

CHAPTER 14

INVESTMENT

Article 14.1 Objectives

The objective of this Chapter is to encourage and promote the flow of investment between each Party on a mutually advantageous basis, under conditions of transparency within a stable framework of rules to ensure the protection and security of investments by investors of the other Party within each Party's territory, while recognising the right of each Party to regulate in order to achieve legitimate public policy objectives, such as the protection of public health, safety, and the environment.

Article 14.2 Definitions

For the purposes of this Chapter:

“activities performed in the exercise of governmental authority” means activities which are performed, including services which are supplied, neither on a commercial basis nor in competition with one or more economic operators;

“covered investment” means, with respect to a Party, an investment in its territory of an investor of the other Party, made in accordance with the applicable law at the time the investment is made,¹ in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

“enterprise” means an enterprise as defined in Article 1.3 (General Definitions – Initial Provisions and General Definitions), and a branch or a representative office of an enterprise;

“enterprise of a Party” means an enterprise constituted or organised under the law of that Party or a branch located in the territory of that Party, that carries out substantial business activities in the territory of that Party;^{2, 3}

¹ For greater certainty, minor or technical breaches of law shall not deprive investors and covered investments of treaty protection.

² For greater certainty, the inclusion of a “branch” in the definitions of “enterprise” and “enterprise of a Party” is without prejudice to a Party's ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

³ An enterprise shall be deemed to carry out substantial business activities in the territory of a Party if it has a genuine link to the economy of that Party. As to whether an enterprise has a genuine link to the economy of a Party, this should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the enterprise:

“freely usable currency” means a “freely usable currency” as determined by the International Monetary Fund under its Articles of Agreement and amendments thereto, or any currency that is used to make international payments and is widely traded in the international principal exchange markets;

“investment” means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, including government issued bonds, debentures, other debt instruments, and loans;⁴
- (d) futures, options, and other derivatives;
- (e) rights under turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licences, authorisations, permits, concessions, and similar rights conferred pursuant to a Party’s law; and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action.

Returns that are invested shall be treated as investments. Any alteration of the form in which assets are invested or reinvested does not affect their qualification as investments;

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- (a) has a continuous physical presence, including through ownership or rental of premises, in the territory of that Party;
 - (b) has its central administration in the territory of that Party;
 - (c) employs staff in the territory of that Party; and
 - (d) generates turnover and pays taxes in the territory of that Party.

⁴ Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have those characteristics.

“investor of a Party” means:

- (a) a Party;
- (b) an enterprise of a Party; or
- (c) a national,

that attempts to make, is making, or has made an investment in the territory of the other Party;

“person of a Party” means a national or an enterprise of a Party; and

“returns” means the amounts yielded by, or derived from, an investment, including profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees, and other fees.

Article 14.3 **Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party;
 - (b) covered investments; and
 - (c) with respect to Article 14.8 (Performance Requirements) and Article 14.18 (Investment and Environmental, Health, and Other Regulatory Objectives), all investments in the territory of that Party.
2. A Party’s obligations under this Chapter shall apply to measures adopted or maintained by:⁵
 - (a) the central, regional, or local governments or authorities of that Party; and
 - (b) any person, including a state enterprise or any other body, when it exercises any government authority delegated to it by central, regional, or local governments or authorities of that Party.

⁵ For greater certainty, a Party’s obligations under this Chapter shall also apply to measures adopted or maintained by any other person or entity acting on the instructions of, or under the direction or control of, a person or body listed under subparagraphs (a) or (b), to the extent that those measures are attributable to a Party under international law.

3. With respect to the establishment of an investment, Articles 14.5 to Article 14.9 shall not apply to any measure relating to activities performed in the exercise of governmental authority.
4. For greater certainty, this Chapter shall not bind a Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.
5. Articles 14.5 to Article 14.9 shall not apply to any measure with respect to audio-visual services.
6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral, or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.
7. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, a Party may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

Article 14.4 **Relation to Other Chapters**

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement of a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not in itself make this Chapter applicable to measures adopted or maintained by the Party relating to that cross-border supply of the service. This Chapter shall apply to measures adopted or maintained by a Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.
3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 11 (Financial Services).

Article 14.5 **Market Access**

Neither Party shall adopt or maintain, with respect to the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-party in its territory, a measure that:

- (a) imposes limitations on:
 - (i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive suppliers, or the requirement of an economic needs test;
 - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;⁶
 - (iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
 - (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or
 - (v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test; or
- (b) requires that an economic activity is carried out through a specific type of legal entity or by a joint venture.

Article 14.6 **National Treatment**

Each Party shall accord to investors of the other Party and covered investments treatment no less favourable than the treatment it accords, in like situations, to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

Article 14.7 **Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors of the other Party and covered investments treatment no less favourable than the treatment it accords, in like situations, to investors of a non-party and to their investments with respect to

⁶ Subparagraphs (a)(i), (a)(ii), and (a)(iii) do not cover measures adopted or maintained in order to limit the production of an agricultural or fisheries product.

the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.⁷

2. Paragraph 1 shall not be construed as obliging a Party to extend to investors of the other Party or to covered investments the benefit of any treatment resulting from measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or the recognition of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.
3. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms other than those set out in this Agreement.

