

CHAPTER 8**TRADE IN SERVICES, INVESTMENT AND MOVEMENT OF NATURAL PERSONS****SECTION I. HORIZONTAL PROVISIONS****ARTICLE 8.1****Objectives**

The objectives of this Chapter are to encourage efficiency, competition and economic growth of the Parties to this Chapter by facilitating the expansion of trade in services, establishment, investment and movement of natural persons of the Parties to this Chapter on the basis of a transparent and stable legal framework, while recognising the right of the Parties to this Chapter to regulate in order to meet national policy objectives.

ARTICLE 8.2**Scope**

1. This Chapter shall apply only between the Russian Federation and Viet Nam, hereinafter referred to in this Chapter as the “Parties to this Chapter”.
2. This Chapter shall apply to measures by the Parties to this Chapter affecting trade in services, establishment, investments and movement of natural persons.
3. In respect of air transport services, this Chapter shall not apply to measures affecting air traffic rights, however granted, or measures affecting services directly related to the exercise of air traffic rights, except the measures affecting aircraft repair and maintenance services, the selling and marketing of air transport services, computer reservation system services as provided for in paragraph 6 of the Annex on Air Transport Services of GATS. The definitions of paragraph 6 of the Annex on Air Transport Services of GATS are incorporated into and form part of this Chapter.
4. This Chapter shall not apply to:
 - a) government procurement, which is subject to Chapter 10 of this Agreement;
 - b) measures affecting natural persons seeking access to the employment market of a Party to this Chapter; or
 - c) measures regarding citizenship, residence or employment on a permanent basis.
5. This Chapter shall not prevent a Party to this Chapter from applying measures to regulate the entry of natural persons of the other Party to this Chapter into or their temporary stay in its territory, including those necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party to this

Chapter under the terms of a specific commitment. The sole fact of requiring a visa for natural persons of a Party to this Chapter and not for those of any other third country shall not be regarded as nullifying or impairing benefits under the commitments made in this Chapter.

ARTICLE 8.3

Definitions

For the purposes of this Chapter:

- a) **“trade in services”** means the supply of a service:
 - i. from the territory of a Party to this Chapter into the territory of the other Party to this Chapter;
 - ii. in the territory of a Party to this Chapter to the service consumer of the other Party to this Chapter;
- b) **“supply of a service”** includes production, distribution, marketing, sale and delivery of a service;
- c) **“services”** includes any service in any sector except services supplied neither on a commercial basis nor in competition with one or more service suppliers;
- d) **“service supplier”** means any person that supplies a service;
- e) **“service consumer”** means any person that receives or uses a service;
- f) **“person”** means either a natural person or a juridical person;
- g) **“natural person of a Party to this Chapter”** means a natural person who, under the applicable laws and regulations of that Party to this Chapter, is a national of such Party to this Chapter;
- h) **“juridical person”** means any legal entity duly constituted or otherwise organised under applicable laws and regulations;

A juridical person is:

“owned” by persons of a Party to this Chapter if more than 50 percent of the equity interest in it is beneficially owned by persons of such Party to this Chapter;

“controlled” by persons of a Party to this Chapter if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

- i) **“juridical person of a Party to this Chapter”** means a juridical person which is constituted or otherwise organised under the laws and regulations of such Party;

- j) **“economic integration agreements”** means international agreements complying with the requirements of Articles V and/or *Vbis* of GATS;
- k) **“measure”** means any measure by a Party to this Chapter, whether in form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- l) **“measure by a Party to this Chapter”** means measures taken by:
- i. central, regional or local governments and authorities of that Party to this Chapter; and
 - ii. non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of that Party to this Chapter.
- m) **“measures by Parties to this Chapter affecting trade in services”** include measures in respect of:
- i. the purchase, payment or use of a service;
 - ii. the access to and use of, in connection with the supply of a service, services which are required by the Parties to this Chapter to be offered to the public generally.
- n) **“measures by Parties to this Chapter affecting establishment, commercial presence and activities”** include measures in respect of establishment, commercial presence of juridical persons of a Party to this Chapter in the territory of the other Party to this Chapter or activities thereof;
- o) **“establishment”** means:
- i. the establishment (or constitution) and/or acquisition of a juridical person (participation in the capital of an existing juridical person) of any legal form and ownership provided for in laws and regulations of a Party to this Chapter within the territory of which this person is being established, constituted or acquired;
 - ii. the acquisition of control over a juridical person of a Party to this Chapter by legally determining, directly or indirectly, the decisions taken by such juridical person, including through voting shares (stocks), participation in managing bodies of such juridical person (including in board of directors, supervisory board, *et cetera*);
 - iii. the creation of a branch; or
 - iv. the creation of a representative office,
- for the purposes of supplying a service and/or performing an economic activity in sectors other than services.

