CHAPTER 4

INVESTMENT

ARTICLE 4.1

Scope and Coverage

1. This Chapter applies to commercial presence in all sectors, with the exception of services sectors as set out in Article 3.1 (Scope and Coverage).[12]

2. This Chapter does not include investment protection and 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 Indonesia are parties.

3. Nothing in this Chapter shall be construed to impose any obligation with respect to government procurement.

ARTICLE 4.2

Definitions

For the purposes of this Chapter,

(a) "juridical person" means any legal entity duly constituted or otherwise organised under applicable laws and regulations, 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 applicable laws and regulations of a Party and engaged in substantive business operations in that Party;

(c) "natural person" means a person having the nationality of a Party in accordance with applicable laws and regulations;

(d) "commercial presence" means any type of business establishment, including through:

(i) the constitution, acquisition or maintenance of a juridical person; or

[12] It is understood that services specifically exempted from the scope of Chapter 3 (Trade in Services) do not fall under the scope of this Chapter.

(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.

ARTICLE 4.3

Investment Promotion

1. The Parties recognise the importance of cooperating to promote investment and technology flows as a means to achieve economic growth and development through effective ways based on common interest and mutual benefits.

2. Cooperation as referred to in paragraph 1 may include:

(a) identifying investment opportunities and activities to promote investment abroad, in particular partnerships between small and medium sized enterprises;

(b) exchange of information on investment regulations; and

(c) furthering of an investment climate conducive to increase investment flows.

ARTICLE 4.4

National Treatment

In the sectors inscribed in Annex XVI (Schedules of Specific Commitments) and subject to any conditions and qualifications set out therein, 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 in its territory.

ARTICLE 4.5

Schedule of Specific Commitments

The sectors liberalised by each Party pursuant to this Chapter and the conditions and qualifications referred to in Article 4.4 (National Treatment) are set out in the Schedules of Specific Commitments included in Annex XVI (Schedules of Specific Commitments).

ARTICLE 4.6

Modification of Schedules

1. Upon written request of a Party, the Parties shall, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of Specific Commitments. The consultations shall be held within three months from the date of the request.

2. In the consultations, the 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. Modifications of Schedules of Specific Commitments are subject to the procedures set out in Articles 10.1 (Joint Committee) and 12.2 (Amendments).

ARTICLE 4.7

Key Personnel

1. Each Party shall, subject to its domestic laws and regulations, grant natural persons of another Party, and key personnel who are employed by natural or juridical persons of another 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 Party shall, subject to its domestic 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 should, subject to their domestic laws and regulations, grant entry and temporary stay and provide any necessary documentation to the spouse and minor children of key personnel.

ARTICLE 4.8

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, such as measures to meet health, safety or environmental concerns or reasonable measures for prudential purposes.

2. A Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, measures to meet health, safety or environmental concerns 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 4.9

Payments and Transfers

1. Except under the circumstances referred to in Article 4.10 (Restrictions to Safeguard the Balance-of-Payments), no Party shall apply restrictions on current payments and capital movements relating to commercial presence in non-services sectors.

2. Nothing in this Chapter shall affect the rights and obligations of the 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 a Party shall not impose restrictions on capital transactions inconsistent with its obligations under this Chapter.

ARTICLE 4.10

Restrictions to Safeguard the Balance-of-Payments

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

ARTICLE 4.11

General Exceptions

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

ARTICLE 4.12

Security Exceptions

For the purposes of this Chapter, paragraph 1 of Article XIV*bis* of the GATS applies and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 4.13

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.