Article 14.8 **Performance Requirements**

1. Neither Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking:⁸
 - (a) to export a given level or percentage of goods or services;
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from a person in its territory;
 - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;
 - (e) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;
 - (f) to restrict exportation or sale for export;

⁷ For greater certainty, this paragraph does not cover treatment accorded by the United Kingdom to investors (and to their investments) of territories for whose international relations the United Kingdom is responsible.

⁸ For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “requirement” or a “commitment or undertaking” for the purposes of paragraph 1.

- (g) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;
- (h) to locate the regional or world headquarters of an enterprise in its territory;
- (i) to hire a given number or percentage of its nationals;
- (j) to achieve a given level or value of research and development in its territory;
- (k) to supply exclusively from the territory of that Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market;
- (l)
 - (i) to purchase, use, or accord a preference to, in its territory, technology of that Party or of a person of that Party;⁹ or
 - (ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a particular technology; or
- (m) to adopt:
 - (i) a given rate or amount of royalty under a licence contract; or
 - (ii) a given duration of the term of a licence contract,

in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future licence contract¹⁰ freely entered into between the investor or investment and a person in its territory, provided that the requirement is imposed or enforced or the commitment or undertaking is enforced in a manner that constitutes direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, subparagraph (m) shall not apply when the licence contract is concluded between the investor or investment and a Party.

2. Neither Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-party in its territory, on compliance with any requirement:

⁹ For the purposes of this Article, the term “technology of a Party or of a person of a Party” includes technology that is owned by a Party or a person of a Party, and technology for which a Party or a person of a Party holds an exclusive licence.

¹⁰ A “licence contract” referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

- (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from a person in its territory;
 - (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;
 - (d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings; or
 - (e) to restrict exportation or sale for export.
3. For greater certainty, nothing in paragraph 1 shall be construed as preventing the enforcement by a Party of an undertaking voluntarily given¹¹ by a person in relation to a takeover or merger.
4. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
5. Subparagraphs 1(g), 1(l), and 1(m) shall not apply:
- (a) if a Party authorises use of an intellectual property right in accordance with Article 31 or Article 31bis of the TRIPS Agreement, or to measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement; or
 - (b) if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a court or administrative tribunal, or by a competition authority to remedy a situation¹² determined after a judicial or administrative process to be anti-competitive under a Party's competition law.¹³

¹¹ An “undertaking voluntarily given” means that it is not required by a Party as a condition of the approval of the takeover or merger.

¹² For greater certainty, for the purposes of this subparagraph “situation” includes any feature of a market (whether behavioural or structural) which may be subject to investigation or study under New Zealand’s competition studies laws or regulations or the United Kingdom’s market investigation law.

¹³ The Parties recognise that a patent does not necessarily confer market power.

6. Subparagraph 1(m) shall not apply if the requirement is imposed or enforced or the commitment or undertaking is enforced by a tribunal as equitable remuneration under the Party's copyright law.
7. Subparagraphs 1(a), 1(b), 1(c), 2(a), and 2(b), shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.
8. Subparagraphs 1(l) and 1(m) shall not be construed to prevent a Party from adopting or maintaining measures to protect legitimate public welfare objectives, provided that those measures are not applied in an arbitrary or unjustified manner, or in a manner that constitutes a disguised restriction on international trade or investment.
9. Subparagraphs 2(a) and 2(b) shall not apply to requirements imposed or enforced by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
10. For greater certainty, paragraphs 1 and 2 shall not apply to any requirement other than the requirements set out in those paragraphs.
11. This Article is without prejudice to the obligations of a Party under the *Agreement on Trade-Related Investment Measures* in Annex 1A to the WTO Agreement.
12. This Article shall not preclude enforcement of any commitment, undertaking, or requirement between private parties, if a Party did not impose or require the commitment, undertaking, or requirement.

Article 14.9 **Senior Management and Boards of Directors**

A Party shall not require that an enterprise that is a covered investment appoint to senior management or board of director positions natural persons of a particular nationality or who are resident in the territory of that Party.

Article 14.10 **Non-Conforming Measures**

1. Articles 14.5 (Market Access) to Article 14.9 (Senior Management and Boards of Directors) shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:

- (i) the central or regional level of government, as set out by that Party in its Schedule to Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures); or
 - (ii) a local level of government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 14.5 (Market Access) to Article 14.9 (Senior Management and Board of Directors).
2. Articles 14.5 (Market Access) to Article 14.9 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out by that Party in its Schedule to Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures).
 3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of a covered investment existing at the time the measure becomes effective.
 4.
 - (a) Article 14.6 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:
 - (i) Article 17.7 (National Treatment – Intellectual Property); or
 - (ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 17 (Intellectual Property).
 - (b) Article 14.7 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:
 - (i) Article 17.7 (National Treatment – Intellectual Property); or
 - (ii) Article 4 of the TRIPS Agreement.