- p) **“commercial presence”** means juridical persons established, constituted, acquired or controlled and/or branches or a representative office created for the purpose of supplying a service and/or performing an economic activity in sectors other than services. For the purposes of this Section commercial presence established, constituted, acquired, controlled or created is hereinafter referred to as “commercial presence set up”;
- q) **“activities”** means activities of industrial, commercial or professional character of the juridical persons, branches, representative offices, referred to in subparagraph o) of this Article, except for those carried out neither on a commercial basis nor in competition with one or more persons engaged in the same type of activities.

ARTICLE 8.4

Other International Agreements

In case an international agreement to which both Parties to this Chapter are party, including the WTO Agreement, provides for more favourable treatment in respect of matters covered by this Chapter for their persons (service suppliers) and/or their commercial presences, services or investments, such more favourable treatment shall not be affected by this Agreement.

ARTICLE 8.5

Domestic Regulation

1. Article VI of GATS shall apply between the Parties to this Chapter, *mutatis mutandis*.
2. Without prejudice to the right of a Party to this Chapter to establish and apply licensing procedures and requirements, regarding the services sectors in respect of which such Party has undertaken specific commitments in accordance with Section II (Trade in Services) of this Chapter, as well as regarding the establishment and activities covered by Section III (Establishment, Commercial Presence and Activities) of this Chapter such Party shall ensure that:
 - a) its licensing procedures are not in themselves a restriction on the establishment, activities or supply of a service, and that its licensing requirements directly related to eligibility to supply a service were not in themselves an unjustified barrier to the supply of the service;
 - b) its competent authorities make a decision on granting/denial of a licence without undue delay and no later than the period specified in relevant laws and regulations of such Party;
 - c) any fees charged in connection with the filing and review of an application for a licence would not in themselves be a restriction on the supply of the service, establishment or activities;

- d) once any period for review of an application for a licence established in the laws and regulations of such Party lapsed, and upon the request of an applicant, such Party's competent authority informs the applicant of the status of its application and whether it was considered complete. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay and specify the additional information required to complete the application. Applicants shall have the opportunity to provide the additional information requested and to make technical corrections in the application. An application shall not be considered complete until all information and documents specified in the respective laws and regulations of that Party are received;
- e) upon the written request of an unsuccessful applicant, the competent authority that has denied an application will inform the applicant in writing of the reasons for the denial of the application. However, this provision shall not be construed to require a regulatory authority to disclose information, where that disclosure would impede law enforcement or otherwise be contrary to the public interest or essential security interests;
- f) where an application is denied, an applicant shall have the right to submit a new application that attempts to address any prior problems for licensing.

ARTICLE 8.6

Contact Points

The Parties to this Chapter shall designate their contact points to facilitate communications between the Parties to this Chapter on the issues covered by this Chapter and shall exchange information on the details of such contact points. The Parties to this Chapter shall notify each other promptly of any amendments to the details of their contact points.

ARTICLE 8.7

Denial of Benefits

A Party to this Chapter may deny benefits of this Section to a person of the other Party to this Chapter, if the former Party establishes that this person is a juridical person that has no substantive business operations in the territory of the other Party to this Chapter and is owned or controlled by persons of either:

- a) any third country; or
- b) the former Party.

