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

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

I. INTRODUCTION

The purpose of this Article is to delineate the central issues facing countries which seek to encourage direct foreign investment\(^1\) in their local economies,\(^2\) and to suggest which approaches to these issues appear most likely to facilitate the attraction of foreign capital, technology and expertise, while preserving local control over the potentially detrimental effects of such investment.

Legal data from the following countries comprise the subject matter of this Article: Antigua and Barbuda, Belize, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, all of which are members of the Caribbean Community\(^3\) (hereinafter CARICOM)

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

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

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

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

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

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4 Treaty Establishing the Caribbean Community, supra, at arts. 2, 3.
5 Id. at art. 2.
6 Id. at arts. 2, 3.
appear to operate as disincentives to foreign investment. Since the economic condition of a domestic economy is a controlling factor in determining the eventual success or failure of an overseas enterprise, it is important for potential investors to differentiate between those "disincentives" which reflect governmental indifference toward the needs of foreign entrepreneurs and those which may be more accurately characterized as acts of economic necessity which, in the long run, inure to the benefit of all economic interests concerned. For the most part, the principal impediments to foreign investment imposed by the governments in question fall into the latter category. We have determined these impediments to include the following: restrictions on investor entry, exchange laws which cast doubt on the prospective ability of foreign investors to repatriate capital and profits, and taxes on personal income and corporate profits.

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

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


9 The foreign investment policy of the Dominican Republic is not uniform with respect to every aspect of its domestic economy. For example, the incentives available for investment in tourism-
of the unnecessarily restrictive approach, that is, the approach involving strict statutory definition of the host environment. The relevant laws of the remaining countries under consideration will be compared to this restrictive model, in order to demonstrate the existence of more efficient legislative alternatives. Part II compares the laws employed to regulate the entry of foreign investors into the local economy. Part III briefly describes alternative approaches to the regulation of business operations involving foreign participation. Part IV compares alternative approaches to the problem of repatriation of capital and profits. Part V explores the range of available investment incentive options, while Part VI provides the context for a more thorough understanding of these incentives by providing an overview of the relative tax burdens imposed on personal income and corporate profits.

II. RESTRICTIVE AND PERMISSIVE APPROACHES TO THE REGULATION OF ENTRY

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

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

10 See infra notes 17-35.
11 See infra notes 91-96.
12 See infra notes 92-94.
enjoyed by the Jamaican government, however, in these countries the legal authority to regulate entry derives from laws which prohibit alien ownership of property, while vesting the government with the power to grant specific exceptions to the general prohibition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 See id. at 252 (translation of Article 23 section 1(d) of the Foreign Investment Law, No. 861 of the Dominican Republic).
from engaging in agriculture and livestock enterprise, fishing, financial services, insurance, and real estate speculation. No direct foreign investment of any form is allowed with respect to utilities, radioactive commodities, and the acquisition of any property rights, including shares, held by resident citizens.

B. Regulating Entry Through the Licensing of Alien Ownership

1. Licensing of Alien Ownership Among the LDCs

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

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27 See id. at 252-253 (translation of Article 23 section 2(a) of the Foreign Investment Law, No. 861 of the Dominican Republic).
28 See id. at 252-253 (translation of Article 23 section 1(b) of the Foreign Investment Law, No. 861 of the Dominican Republic).
29 See id. at 252-253 (translation of Article 23 section 1(c) of the Foreign Investment Law, No. 861 of the Dominican Republic).
30 See id. at 252-253 (translation of Article 23 section 1(d) of the Foreign Investment Law, No. 861 of the Dominican Republic).
31 See id. at 253 (translation of Article 24 of the Foreign Investment Law, No. 861 of the Dominican Republic).
32 Id. at 244 (translation of Article 1 section 1(a) of the Foreign Investment Law, No. 861 of the Dominican Republic) ("Direct Foreign Investment: Are contributions proceeding from abroad, owned by natural or legal foreigners or by non-resident Dominicans; to the capital of an enterprise in freely convertible currencies, in machinery or equipment, in tools, instruments, or accessories and parts with the purpose of obtaining registration of the investment with the Central Bank. . .").
33 Id. at 252 (translation of Article 23 section (a) of the Foreign Investment Law, No. 861 of the Dominican Republic).
34 Id. at 252 (translation of Article 23 section (b) of the Foreign Investment Law, No. 861 of the Dominican Republic).
35 Id. at 252 (translation of Article 23 section (c)(i)-(iv) of the Foreign Investment Law, No. 861 of the Dominican Republic) (". . .Excepted are those cases in which the new investment is made in an enterprise to avoid imminent bankruptcy if they meet the following conditions:
 i) The enterprise does not function in those areas indicated in heading a) of this Article.
 ii) The Directories verifies the imminent bankruptcy.
 iii) The enterprise proves that it has offered a preferential purchase option to national investors, and
 iv) The enterprise is important to the national economy.").
36 See infra notes 37-44.
37 See Non-Belongers Land Holding Regulation Act, 1968, sections 3(a)-(d) (prohibition against alien ownership of companies), 6(a)-(g) (definition of "company under alien control") Antigua Act No. 17 of 1968 (hereinafter Antigua and Barbuda Aliens Land Holding Regulation Act) and Non-Belongs Land Holding Regulation (Amendment) Act, 1977, sec. 2(b), Antigua Act No. 8 of 1977 (repealing and replacing the definition of "non-belonger" in sec. 2(1) of Antigua and Barbuda Aliens Land Holding Regulation Act, supra); Aliens Landholding Ordinance, 1973, sections 2(a)-(c) (definition of "alien"), 3(a)-(c) (definition of "company under alien control"), 4(a)-(d) (prohibition against alien ownership of land), 8(2) (prohibition against alien ownership of companies which hold
bition provides the respective governments with the direction to grant ownership rights to aliens on a case by case basis. The prohibitions on unlicensed ownership by companies under alien control contained in the Alien Land Holding Regulation Acts of Antigua and Barbuda, Dominica, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines effectively subject prospective foreign ownership of local companies to the licensing procedure since ownership of a local company generally entails ownership of local property. The Aliens Land Holding Regulation Act of Belize specifically prohibits the unlicensed alien ownership of companies which hold land.

