

4. The Sub-Committee shall be:
  - (a) composed of representatives of the Governments;  
and
  - (b) co-chaired by officials of the Governments.
5. The Sub-Committee may, if necessary, establish *ad hoc* technical working groups as its subsidiary bodies.

Article 71  
Enquiry Points

Each Government shall designate an enquiry point to answer all reasonable enquiries from the other Government regarding SPS measures referred to in Article 68 and, if appropriate, provide the other Government with the relevant information.

Article 72  
Non-Application of Chapter 13

The dispute settlement procedures provided for in Chapter 13 shall not apply to this Chapter.

Chapter 7  
Investment

Article 73  
Scope

1. This Chapter shall apply to measures adopted or maintained by a Country relating to:
  - (a) investors of the other Country; and
  - (b) investments of investors of the other Country in the former Country.
2. In the event of any inconsistency between this Chapter and Chapter 8:
  - (a) with respect to matters covered by Articles 75, 76 and 79, Chapter 8 shall prevail to the extent of inconsistency; and
  - (b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of inconsistency.

3. Nothing in this Chapter shall impose any obligation on either Country regarding measures pursuant to immigration laws and regulations.

Note: In respect of Malaysia, measures referred to in this paragraph include those pursuant to the immigration policies endorsed by the Cabinet, and announced and made publicly available in a written form by the Government of Malaysia.

#### Article 74 Definitions

For the purposes of this Chapter:

- (a) an enterprise is:
  - (i) "owned" by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and
  - (ii) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;
- (b) the term "enterprise of a Country" means any legal entity duly constituted or organised under the law of a Country, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, association, organisation, company or branch;
- (c) the term "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the GATS;
- (d) the term "freely usable currency" means any currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets as defined under the Articles of Agreement of the International Monetary Fund, as may be amended;
- (e) the term "investments" means every kind of asset owned or controlled, directly or indirectly, by an investor of a Country, including:
  - (i) an enterprise;

- (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
- (iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
- (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
- (v) claims to money and claims to any performance under contract having a financial value;
- (vi) intellectual property rights, including copyrights, patent rights, and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new plant varieties, trade names, indications of source or geographical indications, undisclosed information, which are conferred pursuant to the laws and regulations of each Country;
- (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits; and
- (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as mortgages, liens and pledges;

Investments also include profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments. A change in the form in which assets are invested does not affect their character as investments.

Note 1: Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.

Note 2: Whether a particular right conferred pursuant to laws and regulations or contracts, as referred to in subparagraph (vii), has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the domestic law of the Country. For greater certainty, the foregoing is without prejudice to whether any asset associated with such right has the characteristics of an investment.

Note 3: Investments do not include an order or judgment entered in a judicial or administrative action.

- (f) the term "investor of a Country" means a natural person of a Country or an enterprise of a Country, except branch of an enterprise of a third State which is located in the Country;
- (g) the term "natural person of a Country" means a natural person who resides in a Country or elsewhere and who under the law of the Country:
  - (i) in respect of Japan, is a national of Japan; and
  - (ii) in respect of Malaysia, is a national of Malaysia or has the right of permanent residence in Malaysia; and
- (h) the term "portfolio investment" means:
  - (i) shares, stocks or other forms of equity participation in an enterprise traded in a securities exchange, which amount to less than 10 percent of the total capital of such enterprise; or
  - (ii) debt securities, such as bonds, notes and financial derivatives, the original maturity of which is less than 12 months, unless such debt securities are arising out of intra-company debt transactions between an investor of a Country and an enterprise in the other Country of which 10 percent or more of the shares, stocks, or other forms of equity are directly or indirectly owned by the investor, or which is directly or indirectly controlled by the investor.

Article 75  
National Treatment

1. Each Country shall accord to investors of the other Country and to their investments treatment no less favourable than that it accords in like circumstances to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments (hereinafter referred to in this Chapter as "investment activities").

2. This Article shall not apply to the establishment, acquisition and expansion of portfolio investments.

3. Notwithstanding the provisions of paragraph 1 of this Article, each Country may prescribe special formalities in connection with the establishment of investments by investors of the other Country in the former Country such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.

Article 76  
Most-Favoured-Nation Treatment

Each Country shall accord to investors of the other Country and to their investments treatment no less favourable than that it accords in like circumstances to investors of a third State and to their investments, with respect to investment activities.