ARTICLE 8.8

Restrictions to Safeguard the Balance of Payments

1. Notwithstanding the provisions of Articles 8.18 and 8.37 of this Agreement each Party to this Chapter may adopt and maintain restrictions on trade in services, establishment and investments in respect of which commitments were undertaken by such Party in accordance with this Chapter, including on payments or transfers for transactions related to such commitments referred to in Articles 8.18 and 8.37 of this Agreement in the event of serious balance of payments and external financial difficulties and threat thereof and subject to the condition that such restrictions:
 - a) shall be applied on a most-favoured-nation basis;
 - b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
 - c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party to this Chapter;
 - d) shall not exceed those necessary to deal with circumstances described in this paragraph;
 - e) shall be temporary and be phased out progressively as the situation specified in this paragraph improve.
2. The Party to this Chapter introducing a restriction under paragraph 1 of this Article shall promptly notify the other Party to this Chapter of such measure.
3. In determining the incidence of such restrictions, the Parties to this Chapter may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.
4. Nothing in this Agreement shall affect the rights and obligations of a Party to this Chapter which is a member of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that such Party to this Chapter shall not impose restrictions inconsistently with the conditions provided for in paragraph 1 of this Article.
5. This Article shall not be subject to the dispute settlement procedures stipulated by the Article 8.38 of this Agreement.

ARTICLE 8.9

Accession

1. Notwithstanding Article 15.2 of the Agreement, any Member State of the Eurasian Economic Union may accede to this Chapter on terms and conditions as agreed between such Member State of the Eurasian Economic Union and Viet Nam in respect of Schedules of Specific Commitments and Lists of reservations.

2. In case of accession of a Member State of the Eurasian Economic Union to this Chapter the provisions of this Chapter shall neither apply between the Parties to this Chapter that are Member States of the Eurasian Economic Union nor shall they grant to Viet Nam any rights and privileges that Member States of the Eurasian Economic Union grant exclusively to each other.

ARTICLE 8.10

Amendments

1. Notwithstanding Article 15.5 of the Agreement, this Chapter may be amended by mutual written consent of the Parties to this Chapter.
2. The amendments to this Chapter resulting from accession of a Member State of the Eurasian Economic Union shall be introduced by mutual written consent of the Parties to this Chapter and the Member State of the Eurasian Economic Union acceding to this Chapter.

ARTICLE 8.11

Consultations

1. The Parties to this Chapter shall consult at the request of either of them, on the matter concerning the interpretation or application of this Chapter.
2. The consultations referred to in paragraph 1 of this Article may be conducted by the Joint Committee established in accordance with Article 1.4 of this Agreement.
3. For the purposes of this Chapter the Joint Committee shall be co-chaired by the representatives of the Parties to this Chapter and any of the decisions of Joint Committee on the matters covered by this Chapter shall be taken by consensus only by the Parties to this Chapter.

ARTICLE 8.12

Settlement of Disputes between the Parties to this Chapter

1. The provisions of Chapter 14 (Dispute Settlement) of this Agreement shall apply with respect to the settlement of disputes between the Parties to this Chapter regarding the interpretation or application of this Chapter with the modifications set out in paragraph 2 of this Article.
2. For the purposes of this Chapter:
 - a) the term “a disputing Party” referred to in Chapter 14 of this Agreement means “a Party to this Chapter”;

- b) the request for consultations referred to in paragraph 2 of Article 14.6 of this Agreement shall be submitted in writing to the responding Party through its contact points designated in accordance with Article 8.6 of this Agreement;
- c) the request for the establishment of an Arbitral Panel referred to in paragraph 3 of Article 14.7 of this Agreement shall be submitted in writing to the responding Party through its contact points designated in accordance with Article 8.6 of this Agreement; and
- d) the suspension of benefits referred to in Article 14.15 of this Agreement may be performed only in respect of the benefits provided for in this Chapter.

ARTICLE 8.13

Lists of Commitments

The “Schedule of Specific Commitments under Section II (Trade in Services)”, “List of Reservations under Section III (Establishment, Commercial Presence and Activities)”, the “Schedule of Specific Commitments under Section IV (Movement of Natural Persons)” and “List of MFN Exemptions in accordance with Articles 8.15 and 8.22 of the Agreement” shall be signed in the form of Protocol No. 1 between the Russian Federation and the Socialist Republic of Viet Nam to the Free Trade Agreement between the Eurasian Economic Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part (hereinafter referred to in this Chapter as “Protocol No. 1”) on the date of signature of this Agreement. The Protocol No. 1 shall constitute an integral part of this Agreement and shall be binding only in respect of the Russian Federation and Viet Nam.