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

The Aliens Land Holding Regulation Acts of Antigua and Barbuda,

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

39 But cf. supra note 31.

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

41 See supra note 38.

42 Id.

43 See Antigua and Barbuda Aliens Land Holding Regulation Act, supra note 37, at sec. at 4(2); Belize Aliens Land Holding Regulation Act, supra note 37, at sec. 6(4); Grenada Aliens Land Holding Regulation Act, supra note 37, at sec. 4(2); Dominica Aliens Land Holding Regulation Act, supra note 37, at sec. 4(2); St. Kitts and Nevis Aliens Land Holding Regulation Act, supra note 37, at sec. 4(2); St. Lucia Aliens Land Holding Regulation Act, supra note 37, at sec. 4(3); St. Vincent and the Grenadines Aliens Land Holding Regulation Act, supra note 37, at sec. 4(2).
Dominica, Grenada, St. Kitts and Nevis, and St. Vincent and the Grenadines are substantially identical, however, there are significant distinctions between the statutes of these countries and those of Belize and St. Lucia. The most important distinctions concern the statutory definitions of "alien control" with respect to companies.

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

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

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

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

46 See infra notes 53, 55, 56.

47 Cf. infra notes 48-58.

48 Cf. infra notes 49-58.

49 See infra notes 53, 55, 56.

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

51 See id. at sec. 3(b).

52 See id.at sec. 3(c).

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

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

55 See Antigua and Barbuda Aliens Land Holding Regulation Act, supra note 37, at sec.6(a); Grenada Aliens Land Holding Regulation Act, supra note 37, at sec. 6(1)(a); Dominica Aliens Land Holding Regulation Act, supra note 37, at sec. 6(a); St. Kitts and Nevis Aliens Land Holding Regulation Act, supra note 37, at sec.6(a); St. Lucia Aliens Land Holding Regulation Act, supra note 37, at sec. 6(1)(a); St. Vincent and the Grenadines Aliens Land Holding Regulation Act, supra note 37, at sec. 6(1)(a).
countries also contain provisions granting local companies the power to prevent alien ownership of their securities. \textsuperscript{56} In contrast, under the statute of Belize, a company is not deemed to be under alien control merely because one of its directors is an alien, \textsuperscript{57} nor are local companies given the power to prevent aliens from holding their securities \textsuperscript{58}.

2. \textit{Licensing of Alien Ownership in Trinidad and Tobago}

Under Trinidad and Tobago law, alien ownership of land is regulated according to a statutory framework equivalent to that of the Aliens Land Holding Regulation Acts of the LDCs. \textsuperscript{59} Under the Aliens (Landholding) Act of Trinidad and Tobago, persons who are not citizens of Trinidad and Tobago, \textsuperscript{60} business entities containing any non-citizens, \textsuperscript{61} and companies either incorporated outside Trinidad and Tobago \textsuperscript{62} or "deemed to be under alien control" \textsuperscript{63} are prohibited from owning land \textsuperscript{64}, holding a mortgage on land \textsuperscript{65}, or owning any interest in a local company \textsuperscript{66} without first obtaining a license from the President \textsuperscript{67}. As is the
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case with Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, and St. Vincent and the Grenadines, as is the case with all of the Aliens Land Holding Regulation Acts of the LDCs, such licenses may be granted subject to conditions which, if breached, may lead to the forfeiture of the rights in question.

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

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

68 See supra note 54.

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

70 See supra note 31.

71 See Aliens (Landholding) Act, supra note 60, at 4(2); see id. at sections 5(4)(a)-(b) (“An annual general license granted by the president under subsection (1) is subject to the following conditions; (a) the funds loaned by such an alien upon the security of mortgages on lands in Trinidad and Tobago shall be loaned to residents of Trinidad and Tobago; (b) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien is a company, by a Director and the Secretary: (i) the number of mortgage loan taken by residents of Trinidad and Tobago; (ii) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien is a company, by a Director and the Secretary: (i) the number of mortgage loan taken by residents of Trinidad and Tobago; (ii) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien is a company, by a Director and the Secretary: (i) the number of mortgage loan taken by residents of Trinidad and Tobago; (ii) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien is a company, by a Director and the Secretary: (i) the number of mortgage loan taken by residents of Trinidad and Tobago; (ii) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien is a company, by a Director and the Secretary: (i) the number of mortgage loan taken by residents of Trinidad and Tobago; (ii) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien is a company, by a Director and the Secretary: (i) the number of mortgage loan taken by residents of Trinidad and Tobago; (ii) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien is a company, by a Director and the Secretary: (i) the number of mortgage loan taken by residents of Trinidad and Tobago; (ii) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien is a company, by a Director and the Secretary: (i) the number of mortgage loan taken by residents of Trinidad and Tobago; (ii) such an alien shall at the end of every year submit to the Minister of Finance a statement containing the following particulars certified as correct and signed by the alien or when the alien is a company, by a Director and the Secretary: (i) the number of mortgage loan taken by residents of Trinidad and Tobago; (ii) such an alien shall at the end of every year submit to the Minister of Finance a statute, (2) the “annual general licen[s]e” to hold mortgages, and (3)

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

73 See supra note 69; see also Trinidad and Tobago Industrial Development Corporation, Draft General Guidelines for the Approval of Licenses for Investment in Trinidad and Tobago under the Aliens (Landholding) Act Chapter 58:02 2 (“The Minister may grant approvals for Alien Companies/Firms etc. to hold a 50 year leasehold interest in properties for the purpose of housing person-
the license "to hold shares or debentures" for a length of time to be determined by the President. The annual general license may be revoked by the President at will.

