procedures to GATT Article V- Freedom of Transit.
- W. The legal framework conforms with the International Transport of Goods under Cover of TIR Carnets.
- X. The legal framework conforms with the ATA carnet for the temporary admission of goods.

2. The law pertaining to Customs and other border-inspection functions promotes and supports free trade and trade facilitation.

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- A. The law allows acceptance of electronic admissions as a legal document.
- B. There are reasonable time limitations for Customs and other border agencies to take administrative or enforcement actions.
- C. The legal framework requires publication of fees and formalities connected with importation and exportation.
- D. The legal framework requires the publication and implementation of all trade and Customs laws and regulations.
- E. The legal framework requires the publication and implementation of Customs rulings.

3. The law sufficiently empowers a Customs Authority and other border authorities -- such as agriculture and immigration -- to implement the trade facilitation aspects of the country's international trade regime.

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Score

- A. The framework law clearly defines the institution or institutions responsible for implementation of laws relating to trade and the roles, responsibilities and operational procedures of each relevant institution.
- B. The framework law requires that the institution(s) render decisions based on published laws, regulations and standards; and through written documentation clearly setting forth the basis for the decision.
- C. Laws grant the Customs Authority the status as the first point of entry and the right to inspect at any point for transshipped, in-bond, or imported goods.
- D. Laws grant the Customs Authority the power to hold and quarantine goods for import, export, or transshipment which violate intellectual property protections, including copyright or patent laws.

4. The domestic legal framework promotes and supports international trade in services.

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- A. The law or regulations include country in-transit preclearance agreements with one or more foreign countries.
- B. There is objective criteria for immigration officers and law enforcement officers connected to the immigration process that they can carry out their enforcement demands without impeding trade.
- C. It is an offense to facilitate an individual or organization in obtaining false identity documents of any country.
- D. Carriers may be sanctioned or charged a financial penalty for carrying passengers without adequate and proper documentation.

5. All state employees engaged in facilitating the trade of goods and services are bound by laws and regulations aimed at preventing corrupt practices.

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- A. With respect to all state employees engaged in facilitating the trade of goods and services, the law requires a written code of conduct, and that it be made available publicly.
- B. The law prescribes adequate and uniform penalties for violations of the code of conduct.
- C. The law requires independent investigative bodies to enforce the code of conduct and prosecute violations.
- D. The law provides for minimal political positions and a largely professional staff within the Customs Authority, the Immigration Authority, and all other agencies engaged in facilitating the trade of goods and services.
- E. The law mandates ethics training for all state employees engaged in facilitating the trade of goods and services.
- F. The law prohibits bribery -- including favors, gifts, and other inducements -- of Customs officials and all other state employees engaged in facilitating the trade of goods and services.
- G. Whistleblower protections are in place for all state employees reporting violation of trade facilitation laws and attempts at bribery.

6. The legal framework adequately regulates the Customs Brokers.

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- A. The law provides that Customs, either solely or in concert with the trade community, regulates the Broker industry.
- B. The law mandates that a written, rigorous examination to obtain a broker's license.
- C. The law mandates a written code of conduct and ethics training for Customs Brokers.
- D. The law provides for operating requirements and penalties for violations.
- E. The law mandates that disciplinary action, either solely or in concert with the trade community, is taken where required.

7. The legal framework regulates Valuation, Classification and Country of Origin based on WTO standards or similar international principles.

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- A. The law provides for authority to issue determinations regarding valuation, classification and country of origin.
- B. The law provides that rulings (binding and informal) are issued in a timely fashion.
- C. The law provides for penalties and fines that adequately combat undervaluation and misclassification.

Score

8. The country is party to, and observes, international agreements pertaining to Cargo Security and has issued laws pertaining to Cargo Security.

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- A. The legal framework requires transportation companies to report the receipt of unmanifested materials.
- B. The legal framework requires transportation companies to report suspicious transactions or requests for illicit transactions.
- C. The legal framework requires a method to control security of cargo, including the use of seals between port and final destination.
- D. The law requires manifest data to be provided in advance of arrival.
- E. All commercial cargo and passenger transport must be nationally registered and subject to government oversight and regulation.
- F. The legal framework conforms with the UN Convention Against Transnational Organized Crime.
- G. Air cargo security laws conform with the provisions and procedures contained in the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970.

9. The country is party to, and observes, international standards concerning strategic goods, and has issued laws regulating strategic goods.

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- A. The legal framework provides for advance information for general enforcement regarding such as arms, bulk currency, dual use items and other.
- B. The legal framework conforms with UN sanctions.
- C. The legal framework conforms with the UN Convention on the Physical Protection of Nuclear Material (Nuclear Materials Convention).
- D. The legal framework conforms with the UN Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological Weapons and on their Destruction.
- E. The legal framework conforms with the UN Convention against Illicit Traffic in Narcotic Drugs (Vienna Convention).
- F. The legal framework conforms with international standards pertaining to transportation of hazardous materials.
- G. The legal framework requires a license from the appropriate government ministry for the import, transit, export, and re-export of sensitive goods, including weapons, explosives, restricted biological agents, precursors, and equipment.
- H. The legal framework requires cargo security measures for dangerous agents (i.e., chemicals, legal biological agents, radiological, weapons and explosives).
- I. Carriers transporting dangerous or hazardous goods or materials are required to provide a Document of Security stating the goods on board before docking at port.
- J. The legal framework prohibits the manufacture, sale, transfer, and/or possession of biological and chemical weapons.
- K. Laws prohibit the manufacture or facilitation of raw materials, materials, equipment, technology, and scientific-technical information and services which can be used to develop weapons of mass destruction or vehicles for the delivery of such weapons.

10. The country is party to, and observes, international standards concerning foodstuff, and has issued laws regulating foodstuff.

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- A. Customs control laws for plant, animal, and food materials are in conformity with the WTO Sanitary and Phytosanitary Measures.
- B. The legal framework conforms with the Codex Alimentarius Commission.
- C. The legal framework conforms with the WHO Convention on International Health Regulations.
- D. The legal framework conforms with the OIE International Animal Health Code on trade in animals and animal products, including disease notification, import risk analysis and import/export procedures.
- E. The legal framework requires the registration of export-oriented commercial farms, food processing, and food packaging firms to allow inspection by food safety agency.
- F. Debarment from further exports or imports is mandated for persons convicted of repeated or serious food import or export violations.

Score

- G. The legal framework requires the registration of process and product characteristics (e.g. product composition, product history, storage time).
- H. The agency responsible for food safety and security has the legal authority to detain suspect food prior to export, import, or transshipment and to prevent further shipment if a food officer finds credible evidence of a threat.
- I. The country recognizes foreign sanitary certificates as valid.

11. The legal framework supports a system of trade-related financial instruments.

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- A. Laws have been enacted that provide a legal framework for trade finance that complies with the ICC trade finance guidelines.
- B. Laws support the following modes of payment:
 - C. a. wire transfers
 - D. b. foreign checks
 - E. c. commercial letters of credit
 - F. d. standby letters of credit
 - G. e. documentary collection
 - H. f. open account
 - I. g. cell phones
 - J. i. credit cards and debit cards
- K. Trade finance laws provide the principle of "open admission" to foreign investors.
- L. Trade finance laws are not unduly complicated and do not add cumbersome regulations (as determined by the exporters and importers).
- M. The current laws and regulations affecting trade finance, insurance and international payments are coordinated to ensure that they are consistent with accepted international practices.

12. The legal framework pertaining to the exchange of currencies is supportive of free trade.

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- A. An exchange control law of national application is in place.
- B. The law provides an efficient balance among stakeholders in controlling the process (e.g., exporters, importers, banks).
- C. The law supports the free flow of legitimate business and tourist travelers across borders.
- D. The law supports the free flow of goods across borders.
- E. There exists a clearly defined, written and generally available set of exchange control regulations.

13. The legal framework pertaining to trade facilitation is readily available, clearly drafted, and easy to use.

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- A. Copies of all laws and regulations that comprise the country's regime pertaining to trade in goods are widely available to all interested stakeholders.
- B. Copies of all laws and regulations that comprise the country's regime pertaining to trade in services are widely available to all interested stakeholders.
- C. All laws and regulations specifically pertaining to trade in agricultural products are readily accessible to stakeholders.
- D. The legal framework pertaining to international trade is user-friendly -- clearly drafted, well organized by subject, with proper indexing, and with article headings.
- E. The legal framework pertaining to international trade is published in all official languages of the country and there is a good English translation.
- F. The legal framework pertaining to international trade is current and is regularly updated by practical-minded experts.

Implementing Institutions

1. The border authorities hire, train, and supervise staff based on international best practices.

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Score

- A. There is an appropriate level of professional and administrative staffing to carry out their mandates.
- B. Border authorities seek to recruit the best personnel through the following recruiting techniques, background checks (including finances, personal references, prior employment, interviews, drug-testing and criminal history).
- C. Border authorities use competitive recruiting.
- D. Border authorities use written, standardized job descriptions and objectives for which there is a standardized application and for which there are written performance requirements for the position.
- E. There is a probation period for first-year employees that has liberalized termination procedure.
- F. Border authorities seek to maintain personnel with the highest integrity through employment standards transparent career development and employment policies.
- G. Border authorities have sufficient funding to pay wages perceived as adequate (based on country wage rates) to all staff, including front-line officers.
- H. Border authorities conduct periodic review of employees' backgrounds, including drug testing during employment and periodic financial background checks throughout employment.
- I. There is a formalized objective system for advancement and promotion that includes a comprehensive performance evaluation system in which employees are reviewed on at least a yearly basis.
- J. An incentive system is in place for rewarding high performance (i.e. monetary bonus for seizures.)
- K. Termination of employment can occur for a serious violations of code of conduct or poor performance.
- L. There is an automated system for handling employment that handles all aspects of the personnel system.
- M. Employees are afforded appropriate training courses, materials, guidebooks or procedural manuals are available to improve issues, such as staff competency, service, new criminal smuggling techniques.
- N. The staff training and development program includes current employees - training offerings correspond to needed skills.
- O. Technical assistance from international community is incorporated in the training programs.

2. The Customs Authority has sufficient funds, staff, and government support to perform its mandate.

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- A. The Customs Authority has sufficient authority and support to carry out its mandate, including clear policy statements and support from the government.
- B. There is sufficient funding through state budget, fees collected, or a combination of both to maintain the Customs Authority's equipment and services.
- C. Customs has an internal plan, reviewed annually, which includes the improvement of efficiency and security of trade flows that identifies and prioritizes core business processes for reform.
- D. Customs has a three-to-five-year strategic plan that is reviewed, updated, and published annually and that has detailed objectives and clearly defined performance measures.
- E. The management structure of the Customs Authority reflects the priorities of the organization.
- F. Customs has a system of accountability for its performance to the government institution responsible for its oversight.
- G. Customs has a merged management structure of immigration, customs, and animal/plant inspection at the border.
- H. Customs has an executive team led by a senior manager with ownership for success which is in charge of managing business process reform to streamline and simplify rules and regulation.
- I. Management routinely solicits input from stakeholders, including employees, other government agencies and private-sector parties.
- J. Customs has an intranet that provides job announcements, phone lists, laws and regulations, procedures, statistics, announcements, and messages from the head of the agency.
- K. There is an active, current web site, updated regularly, with contact information and relevant materials needed by customers.

