

ARTICLE 35

Restrictions to Safeguard the Balance-of-Payments

1. The Parties shall endeavour to avoid the imposition of restrictive measures for balance-of-payments purposes.
2. Articles XI and XII of the GATS shall apply to payments and transfers, and to restrictions to safeguard the balance-of-payments relating to trade in services.
3. A Party adopting or maintaining a measure under this Article shall promptly notify the other Parties and the Joint Committee thereof.

ARTICLE 36

Annexes

Annexes VI to X form an integral part of this Chapter.

IV INVESTMENT

ARTICLE 37

Definitions

For the purposes of this Chapter:

- (a) “*company*” means any entity constituted or organized under the applicable law, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;
- (b) “*investment*” means any kind of asset and particularly:
 - (i) movable and immovable property as well as any other rights in rem, such as mortgages, liens, and pledges;
 - (ii) shares, bonds and debentures or any other forms of participation in a company;

- (iii) claims to money or to any performance associated with a company having an economic value;
 - (iv) intellectual property rights, technical know-how and goodwill;
 - (v) business concessions conferred by law or under contract, including any concession to search for, cultivate, extract or exploit natural resources;
- (c) “*investment of an investor of a Party*” means an investment that is owned or controlled, either directly or indirectly, by an investor of that Party;
- (d) “*investor of a Party*” means:
- (i) a natural person having the nationality of that Party or having the right of permanent residence of that Party in accordance with its applicable laws;
 - (ii) a company constituted or organized under the applicable law of that Party and carrying out substantial business activities there;

making or having made an investment in the territory of another Party.

ARTICLE 38

Scope and Coverage

1. This Chapter shall apply to investors of a Party, and to their investments whether made before or after the entry into force of this Agreement.
2. Article 40 (1) shall not apply to measures affecting trade in services whether or not a sector concerned is scheduled in Chapter III.
3. Article 40 (1) shall also not apply to investors of a Party in services sectors and their investments in such sectors. This provision is subject to review after a period of ten years from the date of entry into force of this Agreement, with a view to examining its continued need.
4. The provisions of this Chapter shall be without prejudice to the rights and obligations of the Parties under other international agreements relating to investment.

ARTICLE 39

Promotion and Protection

1. Each Party shall, in accordance with the provisions of this Chapter, create and maintain stable, equitable, favourable and transparent conditions for investors of the other Parties to make investments in its territory.
2. Such conditions shall include a commitment to accord at all times to investments of investors of another Party fair and equitable treatment. Such investments shall also enjoy the most constant protection and security.

ARTICLE 40

National Treatment and Most-Favoured-Nation Treatment

1. Each Party shall accord to investors and investments of investors of another Party, in relation to the establishment, acquisition, expansion, management, conduct, operation and disposal of investments, treatment that is no less favourable than that which it accords in like situations to its own investors and their investments or to investors and their investments of any other State, whichever is more favourable.
2. If a Party accords more favourable treatment to investors of any other State or their investments by virtue of a free trade agreement, customs union or similar agreement that also provides for substantial liberalisation of investments, it shall not be obliged to accord such treatment to investors of another Party or their investments. However, upon request from another Party, it shall afford adequate opportunity to negotiate the benefits granted therein.
3. The standard of national treatment as provided for in paragraph 1 shall not apply to subsidies based on a Party's social policy or its economic development policy, even if such subsidies, directly or indirectly, favour local enterprises or entrepreneurs. If another Party considers that such subsidies, in a particular case, have a seriously distortive effect on the investment opportunities of its own investors, it may request consultations on such matters. Such requests shall be accorded sympathetic consideration.
4. The standard of national treatment as provided for in paragraph 1, means, with respect to a sub-national entity, treatment no less favourable than the most favourable treatment accorded, in like situations, by that entity to investors, and to investments of investors, of the Party of which it forms a part.

ARTICLE 41

Taxation

1. Except as otherwise provided for in this Article, nothing in this Chapter shall create rights or impose obligations with respect to taxation measures.
2. Article 40 shall apply to taxation measures subject to deviations from national treatment that are necessary for the equitable or effective imposition or collection of direct taxes¹¹.
3. If a Party accords special advantages to investors and their investments of any other State by virtue of an agreement for the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of another Party and their investments.

ARTICLE 42

Dispossession, Compensation

1. None of the Parties shall take, either *de jure* or *de facto*, measures of expropriation or nationalisation against investments of investors of another Party, unless such measures are in the public interest; non-discriminatory; carried out under due process of law; and accompanied by the payment of compensation. The amount of compensation shall be settled in a freely convertible currency and paid without delay to the person entitled thereto without regard to its residence or domicile.
2. Investors of a Party whose investments in the territory of another Party have suffered losses due to armed conflict or civil strife in the territory of the latter Party, shall benefit from treatment in accordance with Article 40 as regards restitution, indemnification, compensation or any other settlement it adopts or maintains relating to such losses.

ARTICLE 43

Domestic Regulation

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure consistent with this Chapter that is in the public interest, such as measures to meet health, safety or environmental concerns.

¹¹ Footnote 10 under Article 19 of Chapter III on Services shall also apply *mutatis mutandis* to this Chapter.

