

PART 6: INVESTMENT

Article 26

Scope and Coverage

- 1 This Part shall apply to all investments in goods and services.
- 2 Articles 28, 29 and 30 shall not apply to any measures affecting investments adopted or maintained pursuant to Part 5 to the extent that they relate to the supply of any specific service through commercial presence as defined in Article 16(n), whether or not they are covered by Annex 2.

Article 27

Definitions

For the purposes of this Agreement :

- 1 "Investments" include but are not limited to the following:
 - a) movable and immovable property and other property rights such as mortgages, liens or pledges;
 - b) shares, stocks, debentures, bank bills, deposits, securities, and similar interests in companies or enterprises (whether incorporated or unincorporated);
 - c) claims to money or to any performance under contract having an economic value;
 - d) intellectual property rights and goodwill;
 - e) business concessions conferred by law or under contract, including any concession to search for, cultivate, extract or exploit natural resources;
 - f) derivative instruments.
- 2 "Proceeds from investment" include but are not limited to the following:
 - a) profits, capital gains, dividends, royalties, interest and other current income accruing from an investment;
 - b) the proceeds from the liquidation of an investment;
 - c) loan payments in connection with an investment;

- d) royalties, license fees, payments in respect of technical assistance, service and management fees;
- e) payments in connection with contracts involving the presence of an investor's property in the territory of the other Party and payment in connection with contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;
- f) earnings of investors of a Party who work in connection with an investment in the territory of the other Party.

3 "Investor" means:

- a) a natural person who resides in the territory of the other Party or elsewhere and who under the law of that other Party:
 - (i) is a national of that other Party; or
 - (ii) has the right of permanent residence in that other Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting investments, provided that that Party is not obligated to accord to such permanent residents more favourable treatment than would be accorded by the other Party to such permanent residents;
- or
- b) any company, firm, association or body, with or without legal personality, whether or not incorporated, established or registered under the applicable laws in force in a Party;

making or having made an investment in the other Party's territory.

Article 28

Most Favoured Nation Status

Except as otherwise provided for in this Agreement, each Party shall accord to investors and investments of the other Party, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition), protection and expropriation (including any compensation) of investments, treatment that is no less favourable than that it accords in like situations to investors and investments from any other State or separate customs territory which is not party to this Agreement.

Article 29

National Treatment

Except as otherwise provided for in this Agreement, each Party shall accord to investors and investments of the other Party in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition), protection and expropriation (including any compensation) of investments, treatment that is no less favourable than that it accords in like situations to its own investors and investments.

Article 30

Standard of Treatment

Each Party shall accord to investors and investments of the other Party the better of the treatment required by Articles 28 and 29.

Article 31

Repatriation and Convertibility

1 Each Party shall allow investors of the other Party, on a non-discriminatory basis, to transfer and repatriate freely and without undue delay their investments and proceeds from investment. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.

2 Notwithstanding paragraph 1, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- a) bankruptcy, insolvency or the protection of the rights of creditors;
- b) issuing, trading or dealing in securities;
- c) criminal or penal offences, and the recovery of proceeds of crime;
- d) reports of transfers of currency or other monetary instruments; or
- e) ensuring the satisfaction of judgments in adjudicatory proceedings.

Article 32

Limitations

- 1 Articles 28, 29 and 30 shall not apply to:
- a) any limitation that is listed by a Party in Annex 3;
 - b) an amendment to a limitation covered by paragraph (a) to the extent that the amendment does not decrease the conformity of the limitation with Articles 28, 29 and 30;
 - c) any new limitation adopted by a Party, and incorporated into Annex 3, which does not affect the overall level of commitments of that Party under this Part;

to the extent that such limitations are inconsistent with those Articles.

2 As part of the reviews of this Agreement provided for in Article 68, the Parties undertake to review at least every two years the status of the limitations set out in Annex 3 with a view to reducing the limitations or removing them.

3 A Party may, at any time, either upon the request of the other Party or unilaterally, remove in whole or in part limitations set out in Annex 3 by written notification to the other Party.