Score

- L. There are written, freely available and well publicized accounts of the procedures necessary to move goods and vehicles efficiently through the port, airport, and customs systems, tariff classification, valuation and country of origin rulings.
- M. Customs ensures that existing and new regulations and legislation are simple in form, content and presentation.
- N. Customs develops and applies performance standards to check that its processing and release of goods are timely and meet reasonable business needs.
- O. Allocation of Customs staff is accordance with the trade flow to minimize overtime and inconsistencies.
- P. Customs has adopted a "customer-oriented" approach to fulfilling its mandate.

3. The Customs Authority is effective in setting and maintaining standards of integrity.

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- A. Customs seeks to maintain integrity standards through the creation of an independent section that:
 - B. a. is charged with investigating and enforcing the integrity code.
 - C. b. maintains a system for business sector/public to contact integrity section and report violations.
 - D. c. publishes information on integrity lapses and punishments.
 - E. d. analyzes duty collections to uncover potential problems when discrepancies arise.
 - F. e. is itself subject to review by independent entity.
- G. Customs seeks to maintain integrity standards through the following business processes:
 - H. a. Minimization of access to money, such as by providing importer with the ability to pay customs duties and taxes via direct deposits to banks.
 - I. b. A corporate surety bonding system, or other appropriate means, such as a duty- and tax-deferral system
 - J. c. Clear and specific guidelines for duties and taxes on imported and exported goods that allow for little discretion at the border.
 - K. d. Binding pre-entry classification and valuation rulings, on request, which will be honored by officers, throughout the customs territory.
 - L. e. A sound, scientific basis for classification decisions based on international standards.
 - M. f. In the absence of any evidence of fraud, a reasonable, fixed limit on the time during which Customs can demand additional duties and/or the re-delivery of the goods.
 - N. g. A requirement that inspectors conducting examinations are selected by an automated system.
 - O. h. Internal controls, as published in a manual, along with automated systems to prevent violations and identify any violations that may occur.
 - P. Customs provides periodic integrity training at all levels, including review of written and public code of conduct, including penalties for violations.
 - Q. Customs provides for the identification for all employees working with public to be shown on request.
 - R. Incentives and job protection exist for employees identifying corruption.

4. The country's clearance processes for goods facilitate cross-border trade.

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- A. The number of Customs officers is adequate:
 - B. a. at airports
 - C. b. at sea ports
 - D. c. at land border crossings
 - E. d. at inland inspection stations
- F. The normal hours/days of operations by Customs are adequate:
 - G. a. at airports
 - H. b. at sea ports
 - I. c. at land border crossings
 - J. d. at inland inspection stations

Score

- K. Border posts have adequate facilities to communicate rapidly and reliably with the national or regional headquarters.
- L. Customs gives importers and exporters the option to file entries themselves or to use an authorized agent.
- M. Customers have multiple options for filing in which convenient places are generally available.
- N. Customs institutes procedures that minimize interventions for accounts that have a high level of compliance.
- O. Documentary control procedures are coordinated so that essential control data is processed in advance of arrival of goods (pre-arrival).
- P. Examination and or release of cargo is permitted prior to the filing of complete entry documentation and payment (post-departure).
- Q. Decisions for Customs interventions are based on risk-assessment techniques.
- R. The declarant's goods are handled by the minimum number of reviewers/signers necessary.
- S. Delays at the border are minimal.
- T. Experience of drawback, export refund, temporary admission regimes is positive.
- U. Customs employs post-departure review.

5. The country's import-related processes are consistent with WTO provisions and serve to facilitate trade.

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- A. Import permits are not required.
- B. Customs mandates the declarant enter data electronically.
- C. Customs uses the electronic declaration that eliminates paper when possible.
- D. Customs applies the WCO Harmonized Tariff System Convention.
- E. Customs applies the WTO Valuation Agreement.
- F. Customs applies the WTO Rules of Origin Agreement.
- G. WCO Express Guidelines are applied for consignments for which immediate or expedited release or clearance is requested, regardless of weight, value, size, type of operator or carrier, or mode of transport.
- H. There are infrequent difficulties in complying with Customs clearance with respect to:
 - I. a. valuation
 - J. b. origin
 - K. c. classification
- L. Customs releases goods at carrier's point of arrival, without requiring their interim transfer to a government-operated or -designated warehouse.
- M. The proportion of import consignments subject to physical inspection by other agencies is negligible.
- N. For non-security related differences in dispute, goods and vehicles are not delayed while all such differences are resolved.
- O. A de minimis regime, updated periodically, is applied whereby certain goods, including documents, private gift packages and trade samples, not exceeding a certain value or weight, are exempted from import duties and taxes and from the formal declaration p
- P. The incidence (rough percentage of total declarations) of procedural difficulties and disputes is low.
- Q. The incidence (rough percentage of total declarations) of procedural difficulties handled at the lowest level possible is high.
- R. Average delay times from arrival to release do not significantly impede trade.

6. The country's export-related processes are consistent with WTO provisions and serve to facilitate trade.

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- A. Export licenses/permits are only required for strategic and otherwise sensitive goods.
- B. Customs mandates the export data is entered electronically.
- C. Customs uses the electronic declaration that eliminates paper when possible.

Score

- D. The incidence (rough percentage of total declarations) of procedural difficulties and disputes is low.
- E. Percentage of export examinations does not impede export process.
- F. Procedural difficulties are handled at lowest level where possible.
- G. When requested from the trade community, Customs is able to provide certification of exportation on a timely basis.

7. The country's transit-related processes are consistent with WTO provisions and serve to facilitate trade.

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- A. Customs operates a system that provides for minimal Customs intervention for goods in transit, such as Transports Internationaux Routiers (TIR).
- B. Customs cooperates closely with other neighboring Customs administrations to assist with effective control and facilitation of common transit traffic.
- C. Transit movements are automated and effectively track cargo from point of arrival to point of departure.

8. The Customs Authority has an automated Customs management system that is operational, up-to-date, efficient, and adequately supported by qualified professionals.

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- A. Customs operates comprehensive automated system according to international standards that incorporates the full range of customs commercial activities:
- B. a. data validation
- C. b. cargo inventory control that follows a shipment through all stages of the process and deposits data into a history file.
- D. c. goods declaration processing (import/export; electronic payment of duties, taxes, and other fees)
- E. d. release notification
- F. e. Customs enforcement (i.e. selectivity, risk management/compliance
- G. f. revenue accounting
- H. g. trade statistics
- I. h. tariff and related information for the trade
- J. i. transmits data nationally and internationally
- K. The Customs Authority has access to sufficient numbers of well trained IT who are charged with supporting the automated system.
- L. Users, including Customs and the trade community, are adequately trained and use these electronic tools.
- M. The data is shared with other government agencies (i.e. food safety, export control).

9. The country has a well established group of Customs Brokers who are licensed to practice in the country following examinations conducted by Customs.

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- A. Customs, either solely or in concert with the trade community, regulates the Broker industry.
- B. Customs, either solely or in concert with the trade community, oversees a written, rigorous examination to obtain license.
- C. The Broker industry has a code of conduct and ethics training.
- D. Customs Broker regulations provide operating requirements and penalties for violations.
- E. Disciplinary action, either solely or in concert with the trade community, is taken by Customs where required.

10. All border agencies are capable of gathering trade data and producing reports that allow stakeholders to make informed trade-related decisions.

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- A. All border agencies, including Customs, immigration, and agriculture, collect essential and high-quality trade information that assists in operations and policy making.
- B. Border agencies transmit data to the relevant statistical organization.
- C. Trade data is readily accessible by both domestic and foreign stakeholders.

D. Trade data is available in English or other major first or second language of the region.

11. The Customs Authority has a cadre of valuation, classification, and ROO specialists who are sufficiently trained and capable of implementing applicable laws and regulations in a manner consistent with WTO requirements and international best practices.

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- A. Experts (classification, rules of origin and valuation) are available in adequate numbers.
- B. Experts (classification, rules of origin and value) are well-trained.
- C. Rulings (binding and informal) are issued in a timely fashion that are consistent with international requirements regarding value and classification.
- D. There is cooperation between the classification, rules of origin, and valuation experts with the trade community, and the trade community considers the knowledgeable and helpful.
- E. There is a successful strategy to combat undervaluation.
- F. Classification and valuation system leads to significant duty collection.
- G. There is a successful strategy to combat misclassification.
- H. Misclassification is considered significant and yields significant revenue/penalties.
- I. There is a successful strategy to combat questionable certificates of origin.

12. The Customs Authority has a risk-management unit or staff dedicated to implementing risk-management processes based on WTO provisions and international best practices.

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- A. Staff, including senior management, are available for risk assessment in adequate numbers.
- B. The risk assessment team is well trained and well equipped.
- C. Customs has a plan, reviewed regularly, for improving risk-assessment according to strategic imperatives.
- D. Risk-assessment is conducted through an automated enforcement information system, using and other modern control techniques to minimize the incidence of physical examinations.
- E. Risk-assessment automation employs random sampling.
- F. The system identifies compliant and non-compliant major accounts and adjusts selectivity criteria accordingly.
- G. Customs implements enforcement operational plans that address high-risk assessments.
- H. The proportion of import consignments subject to physical inspection by Customs is relatively low.
- I. As a result of risk assessment, discrepancies are detected, and seizures and revenue collected are generally significant.
- J. Customs rapidly and efficiently shares information with and receives information from other intelligence agencies and other Customs agencies, other government agencies, regional and international counterparts.
- K. Intelligence activities result in usable information that lead to successful enforcement operations.

13. The Customs Authority carries out inspections in a manner that appropriately supports the flow of goods across borders.

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- A. Customs has an adequate number of inspectors.
- B. The inspectors are well-trained and well-equipped, including specialized equipment.
- C. Supporting documents, such as invoices, certificates of origin, and way-bills, are inspected.
- D. There is cooperation between the inspectors and other Customs and other government agencies.
- E. There is cooperation between the inspectors and the trade community.
- F. Equipment at the border includes:
 - G. a. x-ray machines
 - H. b. drug/bomb sniffing dogs or computerized detection equipment
 - I. c. non-intrusive container inspection equipment
- J. There are facilities available for adequate inspection at all border crossings.

- K. Customs has facilities to detain goods at border posts, regional, or national headquarters.
- L. Operational procedures are consistent across border points.

14. The Customs Authority carries out investigations in a manner that appropriately supports the flow of goods across borders.

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- A. A dedicated investigative team is available in adequate numbers.
- B. The investigators are trained (The investigation team is trained in the law and able to assist in prosecution of cases), armed and well-equipped, including specialized equipment.
- C. Customs successfully apply principles of interview and interrogation techniques to substantiate criminal activity.
- D. There is cooperation between the investigators and other Customs and other government agencies.
- E. There is cooperation between the investigators and inter-country regional and international counterparts.
- F. Investigative techniques include surveillance, undercover operations, and wire taps.
- G. As a result, discrepancies are detected, and seizures and revenue collected from these actions are generally significant.

15. The Customs Authority carries out audits in a manner that appropriately supports the flow of goods across borders.

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- A. A dedicated audit team is available in adequate numbers.
- B. Customs auditors are well-trained and successfully apply accounting principles and techniques to substantiate compliance issues and criminal activity.
- C. They are trained in the law and may lend assistance in complex financial audits in support of investigators.
- D. There is cooperation between the auditors and other Customs and other government agencies.
- E. Customs sponsors a program for importers that bestows a "low risk" designation after a comprehensive audit.
- F. Audit operations conduct a significant amount of audits that result in significant revenue collections.

