# HAITI
# INVESTMENT CLIMATE STATEMENT
# 2015

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## Executive Summary

Haiti is an island country located in the Caribbean Basin and occupies the western of the island of Hispaniola. The Government of Haiti (GOH) has initiated a series of measures to encourage foreign investment and to establish a legal framework for long-term private-led, market-based economic growth. The GOH is widely reliant on international assistance, focuses on reinforcing public administration, rebuilding Haiti's infrastructure and public services, and improving the conditions for private sector development. Progress was made toward the creation of a Treasury Single Account (TSA), helping reduce the number of treasury accounts for greater cash management. So far four treasury accounts were opened at the Haitian Central Bank (BRH), helping reduce the total number of treasury accounts. Private investment continues to grow; foreign direct investment reached USD 144 million in 2014, driven by new investments in telecommunications and tourism between 2013 and 2014. The GOH has designated key investment sectors, including tourism, agriculture, construction, energy, and manufacturing, and it supports them through sector-focused investment promotion, public spending, and special economic zones. In addition, the Center for Investment Facilitation (CFI) is attempting to expedite business start-ups by developing off-the-shelf, pre-registered corporations for investors seeking to do business in Haiti. To streamline the incorporation process, CFI eliminated the step requiring the President's office to review the incorporation draft before final publication. Thanks to this strategy, CFI reported that from October 2014 to March 2015 several agricultural and textile companies manifested interest in doing business in Haiti, which prompted the agency to process investments of over USD 350 million with 74.2 percent going to the agriculture sector. CFI reported that since its inception in 2006, the agency has facilitated the incorporation of 110 businesses that led to the creation of over 60,000 new jobs in the Haitian economy.

Haiti's economy grew by 2.8 percent in 2014, a deceleration in comparison to FY 2013 when the economy grew at a rate of 4.0 percent. The contraction was mainly attributed to political uncertainty in the run-up to postponed elections, severe drought conditions in early 2014 that undercut agricultural production, the reduction of external financial assistance, and the late adoption of the FY 2014 budget. Despite a depreciation of the local currency against the U.S. dollar, inflation remained in single digits (6.6 percent) during FY 2014. GDP growth is expected to be between 2 and 3 percent in 2015, while inflation will remain contained. Despite a generally favorable investment outlook for Haiti in 2015, this will be contingent on the continuation of legal and structural reform efforts which have been delayed by long overdue elections and multiple ministerial changes. 2015 is an election year; generally businesses are reluctant to invest in election years and go into a wait and see mode.

## 1. Openness To, and Restrictions Upon, Foreign Investment

### Attitude toward Foreign Direct Investment

Although there are challenges to the business climate, Haiti's legislation encourages foreign direct investment. Import and export policies are non-discriminatory and are not based upon nationality. Haitian and foreign investors have the same rights, privileges and equal protection under the 1987 investment code. The GOH has made some progress in recent years to improve the legal framework, create and strengthen core public institutions, and enhance economic governance. The central bank continued the monetary, fiscal, and foreign exchange policies initiated under the 2004-2006 interim Haitian government with the assistance of the International Monetary Fund (IMF) and the World Bank (WB) aimed at creating a stable macroeconomic environment. Such policies include reducing interest rates to facilitate access to credit and keeping the exchange rate stable. Political infighting and weak institutional capacity within the Haitian government and in the private sector, however, have reduced the impact of the Haitian government's initiatives and stalled much-needed efforts to modernize Haiti's commercial, investment, and tax laws. The WB, IMF and IDB also wrote off USD 788 million in debt as part of a broad strategy to support Haiti's long-term reconstruction plans after the 2010 earthquake. However, as a result of infrastructure rebuilding and social programs, Haiti acquired USD 1.6 billion in new foreign debt, with more than 75 percent of this owed to the Venezuelan government.

The Haitian government began drafting new laws to improve the legal framework and incentives for investment in Haiti. An anti-money laundering law was passed in November 2013, and a new anti-corruption law harmonizes Haiti's legislation with international standards. The laws on electronic transactions and electronic signatures are still pending Parliament's approval. In addition, numerous pieces of legislation that may improve the investment climate are being reviewed, such as a new mining code, an insurance code, a labor code, a law establishing a public credit bureau, and new construction permit regulations. The Haitian government also continues to upgrade Haiti's historically inadequate infrastructure and has rehabilitated a number of roads in the country.

The Haitian economy had begun recovering slowly from the 5.4 percent contraction of FY 2010 caused by the earthquake. The economy grew 5.6 percent in 2011, 2.8 percent in 2012, 4.0 percent in 2013, and 2.8 percent in 2014. The 2013 growth was attributed to public spending and the moderate recovery of some key sectors such as agriculture, manufacturing, construction, and tourism. However, adverse natural shocks affecting agricultural output and the slow execution of public capital spending negatively affected the economic recovery in 2014, and growth slowed to 2.8 percent. The IMF forecasts a GDP growth rate of 3.5 percent in 2015 with projected downside risks, but more recently the government downgraded its own projection to 2.5 percent growth.

**Other Investment Policy Reviews**

Not applicable.

**Laws/Regulations of Foreign Direct Investment**

The Investment Code prohibits fiscal and legal discrimination against foreign investors. The Code explicitly recognizes the crucial role of foreign direct investment in spurring economic growth and aims to facilitate, liberalize, and stimulate private investment. It contains exemption regimes to promote investment likely to enhance competitiveness in sectors deemed priorities or strategically important, especially export-oriented sectors. Tax incentives, such as reductions on taxable income and tax exemptions, are designed to promote private investment. The Code grants Haitian and foreign investors the same rights, privileges and equal protection. Foreign investors must be legally registered and pay appropriate local taxes and fees.

