

CHAPTER 5

INVESTMENT

ARTICLE 5.1

Scope and Coverage

1. This Chapter shall apply to commercial presence in all sectors, with the exception of services sectors as set out in Article 4.1 of this Agreement.⁸
2. This Chapter shall be without prejudice to the interpretation or application of other international agreements relating to investment or taxation to which one or several EFTA States and one or several Central American States are parties.^{9 10}
3. Subject to paragraph 1, this Chapter applies to measures taken:
 - (a) by the Parties' central, regional or local governments and authorities, as well as;
 - (b) by non-governmental bodies in the exercise of powers delegated by the Parties' central, regional or local governments or authorities.

ARTICLE 5.2

Definitions

For the purposes of this Chapter:

- (a) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (b) "juridical person of a Party" means a juridical person constituted or otherwise organised under the law of an EFTA State or of a Central American State and engaged in substantive business operations in the EFTA State concerned or in the Central American State concerned;

⁸ It is understood that services specifically exempted from the scope of Chapter 4 do not fall under the scope of this Chapter.

⁹ It is understood that any dispute settlement mechanism in an investment protection agreement to which one or several Parties of this Agreement are parties is not applicable to alleged breaches of this Chapter.

¹⁰ Any dispute initiated by a Party regarding the same matter arising under this Chapter and any investment protection agreement to which one or several Central American States and one or several EFTA States are Parties, may be settled in either forum at the discretion of the complaining Party. The forum selected shall be to the exclusion of the other.

- (c) “natural person” means a person who is a national of one of the EFTA States or of one of the Central American States in accordance with their respective legislations;
- (d) “commercial presence” means any type of business establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person; or
 - (ii) the creation or maintenance of a branch or a representative office;within the territory of another Party for the purpose of performing an economic activity.

ARTICLE 5.3

National Treatment

With respect to commercial presence, and subject to Article 5.4 and the reservations set out in Annex XVIII each Party shall accord to juridical and natural persons of another Party and to the commercial presence of such persons, treatment no less favourable than that it accords, in like situations, to its own juridical and natural persons, and to the commercial presence of such persons.

ARTICLE 5.4

Reservations

1. Article 5.3 shall not apply to:
 - (a) any reservation that is listed by a Party in Annex XVIII;
 - (b) an amendment to a reservation referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the reservation with Article 5.3;
 - (c) any new reservation adopted by a Party in accordance with paragraph 4 and incorporated into Annex XVIII;

to the extent that such reservations are inconsistent with Article 5.3.

2. As part of the reviews provided for in Article 5.11 the Parties undertake to review the status of the reservations set out in Annex XVIII 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 reservations set out in Annex XVIII by written notification to the other Parties.

4. In case of the adoption of a new reservation as referred to in subparagraph 1(c), the Party concerned shall ensure that the overall level of its commitments under this Agreement is not affected. It shall promptly notify the other Parties of the reservation and set out, where applicable, the measures aimed at maintaining the overall level of its commitments. On receiving such notification, any other Party may request consultations regarding the reservation and related issues. Such consultations shall be entered into without delay. The Party that requests consultations shall inform the other Parties and any of them may participate in the consultations. The parties to the consultations shall inform the other Parties of the results of the consultations.

ARTICLE 5.5

Key Personnel

1. Each Party shall, subject to its laws and regulations, grant natural persons of another Party who have established or seek to establish commercial presence in that Party, and key personnel who are employed by natural or juridical persons of another Party, temporary entry and stay in its territory in order to engage in activities connected with commercial presence, including the provision of advice or key technical services.

2. Each Party shall, subject to its laws and regulations, permit natural or juridical persons of another Party, and their commercial presence, to employ, in connection with commercial presence, any key personnel of the natural or juridical person's choice regardless of nationality and citizenship provided that such key personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.

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 and stay 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 5.6

Right to Regulate

1. Subject to the provisions of this Chapter and Annex XVIII, a Party may, on a non-discriminatory basis, adopt, maintain or enforce any measure 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 should 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 a commercial presence of persons of another Party or a non-party.

ARTICLE 5.7

Payments and Transfers

1. Except under the circumstances envisaged in Article 5.8, a Party shall not apply restrictions on current payments and capital movements relating to commercial presence activities in non-services sectors.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistent with its obligations under this Chapter except under Article 5.8 or at the request of the IMF.

ARTICLE 5.8

Restrictions to Safeguard the Balance-of-Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.

2. With respect to the rights and obligations of the Parties concerning restrictions referred to in paragraph 1, paragraphs 1 to 3 of Article XII of the GATS shall apply and 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 thereof.

ARTICLE 5.9

General Exceptions

With respect to the rights and obligations of the Parties concerning general exceptions, Article XIV of the GATS shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 5.10

Security Exceptions

With respect to the rights and obligations of the Parties concerning security exceptions, paragraph 1 of Article XIV *bis* of the GATS shall apply and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 5.11

Review

This Chapter shall be subject to periodic review within the framework of the Joint Committee regarding the possibility to further develop the Parties' commitments.