5. Articles 14.5 (Market Access) to Article 14.9 (Senior Management and Boards of Directors) shall not apply to any measure with respect to government procurement.
6. Articles 14.5 (Market Access) to Article 14.9 (Senior Management and Boards of Directors) shall not apply to a subsidy or grant provided by a Party, including a government supported loan, guarantee, or insurance.
7. Each Party shall endeavour to progressively remove the non-conforming measures.

Article 14.11
Minimum Standard of Treatment¹⁴

1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligations in paragraph 1 provide that:
 - (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
 - (b) “full protection and security” requires each Party to provide the level of police protection required under customary international law.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.
5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not

¹⁴ Article 14.11 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 14A (Customary International Law).

constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

Article 14.12
Treatment in Case of Armed Conflict or Civil Strife

1. Notwithstanding Article 14.10 (Non-Conforming Measures), each Party shall accord to investors of the other Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:
 - (a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
 - (b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for that loss.
3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 14.6 (National Treatment) but for Article 14.10 (Non-Conforming Measures).

Article 14.13
Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Those transfers include:
 - (a) contributions to capital, including the initial contribution;
 - (b) returns;
 - (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
 - (d) payments made under a contract, including a loan agreement;

- (e) payments made pursuant to Article 14.12 (Treatment in Case of Armed Conflict or Civil Strife) and Article 14.14 (Expropriation and Compensation);
 - (f) payments arising out of a dispute; and
 - (g) earnings and other remuneration of foreign personnel in connection with the covered investment.
2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
 3. Neither Party shall require its investors to transfer, or penalise its investors for failing to transfer, the income, earnings, profits, or other amounts derived from, or attributable to, investments in the territory of the other Party.
 4. Notwithstanding paragraphs 1 and 2, each Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its law relating to:
 - (a) bankruptcy, insolvency, or the protection of the rights of creditors;
 - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
 - (c) criminal or penal offences;
 - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
 - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
 - (f) social security, public retirement, or compulsory savings schemes.
 5. For greater certainty, nothing in this Article shall be construed to prevent a Party from applying its law relating to the imposition of economic sanctions provided that doing so does not constitute a disguised restriction on transfers.

Article 14.14
Expropriation and Compensation¹⁵

1. Neither Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:
 - (a) for a public purpose;
 - (b) in a non-discriminatory manner;
 - (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2, 3, and 4; and
 - (d) in accordance with due process of law.
2. Compensation shall:
 - (a) be paid without delay;
 - (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);
 - (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
 - (d) be fully realisable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:
 - (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus
 - (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

¹⁵ This Article shall be interpreted in accordance with Annex 14B (Expropriation).

5. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that the issuance, revocation, limitation, or creation is consistent with Chapter 17 (Intellectual Property) and the TRIPS Agreement.¹⁶
6. For greater certainty, a Party's decision not to issue, renew, or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant:
 - (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy or grant; or
 - (b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction, and maintenance of that subsidy or grant,

standing alone, does not constitute an expropriation.

Article 14.15 Subrogation

If a Party, or any agency, institution, statutory body, or corporation designated by a Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance, or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

Article 14.16 Special Formalities and Disclosure of Information

1. Nothing in Article 14.6 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted under the law of a Party, provided that those formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

¹⁶ For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

2. Notwithstanding Article 14.6 (National Treatment) and Article 14.7 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party, or a covered investment, to provide information concerning an investment solely for informational or statistical purposes. Each Party shall protect that information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 14.17 **Denial of Benefits**

Each Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to covered investments of that investor if:

- (a) a non-party or a person of a non-party owns or controls the enterprise; and
- (b) the denying Party adopts or maintains a measure with respect to the non-party or the person of the non-party which prohibits transactions with the enterprise or which would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to the investments of that enterprise.

Article 14.18 **Investment and Environmental, Health, and Other Regulatory Objectives**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing, in a manner consistent with this Chapter, any measure that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health, or other regulatory objectives.
2. The Parties recognise the importance of environmental protection, including with respect to climate change mitigation and adaptation, and recall each Party's rights and obligations relating to the protection of the environment provided for in this Agreement.

Article 14.19 **Corporate Social Responsibility**

The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate

into their internal policies those internationally recognised standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party, such as the *OECD Guidelines for Multinational Enterprises* and the *United Nations Guiding Principles on Business and Human Rights*.

ANNEX 14A

CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 14.11 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

ANNEX 14B

EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Article 14.14 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article 14.14 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
 - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;¹⁷ and
 - (iii) the character of the government action.
 - (b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations, except in rare circumstances.

¹⁷ For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.