The Code also established an Inter-Ministerial Investment Commission (CII) to examine investor eligibility for license exemptions as well as customs and tariff advantages. The CII is chaired by the Prime Minister or his delegate, and is composed of representatives of the Ministries of Economy and Finance, Commerce, and Tourism, as well as those ministries with purview over the prospective area of investment. The CII must authorize all business sales, transfers, mergers, partnerships, and fiscal exemptions within the scope of the Code. The CII also manages the process of fining and sanctioning enterprises that ignore the Code. Investment in certain sectors, such as health and agriculture requires special Haitian government authorization. Investment in "sensitive" sectors, such as electricity, water, and telecommunications, requires a Haitian government concession as well as an authorization from the appropriate state agency. In general, natural resources are considered to be the property of the state. As a result, prospecting, exploring, or exploiting mineral and energy resources require concessions and permits from the Bureau of Mining and Energy, in the Ministry of Public Works. Mining, prospecting, and operating permits may only be granted to firms and companies established and resident in Haiti.

Haiti has made several commitments to the World Trade Organization (WTO) in relation to the financial services sector. These commitments include permitting foreign investment in financial services, such as retail, commercial, and investment banking, and consulting. Currently, there are two foreign banks operating in Haiti: Citibank of the United States and Scotia Bank of Canada.

Haitian law is deficient in a number of areas, including operation of the judicial system; publication of laws, regulations, and official notices; establishment of companies; land tenure and real property law and procedures; bank and credit operations; insurance and pension regulation; accounting standards; civil status documentation; customs law and administration; international trade and investment promotion; foreign investment regulations; and regulation of market concentration and competition. Although these deficiencies hinder business activities, they are not specifically aimed at foreign firms and appear to have an equally negative effect on foreign and local companies.

**Industrial Promotion**

The Investment Facilitation Center (CFI) was established to promote investment opportunities in Haiti. CFI's major activities include: streamlining the investment process by simplifying procedures related to trade and investment; providing updated economic and commercial information to local and foreign investors; and promoting investment in priority sectors. The Haitian government considers strategic investments in sectors that contribute substantially to reductions in the balance of payments deficit, increase economic growth, and improve the skill level of the labor force as priorities. Investments that lead to permanent job creation and a renewal of the domestic production structure are also considered priority or strategic investments. The current administration redirected CFI’s focus towards legal reform, and the promotion of domestic and international investment with continued emphasis on public relations. The institution also offers red carpet service for large investors interested in Haiti. CFI was also recognized by the World Bank’s investment index as a regional leader in the promotion of investment online.

CFI has made some progress in reducing delays facing investors in starting a business in Haiti, thereby reducing transaction costs The Minister of Commerce's (MCI) internet registry allows investors to search for or verify the existence of a business in Haiti. The registry will eventually provide on-line registration of companies through an "electronic single window." The single window is part of a project sponsored by the Inter-American Development Bank (IDB) that seeks to reduce the time needed to register a limited company in Haiti to 10 days. CFI also offers a service providing pre-registered and fully authorized companies classified in seven different sectors such as manufacturing, agribusiness, and real estate. Once these off-the-shelf companies are validated by the Inter-Ministerial Investment Commission, the shares are transferred to the new owners.

CFI offers a wide range of support and services to foreign investors. The Director General oversees the agency, including decisions on offering tax incentives to new businesses. The Director of Promotion works to attract new businesses, particularly in the agricultural, textile, and tourism sectors, to Haiti. The Director of Facilitation is in charge of coordinating within public sector agencies and administrative entities to ensure that all obligations and follow-up are being implemented.

**Limits on Foreign Control**

Investors in Haiti can create the following types of businesses: sole proprietorship, limited or general partnership, joint-stock company, public company (corporation), subsidiary of a foreign company, and co-operative society. Corporations are the most commonly used business structure in Haiti.

Foreign investors are permitted to own 100 percent of a company or subsidiary. As a Haitian entity, such companies enjoy all rights and privileges provided under the law. Additionally, they are permitted to operate businesses without equity-to-debt ratio requirements. Accounting law allows foreigners to capitalize using tangible and intangible assets in lieu of cash investments.

Foreigners are free to enter into joint ventures with Haitian citizens. The distribution of shares is a private matter between two partners. However, the sale and purchase of company shares are regulated by the state.

Entrepreneurs are free to dispose of their properties and assets and to organize production and marketing activities in accordance with local laws.

The Haitian government does not impose discriminatory requirements on foreigners who wish to invest. Haitian laws related to residency status and employment are reciprocal. Foreigners who are legal residents in Haiti and wish to engage in trade have, within the framework of laws and regulations, the same rights granted to Haitian citizens. However, Article 5 of the Decree on the Profession of Merchants reserves the function of manufacturer's agent for Haitian nationals.

Foreign firms are also encouraged to participate in government-financed development projects. Performance requirements are not imposed on foreign firms as a condition for establishing or expanding an investment, unless indicated in a signed contract.

**Privatization Program**

The Haitian government allows for the privatization of public enterprises, which permits foreign firms to invest in the management and/or ownership of Haitian state-owned enterprises. The Haitian government established the Commission for the Modernization of Public Enterprises (CMEP) in 1996 to facilitate the privatization process by creating strategies to privatize Haitian state enterprises. Despite initial enthusiasm in both the public and private sectors for privatization, progress has been slow. To date, three Haitian state-owned enterprises have been privatized, and two other privatizations are under consideration.

In 1998, two U.S. companies, Seaboard and Continental Grain, purchased 70 percent of the state-owned flourmill. Currently, each partner owns 23 percent of the new company known today as "Les Moulins d'Haiti." In 1999, a consortium of Colombian, Swiss, and Haitian investors purchased a majority stake in the national cement factory. In 2010, a Vietnamese corporation, Viettel, officially acquired 60 percent of the state telecommunications company Teleco (now operating as Natcom), with the Haitian government retaining 40 percent ownership. Several schemes are envisaged for the privatization of the National Port Authority (APN) and the state electricity company Electricite d'Haiti (EDH).

GOH is considering a Private/Public Partnership to initiate the modernization process of public company EDH. This concession will place some functions of EDH under a private management contract. The company recently launched international tenders, looking for investors who could improve the production, the transportation, and the distribution process of electricity in the Southeast and Northwest departments. The vetting of the candidates is in process.