SECTION II. TRADE IN SERVICES

ARTICLE 8.14

Scope

1. This Section shall apply to any measure of the Parties to this Chapter affecting trade in services.
2. This Section shall not apply to provision of subsidies or other forms of State or municipal support to service suppliers or their services.

ARTICLE 8.15

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Section, each Party to this Chapter shall accord immediately and unconditionally to services and service suppliers of the other Party to this

Chapter treatment no less favourable than that it accords to like services and service suppliers of any third country.

2. A Party to this Chapter may maintain a measure inconsistent with paragraph 1 of this Article provided that such a measure is set out in its individual national List in Annex 1 to Protocol No. 1.
3. The provisions of this Section shall not be construed to prevent a Party to this Chapter from conferring or according advantages to adjacent countries in order to facilitate trade in services limited to contiguous frontier zones of services that are both locally produced and consumed.
4. Nothing in this Agreement shall be construed to oblige a Party to this Chapter to provide to services or service suppliers of the other Party to this Chapter benefits or privileges that the former Party is providing or will provide in future:
 - a) in accordance with the economic integration agreements of the former Party; or
 - b) on the basis of the agreements on avoidance of double taxation or other arrangements on taxation issues.

ARTICLE 8.16

Market Access

1. With respect to market access through the modes of supply defined in Article 8.3 of this Agreement, each Party to this Chapter shall accord to services and service suppliers of the other Party to this Chapter treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule in Annex 2 to Protocol No. 1.¹
2. In sectors where market access commitments are undertaken, the measures which a Party to this Chapter shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule in Annex 2 to Protocol No. 1, are defined as:
 - a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; or

¹ If a Party to this Chapter undertakes a market-access commitment in relation to the supply of a service from the territory of a Party to this Chapter into the territory of the other Party to this Chapter and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital.

- c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

ARTICLE 8.17

National Treatment

1. In the sectors inscribed in its Schedule in Annex 2 to Protocol No. 1, and subject to any condition and qualification set out therein, each Party to this Chapter shall accord to services and service suppliers of the other Party to this Chapter, in respect of all measures affecting supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.²
2. A Party to this Chapter may meet the requirement of paragraph 1 of this Article by according to services and service suppliers of the other Party to this Chapter, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party to this Chapter compared to like services or service suppliers of the other Party to this Chapter.

ARTICLE 8.18

Payments and Transfers

1. Except under the circumstances envisaged in Article 8.8 of this Agreement a Party to this Chapter shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments under this Section.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties to this Chapter as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party to this Chapter shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Section regarding such transactions, except under Article 8.8 of this Agreement or at the request of the International Monetary Fund.

ARTICLE 8.19

Recognition

Article VII of GATS shall apply between the Parties to this Chapter, *mutatis mutandis*.

² Specific commitments assumed under this Article shall not be construed to require any Party to this Chapter to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

SECTION III. ESTABLISHMENT, COMMERCIAL PRESENCE AND ACTIVITIES**ARTICLE 8.20****Scope**

1. This Section shall apply to any measure by the Parties to this Chapter affecting establishment, commercial presence and activities.
2. This Section shall apply to commercial presence set up by a person of a Party to this Chapter within the territory of the other Party to this Chapter at the date or after the date of entry into force of this Agreement.
3. This Section shall not apply to provision of subsidies or other forms of State or municipal support to persons and their commercial presence in connection with establishment and/or activities.

ARTICLE 8.21**National Treatment**

1. With respect to establishment and subject to the reservations set out in its individual national List provided for in Annex 3 to Protocol No. 1, each Party to this Chapter shall grant, within its territory, to the persons of the other Party to this Chapter treatment no less favourable than that it accords in like circumstances to its own persons.
2. With respect to activities and subject to the reservations set out in its individual national List provided for in Annex 3 to Protocol No. 1, each Party to this Chapter shall grant to the commercial presence set up by a person of other Party to this Chapter within the territory of the former Party treatment not less favourable than the treatment granted in like circumstances to the commercial presences of its own persons set up within its territory.