4 A Party may, at any time, incorporate a new limitation into Annex 3 in accordance with paragraph 1(c) of this Article by written notification to the other Party. On receiving such written notification, the other Party may request consultations regarding the limitation. On receiving the request for consultations, the Party incorporating the new limitation shall enter into consultations with the other Party.

Article 33

Subrogation

1 In the event that either Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own investors in respect of any of their claims under this Part, the other Party acknowledges that the former Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of such investors.

2 Any payment made by one Party (or any agency, institution, statutory body or corporation designated by it) to its investors shall not affect the right of such investors to make their claims against the other Party in accordance with Article 34, in cases where the former Party elects not to exercise its subrogated rights or claims.

Article 34

Investment Disputes

1 Any legal dispute between an investor of one Party and the other Party arising directly out of an investment by that investor in the territory of that other Party shall, as far as possible, be settled amicably through negotiations between the investor and that other Party.

2 If the dispute cannot be resolved as provided for in paragraph 1 within 6 months from the date of request for negotiations then, unless the parties to the dispute agree otherwise, it shall, upon the request of either such party, be submitted to conciliation or arbitration by the International Centre for Settlement of Investment Disputes established by the Convention on the Settlement of Investment Disputes between the States and Nationals of Other States done at Washington on 18 March, 1965, provided that the other party does not withhold its consent under Article 25 of that Convention.

ANNEX 3

INVESTMENT LIMITATIONS

Introductory Note

1 Each Party has set out, pursuant to Article 32, the limitations established by it that do not conform with obligations imposed by:

- a) Article 28 (most-favoured-nation status); and
- b) Article 29 (national treatment).

2 Each limitation sets out the following elements:

- a) “Type of Limitation” specifies the obligation referred to in paragraph 1 for which a limitation is necessary;
- b) “Legal Citation” identifies the laws, regulations or other measures which are relevant to the limitation. A measure cited in the legal citation element:
 - (i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement, and
 - (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;
- c) “Description” sets out the non-conforming aspects of the measures for which the limitation is necessary, or the basis on which the limitation is applied to a sector.

ANNEX 3.1

Limitations of New Zealand

A. All sectors

Type of Limitation: National treatment (Article 29)

Legal Citation: Fisheries Act 1996
Overseas Investment Act 1973
Overseas Investment Act Regulations 1995
Overseas Investment Amendment Act 1998

Description: 1 Under the Overseas Investment Act Regulations, 1995, issued under the Overseas Investment Act 1973, Ministerial approval is required for the following investments by an overseas person:

- a) acquisition or control of 25 per cent or more of any class of shares or voting power in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ\$50 million, unless an exemption exists or an authorisation is granted;
- b) commencement of business operations, or acquisition of an existing business, including business assets, in New Zealand, where the total expenditure to be incurred in setting up or acquiring that business or those assets exceeds NZ\$50 million, unless an exemption exists or an authorisation is granted;
- c) acquisition, regardless of dollar value, of:
 - (i) 25 per cent or more of any class of shares or voting power in a New Zealand entity that owns commercial fishing quota or annual catch entitlement;
 - (ii) commercial fishing quota or annual catch entitlement;

unless an exemption exists or an authorisation is granted;

- d) acquisition, regardless of dollar value of:
- (i) New Zealand land outside of urban areas and exceeding five hectares or land wherever located worth more than NZ\$ 10 million;
 - (ii) scenic reserve land (including land that encompasses or adjoins recreational, historic or heritage areas, the foreshore and lakes);
 - (iii) land over 0.4 hectares on specified off-shore islands;
 - (iv) any land on all other islands;

unless an exemption exists or an authorisation is granted;

- e) acquisition, regardless of dollar value, of 25 percent or more of any New Zealand entity that owns or controls:
- (i) New Zealand land outside of urban areas and exceeding five hectares or land wherever located worth more than NZ\$ 10 million;
 - (ii) scenic reserve land (including historic or heritage areas, the foreshore and lakes);
 - (iii) land over 0.4 hectares on specified off-shore islands;
 - (iv) any land on all other islands;

unless an exemption exists or an authorisation is granted.

2 Ministers, in determining whether to grant approval, act in accordance with a screening regime (a non-legally binding description of which is appended to this Annex) which may be adjusted or replaced from time to time by New Zealand Government legislation, regulation or policy setting.

