

CHAPTER 4

INVESTMENT

ARTICLE 4.1

Scope and Coverage¹⁴

1. This Chapter shall apply to commercial presence in sectors other than services sectors covered by Chapter 3.¹⁵
2. This Chapter shall be without prejudice to the interpretation or application of other international agreements relating to investment and taxation to which one or several EFTA States and Hong Kong, China are parties.¹⁶

ARTICLE 4.2

Definitions

For the purposes of this Chapter,

- (a) “juridical person” means any legal entity duly constituted or otherwise organised under domestic 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 another Party” means a juridical person constituted or otherwise organised under the domestic law of that Party and engaged in substantive business operations in any Party;
- (c) “natural person” means:
 - (i) with respect to an EFTA State, a person who has the nationality of that EFTA State or is a permanent resident of that EFTA State in accordance with its domestic law;

¹⁴ It is understood that nothing in this Chapter shall be construed to impose any obligation with respect to investment protection matters, such as protection against expropriation, full protection and security and other investment protection matters.

¹⁵ It is understood that services specifically exempted from the scope of Chapter 3 do not fall under the scope of this Chapter.

¹⁶ It is understood that any dispute settlement mechanism in an investment protection agreement to which one or several EFTA States and Hong Kong, China are parties is not applicable to alleged breaches of this Chapter.

- (ii) with respect to Hong Kong, China, a person who is a permanent resident of the Hong Kong Special Administrative Region of the People's Republic of China in accordance with its domestic 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, in another Party for the purpose of performing an economic activity.

ARTICLE 4.3

National Treatment

Each Party shall 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 4.4

Reservations

1. Article 4.3 shall not apply to:
 - (a) any reservation of a Party as set out in Annex XI;
 - (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 4.3; and
 - (c) any new reservation adopted by a Party, and incorporated into Annex XI 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 4.3.

2. As part of the reviews provided for in Article 4.10, the Parties undertake to review at least every three years the status of the reservations set out in Annex XI with a view to reducing or removing the reservations.

3. A Party may, at any time, either upon 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 subparagraph 1 (c) by written notification to the other Parties. On receiving such written notification, another Party may request consultations regarding the reservation. At the written request of a Party, the Party incorporating the new reservation shall enter into consultations with the requesting Party within 30 days after the date of receipt of the request.¹⁷

ARTICLE 4.5

Key Personnel

1. Each Party shall, subject to its domestic law, endeavour to grant natural persons of another Party who have established or seek to establish commercial presence in that Party, and key personnel employed by natural or juridical persons of another Party, temporary entry and stay in that Party for the purpose of engaging in economic activities connected with commercial presence.

2. Each Party shall, subject to its domestic law, endeavour to 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 that 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 shall, subject to their respective domestic law, endeavour to grant temporary entry and stay and provide any necessary confirming documentation to the spouse and minor children of a 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 4.6

Right to Regulate

1. 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 and reasonable measures for prudential purposes.

2. A Party should 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 that Party of a commercial presence of persons of another Party or a non-party.

¹⁷ It is understood that consultations held pursuant to paragraph 4 shall be without prejudice to the rights and obligations of the Parties under Chapter 10 or under the WTO Dispute Settlement Understanding.

Article 4.7

Payments and Transfers

1. Except under the circumstances envisaged in Article 4.8, 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 Articles of the Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of the Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistent with its obligations under this Chapter.

ARTICLE 4.8

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. The rights and obligations of the Parties in respect of such restrictions shall be governed by paragraphs 1 to 3 of Article XII of the GATS, which 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 4.9

Exceptions

The rights and obligations of the Parties in respect of general exceptions and security exceptions shall be governed by Article XIV and paragraph 1 of Article XIV *bis* of the GATS, which are hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

ARTICLE 4.10

Review

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