16. The country has assigned personnel to oversee Cargo Security, and such personnel is well trained and sufficiently equipped.

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- A. Personnel dedicated to cargo security are available in adequate numbers.
- B. The personnel are trained and well-equipped.
- C. There is cooperation between those responsible for cargo security and other Customs and other government agencies.
- D. There is cooperation between those responsible for cargo security and inter-country regional and international counterparts.
- E. Cargo security programs are implemented, (i.e. know your customer, seals).
- F. As a result of cargo security programs are security of the supply chain is strengthened.
- G. Transportation companies report the receipt of unmanifested materials.
- H. Transportation companies to report suspicious transactions or requests for illicit transactions.
- I. Incidence of pilferage and loss is low for general merchandise while still in customs custody.
- J. Customs agency secures and seals importing containers or goods at the earliest possible point after their arrival to ensure that their integrity is maintained after Customs clearance.
- K. Customs or the regional headquarters has adequate and safe facilities for which to detain people and cargo.

17. The Customs Authority employs consistent, fair, and transparent processes concerning the import and export of Strategic Goods.

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- A. Customs has system for reviewing high-risk export, such as WMD, explosives and weapons.
- B. Customs performs regular checks for the import, transit, export, and re-export of the following sensitive goods:

- C. a. weapons and military equipment
- D. b. explosives
- E. c. restricted biological agents, precursors, and equipment (following the Australia Group list)
- F. d. hazardous chemicals, precursors, and equipment (following the Australia Group list)
- G. e. dual-use technical equipment
- H. f. nuclear-related technology and materials
- I. Customs is equipped at border entry points with nuclear detection devices (radiation pagers, isotope detector and radiation portal monitors)
- J. Customs has a response plan for alerts.
- K. Customs inspectors are trained in techniques to identify strategic goods.
- L. Customs administrative and enforcement practices are in conformity with the UN Convention on the Physical Protection of Nuclear Material (Nuclear Materials Convention).
- M. The nation is not known to manufacture, sell, transfer, and/or process raw materials, equipment, technology, and/or scientific-technical information and services that can be used to develop terrorist explosives or weapons of mass destruction.

18. At the borders, agriculture infrastructure is prioritized and specifically suited for the country's products and international trade in agricultural products.

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- A. Agricultural cargo facilities, including refrigerated/cold storage, loading and off-loading, and transport, are routinely available.
- B. Cargo transport of perishable goods – plant and animal products – are regulated in such a way as to minimize transport delays and inspections.
- C. Adequate facilities exist to conduct health, plant, animal health and environmental inspections.
- D. Warehouse services are routinely available at reasonable prices.
- E. The agricultural authority provides a variety of services dedicated to assisting traders of agricultural goods in meeting their obligations under international, regional and bi-lateral trade agreements.

19. The immigration service has sufficient and well trained staff, along with appropriate funding and equipment to carry out its mandate.

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- A. The institution responsible for issuing visas and passports has the following characteristics:
 - B. a. a clearly defined mandate to facilitate and secure flows of people.
 - C. b. sufficient professional and administrative staffing to carry out its mandate.
 - D. c. sufficient authority and support to carry out its mandate, including clear policy statements and support from the government.
 - E. d. sufficient funding through state budget, fees collected, or a combination of both to maintain its equipment and services.
 - F. e. sufficient funding to pay wages perceived as adequate (based on country wage rates) to all staff, including front-line officers.
 - G. f. an active staff training to improve understanding of techniques for smuggling people and illegal entries and other illicit travel activity.
 - H. g. clearly delineated parameters and authority with respect to other government bodies whose actions and decisions directly affect enforcement.
 - I. h. access to specialists with sufficient expertise to provide appropriate analysis.
 - J. i. adequate equipment to facilitate the efficient flow of legal visitors into the country.

20. Agencies involved with the facilitation of the flow of services are knowledgeable and capable of applying the visa process to various types of citizens and diverse circumstances.

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- A. The implementing institution responsible for issuing visas and passports maintains an active web site that includes contact information, application requirements, forms, and related legal materials.
- B. Officers responsible for issuing visas and passports are generally knowledgeable about common immigration laws and procedures.

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- C. There is no sizeable delay or backlog in the visa process.
- D. Visa officers have the authority to act independently, without approval from the central visa institution, and to efficiently deal with a wide range of situations.
- E. The visa institution posts immigration officers abroad to help solve immigration problems pre-entry and collaborate with foreign officials.
- F. The institution has a visa waiver program that allows certain types of foreigners to enter for reasons other than work or study, for a short, pre-determined length of stay.
- G. Visas and passports are provided:
 - H. a. transparently and without imposition of bribes or other inappropriate rent-seeking behavior.
 - I. b. according to published procedures.
 - J. c. efficiently.
- K. The business community does not perceive of delays or backlog in the entry process at points of entry.
- L. The implementing institution collects migration and people flow data using a regional or international standard.

21. The immigration service and other agencies involved with facilitating the flow of services have implemented measures to guard against the illegal entry of persons seeking to work or provide services in the country.

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- A. The visa-issuing organization maintains:
 - B. a. a computerized watch list of individuals not permitted to enter the country.
 - C. b. a tracking system for lost and stolen passports.
- D. Officers responsible for issuing visas receive regularly updated training in:
 - E. a. interviewing techniques.
 - F. b. common methods of regional and international immigration fraud and common fraudulent documents.
- G. Visa databases are kept on all visa holders who enter country.
- H. Visa applications are checked against the immigration agencies' watch lists.
 - I. The visa institution regularly shares information communicates with the following:
 - J. a. law enforcement (national and local)
 - K. b. Customs
 - L. c. border patrol/police

Supporting Institutions

1. Associations or committees of importers and exporters actively liaise with Customs and other trade-related authorities, provide training to the private sector, and comment on laws and regulations.

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- A. There is a well developed industry of importers.
- B. Importers provide reliable and accurate data to Customs (incidence of wrong description, false declaration, certificates of origin and undervaluation are low).
- C. There is a well-developed industry of exporters.
- D. Importers are members of a trade association and/or Chamber of Commerce and the experience is beneficial.
- E. Exporters provide reliable and accurate data to the Customs operation.
- F. Exporters are members of a trade association and/or Chamber of Commerce and the experience is beneficial.
- G. Exporters participate in useful export-promotion activities.
- H. Exporters, importers and their associations are affiliated with international organizations and are involved in the harmonization of customs law and practice with international standards.
- I. Exporters, importers and their associations actively monitor customs practice and developments, and issue opinions and appeals for change based on the results of monitoring.

Score

- J. Exporters, importers and their associations provide input to policy makers and local business associations on international customs standards.
- K. Specialized professional publications report regularly and accurately on matters related to customs, giving the business community and general public a greater understanding of customs modernization issues.
- L. Exporters to the country are provided with national treatment regarding protection of person and property.
- M. Exporters to the country are provided with national treatment regarding granting of business licenses, import and export permits and authorizations to employ persons.

2. The community of Customs Brokers/Agents and Freight Forwarders is sufficient to service the country and renders services in an efficient, transparent, and lawful manner.

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- A. The quantity of the following providers is sufficient:
 - B. a. freight forwarders (logistics).
 - C. b. brokers/agents (formalities).
- D. The quality of the following providers is adequate:
 - E. a. freight forwarders (logistics).
 - F. b. brokers/agents (formalities).
- G. The cost of the following providers is reasonable:
 - H. a. freight forwarders (logistics).
 - I. b. brokers/agents (formalities).
- J. Brokers/Agents and Forwarder operators:
 - K. a. provide and maintain accurate data to Customs, including the classification, shipper and consignee name and address, first and second notification parties, description, weight, quantity, and unit of measure of cargo being cleared.
 - L. b. are well trained and knowledgeable in Customs procedures and tariff requirements.
 - M. c. implement know-your-customer rules or rules otherwise dealing with reliability of clients.
 - N. d. are able to trace shipments to point of origin.
 - O. e. report to Customs suspicious and irregular activities.
 - P. f. train importers and exporters regarding documentary procedures and requirements.
 - Q. g. maintain automated interface with Customs.
- R. Experienced local consultants and service providers are available to assist with trade missions, marketing and other trade promotion activities.
- S. Brokers/Agents and Forwarder operators have an active and functioning organization that interfaces with Customs and other institutions.

3. There is an adequate supply of insurance providers.

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- A. The quantity of insurance, bonds and guarantee providers is sufficient.
- B. The quality of insurance, bonds and guarantee providers is adequate.
- C. The cost of insurance, bonds and guarantee providers is reasonable.
- D. Public domestic and/or international financial institutions provide assistance in obtaining insurance.
- E. Private insurance companies offer insurance products suitable for trade in agricultural products.

4. The country has sufficient In-Bond Warehouses and Warehouse Services.

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- A. The quantity of inbond warehouses and warehouse services is sufficient.
- B. The quality of inbond warehouses and warehouse services is adequate.
- C. The cost of inbond warehouses and warehouse services is reasonable.
- D. The supply, quality and cost of warehouses specifically used for agricultural products is adequate.

- E. Warehouse operators for Customs bonded maintain adequate security characteristics (i.e. adequate physical security, lighting, access control, procedures for detecting and reporting shortages and overages).

5. The country conducts Free Zone operations adequately and at reasonable fees.

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- A. There is an adequately functioning free zone(s) that provide adequate services.
- B. Fees are reasonable.
- C. Free zones conduct operations electronically, including internal operations, vessel carriers exchange data electronically with other entities, such as customs, users, banks and port services.
- D. Free zones maintain an adequate security system (i.e. sufficient authority to carry out their mandate in securing facilities).
- E. Free Zones provides appropriate and regularly updated staff training in security issues.
- F. There is a low incidence of pilferage and theft while in Free Zone limits.
- G. Free Zone allows allow for cargo to be available for inspection on a timely basis.
- H. Cargo is released for export in a timely fashion following Customs release.
- I. Free Zone provides a mechanism for cooperation among customers and the experience is beneficial.

6. The country has an Export Control Agency with sufficient mandate, staff and funding to perform trade related activities, and operates in a manner that facilitates trade.

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- A. The Export Control agency has:
 - a. a clearly defined mandate to enforcing laws.
 - b. sufficient professional and administrative staffing to carry out its mandate.
 - c. sufficient authority and support to carry out its mandate, including clear policy statements and support from the government.
 - d. sufficient funding through state budget, fees collected, or a combination of both to maintain its equipment and services.
 - e. sufficient funding to pay wages perceived as adequate (based on country wage rates) to all staff, including front-line officers.
 - f. an active staff training to improve understanding of techniques for strategic goods.
 - g. clearly delineated parameters and authority with respect to other government bodies whose actions and decisions directly affect enforcement.
 - h. access to specialists with sufficient expertise to provide appropriate specialized strategic goods analysis.
- J. The supporting institution maintains a cooperative relationship with Customs and border agencies.
- K. The supporting institution maintains a cooperative relationship with other governments.
- L. The supporting institution maintains a cooperative relationship with the trade community, including education and public awareness activities.
- M. The Export Control agency maintains:
 - a. a control list of regulated chemicals and pathogens, based on the Australia Group list.
 - b. a control list of regulated dual-technology goods.
 - c. a control list of weapons.
 - d. a control list of nuclear-related weapons and technology.
- R. The control agency maintains a regularly updated registry of companies that export strategic goods.
- S. The control agency has or has access to an investigative arm that exists to investigate possible illicit transportation and/or manufacturing companies.
- T. The control agency maintains a list of firms that have been in violation of import or export control laws.
- U. Control agency issues and denies licenses where appropriate.
- V. Control agency has an automated system of control for transactions under the license.