The Haitian government has allowed private sector investment in electricity generation to compensate for EDH's inability to supply sufficient power. Three independent power producers generate electricity for EDH, the most recent being the Haitian firm E-Power, which opened a 32 megawatt, USD 56 million heavy fuel-oil power plant in Port-au-Prince in late 2010. The Haitian government has also allowed limited private sector investment in selected seaports, and has expressed interest in privatizing the Port-au-Prince and Cap Haitian airports. To accompany this initiative, the government provided fiscal incentives to the GB Group to build Haiti’s first Panamax container port. This project is scheduled to receive its first ship in August 2015.

**Screening of FDI**

Not applicable.

**Competition Law**

Not applicable.

**Investment Trends**

Despite the challenges the pro-business agenda of the current administration have led to increased interest in Haiti from foreign investors. For example, a new USD 45 million, 175-room Marriott hotel in Port-au-Prince was inaugurated in February 2015. Digicel, a telecommunications provider that is the largest foreign direct investor in Haiti, is the hotel's owner. Coca Cola, through their local partner Brasserie La Couronne, is expanding capacity to meet increasing demand for their product. La Couronne, which bottles Coca Cola locally, is in the process of upgrading their machinery, and recently received their manufacturing standard certificate. Further reform and improvement of the business climate is important to transform foreign investors' interest into increased investment.

A large increase in FDI in 2006 occurred due to cellular phone company Digicel's investment in the telecommunications sector. FDI inflows were very limited in 2008 and 2009, but have risen substantially since 2011, with new investments in the construction, transportation, manufacturing, and hotel industries. Total FDI inflows were USD 119 million in 2011 and USD 156 million in 2012. They fell FDI USD 118 million in 2013 and then rose to USD 144 million in 2014. The IMF foresees a decline of FDI inflows in 2015 to USD 114 million. FDI inflows were mostly driven by investment in telecommunications and tourism; however, analysts project that mining could also see significant FDI inflows in the near future.

*Table 1*

| Measure | Year | Index or Rank | Website Address |
|---|---|---|---|
| **TI Corruption Perceptions index** | 2014 | 161 of 175 | transparency.org/cpi2014/results |
| **World Bank's Doing Business Report "Ease of Doing Business"** | 2015 | 180 of 189 | doingbusiness.org/rankings |
| **Global Innovation Index** | 2014 | N/A | globalinnovationindex.org/content.aspx?page=data-analysis |
| **World Bank GNI per capita** | 2013 | USD 810 | data.worldbank.org/indicator/NY.GNP.PCAP.CD |

*Millennium Challenge Corporation Country Scorecard*

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a 2014 per capita gross national income (GNI) of USD 4,085 or less. Haiti's scorecard is available here: https://assets.mcc.gov/scorecards/score-fy15-english-ht-haiti.pdf. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: https://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

Although there have been improvements in several sectors, Haiti remains less competitive compared to the rest of the region. Overall costs to start a new business in Haiti remain high, and access to credit and mechanisms for investor protection are insufficient. The current administration continues to promote Haiti as being open for business, but officials recognize the need for coordinated efforts from both the government and the private sector to make it easier and cheaper for investors to do business in the country.

## 2. Conversion and Transfer Policies

### Foreign Exchange

All citizens and residents have the right to dispose of their assets. Banks and currency exchange companies set their rates at the market-clearing rate. The spread between buying and selling rates is generally less than five percent. The Haitian Central Bank (BRH) publishes a daily reference rate, which is a weighted average of exchange rates offered in the formal and informal exchange markets. The exchange rate for the Haitian gourde (HTG) is determined by the market. The Haitian gourde is fully convertible for commercial and capital transactions. As of April 2015, the exchange rate is approximately 47 HTG/USD. Declining aid inflows have led to a slight depreciation of the Haitian gourde, offset by a net inflow of U.S. dollars which contributed to avoiding unwarranted volatility on the exchange market. Sogebank reported a net inflow of USD 4.2 billion, a slight increase over the previous year (USD 4.1 billion).

*Remittance Policies*

Remittances are Haiti’s major source of foreign currency and account for one fourth of GDP. Remittances increased by 12.7 percent in 2014 over the previous year. There are no restrictions or controls on foreign payments or other fund transfer transactions, and foreign exchange is readily available. While restrictions apply on the amount of money that may be withdrawn per transaction, there is no restriction on the amount of foreign currency that residents may hold in bank accounts, and there is no ceiling on the amount residents may transfer abroad. The Haitian government does not impose restrictions on the inflow or outflow of capital.

Stricter measures are now being put in place to monitor money transfers in accordance with Haiti’s efforts to deter illicit cash flows, as mandated by the 2013 Anti-Money Laundering Act and the forthcoming implementation of the United States Foreign Account Tax Compliance Act (FATCA).

## 3. Expropriation and Compensation

The 1987 Constitution allows expropriation only for reasons of public interest or land reform. Any expropriation is subject to prior payment of fair compensation as determined by an expert. If the initial project for which the expropriation occurred is abandoned, the Constitution stipulates that the expropriation will be annulled and the property returned to the original owner. The Constitution prohibits nationalization and confiscation of real and personal property for political purposes or reasons.

Title deeds are often unclear and ownership is insecure. The Haitian government has an office (INARA) to implement expropriations of private agricultural properties with appropriate compensation. The agrarian reform project initiated under the first Preval administration (1996-2001) was controversial among both Haitian and U.S. property owners. There have been complaints of non-compensation for the expropriation of property. The current administration has been slow about an ongoing revision of the land tenure code. Amendments are expected to address current issues related to the lack of access to land records, surveys, and property titles in Haiti. A recent partnership between the private sector, government of Haiti, and international organizations provides a guide to formalizing land tenure.