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

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

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

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74 Aliens (Landholding) Act, supra, at sec. 5(1); see also supra note 63.
75 Aliens (Landholding) Act, supra, at sec. 9(1)(c); see also supra note 63.
76 See Aliens (Landholding) Act, supra at sec. 9(4) (citing id. at sections 9(s), 9(1)).
77 See Aliens (Landholding) Act, supra, at sec. 5(5) ("...such revocation does not affect anything done under that license.").
78 See Draft General Guidelines for the Approval of Licenses for Investment in Trinidad and Tobago under the Aliens (Landholding) Act Chapter 58:02, at 3.
79 Id.
80 Id.
81 Id.
82 See id.
83 Id.
84 See id.
85 Id.
86 See supra notes 36-58.
87 See supra note 67.
will remain open to potential foreign participation. In Trinidad and Tobago this authority is used to deny foreign participation in certain types of local enterprise which the executive branch has officially deemed to be "reserved for exploitation by nationals of Trinidad and Tobago." Restricted activities include land development, agriculture, construction, transportation services, petroleum marketing and other petroleum related services which can adequately be conducted by locally owned businesses, advertising and public relations, journalism, management services, business representation of foreign companies, hair styling, handicraft enterprises, furniture production, cement block production, the manufacture of clothing for the local market, textile screen hand printing, tire retreading, and the manufacture of luggage, purses or wallets for the local market.

C. Regulating Entry Through Exchange Control Procedures

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

D. Regulating Entry by Requiring Incorporation Under Local Law

The Haitian approach to the regulation of foreign economic entry is

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88 Id.
90 Id.; see also letter from Desmond Edwards for General Manager, Trinidad and Tobago Industrial Development Corporation to Lewis D. Solomon (November 24, 1989) ("It should be noted that no specific administrative order or other official legal instrument is used in the designation of areas of investment reserved for the exploitation by nationals of Trinidad and Tobago.")
91 Price Waterhouse, Doing Business in Jamaica 15-16 (1985) ("The Government welcomes foreign investment and there is no set policy as to what are reserved for Jamaica. Generally the service industries...are reserved for the local investor, but each foreign investment proposal is assessed on its own merit.")
93 See id. at sections 33(1)(a)-(c), 33(3)-(4), FIRST SCHEDULE.
94 See supra notes 92-93.
95 Exchange Control Act, supra note 92, at Sec. 32(2), SECOND SCHEDULE.
96 See generally, Exchange Control Act, supra note 92.

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

III. REGULATING BUSINESS OPERATIONS

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

A. Pledging Non-Intervention

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

B. Providing for Administrative Oversight of Business Operations

The investment incentive laws of the Dominican Republic are im-

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97 See infra this Article, Section I.
98 See Prominex Haiti, A Practical Guide to Investment Opportunities in Haiti 49.
99 Id.
100 Id.
101 Id. at 59-60.
102 Cf. infra notes 103-113.
103 See infra notes 105-106.
104 See infra note 107-113.
106 Id.
bued with express requirements for strict administrative oversight over the operations of newly formed enterprises. For example, the Industrial Incentives Law of the Dominican Republic created an entire new tier of bureaucracy, called the Directorate of Industrial Development, for the sole purpose of administering the statute.

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

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

IV. REGULATING THE REPATRIATION OF CAPITAL AND PROFITS

An important issue confronting prospective foreign investors involves the question whether the laws of the host country provide reliable assurances that investors will be allowed to repatriate capital and profits without significant regulatory interference. Host governments must be equally concerned with this issue since repatriation entails a loss of wealth on the part of the host country. There are three identifiable basic approaches to the problem of reconciling foreign investors' property interests with the self-preservation concerns of the host governments: (1)
the statutorily constrained or rigid approach utilized by the Dominican Republic,\(^\text{114}\) (2) the discretionary or flexible approach in effect in Jamaica,\(^\text{115}\) Trinidad and Tobago,\(^\text{116}\) and in the majority of the LDCs;\(^\text{117}\) and (3) the permissive approach, adopted by Belize, Grenada\(^\text{118}\) and Haiti,\(^\text{119}\) whereby the host country allows repatriation to proceed virtually without restriction.

A. Statutorily Limited Rights of Repatriation

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

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

B. Discretionary Repatriation Authority

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

\(^{\text{114}}\) See infra notes 120-124.

\(^{\text{115}}\) See infra notes 125-140.

\(^{\text{116}}\) Id.

\(^{\text{117}}\) Id.

\(^{\text{118}}\) See infra note 142.

\(^{\text{119}}\) See infra note 143.


\(^{\text{121}}\) Id. at 249-250 (translation of Article 16 of the Foreign Investment Law, No. 861 of the Dominican Republic).

\(^{\text{122}}\) Id.

\(^{\text{123}}\) Id. at 250 (translation of Article 17 of the Foreign Investment Law, No. 861 of the Dominican Republic).

\(^{\text{124}}\) Id. at 94 (Article entitled "Currency and Exchange" by William C. Headrick).

vest the government with the authority to permit or deny overseas payments\textsuperscript{126} (or payments to the accounts of nonresidents\textsuperscript{127}) on a case by case basis. The respective governments are empowered to delay repatriation by directing such payments to be made to "blocked accounts\textsuperscript{128} in which moneys may be impounded until such time as the government


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

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

"8.(1) Except with the permission of the Accountant General, no person in [St. Vincent and the Grenadines] shall, subject to the provisions of this section, make any payment outside [St. Vincent and the Grenadines] to or for the credit of a person resident in the scheduled territories shall in [St. Vincent and the Grenadines] do any act which involves, is in association with or is preparatory to the making of any such payment."); but see infra note 122.

\textsuperscript{127} Id.

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

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

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

THIRD SCHEDULE (section 34)

Block[ed] Accounts

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

2. Where a direction is given that a payment is to be made to a blocked account only, then, subject to the next following paragraph-
   (a) the manner in which the payment may be made shall be either-
      (i) to the banker, with a direction that it is to be credited to a blocked account of that person (which direction may, in the case of a payment by means of a cheque or warrant, be
deems repatriation to be in the national interest.\textsuperscript{129}

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

\section*{C. Unrestricted Rights of Repatriation}

Among the countries under consideration in this Article, Belize, Grenada and Haiti demonstrate the most permissive policies toward the repatriation of capital and profits by foreign investors.\textsuperscript{132} Both Belize and Grenada guarantee foreign investors who have invested in an approved enterprise the right to repatriate capital and profits at any time,\textsuperscript{133} while Haiti places no restriction on any overseas payments\textsuperscript{134}.
VI. INVESTMENT INCENTIVES FOR NEW MANUFACTURING ENTERPRISES

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

A. The Industrial Incentives Law of the Dominican Republic

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

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135 See infra note 144.
136 See infra Part III of this Article, notes 26-85.
137 See infra Part V of this Article, notes 114-142.
138 See infra notes 154-194.
139 See infra notes 195-226.
141 Id. at 261 (translation of Article 7 of the Industrial Incentives Law, No. 299 of the Dominican Republic).
142 See infra notes 146-143. Since Class “A” enterprises “may only be established in Free Zones existing in the Republic”, see supra note 140, and since investment in Free Zones is not direct investment in the domestic economy, see supra Introduction of this Article, note 1, it can be stated that the Dominican Republic does not offer income tax incentives for direct foreign investment.
To qualify for Class "B" concessions, enterprises must produce goods not previously produced in the Dominican Republic, meeting the domestic demand for a product which would otherwise be addressed through importation. Class "C" refers to enterprises which fail to meet the standards of Classes "A" or "B", and which either produce goods for domestic consumption, where current local production of such goods has been deemed insufficient by the Directorate of Industrial Development, or employ local raw materials in the manufacturing process.