Social Dynamics

1. Quality of product is competitive with imported product on the domestic market.	0
A. Appearance is attractive and acceptable. B. Shelf life is adequate to the requirements of the market. C. Packaging is attractive and provides the product with adequate protection. D. Product is generally uniform in size and appearance. E. Flavor of the product meets the market's expectations.	
2. Components of delivered cost at export destinations are competitive with alternative sources of supply in export markets.	0
A. FOB cost of the product at origin is competitive. B. Transportation costs are competitive. C. Costs for export documentation, inspection, and compliance with export requirements are competitive. D. Destination costs (import fees, customs clearance, tariffs, duties, etc) are competitive.	
3. There are adequate levels of trust and information supporting supply chains to effectively create trade in goods and services.	0
A. Input markets are transparent and predictable. B. International market research on product costs, competition, size of market and supply/demand trends is valued. C. Companies are sufficiently knowledgeable about global supply chains to integrate their firms into niche positions. D. Cultural attitudes limit bribery and the indiscriminate stoppage of the flow of goods and/or services. E. Foreigners are not mistreated or taken advantage of in cross-border transactions.	
4. There is a tangible volume and value of agricultural trade activity already taking place.	0
A. Actors express satisfaction with the public and private sector support services available to them. B. Corruption is not perceived as a major impediment to business expansion. C. Trade is conducted by the private sector. D. Trade is profitable for the actors involved.	
5. The agricultural commodities produced enjoy a favorable consumer perception.	0
A. They are appreciated and sell well in neighboring countries. B. They are appreciated and sell well in overseas markets. C. They are appreciated and sell well in the domestic market.	
6. The horticultural commodities produced enjoy a favorable consumer perception.	0
A. They are appreciated and sell well in neighboring countries. B. They are appreciated and sell well in overseas markets.	
7. The animal and dairy commodities produced enjoy a favorable consumer perception.	0
A. They are appreciated and sell well in the domestic market. B. They are appreciated and sell well in neighboring countries. C. They are appreciated and sell well in overseas markets.	

Enforcing Contracts

Legal Framework

1. The laws pertaining to contracts are readily available, clearly drafted, and easy to use.

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- A. Print copies of law pertaining to contracts -- including sales of goods, contracts on services, secured transactions, real property contracts, and other types of contracts -- are readily available to members of the legal profession, the business community and the general public in both rural and urban areas.
- B. The law pertaining to contracts is published in all official languages of the country.
- C. The law is user-friendly -- clearly drafted, well-organized by subject, with a table(s) of contents at the front, and with article headings.
- D. Law pertaining to all forms of contracts is available on a regularly updated Internet site.
- E. Courts post or otherwise very clearly identify the fees and costs involved with commencing a case involving contracts.

2. The legal framework provides for freedom of contract.

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- A. Contracting parties are free to agree on lawful, customized terms in their contracts, including liquidated damages and other remedies, choice of forum, and choice of law.
- B. The law pertaining to real property allows owners of land and other real property to sell, lease, donate, exchange, and bequeath all, or portions of, their land interests.
- C. Law pertaining to secured transactions provides that any property right that can be identified, used, defended and transferred by the owner can be used as collateral, including movable property such as agriculture equipment, livestock and crops.
- D. Notarial law, including its implementation, does not conflict with the principle of freedom of contract.
- E. With few restrictions, labor and employment law provides for at-will employment.
- F. State restrictions on freedom of contract are confined to provisions protecting the interests of public health, safety, morals or welfare.
- G. The framework law guarantees enforcement of any contract that is not contrary to law, even if not explicitly permitted or otherwise regulated by law.

3. The law on contracts is conducive to the establishment and enforcement of arms-length transactions.

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- A. A framework Law on Contracts (found in a stand-alone law, a Law on Obligations, commercial code, etc.) contains all elements necessary for two or more parties to create a legally binding exchange of promises pertaining to a commercial undertaking.
- B. The framework law clearly defines or directs the reader to the legal procedure for enforcement of contracts.
- C. The framework law provides for adequate legal remedies for breach of contract.
- D. The framework laws provide clear measures for calculating monetary damages.
- E. The law specifically pertaining to the sales of goods is consistent with international standards, and specifically includes provisions for warranties and related rights.
- F. Law pertaining to contracts involving real property is clear, accessible, and consistent with other contract law.
- G. Law pertaining to secured transactions is clear, accessible, and consistent with other contract law.
- H. A law on civil procedure (or commercial procedure) is clear, accessible, and consistent with other law pertaining to contracts.
- I. The courts have a clear mandate, which is understood and accepted by the other bodies of the State, to interpret, apply, and enforce contract law.
- J. The law allows for private enforcement of contracts following a court order.
- K. There are one or more laws that provide for the effective protection of the contractual rights of foreign and domestic investors.

- L. The law provides for private remedies against fraud.
- M. The law provides for public prosecution of and penalties for fraud relating to commercial contracts.
- N. First-instance and appellate jurisdiction over contract disputes is clear.

4. There is a clear and accessible body of supporting regulations for all law pertaining to private commercial contracts.

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- A. The law of civil procedure is supported by rules of procedure that clearly set forth the process for resolving contractual disputes.
- B. Collateral registries operate under clear and accessible rules of procedure, including unambiguous rules pertaining to administrative fees and costs.
- C. Land registries operate under clear and accessible rules of procedure, including unambiguous rules pertaining to administrative fees and costs.
- D. Notaries operate under clear and accessible rules of procedure, including unambiguous rules pertaining to administrative fees and costs.
- E. Copies of regulations pertaining to contracts -- including sales of goods, contracts on services, secured transactions, real property contracts, insolvency and other contract-related law -- are readily available to the public, either in print or over the Internet.
- F. Regulations are published in all official languages of the country.

5. Law and regulations concerning government contracts are clear, accessible, and in-line with international best practices.

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- A. Law pertaining to government contracts aims to prevent misappropriation of funds and ensure uniform procurement policies and practices across agencies.
- B. Up-to-date information pertaining to government contract opportunities, procedures for bidding, and results of contract decisions is freely available
- C. Administrative bodies that handle commercial disputes between the government and private sector: a. operate according to clear, transparent, published rules and procedures;
- D. b. make their rules and procedures available to the public.
- E. c. issue written decisions based on the published, established law.
- F. Decisions of the administrative bodies responsible for government contracts can be appealed to the court system.
- G. If the country is a member of the WTO, it has accepted the Plurilateral Agreement on Government Procurement, or, if it is a candidate for WTO membership, there is evidence of its intention to accept that agreement.
- H. Rules governing government procurement promote competition amongst bidders.
- I. Micro and small enterprises are specifically encouraged to participate in government procurements.
- J. The rules governing government procurement are publicly available and in multiple local languages, if applicable.

6. The law is forward-looking in that it anticipates and provides for non-traditional types of contracts.

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- A. There is a law on franchising agreements that is in-line with international best practices.
- B. There is a modern leasing law.
- C. A consumer protection law protects the rights of consumers who are damaged by a merchant's fraudulent, deceptive or otherwise harmful behavior.
- D. The law adequately addresses electronic transactions.
- E. The law provides for e-signatures.

7. The legal framework provides courts with adequate jurisdiction to hear disputes pertaining to real property.

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- A. The courts are empowered to hear disputes regarding real property matters in general, including contract claims, mortgage foreclosures, and boundary and title disputes,

- B. The courts are empowered to hear cases arising from the property registration process, including suits against or appeals from decisions of the land registry.
- C. The courts are empowered to hear cases arising from the land use regulation process, including suits against or appeals from decisions of the land use authorities.

8. Framework laws are in place that establish a functioning judicial system that meets reasonably interpreted international standards pertaining to resolution of commercial disputes.

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- A. There exists law on the courts and the judiciary that creates a system of courts, from first instance, through appellate review, to a final high-level court of final review.
- B. The principle of judicial independence is enshrined in the Constitution or elsewhere in the legal framework.
- C. Judicial independence from political or extra-legal influence in the adjudication of claims and cases is specifically ensured through the following means:
 - D. a. Processes of judicial appointments and tenure that are free from political influence.
 - E. b. There is an independent process for establishing the operating budget for the court system.
 - F. c. There is a random or otherwise depoliticized case-assignment process.
- G. There is a law on civil procedure or commercial procedure that establishes the rules under which commercial disputes are resolved.
- H. The framework laws define geographic and subject matter jurisdiction for the courts.
 - I. The law allows for the creation of small claims courts or courts of limited jurisdiction for the purpose of speedy and efficient resolution of low-value disputes.
- J. The laws require that the responsible bodies render publicly available, written decisions based on available laws, regulations and decisions (stare decisis), within reasonable time frames.
- K. The laws clearly define the roles and responsibilities of the Ministry of Justice, the Judiciary and any other government entity charged with court oversight or operations.
- L. The framework laws establish a system of sanctions for litigant delays or failure to otherwise comply with court procedure, rules or orders. These provide sufficient disincentives to inappropriate behavior by parties and their attorneys.
- M. The framework laws provide judges the power to levy sanctions against parties as needed to sufficiently control the proceedings and to avoid abuses of the system by the parties.

9. The legal framework pertaining to commercial dispute resolution is readily available, clearly drafted, and easy to use.

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- A. Print copies of law pertaining to commercial dispute resolution are readily available to members of the legal profession, the business community and the general public, including in rural areas.
- B. New laws are published according to a uniform, timely and consistently implemented procedure (such as through regular publication of an Official Gazette).
- C. Law is published in all official languages of the country.
- D. The law is user-friendly -- clearly drafted, well-organized by subject, with a table(s) of contents at the front, and with article headings.
- E. Law pertaining to all aspects of commercial dispute resolution is available on a regularly updated Internet site.
- F. Courts post or otherwise very clearly identify the fees and costs involved with commencing commercial cases.

10. The framework laws include specific provisions on commercial disputes.

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- A. The framework laws clearly define the kinds of commercial transactions and disputes covered under the law so that interested parties have an understanding of the kinds of transactions from which a suit may arise.
- B. The framework laws define the institution or institutions responsible for the resolution of commercial disputes (including courts and administrative tribunals) and the roles and responsibilities of each such institution.
- C. The court system includes a specific commercial court division or branch with limited jurisdiction to cover only commercial disputes.

- D. The framework laws provide a clear mandate for each type of court's jurisdiction, including:
- E. a. threshold value of claims that can be brought in the court, and
- F. b. the types of parties who may bring suit (natural and/or legal persons).

11. Administrative and regulatory bodies that deal with commercial disputes involving government entities are sufficiently defined in the law.

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- A. The laws that identify administrative tribunals bodies for resolving disputes relating to government entities – tax disputes, licensing disputes, competition related complaints:
- B. a. clearly define administrative tribunals or commissions as the institutions for resolving enumerated types of commercial disputes;
- C. b. provide a clear mandate for each tribunal's jurisdiction including threshold value of claims that can be brought in the court, the types of parties who may bring suit (natural and/or legal persons), and nature of complaints that may be brought before
- D. c. remove any ambiguities or perceived overlapping jurisdictions for different types of disputes such as tax, bankruptcy, etc; and
- E. d. define relevant procedures or mandate development of relevant procedures for resolving administrative commercial (economic) disputes.
- F. The rights of appeal from such administrative bodies to the regular courts are clearly explained.
- G. The law allows for such disputes to resolved through alternative dispute resolution.