## 4. Dispute Settlement

### Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

The legal system of Haiti is based upon the French Napoleonic Code. The judiciary consists of four levels: the Court of Cassation, courts of appeal, civil courts, and magistrates' courts. Judges of the Court of Cassation are appointed by the president for 10-year terms. Government prosecutors, appointed by the courts, act in both civil and criminal cases. There are also land, labor, and children's courts. Haiti's commercial code dates to 1826 and underwent its last significant revision in 1944. There are few commercial legal remedies available. The protection and guarantees that Haitian law extends to investors are severely compromised by weak enforcement mechanisms, a lack of updated laws to handle modern commercial practices, and a weak judicial system. Injunctive relief is based upon penal sanctions rather than securing desirable civil action. Similarly, contracts to comply with certain obligations, such as commodities futures contracts are not enforced. Judges often do not possess the specialized knowledge, and sometimes their in-depth understanding of commercial law is limited. Utilizing Haitian courts to settle disputes is a lengthy process and cases may remain unresolved for many years. Business litigants, who become frustrated with the legal process, may opt to pursue out-of-court settlements.

The Haitian Chamber of Commerce and Industry (CCIH), in partnership with the Haitian government and with funding from the European Union, has a commercial dispute settlement mechanism – the Arbitration and Conciliation Chamber -- to provide mechanisms for conciliation and arbitration in cases of private commercial disputes.

There are several ongoing private disputes between U.S. and Haitian entities. U.S. citizens seeking resolution of these disputes are often hindered by Haiti's cumbersome legal system. As a result of international assistance, progress is being made to increase the credibility of the judiciary and the effectiveness of the national police.

### Bankruptcy

Haiti's 1826 Bankruptcy Law was last modified in 1944. Under domestic law, there are three phases of bankruptcy. In the first stage, payments cease and bankruptcy is declared. In the second stage, a judgment of bankruptcy is rendered, which transfers the rights to administer assets from the debtor to the Director of the Haitian Tax Authority (Direction Générale des Impôts, or DGI). In this phase, assets are sealed and the debtor is confined to debtor's prison. In the last stage, the debtor's assets are liquefied and the debtor's verified debts are paid. In practice, the above measures are seldom applied. Since 1955, most bankruptcy cases have been settled between the parties. Debts are normally paid in Haitian gourdes (HTG).

**Investment Disputes**

Investment disputes can be settled in Haitian courts or through international arbitration. A claimant dissatisfied with the ruling of the court cannot request international arbitration after the ruling is issued.

Foreign court decisions are not enforceable in Haiti.

**International Arbitration**

Haiti is actively working with the international community to create a domestic culture that accepts international arbitration as an effective means for dispute resolution.

*ICSID Convention and New York Convention*

In 2009, Haiti became a member state to the International Centre for the Settlement of Investment Disputes (ICSID convention). They are also signatories to the convention on the Recognition and the Enforcement of Foreign Arbitral Awards (1958 New York Convention)

**Duration of Dispute Resolution**

There are several ongoing private disputes between U.S. and Haitian entities.

**5. Performance Requirements and Investment Incentives**

**WTO/TRIMS**

Haiti is an original member of the World Trade Organization (WTO). According to the WTO's latest Trade Policy Review (2003), Haiti's Investment Code and Law on Free Trade Zones is fully consistent with the Agreement on Trade-Related Investment Measures (TRIMs).

Haitian law confers equal treatment to manufacturing companies that produce for the local market regardless of their nationality, as long as they reside in Haiti. There are several special status categories for certain types of investment in priority or strategically significant enterprises.

**Investment Incentives**

In order to attract investment to certain industries, the Investment Code created a privileged status for some manufacturers. Eligible firms can benefit from customs, tax, and other advantages under the Code. Investments that provide added value of at least 35 percent in the processing of local or imported raw materials are eligible for preferential status.

The statute allows for a 5- to 10-year income tax exemption. Industrial or crafts-related enterprises must meet one of the following criteria in order to benefit from this exemption:

- Make intensive and efficient use of available local resources (i.e., advanced processing of existing goods, recycling of recoverable materials).

- Increase national income.
- Create new jobs and/or upgrade the level of professional qualifications.
- Reinforce the balance of payments position and/or reduce the level of dependency of the national economy on imports.
- Introduce or extend new technology more appropriate to local conditions (i.e., utilize non-conventional sources of energy, use labor-intensive production).
- Create and/or intensify backward or forward linkages in the industrial sector.
- Export-oriented production.
- Substitute a new product for an imported product, provided that the new product presents a quality/price ratio deemed acceptable by the appropriate entity and comprises a total production cost of at least 60 percent of the value added in Haiti, including the cost of local inputs used in its production.
- Prepare, modify, assemble, or process imported raw materials or components for finished goods that will be re-exported.
- Utilize local inputs at a rate equal or superior to 35 percent of the production cost.

For investment that matches one or more of the criteria described above, the Haitian government provides customs duty and tax incentives. Companies that enjoy tax exemption status are required to submit annual financial statements. Fines or withdrawal of tax advantages may be assessed to firms failing to meet the Code's provisions.

A progressive tax system applies to income, profits, and capital gains earned by individuals. The tax rates on individuals are as follows (47 HTG/USD as of April 2015):

| Income (Gourdes per month) | Rate (percent) |
|---|---|
| Up to 60,000 | 0 |
| 60,001 to 240,000 | 10 |
| 240,001 to 480,000 | 15 |
| 480,001 to 1,000,000 | 25 |
| Over 1,000,000 | 30 |

The tax rate on corporate income is 30 percent. The Haitian government receives technical assistance from the U.S. Department of the Treasury's Office of Technical Assistance and USAID to facilitate increasing the Haitian tax base and the Haitian government's tax collection and enforcement capabilities.

*Research and Development*

Foreign investors are permitted to own a company or subsidiary. As such, the entity enjoys all rights and privileges provided under the law. Entrepreneurs are free to dispose of their properties and assets and to organize production and marketing activities in accordance with local laws.

**Performance Requirements**

Not applicable.

### Data Storage

Not applicable.

## 6. Right to Private Ownership and Establishment

Foreigners who wish to obtain residential status to conduct business in Haiti must deposit HTG 50,000 (USD 1,111) in a blocked account at the BRH. A professional identity card, issued by the Ministry of Commerce and Industry, is also required. Transient business persons and those temporarily in the country must be accompanied by locally licensed agents when visiting clients or soliciting business.

