

## **CHAPTER 9**

### **INVESTMENT**

#### ARTICLE 9.1

##### *Scope and Coverage*

1. This Chapter applies to commercial presence in all sectors, with the exception of services sectors as set out in Article 8.1 (Scope and Coverage).<sup>1</sup>
2. Notwithstanding paragraph 1, the provisions regarding investment facilitation and cooperation (Articles 9.16, Administration of this Chapter, 9.17; Focal Points; 9.18, Provision of Information; and 9.19, Cooperation Between Agencies Responsible for Investment Promotion) apply to commercial presence in all sectors.
3. This Chapter shall be without prejudice to the interpretation or application of other international agreements relating to investment or taxation to which one or several EFTA States and one or several MERCOSUR States are parties.
4. Nothing in this Chapter shall be construed to impose any obligation on the State Parties regarding government procurement, which shall be subject to Chapter 11 (Government Procurement).

#### ARTICLE 9.2

##### *Definitions*

For the purposes of this Chapter:

- (a) “juridical person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (b) “juridical person of a State Party” means a juridical person constituted or otherwise organised under the domestic laws and regulations of a State Party and engaged in substantive business operations in the territory of that State Party;
- (c) “natural person” means a person who has the nationality, or is a permanent resident, of a State Party in accordance with its applicable domestic laws and regulations;

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<sup>13.</sup> It is understood that services specifically exempted from the scope of Chapter 8 (Trade in Services) shall not fall within the scope of this Chapter.

- (d) “commercial presence” means any type of business establishment, including through:
- (i) the constitution, acquisition or maintenance of a juridical person; or
  - (ii) the creation or maintenance of a branch or a representative office, within the territory of another State Party for the purpose of performing an economic activity.<sup>2</sup>

#### ARTICLE 9.3

##### ***National Treatment***

In the sectors covered by Annex XV (Schedules of Specific Commitments) and subject to any conditions and qualifications set out therein, each State Party shall accord to juridical and natural persons of another State Party and to the commercial presence of such persons, treatment no less favourable than that it accords, in like situations, to its own juridical and natural persons and to the commercial presence of such persons.

#### ARTICLE 9.4

##### ***Schedule of Specific Commitments***

The sectors liberalised by each State Party pursuant to this Chapter and the conditions and qualifications referred to in Article 9.3 (National Treatment) are set out in the Schedules of Specific Commitments included in Annex XV (Schedules of Specific Commitments).

#### ARTICLE 9.5

##### ***Modification of Schedules***

1. The State Parties shall, upon written request by a State Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting State Party’s Schedule of Specific Commitments. The consultations shall be held within three months from the receipt of the request.
2. In the consultations, the State Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable than that provided for in the Schedule of Specific Commitments prior to such consultations is maintained.

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<sup>2</sup> Where the economic activity is not performed directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the juridical person shall, nonetheless, through such commercial presence be accorded the treatment provided for under this Chapter. Such treatment shall be extended to the commercial presence through which the substantive business operations are carried out and need not be extended to any other parts of the commercial presence located outside the territory where the substantive business operations are carried out.

Modifications of Schedules of Specific Commitments are subject to the procedures set out in Articles 14 (Joint Committee) and 16.2 (Amendments).

#### ARTICLE 9.6

##### ***Key Personnel***

1. Each State Party shall, subject to its domestic laws and regulations, grant natural persons of another State Party, and key personnel who are employed by natural or juridical persons of another State Party, entry and temporary stay in its territory in order to engage in activities connected with commercial presence, including the provision of advice or key technical services.
2. Each State Party shall, subject to its domestic laws and regulations, permit natural or juridical persons of another State Party, and their commercial presence, to employ, in connection with commercial presence, any key personnel of the natural or juridical person's choice regardless of nationality and citizenship provided that such key personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.
3. Each State Party shall, subject to its domestic laws and regulations, grant entry and temporary stay and provide any necessary confirming documentation to the spouse and minor children of a natural person who has been granted entry, temporary stay and authorisation to work in accordance with paragraphs 1 and 2. The spouse and minor children shall be admitted for the period of the stay of that person.

#### ARTICLE 9.7

##### ***Right to Regulate***

1. The State Parties reaffirm their inherent right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection, the conservation of living or non-living exhaustible natural resources, or the promotion and protection of cultural diversity.
2. A State Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, measures according to paragraph 1 as an encouragement for the establishment, acquisition, expansion or retention in its territory of a commercial presence of persons of another State Party or a non-Party.

## ARTICLE 9.8

### ***Responsible Business Conduct***

The State Parties commit to promoting responsible business conduct, including by encouraging relevant practices such as responsible management of supply chains by businesses. In this regard, the State Parties acknowledge the importance of internationally recognised principles and guidelines, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact and the UN Guiding Principles on Business and Human Rights.