12. The process for the enforcement of judgments is clearly defined in the law.

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- A. The procedures for court enforcement of a judgment are clearly outlined in the relevant law or in court procedure.
- B. The institution responsible for enforcing court judgments, often the "Bailiff's office," is vested with clear authority for enforcing court judgments.
- C. The law clearly defines specific procedures for attachment of cash, accounts, intangibles, movable property, and real property.
- D. The law adequately define the roles of bailiffs (or similar judicial officers) in the enforcement process.
- E. The law establishes a market-oriented system of auctions and evaluations.
- F. The law provides for the use of self-enforcing judgment orders instead of new and separate actions for enforcement.
- G. The framework laws provide for judicial enforcement of domestic and foreign arbitral awards, and establish the procedures for such enforcement.
- H. The framework laws establish a system of sanctions for delays and failure to comply with procedure, rules or court orders, which, if applied, provide sufficient disincentives to discourage inappropriate behavior by parties and their attorneys.

13. The law supports alternative dispute resolution of commercial disputes, including the enforcement of decisions reached through ADR (including arbitration and mediation/conciliation).

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- A. A framework law on arbitration is in place permitting parties to use ADR to resolve commercial disputes.
- B. The framework law on arbitration, along with setting default processes and standards for ADR to be used in the absence of other provisions, allows the parties to contractually establish their own ADR procedures.
- C. Legal provisions on arbitration apply to both international and domestic disputes.
- D. By law, binding arbitration awards are to be enforced by the courts, with only a few, limited exceptions, with appeals only allowed for fraud, undue influence, etc.
- E. The law provides for domestic court enforcement of international arbitration awards.
- F. The country is a signatory to the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards.
- G. Mediation and/or conciliation is specifically contemplated by the law, through inclusion in the framework law, a stand-alone law, or, where applicable, through inclusion in the common law.

- H. Parties are free to choose their arbitrators or mediators, including those who are subject matter or sector experts, in addition to lawyers.
- I. Settlements reached through mediation or conciliation are enforceable by the courts under the similar legal conditions as arbitration decisions.
- J. Courts encourage parties to attempt settlement through such means as arbitration or mediation/conciliation prior to a lawsuit being adjudicated.
- K. There exists both a system of independent arbitration centers as well as court-annexed arbitration.

14. Regional, district or other local courts exist for addressing disputes affecting the agricultural and rural economy.

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- A. There is a clear legal framework that establishes local courts.
- B. The local court system lies within the formal judicial framework.
- C. The revenue base for the local court is clearly stated in the law and functions so as to fully cover administrative costs.
- D. Local courts have jurisdiction over a wide range of commercial and property disputes.
- E. Local courts operate according to clear, transparent, published rules and procedures;
- F. Courts are prevalent and accessible in rural areas.
- G. Local courts make their rules and procedures available to the public.
- H. Local courts issue written decisions based on the published, established law.
- I. Decisions of the local courts responsible can be appealed to the court system.

Implementing Institutions

1. Notaries, whether mandatory or optional, support an effective system of contract formation and enforcement. Alternatively, the absence of notaries does not discourage the formation of contracts.

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- A. If notarization is required to validate or to make a contract enforceable, contracting parties consider notaries to be reasonably available and accessible.
- B. Notary fees are considered reasonable by end-users.
- C. Notaries are reasonably familiar with the standards prescribed by the Civil Code and related laws for written agreements.
- D. Lawyers do not report excessive interference by notaries with the substance of contracts.
- E. The notarial process does not add excessive time to the contract formation process.
- F. Where the law does not require or otherwise encourage notarial involvement in the formation of contracts, potential business partners are not dissuaded from entering into contracts.

2. With respect to the resolution of contractual disputes, the courts are efficient.

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- A. Commercial cases are heard in a court forum or division that is separate from those hearing other types of disputes.
- B. The courts are sufficiently funded.
- C. The courts are sufficiently staffed.
- D. Court staff have regular access to training in areas relevant to execution of their responsibilities.
- E. The courts have detailed internal regulations and operating procedures.
- F. The courts maintain a case tracking and filing system that ensures that cases are heard in a reasonably efficient manner.
- G. The courts operate with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.
- H. Court administrators hold significant administrative authority, and the work of judges is confined chiefly to the substantive resolution of cases.
- I. Time standards for judges resolving contractual disputes are in place and generally observed.
- J. Contractual disputes typically undergo settlement discussions or mediation prior to trial.

- K. The appellate process does not involve adding to the factual record compiled in the court of first instance.
- L. Only one appeal is a matter of right, while second and third appeals occur at the discretion of the courts.

3. The business community engages in effective means of self-help prior to commencing formal dispute resolution processes.

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- A. Small and medium-sized enterprises are accustomed to engaging lawyers to assist in preparing and enforcing contracts.
- B. Systems of customary law are effective for resolving small contractual disputes.
- C. The business and legal communities have developed and use a body of standardized contracts.
- D. The business community regularly accesses informational sources that help reduce their risks, such as credit bureaus and other informational agencies.
- E. The business community engages in predictable, sequential methods of collection of debts.
- F. The business community is accustomed to taking advantage of contractual rights -- such as repossession of property, where legal -- without undue involvement of the courts.
- G. Certification and inspection services have adopted uniform standards and procedures that can be easily incorporated into commercial contracts.

4. The courts are regarded as an appropriate institution for resolution of commercial disputes.

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- A. Lawyers and commercial actors report that, if they go to court, they can expect to receive a just decision, grounded on published laws, regulations and standards, in a timely manner.
- B. Judges have the power to exercise discretion in deciding to hear the merits of a case, i.e. they have the power to quickly dismiss frivolous lawsuits.
- C. Judges have the power to sanction parties who are uncooperative or taking actions to unnecessarily continue a lawsuit.
- D. Judges and other court officials have the power to maintain orderly in-court proceedings.
- E. Commercial cases are heard in a court forum or division that is separate from those hearing other types of disputes so as to allow the court to develop an expertise in commercial matters.
- F. Lawyers and commercial actors respect and observe the decisions of judges, even if the decision is adverse to their positions.
- G. The number of appeals allowed the parties as a matter of right is significantly limited, with remaining appeals only allowed at the discretion of the courts.
- H. Courts regularly review a review of their procedures to ensure they are meeting the needs of parties.

5. Courts are well organized, well led, and endowed with sufficient resources to fulfill their mandate.

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- A. There is a sufficient number of courts to provide for safe and convenient access to the population, including in urban, suburban, and rural areas.
- B. The courts are clean, orderly, and project a gravity of purpose.
- C. Courtrooms and their facilities are adequate and in good repair and are generally sufficient to meet the needs of the judiciary.
- D. The clocks in courthouses function and are correctly set.
- E. The courts operate with a sufficient number of computers and other equipment to enable them to handle their caseloads in a reasonably efficient manner.
- F. Court fees are clearly defined and publicized, and no additional, informal fees are solicited or accepted by court staff.
- G. Court administrators hold significant administrative authority and the work of judges is confined chiefly to the substantive resolution of cases.
- H. Court staff hold clearly defined roles and are subject to periodic performance reviews.
- I. The judiciary has an administrative office or other unit responsible for overall oversight and management of the courts.

6. Courts are efficient and effective in their operations.

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- A. The courts have detailed internal regulations and operating procedures.
- B. A case management or tracking system is employed to maintain a complete record of all proceedings regarding each particular case which is used to ensure that cases are completed in a reasonable time.
- C. Upon request, courts can provide accurate statistics about case assignment, status, and disposition times.
- D. Time standards for judges resolving contractual disputes are in place and generally observed.
- E. 90 percent of commercial cases are resolved within 12 months.
- F. 98 percent of commercial cases are resolved within 18 months.
- G. 100 percent of commercial cases are resolved within 24 months.
- H. Courtroom proceedings are open to, and may accommodate, the public and the media.
- I. A transcript or some other reliable record of courtroom proceedings is maintained, is easily available to the public at minimal charge, and is available for cases others than those involving the requesting party.
- J. Court decisions are generally a matter of public record, and significant appellate positions are published and open to public and academic scrutiny.
- K. Judges are required to report to a chief or executive judge on a regular basis regarding their caseload, disposition thereof, etc.

7. Judges are independent and impartial.

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- A. Judges are appointed based on objective criteria, that, even if influenced somewhat by politics, foster a system of independent, impartial judges.
- B. A judicial code of ethics exists to address major issues such as conflict of interest, ex parte communications, and inappropriate political activity.
- C. Judges do not engage in ex parte communications.
- D. Judicial decisions only may be reversed through the judicial appellate process.
- E. The judiciary has control over its own budget.
- F. Judicial salaries are adequate to attract and retain qualified judges, enabling them to support their families and live in a reasonably secure environment, without having to have recourse to other sources of income.
- G. Senior-level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.
- H. Judges are required to disclose their assets on an annual basis.
- I. Judges have immunity for actions taken in their official capacity.
- J. A meaningful process exists under which judges, lawyers and members of the public may register complaints concerning judicial conduct.
- K. Judges are free from concerns regarding their personal security, and if a situation arises where their safety is in doubt they are afforded additional security.
- L. Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

8. The courts are free of corruption.

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- A. Court staff is hired according to an open, competitive process.
- B. Cases are randomly assigned.
- C. Courtroom proceedings are open to, and may accommodate, the public and the media.
- D. Court fees are clearly defined and publicized, and no additional, informal fees are solicited or accepted by court staff.
- E. There exists a code of conduct for court staff, including standards of integrity and confidentiality.
- F. The salaries of the administrative staff are sufficient to attract and retain qualified staff.
- G. Court decisions are generally a matter of public record, and significant appellate positions are published and open to public and academic scrutiny.
- H. A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

9. The institution charged with enforcement of judicial decisions (such as a bailiff service) is fair and effective in the implementation of its duties.

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- A. The enforcing agency is sufficiently funded.
- B. The enforcing agency is sufficiently staffed.
- C. The enforcing agency tracks its rate of enforcement and regularly seeks ways to make the procedure faster, less costly, or otherwise more efficient.
- D. Parties with experience in executing contracts report a high degree of satisfaction with the enforcing agency.
- E. The enforcing agency does not have a reputation for charging informal fees.
- F. Bailiffs enforce judgments in a consistent and fair manner, in accordance with law, and in a peaceable manner
- G. Bailiffs receive adequate training in order to perform their duties.
- H. Bailiffs are familiar with their duties and responsibilities as set forth by law or regulation.
- I. Bailiffs are subject to licensing or another type of credentialing process.
- J. Bailiffs have a professional membership organization that provides educational and training opportunities to its members.
- K. The cost of enforcing a judgment is minimal so as to encourage parties to enforce judgments.