Foreigners working in Haiti are subject to property restrictions. Foreigners, excluding foreign corporations, may not own more than one residence in the same district or own real estate without prior authorization from the Ministry of Justice. Land ownership is limited to 1.29 hectares (about 3 acres) in urban areas and 6.45 hectares (about 16 acres) in rural areas. Additionally, foreigners may not own property or buildings near the border. Foreigners who establish Haitian corporations with corporate offices located in Haiti are not affected by restrictions on ownership of property or buildings adjacent to the border with the Dominican Republic.

## 7. Protection of Property Rights

### Real Property

Real property interests are affected by the absence of a comprehensive civil registry. Bona fide property titles are often non-existent. If they do exist, they are often in conflict with other titles for the same property. Verification of property titles can take several months or more. The Embassy regularly receives reports of fraudulent or fraudulently recorded land titles. Mortgages exist, but real estate mortgages are expensive and involve cumbersome procedures. They are not always recorded against the debtor or creditors.

### Intellectual Property Rights

Haitian law protects copyrights, patent rights, and inventions, as well as industrial designs and models, special manufacturers' marks, trademarks, and business names. The law penalizes individuals or enterprises involved in infringement, fraud, or unfair competition; however, enforcement is weak. Haiti is a signatory to the Buenos Aires Convention of 1910, the Paris Convention of 1883 regarding patents, and the Madrid Agreement regarding trademarks. Haiti has ratified the Bern Copyright Convention.

The current draft trademark law appears to reflect the Haitian government's determination to revise its intellectual property legislation in line with its international agreements. As noted, weak enforcement mechanisms, inefficient courts, and judges' inadequate knowledge of commercial law may impede the effectiveness of statutory protections.

*Resources for Rights Holders*

For more information concerning intellectual property rights, please contact the U.S. Embassy's Commercial Attaché Christian Loubeau at PAPECON@state.gov .

Local lawyers list:
photos.state.gov/libraries/haiti/231771/PDFs/List%20of%20Attorneys%20May%202011.pdf

Haitian Copyright Office (BHDA)
Ministry of Culture and Communication
http://bhdahaiti.com/
31, Rue Cheriez
Canape-Vert
Port-au-Prince
HAITI (West Indies)
(509) 2811 0535
(509)2811 5626
bhda.gouv@gmail.com
Director general/Directrice générale: Mrs. Emmelie Phrophète Milce

Industrial Property Offices
Intellectual Property Service, Department of Legal Affairs
Ministry of Trade and Industry
http://www.mci.gouv.ht/
Parc Industriel Metropolitain (SONAPI),
Route de l'aéroport
Port-au-Prince
(509) 2943 1868
(509) 2940-0726
rodrigue.josaphat@mci.gouv.ht
mcihaiti@yahoo.fr
Director of Legal Affairs/Directeur des Affaires Juridiques: Mr. Rodrigue Josaphat

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

## 8. Transparency of the Regulatory System

Haitian laws are transparent and theoretically universally applicable, but legal enforcement is not universally applied nor observed. The bureaucracy and "red tape" in the Haitian legal system is often excessive.

Haiti does not have laws to specifically foster competition. Tax, labor, health, and safety laws and policies are theoretically universally applicable. However, they are not universally applied, observed, or enforced. Many in the private sector provide services, such as health care, for employees that are not provided by Haitian government agencies.

## 9. Efficient Capital Markets and Portfolio Investment

The scale of financial services remains modest in Haiti. In principle, there are no limitations on foreigners' access to the Haitian credit market and credit is available through commercial banks. The free and efficient flow of capital is hindered by the difficulties in obtaining financing and by Haitian accounting practices, which often fall below international standards. While there are no restrictions on foreign investment through mergers or acquisitions, there is no Haitian stock market, so there is no way for investors to purchase shares in a company outside of direct transactions.

The standards that govern the Haitian legal, regulatory, and accounting systems often fall below international norms. Haitian laws do not require external audits of domestic companies. Local firms calculate taxes, obtain credit or insurance, prepare for regulatory review, and assess real profit and loss. Accountants use basic accounting standards set by the Organization of Certified Professional Accountants in Haiti (OCPAH).

Practices in the banking sector, however, are superior to other sectors. Under Haitian law, banks are neither required to comply with internationally recognized accounting standards nor to be audited by internationally recognized accounting firms. Haiti's Central Bank, BRH, requires only that banks be audited. Nonetheless, most private banks follow international accounting norms and use consolidated reporting. BRH is generally viewed as one of the best-functioning GOH institutions.

### Money and Banking System, Hostile Takeovers

The trend in the banking sector has been toward the proliferation of the branches to capture deposits and remittances and the concentration of credit mainly in trade financing. Telebanking now provides access to banking services for many Haitians holding bank accounts for the first time. Three major banking institutions hold 82 percent of total banking sector assets, valued at HTG 195 billion (USD 4.33 billion) in September 2014. The three major commercial banks also hold more than three-quarters of the total loan portfolio, while 70 percent of total loans are monopolized by 10 percent of borrowers, which increases the Haitian banking system's vulnerability to systemic credit risk and restricts the availability of capital. The gross loan portfolio of the banking system in September 2014 was HTG 68 billion (USD 1.5 billion), representing about a 9.6 percent increase from FY 13. The quality of the loan portfolios in the banking system, measured by the ratio of nonperforming loans over total loans, improved significantly over the past two years with an increase of 3.00 percent over September 2013 (2.4 percent). The improvement of the quality of the loan portfolio over the past years resulted mainly from the cancellation of SOCABANK's nonperforming loans by the state-owned commercial bank BNC. SOCABANK, a privately-owned commercial bank, was taken over by BNC in 2007, which caused it to become the third largest bank in the system.

The Central Bank (BRH's) main challenge is to maintain sound monetary policy in a context of a larger-than-expected government deficit. Inflation, at 6.6 percent in April 2015, was stabilized by international food commodity prices. The exchange rate suffered from continued pressures in the foreign exchange market resulting from an increased fiscal deficit and a social-political backlog. To ease the pressure on the local currency, the Central Bank preceded with the sales of

USD 33 million in 2014, while maintaining the reserve requirement ratios of bank deposits at the same level as in 2013.