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

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

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

Class "C" — (1) Up to 90% (the exact amount is subject to the discretion of The Directorate of Industrial Development) exemption from import duties and taxes on raw materials and components used in the manufacturing process and not available from domestic sources;
and (2) 90% exemption from all import duties and taxes on fuel (excluding gasoline) and lubricants used in the manufacturing process.\textsuperscript{153}

\section*{B. CARICOM Investment Incentive Legislation}

Article 40 of the Annex to the Treaty Establishing the Caribbean Community requires the signatories to "seek to harmonise such legislation and practices as directly affect fiscal incentives to industry",\textsuperscript{154} while Article 54 further requires that "in establishment of the Scheme for Harmonisation of Fiscal Incentives to Industry...the special needs of the Less Developed Countries shall be taken into account."\textsuperscript{155} Within the context of these provisions, the CARICOM member states concluded the Agreement on the Harmonisation of Fiscal Incentives at Georgetown, Guyana on June 1, 1973.\textsuperscript{156} Pursuant to this agreement, the LDCs and Trinidad and Tobago adopted similarly worded implementing legislation\textsuperscript{157} ("the Fiscal Incentives Acts"), while Jamaica incorporated the harmonization requirements of the agreement into two pieces of existing investment incentive legislation entitled the Industrial Incentives Act\textsuperscript{158} (which governs production for the domestic market\textsuperscript{159}) and the Export Industry Encouragement Act\textsuperscript{160} (which governs production for export to countries other than the CARICOM member states\textsuperscript{161}) ("the Jamaican investment incentive statutes").

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

\begin{footnotesize}
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\item[\textsuperscript{153}] Id.
\item[\textsuperscript{155}] Annex to the Treaty Establishing the Caribbean Community, July 4, 1973, art. 54.
\item[\textsuperscript{156}] An Agreement on the Harmonisation of Fiscal Incentives, June 1, 1973.
\item[\textsuperscript{158}] See Industrial Incentives Act, Laws of Jamaica (1986) (hereinafter Jamaica Industrial Incentives Act).
\item[\textsuperscript{159}] See generally id.
\item[\textsuperscript{161}] See generally id.
\end{itemize}
\end{footnotesize}
enterprise;\(^\text{162}\) (2) an exemption from tax on corporate profits;\(^\text{163}\) (3) an exemption from tax on dividends;\(^\text{164}\) (4) the right to carry forward net losses incurred during the tax concession period, to be set off against chargeable income during the five year period following the end of the tax concessions period;\(^\text{165}\) (under the Jamaican investment incentives statutes, such losses may be set off against chargeable income during the six year period following the end of the tax concession period);\(^\text{166}\) (5) tax credits on export income earned following the end of the tax concessions period;\(^\text{167}\) and (6) the right to depreciate assets to the extent normally

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

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

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

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

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

\(^{167}\) See Antigua and Barbuda Fiscal Incentives Act, supra note 157, at sections 18(1), 18(2)(a)-(b), 18(2)(c)(i)-(ii), 18(3); Belize Fiscal Incentives Act, supra note 157, at sections 12(1), 12(2)(a)-(b), 12(c)(i)-(ii), 12(3); Dominica Fiscal Incentives Act, supra note 157, at sections 18(1), 18(2)(a)-(b), 18(3)(i)-(ii); Grenada Fiscal Incentives Act, supra note 157, at sections 16(1), 16(2)(a)-(b), 16(c)(i)-(ii), 16(3); Jamaica Export Industry Encouragement Act, supra note 160, at sections 5(3)(c), 8(4)(a)-(b); St. Kitts and Nevis Fiscal Incentives Act, supra note 157, at sections 16(1)-(3); St. Lucia
permitted, during the tax concession period.\textsuperscript{168}

The Jamaican investment incentive statutes depart from the common approach utilized in the Fiscal Incentives Acts to determine the length of concession periods\textsuperscript{169} in that the government retains the discretionary authority to grant tax concessions for up to 10 years without reference to statutory guidelines based on particular features of a given enterprise.\textsuperscript{170} The Jamaican investment incentive statutes set a 10 year limit on the length of customs concessions periods that may be granted to approved manufacturers.\textsuperscript{171}

In contrast, each of the Fiscal Incentives Acts under consideration in this Article designates five types of manufacturing enterprises which correspond to the maximum allowable length of the concessions period\textsuperscript{172} (under these statutes, the period in which tax and customs concessions are in effect is a single unit of time which is termed “the tax holiday”\textsuperscript{173}). Three types (Groups I, II and III) are classified according