Article 77  
General Treatment

Each Country shall accord to investments of investors of the other Country fair and equitable treatment and full protection and security.

Article 78  
Access to the Courts of Justice

Each Country shall in that Country accord to investors of the other Country treatment no less favourable than the treatment which it accords in like circumstances to its own investors or investors of a third State with respect to access to its courts of justice and administrative tribunals and agencies, both in pursuit and in defence of such investors' rights.

Note: This Article shall apply in respect of taxation measures, where Article 81 applies to taxation measures.

Article 79  
Prohibition of Performance Requirements

1. For the purposes of this Chapter, the Annex to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement, as may be amended, is incorporated into and forms part of this Agreement, *mutatis mutandis*.
2. The Countries shall enter into further consultations, at the earliest possible time. The aim of such consultations is to review issues pertaining to prohibition of performance requirements within five years from the date of entry into force of this Agreement.
3. The aim of consultations referred to in paragraph 2 of this Article may include the review of reservations relating to prohibition of performance requirements.

Article 80  
Reservations and Exceptions

1. Articles 75 and 76 and paragraph 1 of Article 79 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by the following, as set out in sectors, sub-sectors or activities listed in Annex 4 and indicated with an asterisk ("\*"):
    - (i) the central government of a Country; or
    - (ii) a prefecture of Japan or a state of Malaysia, as set out in Annex 4 in accordance with paragraph 5 of this Article;
  - (b) any existing non-conforming measure that is maintained by a local government of a Country other than prefectures and states referred to in subparagraph (a) (ii);
  - (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or
  - (d) an amendment or modification of any measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the level of conformity of the measure, as it existed immediately before the amendment or modification, with Articles 75 and 76 and paragraph 1 of Article 79.

2. Each Country reserves the right to adopt or maintain any measure not conforming with the obligations imposed by Articles 75 and 76 and paragraph 1 of Article 79, for sectors, sub-sectors or activities listed in Annex 4 other than those referred to in paragraph 1 of this Article.

3. Any amendment or modification of an existing measure or adoption of a new measure for sectors, sub-sectors or activities referred to in paragraph 2 of this Article, shall not be more restrictive to existing investors and existing investments than the measure applied to such investors and investments immediately before such amendment or modification or adoption, unless such sectors, sub-sectors or activities are indicated with the symbol "+" in Annex 4.

4. For the purposes of this Article:

- (a) the terms "existing investors" and "existing investments" mean respectively investors whose investments are present in a Country, and investments that are present in a Country, immediately before the modification or amendment of existing measures, or adoption of new measures; and
- (b) any expansion or diversification of existing investments by existing investors after the modification or amendment of existing measures or adoption of new measures shall not be regarded as existing investments to the extent of such expansion or diversification.

5. Each Country shall set out in Annex 4, within six months after the entry into force of this Agreement, any existing non-conforming measure, with an asterisk ("\*"), maintained by a prefecture or a state as referred to in subparagraph 1(a)(ii) of this Article and shall notify thereof the other Country by a diplomatic note.

6. Neither Country may, under any measure adopted pursuant to paragraph 2 of this Article after the entry into force of this Agreement, require an investor of the other Country, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authority.

7. In cases where a Country makes an amendment or modification of existing measures or adopts new measures with respect to sectors, sub-sectors or activities listed in Annex 4:

- (a) that Country shall notify the other Country to the extent possible, the amendment or modification or new measures, and whenever possible prior to implementation, if not, as soon as possible thereafter; and
- (b) that Country upon the request by the other Country shall hold consultation in good faith with that other Country with a view to achieving mutual satisfaction.

8. Notwithstanding the provisions of this Article, each Country may, in exceptional financial, economic or industrial circumstances, adopt exceptional measure inconsistent with Articles 75 and 76 and paragraph 1 of Article 79 in the sectors, sub-sectors or activities listed in Annex 4 with an asterisk ("\*"), provided that such Country shall, to the extent possible prior to the entry into force of the measure, or as soon as possible thereafter:

- (a) notify the other Country of the elements of the measure; and
- (b) hold, upon the request by the other Country, consultations in good faith with the other Country with a view to achieving mutual satisfaction and take appropriate action thereafter.

9. Each Country shall endeavour, where appropriate, to reduce or eliminate the reservations specified in Annex 4.

10. Articles 75, 76 and 79 shall not apply to any measure that a Country adopts or maintains with respect to government procurement.