## ARTICLE 9.9

### ***Transparency***

The State Parties shall promptly publish, or otherwise make publicly available in a manner as to enable the State Parties and their juridical and natural persons to become acquainted with them, their laws, regulations, judicial decisions, administrative rulings of general application as well their respective international agreements, which affect matters covered by this Chapter.

## ARTICLE 9.10

### ***Disclosure of Confidential Information***

Nothing in this Chapter shall require any State Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of any juridical or natural person.

## ARTICLE 9.11

### ***Payments and Transfers***

1. Except under the circumstances envisaged in Article 9.12 (Restrictions to Safeguard the Balance-of-Payments), a State Party shall not apply restrictions on current payments and capital movements relating to commercial presence activities in non-services sectors.

2. Nothing in this Chapter shall affect the rights and obligations of the State Parties under the Articles of Agreement of the IMF, including the use of exchange actions, which are in conformity with the Articles of Agreement of the IMF, provided that no State Party shall impose restrictions on capital transactions inconsistent with its specific commitments regarding such transactions, except under Article 9.12 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the IMF.

## ARTICLE 9.12

### ***Restrictions to Safeguard the Balance-of-Payments***

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a State Party may adopt or maintain restrictions in sectors on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance of payments of a State Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1 shall:
  - (a) not discriminate against a State Party in comparison to another State Party or to a non-Party;
  - (b) be consistent with the Articles of Agreement of the IMF;
  - (c) avoid unnecessary damage to the commercial, economic and financial interests of another State Party;
  - (d) not exceed those necessary to deal with the circumstances described in paragraph 1; and
  - (e) be temporary and be phased out progressively as the situation specified in paragraph 1 improves.
3. In determining the incidence of such restrictions, the State Parties may give priority to commercial presence which is more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.
4. A State Party adopting or maintaining such restrictions shall promptly notify the Joint Committee.

## ARTICLE 9.13

### ***General Exceptions***

Article XIV of GATS applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

## ARTICLE 9.14

### ***Security Exceptions***

Article XIVbis of GATS applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

## ARTICLE 9.15

### ***Review***

The Joint Committee shall review, whenever necessary, but normally every two years, the possibility to further improve the commitments of the State Parties contained in this Chapter, taking into account, *inter alia*, the commitments undertaken with non-Parties in agreements concluded after the entry into force of this Agreement.

## ARTICLE 9.16

### ***Administration of this Chapter***

Upon request of a State Party, the Joint Committee shall:

- (a) exchange information and consider developments relevant for the establishment and expansion of commercial presence and investment facilitation;
- (b) endeavour to resolve and prevent disputes that may arise regarding the interpretation or application of this Chapter; and
- (c) identify opportunities for cooperation and further investment facilitation, with a view to developing and coordinating, as appropriate, the implementation of cooperation and facilitation programmes which have been mutually agreed by the interested State Parties.

## ARTICLE 9.17

### ***Focal Points***

1. The State Parties shall establish focal points in order to facilitate communication, information flow and respond to inquiries from another State Party regarding measures affecting matters covered by this Chapter.
2. The focal points shall have the following responsibilities:
  - (a) interaction and cooperation with the focal points of the other State Parties in accordance with this Chapter;
  - (b) interaction with the State Party's competent governmental authorities and natural and juridical persons of another State Party in accordance with this Chapter, including in the event of inquiries brought by such persons; and
  - (c) facilitate access for natural and juridical persons of another State Party to the information referred to in Article 9.18 (Provision of Information).
3. The focal points referred to in paragraph 1 are set out in Annex XVI (Focal Points for Investment and Agencies Responsible for Investment Promotion).

## ARTICLE 9.18

### ***Provision of Information***

1. Upon request of another State Party and through the focal points referred to in Article 9.17 (Focal Points), each State Party shall, to the extent possible, provide information to the requesting State Party on:

- (a) laws, regulations, judicial decisions and administrative rulings of general application made effective by a State Party, and agreements in force between the State Parties, which affect matters covered by this Chapter as referred to in Article 9.9 (Transparency); and
- (b) measures to promote investments.

2. Upon request of another State Party, each State Party shall provide the requesting State Party with details of relevant publications or websites where information referred to in paragraph 1 is made available.

## ARTICLE 9.19

### ***Cooperation between Agencies Responsible for Investment Promotion***

1. The State Parties shall encourage their agencies or entities responsible for the promotion of investments to share experiences and relevant information and to identify areas for cooperation and joint events to the extent possible.

2. The agencies or entities referred to in paragraph 1 are set out in Annex XVI (Focal Points for Investment and Agencies Responsible for Investment Protection).