\begin{footnotesize}
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  \item Fiscal Incentives Act, \textit{supra} note 157, at sections 16(1)-(3); St. Vincent and the Grenadines Fiscal Incentives Act, \textit{supra} note 157, at sections 16(1)-(3); cf. Trinidad and Tobago Fiscal Incentives Act, \textit{supra} note 157, at sections 23(3) (citing Corporation Tax Act, ch. 75:02, sections 8(1), 8(2)(a)-(b), 8(3)(a)-(b), 8(4), SECOND SCHEDULE, Laws of Trinidad and Tobago (1980)).
  \item \textit{See} Antigua and Barbuda Fiscal Incentives Act, \textit{supra} note 157, at sec. 14; Belize Fiscal Incentives Act, \textit{supra} note 157, at sec. 9(1); Dominica Fiscal Incentives Act, \textit{supra} note 157, at sec. 15(1); Grenada Fiscal Incentives Act, \textit{supra} note 157, at sec. 14(1); Jamaica Industrial Incentives Act, \textit{supra} note 158, sections 11(b)-(c), 29(1)(b)-(c); Jamaica Export Industry Encouragement Act, \textit{supra} note 160, at sections 9(1), 11(3), 11(4)(c); St. Kitts and Nevis Fiscal Incentives Act, \textit{supra} note 157, at sec. 13; St. Kitts and Nevis Fiscal Incentives Act, \textit{supra} note 157, at sec. 13; St. Vincent and the Grenadines Fiscal Incentives Act, \textit{supra} note 157, at sec. 13; cf. Trinidad and Tobago Fiscal Incentives Act, \textit{supra} note 157, at sec. 23(2).
  \item \textit{Compare infra} notes 170, 171 \textit{with supra} notes 150-161.
  \item \textit{See} Jamaica Industrial Incentives Act, \textit{supra} note 158, at sections 29(a)(i)-(ii); Jamaica Export Industry Encouragement Act, \textit{supra} note 160, at sections 9(1), 11(3), 11(4)(c).
  \item \textit{See} Jamaica Industrial Incentives Act, \textit{supra} note 158, at sec. 18; Jamaica Export Industry Encouragement Act, \textit{supra} note 158, at sections 9(1), 11(3), 11(4)(c); \textit{see also} Jamaica Industrial Incentives Act, \textit{supra} note 160, at sections 15(1)-(3).
  \item \textit{See} Antigua and Barbuda Fiscal Incentives Act, \textit{supra} note 157, at sections 11(a)-(d), 12(1)-(2), SCHEDULE; Belize Fiscal Incentives Act, \textit{supra} note 157, at sections 5(1)(a)-(e), 5(2); Dominica Fiscal Incentives Act, \textit{supra} note 157, at sections 13(I)(a)-(e), 13(2); Grenada Fiscal Incentives Act, \textit{supra} note 157, at sections 10(1)(a)-(b), 12(1), SCHEDULE II; St. Kitts and Nevis Fiscal Incentives Act, \textit{supra} note 157, at sections 10(1)(a)-(b), 11(1)-(2), 12(1), SCHEDULE III; St. Lucia Fiscal Incentives Act, \textit{supra} note 157, at sections 10(1)(a)-(b), 11(1)-(2), 12(1), SCHEDULE III; St. Vincent and the Grenadines Fiscal Incentives Act, \textit{supra} note 157, at sections 10(1)(a)-(b), 11(1)-(2), SCHEDULE III; Trinidad and Tobago Fiscal Incentives Act, \textit{supra} note 157, at sections 2(1), 9(2), 10(1)(c), \textit{SECOND SCHEDULE}.
  \item \textit{See} Antigua and Barbuda Fiscal Incentives Act, \textit{supra} note 157, at sec. 11(1); Belize Fiscal Incentives Act, \textit{supra} note 157, at sec. 2(1); Dominica Fiscal Incentives Act, \textit{supra} note 157, at sec. 14(1); Grenada Fiscal Incentives Act, \textit{supra} note 157, at sec. 12(1); St. Kitts and Nevis Fiscal Incentives Act, \textit{supra} note 157, at sec. 12(1); St. Lucia Fiscal Incentives Act, \textit{supra} note 157, at sec. 12(1); St. Vincent and the Grenadines Fiscal Incentives Act, \textit{supra} note 157, at sec. 12(1); Trinidad and Tobago Fiscal Incentives Act, \textit{supra} note 157, at sec. 2(1).
\end{itemize}
\end{footnotesize}
to the percentage of “local value added” to the sales price of finished products. The fourth type of enterprise common to all of these Fiscal Incentives Acts is labeled an “enclave enterprise”, denoting an enterprise which produces solely for export outside CARICOM. With the exception of the statutes of Antigua and Barbuda, Belize, and Trinidad and Tobago, the Fiscal Incentives Acts under consideration do not extend import duty concessions to enclave enterprises. The fifth type is

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

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

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

175 See infra note 176.

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

177 Compare Antigua and Barbuda Fiscal Incentives Act, supra note 157, Belize Fiscal Incentives Act, supra note 157, and Trinidad and Tobago Fiscal Incentives Act, supra note 157 (each containing no restrictions on import duty concessions to enclave enterprises), with Dominica Fiscal Incentives Act, supra note 157, at sec. 10(4); Grenada Fiscal Incentives Act, supra note 157, at sec. 7(4); St. Kitts and Nevis Fiscal Incentives Act, supra note 157, at sec. 7(4); St. Lucia Fiscal Incentives
labeled either an "capital intensive enterprise" or "highly capital intensive industry", denoting an enterprise with a capital investment of at least U.S. $9.25 million. Using the preceding terminology, concessions under the Fiscal Incentives Acts of the LDCs, and Trinidad and Tobago may be granted as follows:

<table>
<thead>
<tr>
<th>Type of Enterprise</th>
<th>Local Value Added</th>
<th>LDC Acts</th>
<th>Maximum Length of the Tax Holiday</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group I</td>
<td>50% or more</td>
<td>15</td>
<td>9</td>
</tr>
<tr>
<td>Group II</td>
<td>25% - 49%</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td>Group III</td>
<td>10% - 24%</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Enclave</td>
<td>Not Applicable</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td>Capital Intensive</td>
<td>Not Applicable</td>
<td>15</td>
<td>10</td>
</tr>
</tbody>
</table>

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

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

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

180 See supra notes 178-179.

181 See supra note 174.

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

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

184 See Dominica Fiscal Incentives Act, supra note 157, at sections 2, 5 ("the member of the
Dominica, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia, and Trinidad and Tobago are required to consider whether the proposed product is already produced in sufficient quantities by domestic manufacturers and whether the company seeking concessions would likely cause a glut in the market for the proposed product based on its projected production schedule.

In addition to the foregoing criteria, the statutes of Antigua and Barbuda, and Jamaica require consideration of "whether manufacture of the product would utilize raw materials of skills available in the [State]" and "the element of risk involved in establishing a successful manufacture of the product", but also grant the approving author-
ity189 "absolute discretion to grant or refuse approval"190. The statute of St. Vincent and the Grenadines requires a finding by the Minister that the proposed enterprise will be viable.191 The statute of Belize is unique in requiring that "a company has been incorporated in Belize which will establish or conduct the enterprise"192 and that the government has determined that the proposed enterprise will be beneficial to the local economy193 and "in the public interest"194.