11. Articles 75 and 76 shall not apply to any measure covered by an exception to, or derogation from, the obligations under Articles 3 and 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended (hereinafter referred to as "the TRIPS Agreement"), as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.



Article 81  
Expropriation and Compensation

1. Neither Country shall take any measures of or equivalent to expropriation or nationalisation against the investments in that Country of investors of the other Country (hereinafter referred to in this Chapter as "expropriation") except:

- (a) for a lawful or public purpose;
- (b) on a non-discriminatory basis;
- (c) in accordance with due process of law; and
- (d) upon payment of prompt, adequate and effective compensation.

2. Such compensation shall be equivalent to the fair market value of the expropriated investments:

- (a) at the time when or immediately before the expropriation was publicly announced; or
- (b) when the expropriation occurred,

whichever is the earlier.

3. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

4. The compensation shall be paid without delay and shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. It shall be:

- (a) effectively realisable;
- (b) freely transferable; and
- (c) freely convertible at the market exchange rate prevailing on the date of the expropriation into the currency of the Country of the investors concerned and freely usable currencies.

5. This Article shall apply to taxation measures, to the extent that such taxation measures constitute expropriation.

Article 82  
Protection from Strife

1. Each Country shall accord to investors of the other Country that have suffered loss or damage relating to their investment activities in the former Country due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the former Country, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors or to investors of a third State, whichever is more favourable to the investors of the other Country.
2. Any payments made pursuant to paragraph 1 of this Article shall be effectively realisable, freely convertible and freely transferable.

Article 83  
Transfers

1. Each Country shall allow all transfers to be made into and out of that Country freely and without delay in any freely usable currency. Such transfers shall include:
  - (a) the initial capital and additional amounts to maintain or increase investments;
  - (b) profits, capital gains, dividends, royalties, interest, fees and other current incomes accruing from investments of the investors of the other Country;
  - (c) proceeds from the total or partial sale or liquidation of investments of investors of the other Country;
  - (d) payments made under a contract including loan payments in connection with investments;
  - (e) earnings, remuneration and other compensation of personnel from the other Country who work in connection with investments in the former Country;
  - (f) payments made in accordance with Articles 81 and 82; and
  - (g) payments arising out of the settlement of a dispute under Article 85.

2. Each Country shall allow transfers referred to in paragraph 1 of this Article to be made in a freely usable currency at the market rate of exchange prevailing on the date of the transfer.

3. Subject to paragraphs 1 and 2 of this Article, each Country shall accord to the transfer referred to in paragraph 1 of this Article treatment no less favourable than that accorded to the transfer originating from investments made by investors of any third State.

4. Notwithstanding paragraphs 1 and 2 of this Article, a Country may delay or prevent a transfer referred to in paragraph 1 of this Article 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;
- (d) ensuring compliance with orders or judgments in adjudicatory proceedings; or
- (e) obligations of investors arising from social security and public retirement plans.

#### Article 84 Subrogation

1. If a Country or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, pertaining to an investment of that investor within the other Country, the other Country shall:

- (a) recognise the assignment, to the former Country or its designated agency, of any right or claim of the investor that formed the basis of such payment; and
- (b) recognise the right of the former Country or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor.

2. Articles 81, 82 and 83 shall apply *mutatis mutandis* as regards payment to be made to the Country or its designated agency mentioned in paragraph 1 of this Article by virtue of such assignment of right or claim, and the transfer of such payment.

Article 85  
Settlement of Investment Disputes  
between a Country and an Investor of the Other Country

1. For the purposes of this Chapter, an "investment dispute" is a dispute between a Country and an investor of the other Country that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Chapter with respect to the investments of the investor of the other Country.

Note: This Article shall apply in respect of taxation measures, where Article 81 applies to taxation measures.

2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as "disputing investor") from seeking administrative or judicial settlement within the Country that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Country").

3. An investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute.

4. If the investment dispute cannot be settled through such consultations within five months from the date on which the disputing investor requested for the consultations in writing and if the disputing investor concerned has not submitted the investment dispute for resolution under administrative or judicial settlement, the disputing investor may:

- (a) submit the investment dispute to the Kuala Lumpur Regional Centre for Arbitration (hereinafter referred to as "KLRCA") for settlement by conciliation or arbitration;
- (b) submit the investment dispute to conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18, 1965, as may be amended;

- (c) submit the investment dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976, as may be amended; or
- (d) if agreed with the disputing Country, submit the investment dispute to arbitration in accordance with other arbitration rules.

