

- (m) the term "issuer" means a designated agency of a Party, or any successor agency, and any agent of either, which provides investment support, but does not refer to the Government of any of the Parties;
- (n) the term "New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, as may be amended;
- (o) the term "Secretary-General" means the Secretary-General of ICSID;
- (p) the term "transfers" means transfers and international payments;
- (q) the term "Tribunal" means an arbitration tribunal established under Article 79 or 83; and
- (r) the term "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976, as may be amended.

Chapter 8 Cross-Border Trade in Services

Article 97 Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party, including measures respecting:

- (a) the supply of a service;

Note: The measures respecting the supply of a service include those respecting the provision of any financial security as a condition for the supply of a service.

- (b) the purchase or use of, or payment for, a service;
- (c) the access to services offered to the public generally and the use of them, in connection with the supply of a service; and
- (d) the presence in its Area of a service supplier of the other Party.

2. This Chapter shall not apply to:

- (a) financial services, as defined in Chapter 9;
- (b) cabotage in maritime transport services, including navigation in inland waters;
- (c) with respect to air transport services, measures affecting traffic rights, however granted; or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:

- (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
- (iii) computer reservation system (CRS) services;

Note: The term "traffic rights" means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of air lines, including such criteria as number, ownership, and control.

- (d) procurement by a Party or a state enterprise;
- (e) subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance;
- (f) measures pursuant to immigration laws and regulations;
- (g) services supplied in the exercise of governmental authority; and

Note: For the purposes of this Chapter, services supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

- (h) measures of a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in that Party.

Article 98
National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own services and service suppliers.

Note: Nothing in this Article shall be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

2. The treatment accorded by a Party under paragraph 1 above means, with respect to a local government in the case of Japan, and with respect to a state in the case of Mexico, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that local government or state to services and service suppliers of the Party of which it forms a part.

Article 99
Most-Favored-Nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service suppliers of any non-Party.

Note: Each Party shall accord to services and service suppliers of the other Party the better of the treatment required by Articles 98 and 99.

Article 100
Local Presence

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its Area as a condition for the cross-border supply of a service.

Article 101
Reservations

1. Articles 98, 99 and 100 shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at the federal or central government level, as set out in its Schedule to Annex 6;
 - (b) any existing non-conforming measure that is maintained by:
 - (i) with respect to Mexico:
 - (AA) a state, for 6 months after the date of entry into force of this Agreement, and thereafter as to be set out by Mexico in its Schedule to Annex 6 in accordance with paragraph 2 below; or
 - (BB) a local government; and
 - (ii) with respect to Japan:
 - (AA) a prefecture, for 6 months after the date of entry into force of this Agreement, and thereafter as to be set out by Japan in its Schedule to Annex 6 in accordance with paragraph 2 below; or
 - (BB) a local authority other than prefectures;
 - (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b) above; or
 - (d) an amendment or a modification to any non-conforming measure referred to in subparagraphs (a) and (b) above provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 98, 99 and 100.
2. Each Party shall set out in its Schedule to Annex 6, within 6 months of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a state or prefecture referred to in subparagraphs 1(b) (i) (AA) and 1(b) (ii) (AA) above, and shall notify thereof the other Party by a diplomatic note.

3. Articles 98, 99 and 100 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex 7.

Article 102 Notification

To the maximum extent possible, each Party shall notify the other Party of any new measure that the Party considers might materially affect the implementation and operation of this Chapter and of Annexes 6 and 7.

Article 103 Sub-Committee on Cross-Border Trade in Services

1. For the purposes of the effective implementation and operation of this Article, a Sub-Committee on Cross-Border Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 165.

2. The functions of the Sub-Committee shall be:

- (a) reviewing the implementation and operation of this Chapter;
- (b) discussing any issues related to this Chapter;
- (c) reporting the findings of the Sub-Committee and making recommendations to the Joint Committee; and
- (d) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 165.

Article 104 Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing, certification, or technical standards of service suppliers of the other Party does not constitute an unnecessary barrier to cross-border trade in services, each Party shall endeavor to ensure that such measure:

- (a) is based on objective and transparent criteria, such as competence and the ability to supply the services;
- (b) is not more burdensome than necessary to ensure the quality of the services; and

- (c) does not constitute a disguised restriction on the cross-border supply of the services.

2. Where a Party recognizes, unilaterally or by agreement, education, experience, licenses or certifications obtained in a non-Party, nothing in Article 99 shall be construed to require the Party to accord such recognition to education, experience, licenses or certifications obtained in the other Party.

Article 105 Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party, and that the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

Note: An enterprise is "owned" by persons of a non-Party if more than 50 percent of the equity interests in it is beneficially owned by persons of that non-Party. An enterprise is "controlled" by persons of a non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the Party establishes that the service is being supplied by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the Area of that other Party.

Article 106 Definitions

For the purposes of this Chapter:

- (a) the term "cross-border trade in services" means the supply of a service:

- (i) from the Area of a Party into the Area of the other Party;
- (ii) in the Area of a Party by a person of that Party to a person of the other Party; or
- (iii) by a national of a Party in the Area of the other Party;

but does not include the supply of a service by an investment of an investor of a Party, as defined in Article 96 in the Area of the other Party;

- (b) the term "measures by a Party" means measures taken by:
 - (i) federal or central government, state, or prefecture or any other local authority; and
 - (ii) non-governmental bodies in the exercise of powers delegated by federal or central government, state, or prefecture or any other local authority;
- (c) the term "service supplier of a Party" means a person of a Party that seeks to supply or supplies a service; and
- (d) the term "supply of a service" includes the production, distribution, marketing, sale and delivery of a service.

Chapter 9 Financial Services

Article 107 Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party affecting:

- (a) cross-border trade in financial services;
- (b) financial institutions of the other Party; and
- (c) investors of the other Party, and investments of such investors, in financial institutions in the Party.

2. This Chapter shall not apply to measures pursuant to immigration laws and regulations.