10. Institutions and centers used for ADR are utilized and are sufficiently funded, staffed, supported, and recognized.

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- A. A sufficient number of arbitration centers, arbitrators and mediators are available to hear cases, including subject matter/sectoral experts in addition to lawyers.
- B. Arbitration centers are easily accessible in both rural and urban settings.
- C. Parties are encouraged to use ADR prior to entering the court system.
- D. Arbitration or mediation decisions are recognized and respected by the parties as binding.
- E. Arbitration/mediation center(s) have sufficient staff and resources to train businesses regularly on the advantages of ADR and the procedures for employing it.
- F. Arbitration/mediation center(s) have sufficient staff and resources to train arbitrators and mediators.
- G. Arbitration/mediation centers allow parties to choose their arbitrators/mediators.
- H. The rules of procedure of the arbitration/mediation centers are in accordance with relevant international standards and best practice, and encourage the expeditious disposition of cases.
- I. The cost of commencing arbitration/mediation proceedings is not a disincentive to using arbitration as a means for resolving contractual disputes.
- J. Judges have the power to and regularly refer cases to ADR, be it through court-annexed procedures or other private means.
- K. Judges who review appeals from arbitral/mediation awards have formal training in the principles of arbitration.
- L. Judges reject arbitral/mediation awards on legitimate procedural grounds only, and do not substitute their judgment for that of the arbitrator except where there is demonstrable negligence or fraud on the part of the arbitrator.
- M. Parties to commercial disputes regularly seek out ADR as an alternative to using the formal court system.

11. Administrative and regulatory bodies that deal with commercial disputes involving government entities are seen as the appropriate bodies for resolving such claims.

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- A. Administrative tribunals have the following characteristics:
 - B. a. clearly defined mandate to resolve administrative commercial disputes;
 - C. b. sufficient staffing to carry out their mandate;
 - D. c. sufficient authority and support (from the state) to carry out their mandate, including clear policy statements; and
 - E. d. sufficient funding through the state budget, fees collected or a combination of both to maintain its equipment and services at an adequate level.

- F. There is a general consistency in the understanding of the role of administrative tribunals in commercial dispute resolution among the government, the tribunals and end-users.
- G. The salaries of tribunal staff are sufficient to attract and retain qualified personnel.
- H. Procedures to file a claim challenging appropriate of administrative decisions (e.g., tax, licensing, zoning, antitrust).
- I. The administrative tribunals maintain and provide reasonable public access to, in terms of procedures and costs, litigation records and decisions, to all parties to a dispute, as well as third parties.
- J. Ministries or tribunals have active, current web sites, including contact information and relevant legal materials pertaining to procedures for filing claims or grievances.
- K. Administrative tribunals maintain and publish their decisions and make them available to the public for free or at a relatively low cost.
- L. Administrative tribunals operate effectively, as demonstrated by:
 - M. a. the ability to resolve commercial disputes brought before them efficiently, in a timely manner, and are able to manage their caseload;
 - N. b. following, reviewing and revising as needed detailed internal regulations and operating procedures;
 - O. c. maintaining fees for commencing a proceeding at a relatively reasonable level so as to not act as a disincentive for parties to use the tribunals to resolve disputes; and
 - P. d. effective enforcement of their decisions.
- Q. It is not necessary to retain a lawyer to bring or defend a claim before an administrative tribunal.

12. Where customary or traditional institutions play a part in resolving commercial disputes, their activities and decisions are considered to be transparent, consistent, efficient, and fair.

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- A. Where appropriate, informal or customary processes are used by businesses and individuals to solve commercial disputes.
- B. Customary institutions conduct proceedings in which evidence is presented by all interested parties and the decisions issued are supported by the weight of the evidence.
- C. Where necessary and relevant, customary tribunals access and rely on the country's formal legal framework when considering and resolving disputes.
- D. Customary institutions generally hold the respect of the individuals and communities that are impacted by their authority.
- E. Both men and women are represented on customary tribunals.
- F. The decisions of customary tribunals evidence respect for the commercial and property rights of women.
- G. The decisions of customary tribunals evidence respect for the commercial and property rights of minority groups.
- H. All issues heard before customary tribunals may also be considered by State administrative bodies or the courts.
- I. When issuing decisions, customary tribunals cite reasons for their decisions.
- J. Informal/Customary law decisions comport with the black letter law of the relevant jurisdiction.
- K. Decisions of an informal/customary law system are easily enforceable and respected within the formal legal system.
- L. Decisions of a informal/customary law system may be appealed to the legal system established by the black letter law in the relevant jurisdiction.

13. Small claims courts, or courts of limited jurisdiction, are seen as appropriate bodies to quickly and efficiently settle matters of relatively small value.

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- A. The costs to use small claims courts are reasonable and not a disincentive to use them.
- B. Small claims courts are easily accessible in both rural and urban areas.
- C. The procedures to use small claims courts, including what falls within their jurisdiction, are easily understandable, readily available, and consistent across courts.
- D. Parties may appear before a small claims courts with legal representation only with permission of the court.

- E. Small claims courts issue written decisions and maintain records of the cases before them.
- F. Decisions of small claims courts are respected by the parties and procedures for enforcement are clearly outlined by the court.

14. Courts are fair and efficient in their treatment of disputes involving foreign investors.

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- A. Foreign investors report that, if they go to court, they can expect to receive a just decision, grounded on published laws, regulations and standards, in a timely manner.
- B. First-instance and appellate jurisdiction over commercial disputes involving foreigners is clear.
- C. Courts recognize and enforce foreign judgments in a non-bureaucratic, effective manner.
- D. Courts recognize and enforce the awards of international arbitration tribunals in a non-bureaucratic, effective manner.
- E. Judges make decisions independently, without regard to inappropriate political pressures or non-judicial considerations.

Supporting Institutions

1. Various public and private actors provide timely, accurate and effective information for commercial actors to make informed assessments of risk and obligations that may arise in a contractual relationship.

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- A. A system of credit bureaus is in place and regularly accessed by the business community, including in rural areas.
- B. The accounting profession is regularly called upon to provide pre-contract valuation information and other financial data that serves to develop an accurate assessment of risk.
- C. The media reports regularly, freely and accurately on matters related to contract law (such as business mergers and deals, as well as changes in the law) in order to give the business community and the public a meaningful understanding of commercial matters.
- D. The business or legal community supports one or more specialized publications on the commercial law and other business issues.
- E. A registry of secured transactions is in place and accessible at a reasonable cost so that parties can check for the reliability of movable collateral.
- F. A real property registry is accessible at a reasonable cost so that parties can check for liens and other restrictions on real property.
- G. Legal services are accessible and affordable to small and medium-sized enterprises.
- H. Sufficient business support services that are known to adhere to international business standards are available for multinational corporations seeking to do business in the country.

2. Trade and industry associations effectively contribute to a business environment that supports the formation and enforcement of contracts.

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- A. Trade and industry associations (including chambers of commerce, bankers associations and business groups) have developed standardized or "form" contracts.
- B. Trade and industry associations have affiliations with international trade organizations and are involved in the harmonization of contract and commercial law and practice with international standards.
- C. Trade and industry associations provide lists of attorneys or law firms that can provide assistance to their members.
- D. Trade and industry associations effectively represent the private sector in public debate over updates and changes in the commercial law.
- E. Trade and industry associations are informed in technology developments as they relate to contract law and have advocated new commercial practices and reforms to existing law to accommodate changes (e.g., digital signatures).
- F. Trade and industry associations provide meaningful opportunities in networking, training, and sharing of best practices.
- G. Organizations of foreign investors contribute positively to the business environment, through networking services, training, publications, and other means.

3. Legislative systems for creating, updating, and reviewing laws relating to contracts are clear, open, and free of corruption.

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- A. Within the legislature, a system is in place for meaningful contributions by the business community to development and updating of the commercial law.
- B. Persons charged with drafting the commercial law have adequate resources and training.
- C. Draft commercial laws are regularly circulated to communities with a stake in their contents.
- D. Public hearings are part of the legislative process.
- E. Votes in the legislature pertaining to the commercial law are taken publically and regularly reported by the press.
- F. Legislators are required to publicly disclose their assets on an annual basis.

4. The legal profession effectively contributes to an environment that supports fair and efficient commercial dispute resolution.

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- A. There is an established bar association that includes lawyers who represent the business community in commercial disputes.
- B. Lawyers' associations have specialized groups related to commercial law and/or commercial dispute resolution.
- C. Lawyers' associations hold continuing legal education and training programs to educate members about commercial legal developments and commercial dispute resolution.
- D. Lawyers' associations hold continuing legal education and training programs to educate members about alternative dispute resolution including arbitration.
- E. There is an adequate supply of attorneys who can represent business endeavors of all sizes, from sole proprietors to large corporations.
- F. There exists a professional association for judges who represent judges interests before the government and other relevant bodies.
- G. The bar association provides accessible and affordable legal help to small and medium-sized enterprises, in both rural and urban areas.
- H. Lawyers in commercial cases actively engage in settlement negotiations, and do not typically require judicial intervention to do so.
- I. Lawyers in commercial cases come to court events prepared, and do not typically request continuences.

5. Law faculties provide an effective foundation of knowledge to law students about the commercial law.

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- A. The process of admission to law school is open, transparent and based on merit.
- B. Law schools are adequately funded, with faculties, facilities and other resources that are sufficient to build a well trained and sufficiently competent cadre of lawyers.
- C. Law students receive their grades according to a clear and transparent system of examinations and other objective measure of understanding and achievement.
- D. The core law school curriculum includes a range of classes in commercial law, including ADR, and those who teach these classes are up-to-date in their own knowledge and skills.
- E. Law faculties receive copies of all domestic commercial law and jurisprudence in a timely manner.
- F. Law students are required to receive training in legal research and writing.
- G. To the extent that a mandatory period of apprenticeship is in place, recent law graduates are afforded sufficient opportunity for meaningful exposure to the practice of law.

6. Trade and industry associations are active in the promotion of an effective system of commercial dispute resolution, including ADR.

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- A. Trade and industry associations provide information to members about commercial litigation, arbitration and legal representation in commercial disputes.
- B. Trade and industry associations educate their members about the various methods of resolving commercial disputes including litigation, mediation, arbitration, and self-enforcement of contracts.

- C. Trade and industry associations provide lists of attorneys or law firms that can provide assistance to their members.
- D. Trade and industry associations publish pamphlets, books or other publications that provide members with a basic overview of commercial/business law.
- E. Trade and industry associations (e.g., bankers associations, securities brokers associations, chambers of commerce) offer alternative dispute resolution services for their members (e.g., have an internal mediation or arbitration scheme).
- F. Businesses, including small and medium-sized enterprises are accustomed to engaging lawyers to assist in preparing and enforcing contracts.
- G. Trade and industry associations have available standard contracts and other forms to their members, including the possibility of tailoring contracts by incorporating information from specific industry sectors.
- H. The business community finds it relatively easy to retain an attorney for commercial dispute resolution.
- I. The business community is accustomed to using alternative dispute resolution mechanisms, including customary and local dispute resolution mechanisms.
- J. Specialized publishers circulate periodicals that report regularly and accurately on matters relating to civil litigation and commercial dispute resolution in order to give the business community and the public a better understanding of commercial matters
- K. Trade and industry associations, including groups representing foreign businesses effectively represent the private sector in public debate over updates and changes in the commercial law.
- L. Trade and industry associations are informed in technology developments as they relate to commercial dispute resolution and have advocated new commercial practices.

7. The executive and legislative branches demonstrate respect for judicial independence and, in general, are supportive of the court system.

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- A. The executive and legislative branches each have a specialized department dedicated to ongoing reform and improvement of court administration and dispute resolution.
- B. Persons charged with drafting the commercial law have adequate resources and training.
- C. Public hearings are part of the legislative process.
- D. Votes in the legislature pertaining to courts and commercial dispute resolution are taken publicly and regularly reported by the press.
- E. Governmental entities involved in commercial dispute resolution have a system for analyzing needs and proposing reforms together.
- F. The Ministry of Justice has a formal mechanism for obtaining input and feedback from the judiciary regarding need for legal and practical reforms in court administration.
- G. For legislative reforms, there is a formal mechanism for obtaining input from all interested stakeholders, and the unit responsible for drafting new laws or amendments actively seeks input from those affected.