5. The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified in this Article.

6. The disputing investor who intends to submit the investment dispute to conciliation or arbitration pursuant to paragraph 4 of this Article shall give to the disputing Country written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify:

- (a) the name and address of the disputing investor;
- (b) the specific measures of the disputing Country at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Chapter alleged to have been breached; and
- (c) the dispute settlement procedures set forth in paragraph 4 of this Article which the disputing investor will seek.

7. Each Country hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration chosen by the disputing investor as provided for in paragraph 4 of this Article. If more than three years have elapsed since the date the disputing investor knew or ought to have known, whichever is the earlier, of the loss or damage which, it is alleged, has been incurred by the disputing investor, the consent above shall be invalidated.

8. Notwithstanding paragraph 4 of this Article and subject to the laws of the disputing Country, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or a court of justice.

9. Unless the disputing investor and the disputing Country (hereinafter referred to as "the disputing parties") agree otherwise, an arbitral tribunal established under subparagraphs 4(a), (b) and (c) of this Article shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Country fails to appoint an arbitrator within 60 days from the date on which the investment dispute was submitted to arbitration, the Director of KLRCA, in the case of arbitration referred to in subparagraph 4(a) of this Article, or the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as "ICSID"), in the case of arbitration referred to in subparagraphs 4(b) and (c) of this Article, on the request of either of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed from the KLRCA or ICSID Panel of Arbitrators respectively subject to the requirement of paragraphs 10 and 11 of this Article.

10. Unless the disputing parties agree otherwise, the third arbitrator shall not be of the same nationality as the disputing investor, nor be a national of the disputing Country, nor have his or her usual place of residence in either of the Countries, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.

11. In the case of arbitration referred to in subparagraphs 4(a), (b) and (c) of this Article, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Director of KLRCA, in the case of arbitration referred to in subparagraph 4(a) of this Article, or the Secretary-General of ICSID, in the case of arbitration referred to in subparagraphs 4(b) and (c) of this Article, may not appoint as arbitrator any person whose nationality is indicated by any of the disputing parties.

12. Unless the disputing parties agree otherwise, the arbitration shall be held in the disputing Country.

13. On written notice to the disputing parties, the Country other than the disputing Country may make submission to the arbitral tribunal on a question of interpretation of this Agreement.

14. The award shall include:

- (a) a judgment whether or not there has been a breach by the disputing Country of any rights conferred by this Chapter in respect of the disputing investor and its investments; and
- (b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:
  - (i) payment of monetary damages and applicable interest; and
  - (ii) restitution of property, in which case the award shall provide that the disputing Country may pay monetary damages and any applicable interest in lieu of restitution.

Costs may also be awarded in accordance with the applicable arbitration rules.

15. The award rendered in accordance with paragraph 14 of this Article shall be final and binding upon the disputing parties. The disputing Country shall carry out without delay the provisions of any such award and provide in the disputing Country for the enforcement of such award in accordance with its relevant laws and regulations.

16. Neither Country shall, in respect of an investment dispute which one of its investors shall have submitted to arbitration in accordance with paragraph 4 of this Article, give diplomatic protection, or bring an international claim before another forum, unless the other Country shall have failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

17. This Article shall not apply to any dispute arising between a Country and an investor of the other Country on any right or privileges conferred or created by Articles 75 and 79.

18. An investor of a Country whose investments are not made in compliance with the laws and regulations of the other Country which are not inconsistent with this Agreement:

- (a) shall not be entitled to submit an investment dispute to conciliation or arbitration referred to in paragraph 4 of this Article; and

(b) shall not resort to dispute settlement procedures under Chapter 13 as a means to settle the investment disputes between the investor and the other Country.

Note: For the purposes of this paragraph, in respect of Malaysia, investments that are not made in compliance with the laws and regulations include investments that are not made in compliance with national policies endorsed by the Cabinet and announced and made publicly available in a written form by the Government of Malaysia.

