

CHAPTER 6

ESTABLISHMENT

ARTICLE 6.1

Scope and Coverage

1. This Chapter applies to commercial presence in all sectors, with the exception of services sectors as set out in Article 5.1.⁹
2. 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 Georgia are parties.

ARTICLE 6.2

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, partnership, joint venture, sole proprietorship or association;
- (b) “juridical person of a Party” means a juridical person constituted or otherwise organised under the law of a Party and engaged in substantive business operations in that Party;
- (c) “natural person” means a person who has the nationality, or is a permanent resident, of a Party in accordance with its applicable law;
- (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 Party for the purpose of performing an economic activity.

⁹ It is understood that services specifically exempted from the scope of Chapter 5 do not fall under the scope of this Chapter.

ARTICLE 6.3

National Treatment

Each Party shall, subject to Article 6.4 and the reservations set out in Annex XIV, accord 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, and to the commercial presence of such persons.

ARTICLE 6.4

Reservations

1. Article 6.3 shall not apply to:
 - (a) any reservation that is listed by a Party in Annex XIV;
 - (b) an amendment to a reservation referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the reservation with Article 6.3;
 - (c) any new reservation adopted by a Party and incorporated into Annex XIV, which does not affect the overall level of commitments of that Party under this Agreement;

to the extent that such reservations are inconsistent with Article 6.3.

2. As part of the review provided for in Article 6.12, the Parties undertake to review at least every three years the status of the reservations set out in Annex XIV with a view to reducing or removing such reservations.

3. A Party may, at any time, either upon request of another Party or unilaterally, remove in whole or in part its reservations set out in Annex XIV by written notification to the other Parties.

4. A Party may, at any time, incorporate a new reservation into Annex XIV in accordance with subparagraph 1(c), by written notification to the other Parties. On receiving such written notification, another Party may request consultations regarding the reservation. On receiving the request for consultations, the Party incorporating the new reservation shall enter into consultations with the requesting Party.

ARTICLE 6.5

Key Personnel

1. Each Party shall, subject to its laws and regulations, grant natural persons of another Party, and key personnel who are 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 key 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 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. 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 a natural person 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 6.6

Right to Regulate

1. Subject to the provisions of this Chapter, a Party may, on a non-discriminatory basis, adopt, maintain or enforce any measure that is in the public interest, including measures to meet health, safety or environmental concerns or reasonable measures for prudential purposes.

2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of a commercial presence of persons of another Party or a non-party.

ARTICLE 6.7

Transparency

Laws, regulations, judicial decisions and administrative rulings of general application made effective by a Party, and agreements in force between Parties, which affect matters covered by this Chapter shall be published promptly, or otherwise made publicly available, in such a manner as to enable the Parties and their juridical and natural persons to become acquainted with them. Nothing in this Article shall require any Party to disclose information which is confidential under its domestic legislation or

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 6.8

Payments and Transfers

1. Except under the circumstances envisaged in Article 6.9, a 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 Parties under the Agreement of the IMF, including the use of exchange actions which are in conformity with that Agreement, provided that a Party shall not impose restrictions on capital transactions inconsistent with its obligations under this Chapter.

ARTICLE 6.9

Restrictions to Safeguard the Balance of Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.

2. Paragraphs 1 to 3 of Article XII of the GATS shall apply and are hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee.

ARTICLE 6.10

General Exceptions

Article XIV of the GATS shall apply and is hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

ARTICLE 6.11

Security Exceptions

Paragraph 1 of Article XIVbis of the GATS shall apply and is hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

ARTICLE 6.12

Review

This Chapter shall be subject to periodic review within the framework of the Joint Committee regarding the possibility to further develop the Parties' commitments.