C. The Industrial Investment Code of Haiti

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

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

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189 See supra note 184.
190 Antigua and Barbuda Fiscal Incentives Act, supra note 157, at sec. 10; Jamaica Industrial Incentives Act, supra note 158, at section 4(4); Jamaica Export Industry Encouragement, supra note 160, at sections 8(1).
191 See St. Vincent and the Grenadines Fiscal Incentives Act, supra note 157, at sec. 2(c).
192 Belize Fiscal Incentives Act, supra note 157, at sec. 4(1)(a).
193 Id. at sec. 4(1)(b).
194 Id.
195 Compare infra notes 200-216 (incentives offered by Haiti) with supra (incentives offered by the Dominican Republic) and 163-182 (incentives offered by CARICOM member states under consideration in this Article).
196 See infra notes 206-209, 200-204.
197 Id.
198 Id.
199 See infra notes 211-216.
200 See Decret Protant Constitution du Code des Investissements Industriels, supra note 105, at art. 23, sections 1(a)-(b).
production,\textsuperscript{201} and on spare parts for machinery used in production\textsuperscript{202}.

Production for export: New enterprises producing solely for export qualify for permanent, 100\% exemption from customs duties, turnover tax, and other domestic taxes, on raw materials and components used in production,\textsuperscript{203} and on spare parts for machinery used in production\textsuperscript{204}.

The magnitude of income tax concessions is determined according to three classifications based on the location of the enterprise.\textsuperscript{205} "Privileged Status A" denotes an enterprise located in the metropolitan area of Port-au-Prince,\textsuperscript{206} the capital city of Haiti\textsuperscript{207}. "Privileged Status B" denotes an enterprise located outside the metropolitan area of Port-au-Prince.\textsuperscript{208} "Privileged Status C" denotes an enterprise located in government owned industrial space facilities.\textsuperscript{209} In order to qualify for income tax concessions, income must be earned from activities carried out at the designated privileged status location.\textsuperscript{210}

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

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

\begin{itemize}
\item \textsuperscript{201} See id. at art. 23, sections 2(a)-(b).
\item \textsuperscript{202} See id. at art. 23, sec. 2(c).
\item \textsuperscript{203} See id. at art. 22, sections (a)-(b).
\item \textsuperscript{204} See id. at art. 22, sec. (c).
\item \textsuperscript{205} See infra notes 206-216. But see Decret Protant Constitution du Code des Investissements Industriels, supra note 105, at arts. 9, 32-35 (Projects deemed to be of special interest to Haiti which do not qualify for incentives under a privileged status may be granted incentives by agreement with the government).
\item \textsuperscript{206} See Decret Protant constitution du Code des Investissements Industriels, supra note 105, at art. 10.
\item \textsuperscript{207} See Decret Protant constitution du Code des Investissements Industriels, supra note 105, at art. 10.
\item \textsuperscript{208} See infra notes 211-216.
\item \textsuperscript{209} See Decret Protant Constitution du Code des Investissements Industriels, supra note 105, at art. 20.
\item \textsuperscript{210} Cf. id.
\end{itemize}
### Foreign Investment in the Caribbean

11:257(1990)

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

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

<table>
<thead>
<tr>
<th>Production Year</th>
<th>Magnitude of Income Tax Exemption (percentage of income exempted)</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>85%</td>
</tr>
<tr>
<td>17</td>
<td>70</td>
</tr>
<tr>
<td>18</td>
<td>55</td>
</tr>
<tr>
<td>19</td>
<td>40</td>
</tr>
<tr>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>21</td>
<td>0</td>
</tr>
</tbody>
</table>

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

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

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

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²¹³ See Decret Protant Consitution du Code des Investissements Industriels, supra note 105, at art. 29 (citing id. at art. 20).
²¹⁴ See id. at art. 20.
²¹⁵ See id. at art. 31 (referring to the laws on Industrial Parks) and la Loi du 27 Aout 1974 instituant et reglementant sur le territoire de la Republique d'Haiti des zones cloturees denommee PARCS INDUSTRIELS, art. 14, Journal Officiel De La Republique D'Haiti, le 26 Septembre 1974.
²¹⁷ See Decret Protant Constitution du Code des Investissements Industriel, supra note 105, at arts. 36, 37.
sion on Privileged Investments is empowered to make recommendations to the Minister of the Economy and Finance who is responsible for granting or denying concessions to particular enterprises. The statute requires the Minister of the Economy and Finance to give preferential consideration to enterprises deemed likely to assist the Haitian economy by improving the utilization of national resources; by creating new jobs; by creating jobs involving advanced levels of training; by earning foreign currency; by leading to the diminished dependency on imported goods; by improving the local technological capability; and by decentralizing the geographical distribution of manufacturing enterprises.

VI. AN OVERVIEW OF CURRENT TAXES ON INCOME AND PROFITS

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

A. Corporation Taxes

Each of the CARICOM member states applies an annual flat rate corporate income tax, while the Dominican Republic and Haiti.

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218 See id. at 42.
219 See id.
220 See id. at art. 11, sec. (a).
221 See id. at art. 11, sec. (b).
222 See id.
223 See id. at art. 11 sec. (c).
224 See id.
225 See id. at art. 11, sec. (d).
226 See id. at art. 11, sec. (e).
227 See supra notes 234-245.
tax corporate income according to graduated rate schedules. For purposes of comparison with the corporate income taxes of the CARICOM member states, the graduated rates of the Dominican Republic and Haiti have been converted into effective rates on chargeable annual income of U.S. $1,000,000. Haiti, Jamaica, and St. Lucia charge the lowest rates of corporate income tax: Haiti charges an effective rate of 33.1% (U.S. $331,000 on U.S. $1,000,000 of chargeable income) while Jamaica and St. Lucia charge flat rates of 33.3%. Grenada charges companies incorporated overseas a rate of 35% of net profits, while charging local companies a minimum flat rate of 33.3% (however, under the Grenada Business Levy Act, a higher effective rate is possible). In ascending order, the corporate tax rates of the remaining countries under consideration in this Article are as follows: Dominica - 35% Antigua

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228 See infra note 242.
229 See infra note 231.
230 See infra note 231-245.