B. Producer and Marketing Boards

Type of Limitation: National treatment (Article 29)

Legal Citation: Agriculture (Emergency Powers) Act 1934
Apple and Pear Export Regulations 1999
Apple and Pear Industry Restructuring Act 1999
Dairy Board Act 1961
Dairy Industry Restructuring Act 1999
Game Industry Board Regulation 1985
Hop Marketing Regulations 1939
Kiwifruit Export Regulations 1999
Kiwifruit Industry Restructuring Act 1999
Marketing Act 1936
Meat Board Act 1997
Pork Industry Board Act 1997
Primary Products Marketing Act 1953
Wool Board Act 1997

Description: More favourable treatment may be accorded to New Zealand nationals and permanent residents in respect of ownership of Producer and Marketing Board assets.

C. Fishing

Type of Limitation: National treatment (Article 29)

Legal Citation: Fisheries Act 1996

Description:

- 1 Without the permission of the Minister of Fisheries, and subject to any conditions that he or she thinks fit to impose, no vessel owned or operated by an overseas person may be registered to carry out commercial fishing or fish carrying activities.
- 2 No vessel that is not a New Zealand ship will be used for commercial fishing within the territorial sea of New Zealand.
- 3 Foreign fishing vessels or fish carriers are required to obtain the approval of the Minister of Fisheries before entering New Zealand internal waters. If the Minister of Fisheries is satisfied that the vessel has undermined international conservation and management measures he or she may deny the vessel approval to enter New Zealand internal waters.

D. Privatisation

Type of Limitation: National treatment (Article 29)

Legal Citation:

Description: More favourable treatment may be accorded to New Zealand nationals and permanent residents in respect of ownership of enterprises currently in State ownership.

E. Overseas Company Reporting Requirements

Type of Limitation: National treatment (Article 29)

Legal Citation: Companies Act 1993
Financial Reporting Act 1993

Description: Overseas companies are required to prepare audited financial statements on an annual basis. Legislation also requires financial statements in relation to an overseas company's New Zealand business. The following companies are required to deliver annual audited financial statements to the Registrar of Companies for registration:

- a) issuers – i.e. those who have raised capital from the New Zealand public ;
- b) overseas companies;
- c) subsidiaries of companies or bodies corporate incorporated outside New Zealand;
- d) companies in which 25 per cent or more of the shares are held or controlled by:
 - (i) a subsidiary of a company or body corporate incorporated outside New Zealand or a subsidiary of that subsidiary;
 - (ii) a company or body corporate incorporated outside New Zealand;
 - (iii) a person not ordinarily resident in New Zealand.

F. All Sectors

Type of Limitation: National treatment (Article 29)

Legal Citation:

Description: More favourable treatment may be accorded to New Zealand nationals and permanent residents in the form of incentives or other programmes to help develop local entrepreneurs and assist local companies to expand and upgrade their operations.

G. Services

Type of Limitation National treatment (Article 29)
Most favoured nation status (Article 28)

Legal Citation:

Description:

- 1 Most favoured nation status and national treatment shall not apply where a services sector is not scheduled under Part 5.
- 2 Where a services sector is scheduled under Part 5, the terms, limitations, conditions and qualifications stated therein shall apply to investments in that sector.
- 3 Any horizontal commitments, limitations, conditions and qualifications scheduled under Part 5 shall apply to investments in the services sector concerned.

DESCRIPTION OF THE OVERSEAS INVESTMENT REGIME

1 The following is a brief, non legally binding, description of the criteria applied to overseas investment that requires approval under New Zealand's Overseas Investment Act 1973 and the Fisheries Act 1996. The criteria may be adjusted or replaced from time to time by Government legislation, regulation or policy setting. A more detailed description of the criteria is set out in the Overseas Investment Regulations 1995.

Non-Land (Prudential Criteria)

2 Ministers must be satisfied that prospective investors:

- a) have business experience and acumen;
- b) demonstrate a financial commitment to the investment;
- c) are of good character and do not have a criminal record that would prevent them from obtaining permanent residence in New Zealand.