8. The media report regularly, freely, and accurately on matters related to the courts.

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- A. The media has sufficient access to all appropriate sources of information concerning commercial law issues.
- B. The media can report freely on issues pertaining to the courts without fear of government reprisal.
- C. The private sector considers media coverage of the courts to be sufficient, accurate and fair.
- D. Judges consider media coverage of courts (and in particular, their commercial law functions) to be sufficient, accurate and fair.
- E. Reporters have access to training and education in issues pertaining to coverage of business and commercial law topics.

9. The public notarial system executes its duties without placing undue burdens, costs or delays on the enforcement of judgments.

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- A. The public notaries have an active association or working group that collaborates with the judiciary and other legal professionals to provide input on reform needs.

- B. If notarization is required to validate or to make a contract enforceable, contracting parties consider notaries to be reasonably available and accessible, including in rural and urban settings.
- C. Notary fees are considered reasonable by end-users.
- D. Notaries are reasonably familiar with the standards prescribed by the Civil Code and related laws for written agreements.
- E. The notarial process does not add excessive time to the contract enforcement process.

10. The donor community effectively supports a strong system of commercial dispute resolution.

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- A. The donor community regularly interacts with local members of the legal profession and the business community to ensure that their programs are effective and meet actual needs.
- B. Coordination of donor activities relating to improving the business environment is considered by both local actors and donors to be adequate and effective.
- C. Business environment "success stories" reported by donors, in particular those pertaining to contract formation and enforcement, are substantiated by sustained, positive results on the ground.
- D. Donor activities pertaining to the business environment are regularly subject to monitoring and evaluation and prove responsive to suggestions for change and improvement.

Social Dynamics

1. The domestic business and legal communities respect the legitimacy and enforceability of written contracts.

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- A. Foreign investors report strong compliance by local companies with written contracts.
- B. Even where there is not a strong tradition of written contracts, local businesspeople demonstrate understanding of the value of written contracts for future transactions.
- C. Commercial actors are generally willing to seek and implement legal advice.
- D. State institutions, including arms of the Government and State-Owned Enterprises, generally comply with the terms of written contracts.
- E. Judges are accustomed to enforcing the terms of written contracts.

2. Members of the informal economy have the opportunity, means, and incentive to formalize, such that they can take advantage of the benefits of contract formation and enforcement.

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- A. Within the past five years, the percentage of businesses that belong to the formal economy has increased, including rural and agricultural businesses.
- B. The process of business formalization is clear and the cost of formalization is not prohibitive, particularly to small and medium enterprises.
- C. In general, micro-enterprises and small businesses, both rural and urban, perceive that the benefits of formalization are worth the costs.

3. Society in general values and practices economic freedom.

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- A. Under the Heritage Foundation's most recent Economic Freedom Index, the country scores better than 70% ("mostly free").
- B. Under the Fraser Institute's most recent Economic Freedom World Report, the country scores better than 6.5 (out of 10).
- C. Under Freedom House's most recent "Freedom of the World" survey, the country is rated as "free."
- D. Rights that directly and indirectly support free-market activity are set forth in the Constitution.

4. There is public confidence in the courts.

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- A. The public perceives that the judiciary is an independent branch of government that is not beholden to the dictates of the executive branch or the legislature.
- B. The public in general perceives that the judiciary is impartial.
- C. Women and minority groups perceive that the judiciary is impartial.

- D. The public perceives that the judiciary resolves disputes in a timely manner.
- E. There is public respect for the judicial office.
- F. The public views the courts as an appropriate venue for resolving civil disputes, where informal methods of dispute resolution have failed.

5. The rule of law is respected by all sectors of society and is not undermined by official corruption.

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- A. Under Transparency International's most recent Corruption Perception Index, the country scores better than 4.
- B. If the country's score on the most recent CPI is less than 7, there is a comprehensive, multi-agency program to combat corruption in State institutions.
- C. There is no recent history of major donors or lending institutions cancelling programs, loans or activities on the grounds of official misuse of funds.
- D. Prosecution of corruption is not generally regarded as a means of weeding out political opponents.
- E. The media covers allegations of official corruption in a responsible and thorough manner.
- F. Judges, prosecutors, and media representatives do not significantly risk their personal safety by participating in inquiries or prosecution of official corruption.
- G. There is evidence that society regards the law as a force for resolving, rather than creating, problems.
- H. There is a common adage throughout various sectors of society that "no one is above the law."

6. Women and minority groups have equal access to courts, administrative tribunals, and forums for alternative dispute resolution.

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- A. There are no laws that, in content or effect, restrict or disallow the ability of women to represent their interests in commercial dispute resolution tribunals, including courts.
- B. There are no laws that, in content or effect, restrict or disallow the ability of religious or ethnic minorities to represent their interests in commercial dispute resolution tribunals, including courts.
- C. Under law or common cultural practice, women do not need the permission of a male family member to launch a commercial legal action.
- D. Opportunities for legal education and training are the same for women as they are for men.
- E. Opportunities for legal education and training are equal among all ethnic and religious groups.
- F. Courts, administrative tribunals and ADR are easily accessed, and widely used and respected, particularly in rural areas.
- G. Traditional dispute methods provide users with sufficient security as not to discourage entrance into commercial agreements.
- H. Traditional dispute methods are culturally and legally accepted as legitimate.

Closing a Business

Legal Framework

1. The legal framework pertaining to business insolvency is readily available, clearly drafted, and easy to use. 0
 - A. Print copies of law pertaining to bankruptcy are readily available to members of the legal profession, the business community, and others with interests in bankruptcy proceedings.
 - B. New laws on bankruptcy are published according to a uniform, timely and consistently implemented procedure (such as through regular publication of an official gazette).
 - C. Laws related to bankruptcy are published in all official languages of the country and written in plainly understandable language.
 - D. Laws and procedures pertaining to bankruptcy are available through a variety of publicly accessible means, including libraries, Internet sites, etc, and these are regularly updated.
 - E. Courts post or otherwise very clearly identify the fees, procedures, and costs involved with commencing a case involving bankruptcy.
2. A nationally applicable bankruptcy law exists that includes the key elements of an effective and efficient insolvency law. 0
 - A. Bankruptcy proceedings can be initiated by both the creditor and debtor, and, with limited discretion, the government (in the form of a prosecutor, etc.).
 - B. The law defines who is eligible to file for bankruptcy (both liquidation and reorganization).
 - C. The role of the courts or implementing institutions is clearly defined in the bankruptcy law.
 - D. The bankruptcy law treats all parties equally, including foreign creditors/debtors, domestic parties, and non-for-profits/for-profits.
 - E. The bankruptcy law does not allow for government parties to be given higher priority.
 - F. The bankruptcy law and related laws concerning secured transactions, banking, real property, and collateral do not contradict each other.
 - G. All legal entities are within the scope of the bankruptcy law, including individuals, businesses, government-owned enterprises, financial institutions, etc.
 - H. Bankruptcy proceedings allow a debtor to stay in business and use revenue generated to resolve his or her debts.
 - I. Once declared, a debtor is not allowed to transfer any property that is part of the bankruptcy proceedings (unless done as part of the proceedings).
 - J. Bankruptcy fraud, e.g. the concealment of assets, conflicts of interest, providing false claims or information, fee fixing and/or redistribution arrangements is a specific crime part of the bankruptcy or criminal statute.
 - K. Directors or management of the company may be held liable for continuing to do business before a company is declared legally bankrupt if they have knowledge that the company has no reasonable prospect of meeting its obligations.
 - L. The law protects debtors against creditors filing specious or abusive petitions that could result in harm to the debtor.
3. The law on bankruptcy creates, and sufficiently empowers, a neutral bankruptcy administrator. 0
 - A. The law creates neutral trustees in bankruptcy (also known as bankruptcy proceeding supervisors, administrators, etc.), or a similar institution which administers bankruptcy proceedings, including managing meetings of creditors, sale of non-exempt assets,
 - B. The bankruptcy law provides for clear and transparent procedures for the appointment of an administrator during bankruptcy proceedings.
 - C. Creditors are given the right to approve and/or seek a substitute administrator, as well as the right to inspect property involved in the bankruptcy proceedings.
 - D. The administrator has wide discretion to sell and dispose of the debtor's assets without court approval.

Score

- E. Transactions concluded in the normal course of business prior to the filing of the petition and in exchange for the fair market value of the asset are protected from the bankruptcy administrator.
- F. The courts have the authority to formally appoint and monitor the work of the administrator.
- G. The administrator can be held liable and disqualified in the event that he breaches his fiduciary duties.
- H. The courts and administrator have the authority to hold both public auctions and private sale of assets.
- I. The law and relevant regulations creates the responsibility and authority for the regulation of administrators within a specific government body, including the power to appoint, monitor and sanction administrators.
- J. The administrator can be held liable and disqualified in the event that he breaches his fiduciary duties.

4. The law regarding liquidation of insolvent companies aligns with international best practices.

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- A. The law allows for both commercial enterprises to terminate the business as well as individuals to file for liquidation of assets.
- B. The law provides for protection against discrimination for individuals who have filed for bankruptcy, and in particular liquidation (e.g. they cannot be released from employment).
- C. Bankruptcy, in particular liquidation, is not a criminal offense. (i.e. there are no 'debtors prisons').
- D. Limitations exist as to who can file for liquidation protections based on recent income levels (e.g. the last six months), if another such claim was recently dismissed, or if a similar claim was completed in the last 5-8 years.
- E. Fraud or concealing of assets is a crime in a liquidation proceeding and is grounds to dismiss the case. Examples of such activities include rapid unloading of assets or buying of goods made part of the liquidation claim with no intent to pay for them.
- F. A bankruptcy administrator is empowered to sell debtor assets as needed to pay off creditors.
- G. The procedures and costs associated with a bankruptcy liquidation created by law and regulation are not a disincentive to filing such a claim.
- H. Filing for liquidation of assets creates an automatic stay which stops most creditors for collecting on the debtor's assets. A secured creditor has the power to request that a stay is lifted in order to repossess the collateral.
- I. Filing for liquidation puts the assets in question in the control of a sanctioned bankruptcy court, administrator, or trustee.
- J. Certain property can be deemed exempt from a liquidation proceeding (i.e. the debtor maintains ownership) as follows:
 - K. 1) The law gives basic descriptions of what this property is but specific properties are determined on a case-by-case basis.
 - L. 2) Such exempt property can include agriculture land and assets collateralized by at-risk borrowers, e.g., traditional associations and subsistence producers.
- M. If a business or individual owes money on a secured debt, a debtor has the choice of allowing the creditor to repossess the property; continuing payments on the property under the contract (if the lender agrees); or paying the creditor a lump sum amount e
- N. By law, upon completion of a liquidation proceeding, all debts are discharged, except those which by law cannot be (for example, taxes, child support, etc.) and the debtor is allowed to keep those debts which may be deemed exempt.

5. The law regarding reorganization of insolvent companies aligns with international best practices.

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- A. The laws regarding bankruptcy allow for reorganization whereby a majority of the creditors can reach a settlement with the debtor that is binding on all creditors.
- B. The laws regarding bankruptcy encourage reorganization of companies whose liquidation value is less than the value of the going concern.
- C. The laws regarding bankruptcy allow for debt forgiveness in reorganization situations.