ARTICLE 44

Transfers

1. Each Party shall allow payments relating to an investment in its territory of an investor of another Party to be freely transferred into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:
 - (a) profits, interest, dividends, capital gains, royalties and fees as well as any other amounts yielded by an investment;
 - (b) payments made under a contract including a loan agreement;
 - (c) additional amounts to maintain or increase an investment;
 - (d) proceeds from the sale or liquidation of all or any part of an investment;
and
 - (e) earnings and other remuneration of personnel engaged from abroad in connection with an investment.
2. A transfer shall be deemed to have been made “without delay” if effected within such a period as is normally required for the completion of transfer formalities, including reports of currency transfers.
3. Each Party shall permit such transfers to be made in a freely convertible currency. “Freely convertible currency” means a currency that is widely traded in international foreign exchange markets and widely used in international transactions.
4. It is understood that paragraphs 1 to 3 above are without prejudice to the equitable, non-discriminatory and good faith application of laws relating to:
 - (a) bankruptcy, insolvency or the protection of the rights of creditors;
 - (b) the issuing, trading or dealing in securities;
 - (c) criminal or penal offences, and the recovery of proceeds of crimes;
 - (d) ensuring the satisfaction of judgments in adjudicatory proceedings.
5. It is also understood that paragraphs 1 to 3 above are without prejudice to obligations under tax laws or social security and public retirement schemes.

ARTICLE 45

Key Personnel

1. The Parties shall, subject to their laws and regulations relating to the entry, stay and work of natural persons, grant investors of another Party, and key personnel (executives, managers and specialists, as defined by the granting Party as “Intra-corporate transferees” in the horizontal commitments of its respective Appendix of Annex VII) who are employed by such investors or investments of such investors, temporary entry, stay and authorisation to work in their territories to engage in activities connected with the establishment, management, maintenance, use, enjoyment, expansion or disposal of relevant investments.

2. The Parties shall, subject to their laws and regulations, permit investors of another Party which have investments in their territories, and investments of such investors, to employ any key personnel of the investor’s or the investment’s choice regardless of nationality and citizenship provided that such key personnel has been permitted to enter, stay and work in the territory of the other Party and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.

3. The Parties are encouraged to grant, subject to their laws and regulations, temporary entry and stay to the spouse and minor children of an investor of another Party or of key personnel employed by such investors, who has been granted temporary entry, stay and authorisation to work.

ARTICLE 46

Reservations

1. Article 40 (1), shall not apply to:

- (a) any reservation that is listed by a Party in Annex XI;
- (b) an amendment to a reservation covered by sub-paragraph (a) to the extent that the amendment does not decrease the conformity of the reservation with Article 40;
- (c) any new reservation adopted by a Party, and incorporated into Annex XI provided that such reservation does not affect the overall level of commitments of that Party under this Chapter;

to the extent that such reservation is inconsistent with the above-mentioned Article.

2. The Parties undertake to review at least every two years the status of the reservations set out in Annex XI with a view to reducing the reservations or removing them.
3. A Party may, at any time, either upon the request of another Party or unilaterally, remove in whole or in part reservations set out in Annex XI by written notification to the other Parties.
4. A Party may, at any time, incorporate a new reservation into Annex XI in accordance with paragraph 1 (c) of this Article by written notification to the other Parties. On receiving such notification, the other Parties may request consultations regarding the reservation. On receiving the request for consultations, the Party incorporating the new reservation shall enter into consultations with the other Parties.

ARTICLE 47

Subrogation

In the event that a Party (or any agency, institution, statutory body or corporation designated by it), as a result of an indemnity it has given in respect of an investment or any part thereof, makes a payment to its own investors in respect of any of their claims under this Chapter, the other Party acknowledges that the former Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of such investors.

ARTICLE 48

Disputes Between an Investor and a Party

1. If an investor of a Party considers that a measure applied by another Party is inconsistent with an obligation of this Chapter, thus causing loss or damage to him or his investment, he may request consultations with a view to solving the matter amicably.
2. Any such matter which has not been settled within a period of six months from the date of request for consultations may be referred to the courts or administrative tribunals of the Party concerned or, if both parties to the dispute agree, be submitted to one of the following:
 - a) arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention"), if this Convention is available;

- b) conciliation or arbitration under the Additional Facility Rules of the International Centre for the Settlement of Investment Disputes;
 - c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law.
3. A Party may conclude contractual agreements with investors of another Party giving its unconditional and irrevocable consent to the submission of all or certain types of disputes to international conciliation or arbitration in accordance with paragraph 2 above. Such agreements may be notified to the Depository of this Agreement.

ARTICLE 49

Exceptions

The following provisions shall apply, *mutatis mutandis*, to this Chapter:

Articles 33, 34 and 35, as well as Article 19 (e), (f) and (g).

V COMPETITION

ARTICLE 50

Competition

1. The Parties recognise that certain business practices, such as anti-competitive agreements or concerted practices, and abuse of a dominant position, may restrict trade between the Parties.
2. A Party shall, at the request of another Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall co-operate through the supply of publicly available non-confidential information of relevance to the matter in question. Subject to its domestic law and the conclusion of a satisfactory agreement safeguarding confidentiality of information, the Party addressed shall also provide any other information available to the requesting Party.
3. No Party may have recourse to arbitration under Chapter IX with respect to matters arising under this Chapter.