

CHAPTER 5

INVESTMENT

ARTICLE 5.1

Coverage

This Chapter shall apply to commercial presence in all sectors, with the exception of all services sectors.

ARTICLE 5.2

Definitions

1. For the purposes of this Chapter:
 - (a) “juridical person of a Party” means a juridical person constituted or otherwise organised under the law of Peru or an EFTA State and engaged in substantive business operations in Peru or in the EFTA State concerned;
 - (b) “natural person” means a national of Peru or an EFTA State according to its respective legislation;
 - (c) “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 Party for the purpose of performing an economic activity.
2. As regards natural persons, this Chapter shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of another Party.

ARTICLE 5.3

National Treatment

With respect to commercial presence, and subject to the reservations set out in Annex XI (Reservations), each Party shall grant to juridical and natural persons of another 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.

ARTICLE 5.4

Reservations

1. National treatment as provided for under Article 5.3 (National Treatment) shall not apply to:

- (a) any reservation that is listed by a Party in Annex XI (Reservations);
- (b) an amendment to a reservation covered by subparagraph 1 (a) to the extent that the amendment does not increase the non-conformity of the reservation with Article 5.3 (National Treatment); and
- (c) any new reservation adopted by a Party in accordance with paragraph 4, and incorporated into Annex XI (Reservations), provided that such reservation does not affect the overall level of commitments of that Party under this Agreement;

to the extent that such reservation is inconsistent with that Article.

2. As part of the review provided for in Article 5.9 (Review), the Parties undertake to review at least every three years the status of the reservations set out in Annex XI (Reservations) with a view to reducing or removing such reservations.

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 (Reservations) by written notification to the other Parties.

4. In case of the adoption of a new reservation, as referred to in subparagraph 1 (c), the Party concerned shall promptly notify the other Parties of the reservation. On receiving such notification, any other Party may request consultations regarding the reservation and related issues. Such consultations shall be entered into without delay.

ARTICLE 5.5

Key Personnel

1. Each Party shall, subject to its laws and regulations, grant natural persons of another Party, and key personnel employed by natural or juridical persons of another Party, temporary entry and stay in its territory in order to engage in activities connected with commercial presence, including the provision of advice or technical services.

2. Each Party shall, subject to its laws and regulations, permit natural or juridical persons of another Party, and their commercial presence, to employ, in connection with the commercial presence, any key personnel provided that such 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. The Parties shall, subject to their laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to the spouse and minor children of key personnel who has been granted temporary entry, 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 5.6

Right to Regulate

Subject to the provisions of this Chapter and Annex XI (Reservations), a Party is not prevented from regulating the commercial presence as set out in subparagraph 1 (c) of Article 5.2 (Definitions).

ARTICLE 5.7

Relation to Other International Agreements

The provisions of this Chapter shall be applied without prejudice to the rights and obligations of the Parties under other international investment agreements, to which Peru and an EFTA State are parties. It is understood that any dispute settlement mechanism in investment protection agreements, to which Peru and an EFTA State are parties, is not applicable to alleged breaches of this Chapter.

ARTICLE 5.8

Exception

The exception in subparagraph (d) of Article XIV of the GATS is hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

ARTICLE 5.9

Review

1. This Chapter shall be subject to periodic reviews in the framework of the Joint Committee regarding the possibility to further develop the Parties' commitments.
2. In view of paragraph 4 of Article 4.1 (Trade in Services), the Parties shall aim at consistency, as far as appropriate, with the results of future negotiations on Chapter 4 (Trade in Services), in particular regarding commitments on payments and transfers.