There are no legal limitations on foreigners' access to the domestic credit market. Credit is available on market terms through commercial banks. However, banks demand a pledge of real property to grant loans. Given the lack of effective cadastral and civil registries, loan applicants face daunting challenges in obtaining credit. The banking sector is extremely conservative in its lending practices. Banks typically lend exclusively to their most trusted and credit-worthy clients. In addition, the high concentration of assets does not allow for product innovation at major banks.

To provide greater financial services access to individuals and prospective investors, the Haitian government’s chattel and banking laws both recognize tangible movable property (ex. portable machinery, furniture, tangible personal property) as collateral for loans. These laws allow individuals to buy condominiums and banks to accept personal properties, such as cars, bank accounts, etc., as a pledge for loans. USAID has a loan portfolio guarantee program with a diversified group of financial institutions in order to encourage them to expand credit to productive small and medium enterprises and rural micro-enterprises. The Haitian government plans to establish a credit rating bureau to disseminate data on the total indebtedness and concentration of credit risks of businesses and individuals in the financial sector, but to date there has been little progress in setting up the bureau.

## 10. Competition from State-Owned Enterprises

Please see “Privatization Program” section above.

### OECD Guidelines on Corporate Governance of SOEs

Not applicable/information not available.

### Sovereign Wealth Funds

Not applicable.

## 11. Corporate Social Responsibility

Awareness of corporate social responsibility among producers and consumers is limited but growing. Almost all large Haitian firms have a CSR component to their business plan, even if it is not well advertised or formalized. Irish-owned telecoms company Digicel, for example, sponsors an Entrepreneur of the Year program and has built 120 schools in Haiti. Natcom provides free internet service to several public schools throughout the country. Les Moulins d’Haiti, partially owned by U.S. firm Seaboard Marine, provides some services including electrical power to surrounding communities. In the aftermath of the 2010 earthquake, many firms provided logistical or financial support to humanitarian initiatives, and many continue to contribute to reconstruction efforts. Haiti’s various chambers of commerce have become more supportive of social responsibility programs as well.

**OECD Guidelines for Multinational Enterprises**

Information not available.

## 12. Political Violence

Haiti's political situation remains fragile. The uncertainty caused by overdue elections, frequent cabinet changes, poor relations between Parliament and the Executive which ultimately resulted in the lapse of a functioning Parliament, have hindered both reconstruction efforts and passage of important legislation. Political violence has been limited in scope, but is still a common occurrence, and may increase if national elections take place as planned in 2015. Capacity of law enforcement authorities needs to be in increased in order to deter and prosecute violent crime.

There have been no recent cases of political groups targeting foreign projects and/or installations. Historically, and continuing into early 2015, politically and socio-economically motivated civil disorder, such as periodic demonstrations triggered by government proposals to increase fuel prices and labor strikes sometimes interrupted normal business operations. Establishing and safeguarding real property rights in Haiti remains a very significant problem, given extremely weak Registry and Judicial capacity.

## 13. Corruption

Corruption, including bribery, raises the costs and risks of doing business. Corruption has a corrosive impact on both market opportunities overseas for U.S. companies and the broader business climate. It also deters international investment, stifles economic growth and development, distorts prices, and undermines the rule of law.

It is important for U.S. companies, irrespective of their size, to assess the business climate in the relevant market in which they will be operating or investing in. It is recommended that they have an effective compliance program or measures to prevent and detect corruption, including foreign bribery. U.S. individuals and firms operating or investing in foreign markets should take the time to become familiar with the relevant anticorruption laws of both the foreign country and the United States in order to properly comply with them, and where appropriate, they should seek the guidance of legal counsel.

U.S. Foreign Corrupt Practices Act: In 1977, the United States enacted the Foreign Corrupt Practices Act (FCPA), which makes it unlawful for a U.S. person, and certain foreign issuers of securities, to make a corrupt payment to foreign public officials for the purpose of obtaining or retaining business for or with, or directing business to, any person. The FCPA also applies to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States. For more detailed information on the FCPA, see the FCPA Lay-Person’s Guide at: http://www.justice.gov/criminal/fraud/fcpa/

*UN Anticorruption Convention, OECD Convention on Combatting Bribery*

UN Convention: The UN Anticorruption Convention entered into force in 2005, and there are 164 parties to it as of November 2012 (see http://www.unodc.org/unodc/en/treaties/CAC/signatories.html). The UN Convention is the first global comprehensive international anticorruption agreement. The UN Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption. The UN Convention goes beyond previous anticorruption instruments, covering a broad range of issues ranging from basic forms of corruption such as bribery and solicitation, embezzlement, trading in influence to the concealment and laundering of the proceeds of corruption. The Convention contains transnational business bribery provisions that are functionally similar to those in the OECD Antibribery Convention and contains provisions on private sector auditing and books and records requirements. Other provisions address matters such as prevention, international cooperation, and asset recovery. Haiti is a party to the UN Convention.

OAS Convention: In 1996, the Member States of the Organization of American States (OAS) adopted the first international anticorruption legal instrument, the Inter-American Convention against Corruption (OAS Convention), which entered into force in 1997. The OAS Convention, among other things, establishes a set of preventive measures against corruption provides for the criminalization of certain acts of corruption, including transnational bribery and illicit enrichment, and contains a series of provisions to strengthen the cooperation between its States Parties in areas such as mutual legal assistance and technical cooperation. As of November 2012, the OAS Convention has 34 parties (see http://www.oas.org/juridico/english/Sigs/b-58.html). Haiti is a party to the OAS Convention.

Haiti is not a party to the OECD Antibribery Convention.

*Resources to Report Corruption*

Any corruption-related activity can be reported to the Haitian Anti-Corruption Unit, responsible for combatting corruption, or Transparency International's branch in Haiti, Haiti Heritage Foundation, which monitors corruption:

Rodiny Jean Baptiste
Director General
Unité de Lutte Contre la Corruption
13, rue Capotille, Pacot, Port-au-Prince, Haiti
(509) 2811-0661 / (509) 4890-3647
info@ulcc.gouv.ht

Marilyn B. Allien
President
Fondation Heritage pour Haiti
Petionville, Haiti
(509) 3701-7089
admlfhh@yahoo.com / heritagehaiti@yahoo.com

Some useful resources for individuals and companies regarding combating corruption in global markets include the following:

- Information about the U.S. Foreign Corrupt Practices Act (FCPA), including a "Lay-Person's Guide to the FCPA" is available at the U.S. Department of Justice's Website at: http://www.justice.gov/criminal/fraud/fcpa.