Article 86  
Facilitation of Movement of Investors

1. Subject to its immigration laws and regulations relating to entry, stay and authorisation to work, each Country shall grant entry, temporary stay and authorisation to work to investors, and executives, managers and members of the board of directors of an enterprise of the other Country, for the purpose of establishing, developing, administering or advising on the operation in the former Country of an investment to which they, or an enterprise of the other Country that employs such executives, managers and members of the board of directors, have committed or are in the process of committing a substantial amount of capital or other resources, so long as they continue to meet the requirements of this Article.

Note: In respect of Malaysia, its obligations under this paragraph are also subject to the immigration policies, relating to entry, stay and authorisation to work, endorsed by the Cabinet, and announced and made publicly available in a written form by the Government of Malaysia.

2. Each Country shall, to the extent possible, make publicly available, requirements and procedures for application for a renewal of the period of temporary stay, a change of status of temporary stay or an issuance of a work permit for a natural person of the other Country who has been granted entry and temporary stay with respect to an investment. Each Country shall endeavour to facilitate the procedures to the extent possible, in accordance with its laws and regulations.



Article 87  
General and Security Exceptions

In cases where a Country takes any measure pursuant to Article 10 that does not conform with the obligations of the provisions of this Chapter other than the provisions of Article 82, that Country shall so notify the other Country, to the extent possible prior to the entry into force of the measure, or if not, as soon thereafter as possible.

Article 88  
Temporary Safeguard Measures

1. A Country may adopt or maintain measures not conforming with its obligations under Article 75 relating to cross-border capital transactions and Article 83:
  - (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
  - (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management in particular, monetary and exchange rate policies.
2. Measures referred to in paragraph 1 of this Article:
  - (a) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended, as applicable;
  - (b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1 of this Article;
  - (c) shall be temporary and shall be eliminated as soon as conditions permit or be phased out progressively as the situation specified in paragraph 1 of this Article improves; and
  - (d) shall be promptly notified to the other Country.
3. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Country as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

Article 89  
Prudential Measures

Notwithstanding any other provisions of this Chapter, a Country shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Country's commitments or obligations under this Chapter.

Article 90  
Environmental Measures

Each Country shall not encourage investments by investors of the other Country by relaxing its environmental measures.

Article 91  
Denial of Benefits

1. A Country may deny the benefits of this Chapter to an investor of the other Country that is an enterprise of the other Country and to an investment of such investor if investors of a third State own or control the enterprise, and the denying Country:

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

2. Subject to prior notification and consultation, a Country may deny the benefits of this Chapter to an investor of the other Country that is an enterprise of the other Country and to investments of such investor if investors of a third State own or control the enterprise and the enterprise has no substantial business activities in the Country under whose law it is constituted or organised.

## Article 92

### Co-operation in Promotion and Facilitation of Investments

1. Both Countries shall co-operate in promoting and facilitating investments between the Countries through ways such as:

- (a) discussing effective ways on investment promotion activities and capacity building;
- (b) facilitating the provision and exchange of investment information including information on their laws, regulations and policies to increase awareness on investment opportunities; and
- (c) encouraging and supporting investment promotion activities of each Country or their business sectors.

2. The implementation of this Article shall be subject to the availability of funds and the applicable laws and regulations of each Country.

## Article 93

### Sub-Committee on Investment

1. For the purposes of effective implementation and operation of this Chapter, the functions of the Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 14 shall be:

- (a) exchanging information on any matters related to this Chapter;
- (b) reviewing and monitoring the implementation and operation of this Chapter and the reservations set out in Annex 4;
- (c) undertaking consultation to review the issues pertaining to the prohibition of performance requirements;
- (d) discussing any issues related to this Chapter, including issues related to co-operation in the promotion and facilitation of investments;
- (e) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and

- (f) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 13.
2. The Sub-Committee shall meet at such venues and times as may be agreed by the Countries.
  3. The Sub-Committee shall be:
    - (a) composed of representatives of the Governments; and
    - (b) co-chaired by officials of the Governments.

Chapter 8  
Trade in Services

Article 94  
Scope and Coverage

1. This Chapter shall apply to measures by a Country affecting trade in services.
2. This Chapter shall not apply to:
  - (a) in respect of air transport services, measures affecting traffic rights, however granted; or to 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 services;
  - (b) cabotage in maritime transport services;
  - (c) subsidies provided by a Country or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance; and
  - (d) measures affecting natural persons seeking access to the employment market of a Country, or measures regarding nationality or citizenship, or residence or employment on a permanent basis.
3. Articles 96, 97 and 101 shall not apply to any measure by a Country with respect to government procurement.