CHAPTER 5

CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS[57]

ARTICLE 5.1

Objectives

The objective of this Chapter is to enable the free movement of capital and payments related to transactions liberalised under this Agreement.

ARTICLE 5.2

Current Account

Each Party shall allow, in freely convertible currency and in accordance with the Articles of Agreement of the International Monetary Fund, any payments and transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

ARTICLE 5.3

Capital Movements

1. Each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital for the purpose of liberalisation of investment and other transactions as provided for in Chapter 3 (Services and Investment).

2. The Parties shall consult each other in the Sub-Committee on Services and Investment, to facilitate the movement of capital between them in order to promote trade and investment.

ARTICLE 5.4

Measures Affecting Capital Movements, Payments or Transfers

1. Articles 5.2 (Current Account) and 5.3 (Capital Movements) shall not be construed as preventing a Party from applying its law relating to:

   (a) bankruptcy, insolvency, or the protection of the rights of creditors;

57 The provisions of this Chapter shall apply to Liechtenstein to the extent of its competences under the Currency Treaty between the Principality of Liechtenstein and the Swiss Confederation done at Bern on 19 June 1980.

(b) issuing, trading or dealing in securities, or futures, options and other financial instruments;

(c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences, deceptive or fraudulent practices;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

(f) social security, public retirement or compulsory savings schemes.

2. The law referred to in paragraph 1 shall not be applied in an arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

ARTICLE 5.5

Restrictions in Case of Balance of Payments and External Financial Difficulties

1. If a Party experiences serious balance of payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers.[58]

2. The measures referred to in paragraph 1 shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund;

(b) not exceed those necessary to deal with the circumstances described in paragraph 1;

(c) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Parties; and

(e) be non-discriminatory as compared with third countries in like situations.

3. In the case of trade in goods, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of

[58] For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

payments. Those measures shall be in accordance with GATT 1994 and the Understanding on the Balance of Payments provisions of the GATT 1994.

4. In the case of trade in services, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of GATS.

5. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall promptly notify them to the other Parties in writing, along with the rationale for their imposition, within 30 days of their adoption or maintenance.

6. If a Party adopts or maintains restrictions under this Article, the Parties shall promptly hold consultations in the Sub-Committee on Services and Investment unless consultations are held in other fora. That Sub-Committee shall assess the balance of payments or external financial difficulties that led to the respective measures, taking into account factors such as:

   (a) the nature and extent of the difficulties;

   (b) the external economic and trading environment; and

   (c) alternative corrective measures which may be available.

7. The consultations under paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 and 2. All relevant findings of a statistical or factual nature presented by the International Monetary Fund, where available, shall be accepted and conclusions shall take into account the assessment by the International Monetary Fund of the balance of payments and the external financial situation of the Party concerned.