- Information about the OECD Antibribery Convention including links to national implementing legislation and country monitoring reports is available at: http://www.oecd.org/department/0,3355,en_2649_34859_1_1_1_1_1,00.html. See also new Antibribery Recommendation and Good Practice Guidance Annex for companies: http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44884389.pdf

- General information about anticorruption initiatives, such as the OECD Convention and the FCPA, including translations of the statute into several languages, is available at the Department of Commerce Office of the Chief Counsel for International Commerce website: http://www.oecd.org/site/adboecdanti-corruptioninitiative/

- Transparency International (TI) publishes an annual Corruption Perceptions Index (CPI). The CPI measures the perceived level of public-sector corruption in 180 countries and territories around the world. The CPI is available at: http://www.transparency.org/cpi2014. TI also publishes an annual Global Corruption Report which provides a systematic evaluation of the state of corruption around the world. It includes an in-depth analysis of a focal theme, a series of country reports that document major corruption related events and developments from all continents and an overview of the latest research findings on anti-corruption diagnostics and tools. See https://www.transparency.org/research/gcr.

- The World Bank Institute publishes Worldwide Governance Indicators (WGI). These indicators assess six dimensions of governance in 212 countries, including Voice and Accountability, Political Stability and Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. See http://info.worldbank.org/governance/wgi/pdf/WGI.pdf. The World Bank Business Environment and Enterprise Performance Surveys may also be of interest and are available at: http://data.worldbank.org/data-catalog/BEEPS.

- The World Economic Forum publishes the Global Enabling Trade Report, which presents the rankings of the Enabling Trade Index, and includes an assessment of the transparency of border administration (focused on bribe payments and corruption) and a separate segment on corruption and the regulatory environment. See http://www.weforum.org/.

- Additional country information related to corruption can be found in the U.S. State Department's annual Human Rights Report available at http://www.state.gov/j/drl/rls/hrrpt/.

- Global Integrity, a nonprofit organization, publishes its annual Global Integrity Report, which provides indicators for 92 countries with respect to governance and anti-corruption. The report highlights the strengths and weaknesses of national level anti-corruption systems. The report is available at: http://report.globalintegrity.org/.

## 14. Bilateral Investment Agreements

Haiti and the U.S. are a part of the Caribbean Basin Trade Promotion Act (CBTPA) a trade preference program enacted in October 2000, which provides duty-free treatment for apparel wholly assembled, knit or knit-to-shape in certain beneficiary countries in the Caribbean, as long as the apparel uses U.S. fabrics and U.S. yarns.

In December 2006, Congress enacted the Haitian Hemispheric Opportunity for Partnership Encouragement Act of 2006, commonly referred to as HOPE. HOPE amended the Caribbean Basin Economic Recovery Act (CBERA) and authorized the President to extend additional trade preferences to Haitian manufactured apparel. HOPE preference programs do not replace those provided by CBTPA, but are separate programs that were added as part of CBERA.

In June 2008, Congress enacted the Food, Conservation, and Energy Act of 2008 (Public Law 110-246). Title XV, Subtitle D, Part I of the Act contains amendments to the established special rules for imports of apparel and other textile articles from Haiti, which can be found in 19 U.S.C. §2703a. These amendments are cited as the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 which is commonly known as HOPE II. HOPE II expanded the preferences originally established in HOPE, and created four new preference programs for Haitian-manufactured apparel.

Haiti, a CARIFORUM member, signed an economic partnership agreement (EPA) with the European Union (EU) in 2009. The EPA allows the export of products from Haiti to EU countries without tariffs or quotas. Haiti is a member of the Caribbean Community (CARICOM) and assumed chairmanship of CARICOM on January 1, 2013. The CARICOM Single Market and Economy (CSME), which was created in 1989 and aims to advance the region's integration into the global economy by facilitating free trade in goods and services and the free movement of labor and capital, became operational in January 2006 among twelve of the fifteen Member States. Haiti, as a member of CARICOM, has expressed an interest in participating fully in CSME. However, to become eligible, Haiti is required to amend its customs code to align with the local tariffs to both CARICOM and WTO standards.

### Bilateral Taxation Treaties

Haiti does not have a bilateral taxation treaty with the United States.

## 15. OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC) offers insurance against political risks and financing programs for U.S. investments in Haiti. OPIC financing includes two programs: direct lending and investment guarantees. Direct loans are available to investment projects sponsored by or significantly involving U.S. small businesses. Investment guarantees are available to U.S. eligible investors of any size. OPIC has invested more than USD 223 million in 78 projects in Haiti over 40 years, in infrastructure, renewable resources, and other sectors.

OPIC has an on-lending facility with Citibank available to several Caribbean countries, including Haiti. OPIC participation in this facility is through loan guarantees totaling USD 100 million, with up to 20 percent of this amount available for Haiti. The OPIC risk share for the facility ranges from 25 to 75 percent for each loan.

Haiti is a member of the WB's Multilateral Investment Guarantee Agency (MIGA). MIGA guarantees investments against non-commercial risks and facilitate access to funding sources including banks and equity partners for investors.

## 16. Labor

Haiti's apparel industry has expanded in recent years, and now counts several local and foreign manufacturers, including U.S., Dominican, and Korean investors, which produce a wide range of clothing articles. The sector has notable strengths and advantages, such as an abundant workforce, duty-free access to the U.S. market, and a program implemented by the International Labor Organization's Better Work program that ensures good working conditions in factories. Measures are currently underway to enhance the technical skills of the Haitian workforce. With a USAID-funded program, TC2, a U.S. based apparel vocational training firm, incorporated the first Haitian Apparel Training center in the Northeast area. The training facility has a capacity to train 2,000 sewing workers per year. The construction of an additional apparel training center in the Caracol Industrial Park in Northern Haiti is being funded by the South Korean International Cooperation Agency.

