

CHAPTER 4

INVESTMENT

ARTICLE 4.1

Scope and Coverage

1. This Chapter shall apply to investments in the territory of one Party by an investor of another Party, which constitute, or are related to, a direct investment. It shall not apply to investments in the services sectors covered by Chapter 3³.
2. This Chapter shall apply to investments irrespective of whether they have been made prior to or after the entry into force of this Agreement. It shall however not apply to disputes arising out of events which occurred prior to the entry into force of the Agreement.
3. The provisions of this Chapter shall be without prejudice to the interpretation or application of the rights and obligations under any other international agreement relating to investment or taxation to which Ukraine and one or several EFTA States are parties.

ARTICLE 4.2

Definitions

For the purposes of this Chapter,

- (a) “direct investment” means participation of an investor in an enterprise, consisting of at least 10 per cent ownership, whether direct or indirect, of the total vote-entitled shares in that enterprise. “Indirect ownership” refers to the total of vote-entitled shares that is attributable to an investor in accordance with the relevant precisions to the definition of “direct investment” by the IMF;
- (b) “enterprise of a Party” means any legal person or any other entity, constituted or otherwise organised under the law of a Party, that is engaged in business operations in the territory of the same or any other Party;
- (c) “investment” means every kind of asset, including but not limited to: any form of equity or other participation in an enterprise; claims to money and

³ For the avoidance of doubt, it is confirmed that services specifically exempted from the scope of Chapter 3 (air traffic rights) are considered to be covered services sectors, and therefore do not fall under the scope of the Investment Chapter.

claims to performance; intellectual property rights; rights conferred pursuant to law or under contract, such as concessions, licenses and permits; and any rights on movable and immovable property;

- (d) “investment activities” means the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of an investment;
- (e) “investment of an investor of a Party” means an investment that is owned or controlled, either directly or indirectly, by an investor of that Party;
- (f) “investor of a Party” means:
 - (i) a natural person having the nationality of, or permanent residence in, a Party in accordance with its applicable law; or
 - (ii) a legal person or any other entity constituted or organised under the applicable law of a Party, and engaged in substantive business operations in any Party, whether or not for profit, and whether private or government owned or controlled;
- (g) “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.

ARTICLE 4.3

General Treatment

Each Party shall accord to investors of the other Party, and their investments, treatment in accordance with international law, including fair and equitable treatment and full protection and security.

ARTICLE 4.4

National Treatment

Each Party shall, subject to Article 4.11 and the reservations set out in Annex XI, accord to investors of the other Party and their investments treatment no less favourable than it accords, in like situations, to its own investors and their investments with respect to investment activities in its territory.

ARTICLE 4.5

Most Favoured Nation Treatment

1. Except as provided for in Annex XII, each Party shall accord to investors of the other Party and their investments treatment no less favourable than that it accords, in like situations, to investors of any non-party and to their investments with respect to investment activities in its territory.
2. If a Party accords preferential treatment to investments of investors of any third State by virtue of a free trade agreement, customs union, common market or any other economic integration agreement, it shall not be obliged to accord such treatment to investments of investors of the other Party. The same applies with respect to treatment accorded by a Party by virtue of any investment protection agreement or agreement on avoidance of double taxation.
3. If a Party, after the entry into force of this Agreement, has granted to a non-party by virtue of an agreement as referred to in paragraph 2, treatment more favourable than that provided for by this Agreement, it shall consider a request by another Party to incorporate into this Agreement the more beneficial treatment granted to the non-party.

ARTICLE 4.6

Access to Courts

Each Party shall in its territory accord to investors of another Party treatment no less favourable than the treatment which it accords to its own investors or investors of a non-party with respect to the jurisdiction of its courts as well as its administrative tribunals and agencies, both in pursuit and in defence of investors' rights.

ARTICLE 4.7

Key Personnel

1. The Parties shall, subject to their laws and regulations relating to the entry, stay and work of natural persons, examine in good faith requests by investors of another Party, and key personnel who are employed by such investors or by investments, to enter and remain temporarily in their territories in order to engage in activities connected with the management, maintenance, use, enjoyment, expansion or disposal of relevant investments, including the provision of advice or key technical services.
2. The Parties shall, subject to their laws and regulations, permit investors of the other Party and their investments, to employ any key person of the investor's or the investment's choice regardless of nationality and citizenship provided that such key person has been permitted to enter, stay and work in the territory of the other Party and

that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key person.

3. The Parties shall, subject to their laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to the spouse and minor children of a natural person who has been granted temporary entry, stay and authorisation to work in accordance with paragraphs 1 and 2. The spouse and minor children shall be admitted for the period of the stay of that person.

ARTICLE 4.8

Right to Regulate

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure consistent with this Chapter 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 shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor of a Party or a non-party.

ARTICLE 4.9

Transparency

Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Party, and agreements in force between Parties, which affect matters covered by this Chapter shall be published promptly, or otherwise made publicly available, in such a manner as to enable Parties and investors to become acquainted with them. The provisions of this Article shall not require any Party to disclose information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any investor.

ARTICLE 4.10

Trade Related Investment Measures

The Parties reaffirm their commitments to the WTO Agreement on Trade-Related Investment Measures (hereinafter referred to as the “TRIMs”) and hereby incorporate the provisions of TRIMs, as part of this Agreement.

ARTICLE 4.11

Reservations

1. National treatment as provided for under Article 4.4 shall not apply to:
 - (a) any reservation that is listed by a Party in Annex XI;
 - (b) an amendment to a reservation covered by paragraph (a) to the extent that the amendment does not decrease the conformity of the reservation with Article 4.4;
 - (c) any new reservation adopted by a Party, and incorporated into Annex XI which does not affect the overall level of commitments of that Party under this Agreement;to the extent that such reservations are inconsistent with Article 4.4.
2. As part of the reviews provided for in Article 4.15 the Parties undertake to review the status of the reservations set out in Annex XI with a view to reducing the reservations or removing them.
3. A Party may, at any time, either upon the request of another Party or unilaterally, remove, in whole or in part, its reservations set out in Annex XI by written notification to the other Parties.
4. A Party may, at any time, incorporate a new reservation into Annex XI in accordance with paragraph 1 (c) of this Article by written notification to the other Parties. On receiving such written notification, the other Parties may request consultations regarding the reservation. On receiving the request for consultations, the Party incorporating the new reservation shall enter into consultations with the other Parties.

ARTICLE 4.12

Payments and Transfers

1. Except under the circumstances envisaged in Article 4.13, a Party shall not apply restrictions on current payments and capital movements relating to direct investments covered by this Chapter.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the IMF, including the use of exchange actions which are in conformity with the said Articles, provided that a Party does not impose restrictions on capital transactions inconsistent with its obligations under this Chapter.

ARTICLE 4.13

Restrictions to Safeguard the Balance-of-Payments

1. The Parties shall endeavor to avoid the imposition of restrictions to safeguard the balance of payments.
2. The rights and obligations of the Parties in respect of such restrictions shall be governed by paragraphs 1 to 3 of Article XII of the GATS, which are hereby incorporated into and made part of this Chapter, *mutatis mutandis*.
3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee.

ARTICLE 4.14

Exceptions

The rights and obligations of the Parties in respect of general exceptions shall be governed by Article XIV of the GATS, which is hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

ARTICLE 4.15

Review Clause

The EFTA States and Ukraine affirm their commitment to review the investment framework and the flow of investment between their territories consistent with their commitments in international investment agreements not later than three years after the entry into force of this Agreement and in regular intervals thereafter.