Rate schedule for personal and corporate income taxes:

<table>
<thead>
<tr>
<th>Income Bracket</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.$0.20 to U.S.$4000</td>
<td>0%</td>
</tr>
<tr>
<td>4000.20 to 20,000</td>
<td>10%</td>
</tr>
<tr>
<td>20,000.20 to 50,000</td>
<td>15%</td>
</tr>
<tr>
<td>50,000.20 to 150,000</td>
<td>25%</td>
</tr>
<tr>
<td>over 150,000</td>
<td>30%</td>
</tr>
</tbody>
</table>

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

232 See id.

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


and Barbuda - 40%;\textsuperscript{239} Trinidad and Tobago - 40%;\textsuperscript{240} St. Vincent and the Grenadines - 45%;\textsuperscript{241} Dominican Republic - 48.95%;\textsuperscript{242} (tax on U.S. $1,000,000 = U.S. $489,507.99\textsuperscript{243}); Belize - 49.5%;\textsuperscript{244} and St. Kitts and Nevis - 50%.\textsuperscript{245}

B. Withholding Taxes

Antigua and Barbuda,\textsuperscript{246} Belize\textsuperscript{247} and Grenada\textsuperscript{248} do not impose

\begin{itemize}
\item\textsuperscript{239} See Income Tax Act, ch. 266, sections 5(a)-(g), 40 Revised Laws of Antigua (1965) (hereinafter Antigua and Barbuda Income Tax Act).
\item\textsuperscript{240} Republic of Trinidad and Tobago Act No. 9 of 1990, sec. 6 (amending FIRST SCHEDULE of Corporation Tax Act, ch. 75:02, Laws of Trinidad and Tobago (1980)) and Corporation Tax Act, at sections 3(a)-(g), 3(h)(i)-(ii), 3(i)-(m).
\item\textsuperscript{242} See Ley No. 72 que introduce modificaciones a la Ley 5911 del ano 1962 de Impuesto sobre la Renta, articulo 1 (amending articulo 55 of Ley 5911 del ano 1962 de Impuesto sobre la Renta) (basic rate schedule of corporate income tax). See also C/CAA’s Caribbean and Central American Databook, supra note 1, at 133 (“Currency (Average 1989): Dominican Republic Peso; U.S. $1.00 = D.R. Peso $6.35”). See also Ley No. 48 del 6 de noviembre de 1970, G.O. No. 9171 del 21 de noviembre de 1970, que establece una contribucion anual sobre toda personal natural o juridica, nacionale o extranjera, domiciliada o no en el pais y sobre las sucesiones indivisas, art. 2, par. (b) (imposing additional corporate income tax at a flat rate of 2 % of chargeable income); Ley No. 190 Contraloria y Auditoria General de la Republica, creada por el Art. 14 de la Ley No. 692, del 2 de abril de 1965 que deroga, y dicta otras disposiciones, art. 2, apra. (b) (imposing a 3 % surcharge on income tax owed under Ley No. 5911, supra). See also Dominican Republic Investors Handbook and Business Guide, supra, at 81. Effective rates (including additional tax under Ley No. 48, supra, and surtax under Ley No. 190, supra):
\begin{itemize}
\item On the first U.S. $787.40- 10% on the next U.S. $787.40- 13% on the next U.S. $1574.80- 16% on the next U.S. $1574.80- 19% on the next U.S. $1574.80- 22% on the next U.S. $1574.80- 27% on the next U.S. $1574.80- 31% on the next U.S. $6299.21- 36% on the amount exceeding $39,370.07- 46%.
\end{itemize}
\item\textsuperscript{243} See id.
\item\textsuperscript{246} See Price Waterhouse, Corporate Taxes A Worldwide Summary 3 (1990).
\item\textsuperscript{247} See id. at 44.
\end{itemize}
withholding taxes on dividend distributions to nonresident corporations and individuals, while Dominica, the Dominican Republic, Haiti, Jamaica, St. Kitts and Nevis, St. Lucia, and Trinidad and Tobago do impose such taxes.\footnote{248} It should be noted that the statutory withholding tax rates of Dominica, Haiti, St. Lucia, St. Vincent, and Trinidad and Tobago may be subject to reduction where the country in which the taxpayer resides and the host country are bound by a double taxation treaty.\footnote{250}

Among the countries imposing taxes on dividend distributions to nonresidents, St. Kitts and Nevis charges the lowest basic rate,\footnote{251} at 10%\footnote{252}. Among the remaining countries under consideration, the basic rates of withholding tax dividend distributions are as follows: Dominica,\footnote{253} Haiti,\footnote{254} and St. Vincent and the Grenadines\footnote{255} - 15%; Dominican Republic - 20.6%;\footnote{256} St. Lucia\footnote{257} and Trinidad and Tobago - 25%;\footnote{258} Jamaica - 33.33%\footnote{259}.