- D. No more than a two-thirds majority vote of the shareholders is required for approval of a reorganization plan.
- E. The voting requirements for creditor approval of a reorganization proposal are defined in the bankruptcy laws.
- F. The laws regarding bankruptcy provide for a stay of legal proceedings by all creditors during a reorganization.
- G. The laws regarding bankruptcy require an expert opinion regarding the feasibility of a reorganization plan.
- H. The bankruptcy law provides for the concept of a "debtor in possession", where the debtor continues to operate the enterprise on a day-to-day basis during reorganization and the execution of a related plan, but under close supervision of a bankruptcy administrator.

6. By law, classes of creditors can form and use a creditors' committee to have their interests protected in a bankruptcy proceeding.

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- A. By law, creditors have the right to form a creditors' committee. This applies to various classes of creditors such as secured and unsecured, shareholders, etc.
- B. A creditors' committee is formed from those creditors willing to serve and is selected by the bankruptcy administrator. It generally consists of those creditors with the greatest monetary interest in the case.
- C. The creditors' committee has the ability, and is given the opportunity, to:
 - D. 1) Investigate the debtor's assets and financial status;
 - E. 2) Make recommendations as to a plan for dissolution of assets or reorganization;
 - F. 3) Comment on any activities of the debtor outside the normal course of business;
 - G. 4) Request a trustee if the debtor's management does not appear to be adequate; and/or
 - H. 5) Hire professionals such as accountants or lawyers to help protect their interests.
- I. Members of the creditors' committee are required to act in the interests of all creditors, and if a direct conflict of interest occurs must recuse themselves from any related decisions.

Implementing Institutions

1. Bankruptcy administrators are viewed as effective and fair.

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- A. A sufficient number of administrators are available to process bankruptcy claims.
- B. The duties of the administrator include the authority to:
 - C. a. investigate the debtor's financial affairs;
 - D. b. verify the claims of all creditors;
 - E. c. dispose of the assets through liquidation;
 - F. d. distribute proceeds of a liquidation;
 - G. e. review suspect transactions and challenge them;
 - H. f. reject or assume pre-insolvency contracts, so long as the contract has not been fully or substantially executed by the parties involved;
 - I. g. assign contractual rights, even in the case of a contractual "non-assignment" clause; and
 - J. h. take on all rights of the directors and the role of the management of the debtor.
- K. Administrators execute their duties in a manner that supports the efficient processing of bankruptcy claims and does not deter parties from filing for bankruptcy.
- L. Administrators are required to be licensed, are sufficiently trained in bankruptcy issues and received ongoing training to remain abreast of developments in the field.
- M. administrators have access to sufficient information systems capabilities to manage their caseload overall and to track the activities of specific bankruptcy cases.
- N. The licensing body for administrators is sufficiently empowered to regulate their members.
- O. The licensing body for administrators keeps statistics on the performance of bankruptcy administrators and the processing of claims.
- P. The licensing body for administrators has sufficient funding, through the state budget, fees, collected or a combination of both, to maintain its services.

Score

2. The courts are -- and are regarded as -- an effective institution for overseeing bankruptcy proceedings.

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- A. Judges and court staff have regular access to training in areas relevant to execution of their responsibilities, in particular with respect to bankruptcy cases.
- B. The courts have detailed internal regulations and operating procedures pertaining to bankruptcy proceedings.
- C. Time standards for judges handling bankruptcy cases are in place and generally observed.
- D. Lawyers and commercial actors report that, when overseeing bankruptcy cases, courts can be expected to issue just decisions, grounded on published laws, regulations and standards, in a timely manner.
- E. Lawyers and commercial actors respect and observe the decisions of judges in bankruptcy proceedings, even if the decision is adverse to their positions.
- F. Judges who hear bankruptcy cases receive periodic continuing legal education on issues relating to company law and corporate governance.

3. The institutions charged with execution of bankruptcy judgments (if any in addition to the administrators, such as a bailiff service) are fair and effective in the implementation of their duties.

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- A. The enforcing agency is sufficiently funded.
- B. The enforcing agency is sufficiently staffed.
- C. The enforcing agency tracks its rate of enforcement and regularly seeks ways to make bankruptcy enforcement procedures faster, less costly, or otherwise more efficient.
- D. Parties with experience in executing bankruptcy decisions report a high degree of satisfaction with the enforcing agency.
- E. The enforcing agency does not have a reputation for charging informal fees.
- F. Creditors do not generally resort to extra-legal enforcement mechanisms to enforce their interest in a debtor's property.
- G. If private repossession of collateral is permitted, private enforcement agents (repossession companies) are actively involved in repossessing property.
- H. Private repossession companies follow the relevant legal procedures and are perceived as fair in their enforcement of creditors' rights as balanced against the rights of the debtor.

4. Creditors committees understand their functions and execute those functions appropriately and effectively.

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- A. Creditors are accustomed to forming committees to monitor the bankruptcy proceedings of an insolvent debtor.
- B. Creditors committee have proven themselves capable of executing the following duties:
- C. 1) Investigate the debtor's assets and financial status;
- D. 2) Make recommendations as to a plan for dissolution of assets or reorganization;
- E. 3) Comment on any activities of the debtor outside the normal course of business;
- F. 4) Request a trustee if the debtor's management does not appear to be adequate; and/or
- G. 5) Hire professionals such as accountants or lawyers to help protect their interests.
- H. Members of the creditors' committee act in the interests of all creditors, and if a direct conflict of interest occurs, they recuse themselves from any related decisions.

Supporting Institutions

1. Government agencies that support bankruptcy-related activities, such as registries, are effective.

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- A. Company registries maintain readily accessible-to-date public records on bankruptcy, judgments and other issues relating to bankruptcy and creditworthiness of natural and legal persons.

- B. The Collateral Registry maintains records that are easily accessible concerning pledges on a debtor's estate.
- C. The Property Registry maintains records that are easily accessible concerning pledges on a debtor's estate.

2. Accountants and auditors are available in sufficient number and level of expertise to support the sound execution of the bankruptcy law.

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- A. There is an adequate number of accountants who have expertise and practical experience in audit and financial aspects of small, medium-sized and large companies.
- B. Most companies (or most or all sizeable companies) produce annual independently audited financial statements.
- C. Accountants and appraisal firms apply generally accepted accounting principles (GAAP) or other internationally recognized standards and norms to asset valuations of insolvent economic entities.
- D. Accountants and auditors are in fact regularly accessed by companies and others for advice and representation pertaining to the financial aspects of company law and valuation of its assets.
- E. Appraisal or accounting firms are perceived by the business community as providing fair valuation of debtor assets.
- F. Accountants apply internationally recognized accounting standards in audits of company financial statements, and view their role as being independent of the company.
- G. There is an independent association of accountants.
- H. There is an independent association of auditors.

3. Trade, industry and professional organizations effectively contribute to a business environment that supports the proper disposition of bankruptcy cases.

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- A. Trade, agriculture, rural enterprise and other (including chambers of commerce, bankers associations, business groups,) have developed standardized manner to assist the effective disposition of bankruptcy claims.
- B. Professional associations, including associations for accountants, lawyers and bankers and other financial institutions, support bankruptcy law development by proposing changes and refinements to the bankruptcy law and related commercial laws.
- C. Independent consultant services are available to provide services to the management of debtor companies with respect to reorganization and exit strategies (pre insolvency as well as during reorganization).
- D. Trade, agriculture, rural enterprise and industry associations provide lists of attorneys or law firms that can provide assistance to their members in bankruptcy matters.
- E. Trade and industry associations effectively represent the private sector in public debate over updates and changes in with respect to bankruptcy law issues.
- F. Trade, agriculture, rural enterprise and industry associations provide meaningful opportunities in networking, training, and sharing of best practices.
- G. administrators (liquidators, trustees) have formed a professional or trade association.
- H. Creditors have a professional or trade association that provides up-to-date information on issues in bankruptcy, trains stakeholders, and advocates for creditors with respect to changes in the law and practice of bankruptcy.
- I. Organizations of foreign investors contribute positively to the business environment, through networking services, training, publications, and other means.

4. The legal profession effectively contributes to a business environment that supports bankruptcy.

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- A. The business community believes that there is an adequate number of lawyers who have expertise in bankruptcy law.
- B. There is an established bar association that includes lawyers who represent the business community in bankruptcy matters.
- C. The bar association has specific committees and activities related to bankruptcy.

Score

- D. The bar association provides meaningful and valued services to lawyers, including continuing legal education in a variety of commercial law topics, regular updates in the profession and the commercial law, and other opportunities for sharing information.
- E. Lawyers have access to an effective system of continuing education about bankruptcy.
- F. The core law school curriculum includes classes in bankruptcy by faculty who themselves are educated or trained in the subject.

5. Legislative systems for creating, updating, and reviewing laws relating to bankruptcy are clear, open, and free of corruption.

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- A. Within the legislature, a system is in place for meaningful contributions by the business community, including the agriculture and rural enterprise sectors to development and updating of the commercial law, including bankruptcy.
- B. Persons charged with drafting the commercial law have adequate resources and training.
- C. Draft commercial laws are regularly circulated to communities with a stake in their contents.
- D. Public hearings and period of public comment are part of the legislative process.
- E. Votes in the legislature pertaining to the commercial law are taken publicly and regularly reported by the press.

Social Dynamics

1. The domestic business and legal communities respect the legitimacy and enforceability of bankruptcy decisions, agreements, and plans.

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- A. Foreign investors report strong compliance by local companies with the enforcement of bankruptcy agreements.
- B. Even where there is not a strong tradition of bankruptcy practice, local businesspeople demonstrate understanding of the value of bankruptcy and how it is a necessary complement to a system of secured transactions.
- C. Commercial actors are generally willing to seek and implement legal advice with respect to bankruptcy claims.
- D. State institutions, including arms of the government and state-owned enterprises, comply with the results of bankruptcy arrangements.
- E. Judges are accustomed to enforcing the terms of bankruptcy cases.
- F. The business and professional communities perceive that the law and institutions associated with bankruptcy claims are stable, transparent and accountable.
- G. The business and professional communities perceive that the law and regulations associated with bankruptcy claims are precise, complete, and meet end user's needs.

2. Micro, small, and medium enterprises have the opportunity and means to take advantage of the benefits of bankruptcy.

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- A. Within the past five years, bankruptcy filings and claims have increased.
- B. MSMEs report that they have adequate understanding of bankruptcy and access to the relevant institutions to pursue such activities.
- C. There is opportunity to take advantage of bankruptcy proceedings in the urban, sub-urban, and rural sectors.
- D. There is an effort to educate MSMEs about the benefits of bankruptcy, as well as remove any related public stigma.

3. There is, in general, political will and an appropriate sense of urgency for improvement of the bankruptcy regime.

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- A. Within the government, important officials are knowledgeable and active in this area.
- B. There is an effective law reform process including a governmental committee with a mandate to cover issues related to bankruptcy law, including drafting of new laws, regulations or amendments thereto.

Score

- C. The government is open and welcoming to private-sector participation and has formal mechanisms for soliciting input from the business and professional community on bankruptcy issues.
- D. Business and professional communities (i.e. end users of the credit bureaus and collateral registry system, including agriculture and rural enterprises) are aware of issues regarding the status of issues surrounding bankruptcy and have access to relevant

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