Land and Fishing Quota

3 In addition to the applicable prudential criteria, in order to approve overseas investment in specific non-farm land and fishing quota, Ministers must consider whether the investment is in the national interest. In doing so, Ministers shall have regard to whether the investment is likely to result in:

- a) the creation of new job opportunities in New Zealand, or the retention of existing jobs in New Zealand that would otherwise be lost;
- b) the introduction to New Zealand of new technology or business skills;
- c) the development of new export markets, or increased export market access for New Zealand exporters;
- d) added market competition, greater efficiency, greater productivity, or enhanced domestic services, in New Zealand;
- e) the introduction of additional investment for development purposes;
- f) increased processing in New Zealand of primary products;

- g) in the case of an investment in land, whether an individual intends to reside permanently in New Zealand.

Additional Requirements for Farm Land

4 In addition to the prudential criteria, approval of overseas investment in farm land requires that the farm land has been offered for sale or acquisition on the open market to New Zealanders. Farm land is defined as land used exclusively or principally for the purpose of agricultural, horticultural, or pastoral purposes, or for the keeping of bees, poultry or livestock.

5 To approve overseas investment in farm land Ministers must also consider whether the overseas investment in farm land is in the national interest and likely to result in “substantial and identifiable benefits” to New Zealand.

Ministers must have regard to the same matters as for fishing quota and other land and investment, as well as:

- a) whether experimental or research work will be carried out on the land;
- b) the proposed use of the land; and
- c) whether the overseas investor intends to farm the land for his or her own use and benefit, and is capable of doing so.

ANNEX 3.2

Limitations of Singapore

A.

Services

Type of Limitation:

Most favoured nation status (Article 28)
National treatment (Article 29)

Legal Citation:

Description:

1 Most favoured nation status and national treatment shall not apply where a services sector is not scheduled under Part 5.

2 Where a services sector is scheduled under Part 5, the terms, limitations, conditions and qualifications stated therein shall apply to investments in that sector.

3 Any horizontal commitments, limitations, conditions and qualifications scheduled under Part 5 shall apply to investments in the services sector concerned.

B. All Sectors

Type of Limitation: National treatment (Article 29)

Legal Citation:

Description: More favourable treatment may be accorded to Singapore nationals and permanent residents in the form of incentives or other programmes to help develop local entrepreneurs/technopreneurs and assist local companies to expand and upgrade their operations.

C. All Sectors

Type of Limitation: National treatment (Article 29)

Legal Citation: Companies Act, Cap 50 (1994)

Description: Compliance by Foreign Companies with the Companies Act as in establishing, reporting and filing of accounts.

- a) Commercial presence, right of establishment and movement of juridical persons are subject to compliance with the following provisions:
- (i) a foreigner who wishes to register a business firm must have a local manager who should be:
 - A) a Singapore citizen;
 - B) a Singapore permanent resident;
 - C) a Singapore employment pass holder;
 - or
 - D) a dependent's pass holder and have written permission from the Singapore Immigration and Registration (SIR).

Provided that a foreigner who is a Singapore permanent resident or a Singapore employment pass holder or a dependent's pass holder with written permission from SIR can register a business without appointing a local manager;
 - ii) every company must have at least 2 directors, and one of whom must be locally resident;
 - iii) all branches of foreign companies registered in Singapore must have at least 2 locally resident agents. (To qualify as locally resident, a person should be either a Singapore citizen or Singapore permanent resident or Singapore employment pass

holder or dependent's pass holder with written permission from SIR);

- b) establishment of a foreign company's branch is subject to the filing of necessary documents.

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| D. | <u>All Sectors</u> |
| Type of Limitation: | National treatment (Article 29) |
| Legal Citation: | Banking Act, Cap 19 (1985) Directive on Housing Loans to Financial Institutions issued by the Monetary Authority of Singapore (MAS) Residential Property Act, Cap 274 (1985) |
| Description: | <ol style="list-style-type: none"> 1 Ownership of land: <ol style="list-style-type: none"> a) non-citizens cannot own land. 2 Ownership of property: <ol style="list-style-type: none"> a) non-citizens are restricted from purchasing landed property and residential property in a building of less than 6 levels; b) there are also restrictions on non-citizens owning Housing & Development Board (HDB) flats; 3 Housing loans: <ol style="list-style-type: none"> a) banks are: <ol style="list-style-type: none"> (i) not allowed to extend Singapore Dollar (S\$) loans to non-Singapore citizens (excluding permanent residents) and non-Singapore companies for the purpose of purchasing residential properties in Singapore. A company incorporated outside Singapore or majority-owned by non-Singapore citizens and/or permanent residents is considered a non-Singapore company; (ii) allowed to extend only one S\$ loan to permanent residents for the purchase of residential property which must be owner-occupied. |