\footnote{248}{See Caribbean/Central American Action, Investing in Grenada 9 (1986).}
\footnote{250}{See Dominica Income Tax Act, supra, at sec. 65(3) (citing id. at sections 58(1)(a)-(e), 58(2), 58(3)); Haiti Income Tax Act, supra, at art. 4(c); St. Lucia Income Tax Act, supra, at sec. 64(3) (citing id. at sections 59(1)(a)-(e), 59(2), 59(3)); St. Vincent Income Tax Act, supra, at sec. 62(3) (citing id. at sections 56(1)(a)-(e), 56(2), 56(3); Income Tax Act, ch. 75:01, sec. 50(3); Laws of Trinidad and Tobago (1983) (citing id. at sections 93(1)(a), 93(1)(b)(i)-(ii), 93(2)-(6)); see also infra notes 258, 259.}
\footnote{251}{Compare infra, note 252 with infra notes 253-259.}
\footnote{252}{St. Kitts and Nevis Income Tax Ordinance (Amendment) Act, (1980), supra, at sec. 4 (repealing sec. 35 of St. Kitts and Nevis Income Tax Act, and replacing with sections 35(1)(a)-(g), 35(2)).}
\footnote{253}{Dominica Income Tax Act, supra, at sections 65(1)-(3), THIRD SCHEDULE at sec. 3(a).}
\footnote{254}{Haiti Income Tax Act, supra, at art. 114.}
\footnote{255}{St. Vincent Income Tax Act, supra, at sections 62(1)-(3), THIRD SCHEDULE at sec. 3(a).}
\footnote{256}{See Ley No. 72, supra, at articulo I (amending art. 45 of Ley No. 5911, supra) and Ley No. 190, supra, at art. 2, para. (b).}
\footnote{257}{St. Lucia Income Tax Act, supra, at sections 64(1)-(4), THIRD SCHEDULE at sections 1(1)(f)(i), 3.}
\footnote{258}{Income Tax Act, ch. 75:01, sections 49(1)(a), 50(1)(a), THIRD SCHEDULE -Part II(i), Laws of Trinidad and Tobago (1983). Trinidad and Tobago and the United States are bound by a double taxation treaty whereby the rate of withholding tax on a corporation residing in the United States which owns at least 10 per cent of a local company's voting stock may not exceed "10 per cent of the gross amount actually distributed", an individual U.S. resident may not exceed "25 per cent of the gross amount actually distributed", Tax Convention Between the United States and Trinidad and Tobago for the Avoidance of Double Taxation, the Prevention of Fiscal Evasion, and the Encouragement of International Trade and Investment, enter into force on December 30, 1970, art. 12, paragraph 1, subsection (b)(i), and the rate of withholding tax on all other U.S.-resident corporate shareholders and on U.S.-resident individuals may not exceed "25 per cent of the gross amount actually distributed", see id. at art. 12, paragraph 1, subsection (a); see generally id. at art. 12, paragraph 1, subsections (a), (b)(i)-(ii).}
C. Personal Income Taxes

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

The remaining countries impose annual personal income taxes at graduated rates. For purposes of comparison, we have calculated the effective tax rate on $100,000 of chargeable income under each system: Haiti - 18.6% (tax = U.S. $18,600 on $100,000 however, it should be noted that the top rate is 30% on chargeable income exceeding U.S. $150,000); St. Lucia - 28.33% (tax = U.S. $28,335); Dominica -

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

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


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

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


266 See supra note 231.

268 See id.

269 Id.

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

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

see also C/CAA's Caribbean and Central American Databook, supra note 1, at 324 (Currency is the East Caribbean Dollar (EC); exchange rate is U.S. $1.00 = EC $2.70).
42.89%\(^{272}\) (tax = U.S. $42,891)\(^{273}\); Trinidad and Tobago - 43.2%\(^{274}\) (tax = U.S. $43,206)\(^{275}\); Belize - 48.09%\(^{276}\) (tax = U.S. $48,097.50)\(^{277}\); St. Vincent and the Grenadines - 51.72%\(^{278}\) (tax = U.S. $51,725.50)\(^{279}\).

\(^{272}\) See Dominica Income Tax (Amendment) Act, 1987, supra, at FIFTH SCHEDULE
(“On the first [U.S. $5,920] .......................... 25%
on the next [U.S. $9,250] .......................... 35%
for every dollar over [U.S. $15,170] .... 45%”);
see also C/CAA’s Caribbean and Central American Databook, supra note 1, at 119 (Currency is the East Caribbean Dollar (EC); exchange rate is U.S. $1.00 = EC $2.70).

\(^{273}\) See id.

\(^{274}\) Finance Act, 1989, sec. 58, Republic of Trinidad and Tobago Act No. 6 of 1989 (repealing and replacing Part I of THIRD SCHEDULE of Income Tax Act, ch. 75:01); see also Finance Act, 1989, supra, at sec. 29
Chargeable Income Rate of Tax
(a) for every dollar of the first [U.S. $12,000] .................. 5 cents
(b) for every dollar of the next [U.S. $8000] .................. 20 cents
(c) for every dollar of the next [U.S. $8000] .................. 40 cents
(d) for every dollar thereafter .................. 45 cents);
See also C/CAA’s Caribbean and Central American Databook, supra note 1, at (“Currency; Trinidad and Tobago dollar (TT)... TT $1.00 = U.S. $0.23”).

\(^{275}\) See id.

\(^{276}\) See Belize Income Tax Act, supra, at sec. 25
(“On the first [U.S. $500] of chargeable income .......................... 5%
On the next [U.S. $500] up to [U.S. $1,000] .................. 6%
On the next [U.S. $500] up to [U.S. $1,500] .................. 8%
On the next [U.S. $500] up to [U.S. $2,000] .................. 10%
On the next [U.S. $1,000] up to [U.S. $3,000] .................. 15%
On the next [U.S. $1,000] up to [U.S. $4,000] .................. 20%
On the next [U.S. $1,000] up to [U.S. $5,000] .................. 25%
On the next [U.S. $2,000] up to [U.S. $7,000] .................. 30%
On the next [U.S. $2,500] up to [U.S. $9,500] .................. 35%
On the next [U.S. $5,000] up to [U.S. $14,500] .................. 40%
On the next [U.S. $15,500] up to [U.S. $30,000] ............... 45%
On the remainder .......................... 50%”);
See also C/CAA’s Caribbean and Central American Databook, supra, at 60 (Currency is the Belize Dollar (BZ); exchange rate is U.S. $1.00 = BZ $2.00).

\(^{277}\) See id.

\(^{278}\) See St. Vincent and the Grenadines Act No. 34 of 1984, sec. 8 repealing and replacing FIFTH SCHEDULE of St. Vincent and the Grenadines Income Tax Act
(“On the first [U.S. $740] .................. 10%
On the next [U.S. $740] .................. 15%
On the next [U.S. $740] .................. 20%
On the next [U.S. $1,480] .................. 25%
On the next [U.S. $1,850] .................. 30%
On the next [U.S. $3,700] .................. 35%
On the next [U.S. $3,700] .................. 40%
On the next [U.S. $3,700] .................. 50%
On the remainder .................. 55%”);
See also C/CAA’s Caribbean and Central American Databook, supra note 1, at 333 (Currency is the Eastern Caribbean Dollar (EC); Exchange rate is U.S. $1.00 = EC $2.70).
VII. CONCLUSION

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