Labor unions are generally receptive to investment that creates new jobs, and support from the international labor movement including the AFL-CIO and ITUC is building the capacity of unions to represent workers and engage in social dialogue. The Ministry of Labor and Social Affairs is revising a new labor code that will be more in compliance with international labor standards. The preparation for the 2015 election as well as the change in the Minister of Labor in January 2015 has stalled the revision of the labor code.

Labor-management relations in Haiti have at times been strained. In some cases, however, industries have autonomously implemented good labor practices. For example, the apparel assembly sector established its own voluntary code of ethics to encourage its members to adopt good labor practices. In addition to local entities, the International Labor Organization (ILO) has an office in Haiti and operates an ongoing project with the assembly industry to improve productivity through improvement in working conditions. The initiative prompted ILO to officially launch Better Work Haiti, a program that was designed to ensure compliance with international labor standards and spur jobs creation in the garment sector over the next ten years.

Since the inception of Better Work Haiti, the garment sector has seen a 50 percent improvement in occupational safety and health across the factories. Employers have doubled their efforts to improve chemical safety, and over 95 percent of local factories have initiated proper policies to strengthen a safer work environment as well as providing good working conditions to garment workers. Wages vary depending on the economic sector. As of May 2014, the minimum wage for the garment sector is HTG 225 per day or (USD 4.78). Better Work Haiti's 9th biannual synthesis report found the majority of factories in compliance with the labor law.
Better Work Haiti's biannual report is available at: http://betterwork.org/global/?p=7201.

## 17. Foreign Trade Zones/Free Ports/Trade Facilitation

A law on Free Trade Zones (FTZ) entered into force in 2002. It sets out the conditions for operating and managing economic FTZs, together with exemption and incentive regimes granted for investment in such zones. The law is not specific to a particular activity. The law defines FTZs as geographical areas to which a special regime on customs duties and controls, taxation, immigration, capital investment, and foreign trade applies and where domestic and foreign investors can provide services, import, store, produce, export, and re-export goods.

FTZs may be private or joint venture. The law provides the following incentives and benefits for enterprises located in FTZs:

- Full exemption from income tax for a maximum period of 15 years, followed by a period during which there is partial exemption that gradually decreases;
- Customs and fiscal exemptions for the import of capital goods and equipment needed to develop the area, with the exception of tourism vehicles;
- Exemption from all communal taxes (with the exception of fixed occupancy tax) for a period not exceeding 15 years; and
- Registration and transfer of the balance due for all deeds relating to purchase, mortgages, and collateral.

A FTZ has been established in the northeastern city of Ouanaminthe, where a Dominican company, Grupo M, manufactures clothing for a variety of U.S. companies -- Sarah Lee, Nautica, Dockers, Fruit of the Loom and Levi Strauss -- at its CODEVI facility. In October 2012, the Government of Haiti with the support of the Inter-American Development Bank (IDB) and the United States Government opened the 617-acre Caracol Industrial Park (PIC) mixed industrial zone located in proximity to the town of Caracol in Haiti's northeastern region. In 2012, two companies began operating in PIC: the Korean garment company S&H Global and a Haitian paint manufacturer, Peinture Caraibe. A Dominican jeans manufacturer and a Haitian paint producer began operations in 2013, while several other companies including a fragrance and cosmetics manufacturer, a steel producer, and a Haitian garment manufacturer started up in 2014.

In 2015 two major FTZ's are in development: The Agritrans project – the first agricultural free trade zone in Haiti – and Port Lafito, a USD 150 million Panamax port and industrial park. Agritrans is a USD 27 million project with the objective of exporting bananas to Europe. The Lafito port is part of a comprehensive development project that includes an industrial free zone, hospital, residential-commercial area, and leisure amenities to include a boutique hotel, a beach club and a marina. Lafito is located 12 miles from the Port-au-Prince main port, and the GB Group plans to set up modern terminal operations to efficiently compete with the main port in Port-au-Prince. In Port-au-Prince the GB Group expects that the industrial park will generate over 3,000 jobs in the apparel sector alone. The project is scheduled to be completed in 2015, and will serve as a gateway connecting Haiti to the rest of the world.

The International Finance Corporation and the WB's Investment Climate Advisory Services are supporting the Haitian government's plans to implement integrated economic zones (IEZ) throughout Haiti. The project, partly funded by the Netherlands, is expected to generate more than 380,000 jobs and 100,000 home sites in Haiti over the next two decades following implementation. The Haitian government is currently working on developing an IEZ law and the regulatory framework to pilot the program under a public-private partnership approach.

**18. Foreign Direct Investment and Foreign Portfolio Investment Statistics**

*Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy*

| | **Host Country Statistical source*** | | **USG or international statistical source** | | **USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other** |
|---|---|---|---|---|---|
| **Economic Data** | **Year** | **Amount** | **Year** | **Amount** | |
| **Host Country Gross Domestic Product (GDP) ($M USD)** | 2013 | 8,458 | 2013 | 8,459 | www.worldbank.org/en/country |
| **Foreign Direct Investment** | **Host Country Statistical source*** | | **USG or international statistical source** | | **USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other** |
| **U.S. FDI in partner country ($M USD, stock positions)** | 2013 | 118 | 2013 | N/A | http://bea.gov/international/factsheet/factsheet.cfm?Area=211 |
| **Host country's FDI in the United States ($M USD, stock positions)** | N/A | | 2013 | 0 | http://bea.gov/international/factsheet/factsheet.cfm?Area=211 |
| **Total inbound stock of FDI as % host GDP** | 2013 | 12% | 2013 | 2.2% | http://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS |

http://www.brh.net/posextglobale.pdf

*Table 3: Sources and Destination of FDI*

IMF Coordinated Direct Investment Survey data are not available for Haiti.

*Table 4: Sources of Portfolio Investment*

IMF Coordinated Portfolio Investment Survey data are not available for Haiti.

## 19. Contact for More Information

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