E. All Sectors

Type of Limitation: National treatment (Article 29)

Legal Citation: Banking Act, Cap 19 (1985)
MAS Notice No. 757

Description: 1 Banks are not allowed to extend S\$ credit facilities to non-residents²² for the following purposes:

- a) speculating in the S\$ currency and interest rate markets;
- b) financing third-party trade between countries not involving Singapore;
- c) financing the acquisition of shares of companies not listed on the Stock Exchange of Singapore or Central Limit Order Book (CLOB);
- d) financing activities outside Singapore except when approved by MAS.

2 Banks must consult MAS before extending S\$ credit facilities to non-residents²² for, inter alia:

- a) amounts exceeding S\$5 million for financing investments such as shares, bonds, deposits, and commercial properties;
- b) amounts exceeding S\$20 million via repurchase agreements of Singapore Government Securities with full delivery of collateral; and
- c) all activities not explicitly mentioned in the MAS Notice 757.

²² For the purposes of this MAS Notice 757, Singapore residents are: (i) Singapore citizens; (ii) individuals who are Singapore tax-residents; (iii) companies incorporated in Singapore which are jointly-owned or majority-owned by Singapore citizens; or (iv) overseas subsidiaries which are jointly-owned or majority-owned by Singapore citizens. All other persons are considered non-residents

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| F. | <u>Printing & Publishing</u> <u>Manufacture & Repair of Transport Equipment</u> <u>Power/Energy</u> |
| Type of Limitation: | National treatment (Article 29) |
| Legal Citation: | |
| Description: | More favourable treatment may be accorded to Singapore nationals and permanent residents in the above sectors. |

G. Privatisation

Type of Limitation: National treatment (Article 29)

Legal Citation:

Description: More favourable treatment may be accorded to Singapore nationals and permanent residents in respect of ownership of enterprises currently in Government ownership.

H. Government-Linked Companies

Type of Limitation: Most favoured nation status (Article 28)
National treatment (Article 29)

Legal Citation:

Description: 1 Most favoured nation status and national treatment shall not apply to any corporate entities in which the Singapore Government is the majority shareholder or has a special share. Such corporate entities shall be permitted to limit the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

2 The term 'special share' whether created by a corporate entity's articles of association, or by domestic law or administrative action, includes a paid-up share or any other share (whether ordinary, equity or otherwise) and any share that has special voting or veto rights in respect of or entitles the holder to give or withhold consent or object to:

- a) the disposal of the whole or substantial part of the corporate entity's undertaking;
- b) the acquisition by any person of any specified percentage of the issued share capital of the corporate entity;
- c) the appointment of the board of directors, management and/or executive staff of the corporate entity;
- d) the winding up or dissolution of the corporate entity; or
- e) any change to the memorandum of association and/or articles of association of a corporate entity relating to the issue, ownership, transfer, cancellation and acquisition of shares of the corporate entity, appointment and dismissal of the board of directors, management and/or executive staff of the corporate entity.

I. Manufacturing Sector

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| Type of Limitation: | Most favoured nation status (Article 28) National treatment (Article 29) |
| Legal Citation: | Control of Manufacture Act, Cap 57 (1985) |
| Description: | Statutory licensing requirements for the manufacture of goods, such as: <ul style="list-style-type: none">a) firecrackers;b) drawn steel products;c) pig iron and sponge iron;d) rolled steel products;e) steel ingots, billets, blooms and slabs;f) beer and stout;g) CD, CD-ROM, VCD;h) DVD, DVD-ROM;i) chewing gum, bubble gum, dental chewing gum or any like substance;j) cigarettes;k) matches;l) cigars. |