ARTICLE 8.22**Most-Favoured-Nation Treatment**

1. With respect to establishment and subject to the reservations set out in its individual national List provided for in Annex 1 to Protocol No. 1, each Party to this Chapter shall grant to the persons of the other Party to this Chapter treatment no less favourable than that it accords in like circumstances to persons of any third country.
2. With respect to activities and subject to the reservations set out in its individual national List provided for in Annex 1 to Protocol No. 1, each Party to this Chapter shall grant to the commercial presence set up by a person of the other Party to this Chapter within the territory

of the former Party treatment not less favourable than the treatment granted in like circumstances to the commercial presences of persons of any third country.

3. For greater certainty, this Article shall not apply to international dispute settlement procedures or mechanisms such as those set out in Article 8.38 of this Agreement.
4. Nothing in this Agreement shall be construed to oblige a Party to this Chapter to provide to the persons of the other Party to this Chapter or their commercial presences benefits or privileges that the former Party is providing or will provide in future:
 - a) in accordance with economic integration agreements of the former Party; or
 - b) on the basis of the agreements on avoidance of double taxation or other arrangements on taxation issues.

ARTICLE 8.23

Market Access

With respect to establishment and/or activities neither Party to this Chapter shall maintain or apply to persons of the other Party to this Chapter and/or to commercial presences of such persons set up within the territory of the former Party, respectively, limitations in respect of:

- a) form of the commercial presence, including legal form of the entity;
- b) total number of commercial presences set up;
- c) maximum percentage limit on shareholding by the persons of the other Party to this Chapter in the capital of a juridical person of the former Party or on degree of control over such juridical person; or
- d) transactions/operations performed by the commercial presence set up by the person of the other Party to this Chapter in the course of their activities in the form of quota or the requirement of economic needs test

except for the limitations provided for in the individual national List of the former Party set out in Annex 3 to Protocol No. 1.

ARTICLE 8.24

Performance Requirements

1. Subject to the reservations set out in its individual national List provided for in Annex 3 to Protocol No. 1 neither Party to this Chapter shall in connection with establishment and/or activities impose or enforce in respect of commercial presences of persons of the other Party to this Chapter set up within the territory of the former Party, respectively, any requirement:
 - a) to export a given level or percentage of goods or services;

- b) to purchase, use or accord a preference to goods produced 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 such establishment and/or activities;
 - d) to restrict sales of goods or services in its territory that such commercial presences produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
 - e) to transfer a particular technology, a production process, or other proprietary information to persons in the territory of the former Party; or
 - f) to supply exclusively from the territory of the former Party the goods that it produces or the services that it supplies to a specific regional market or to the world market.
2. Neither Party to this Chapter shall condition the receipt or continued receipt of an advantage in connection with establishment and/or activities of commercial presences of persons of the other Party to this Chapter set up within the territory of the former Party on compliance with any of the following requirements:
- a) to purchase, use or accord a preference to goods produced in the territory of the former Party;
 - b) 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 such establishment and/or activities; or
 - c) to restrict sales of goods or services in its territory that such commercial presences produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
3. Nothing in paragraph 2 of this Article shall be construed to prevent a Party to this Chapter from conditioning the receipt or continued receipt of an advantage, in connection with establishment and/or activities of the persons of the other Party to this Chapter and/or to commercial presences of that persons set up within the territory of the former Party 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 the territory of the former Party.
4. For greater certainty, nothing in paragraph 1 of this Article shall be construed to prevent a Party to this Chapter from imposing or enforcing any requirement, in connection with commercial presences of persons of the other Party to this Chapter, to employ or train workers in its territory provided that such employment or training does not require the transfer of a particular technology, production process, or other proprietary knowledge to a person in its territory.
5. Subparagraph e) of paragraph 1 of this Article shall not apply:

- a) when a Party to this Chapter authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or
 - b) when the requirement is imposed or enforced by a court or relevant authority in accordance with the competition laws and regulations of the Party to this Chapter imposing or enforcing the requirement.
6. Subparagraphs a) and b) of paragraph 1 of this Article, and subparagraph a) of paragraph 2 of this Article shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.
7. This Article is without prejudice to the rules of origin applied by the Parties to this Chapter that are subject to Chapter 4 (Rules of Origin) of this Agreement.

ARTICLE 8.25

Senior Management Boards of Director

With respect to establishment and/or activities and subject to limitations provided for in its individual national List set out in Annex 3 to Protocol No. 1 and subject to conditions and limitations set out in the Section IV (Movement of Natural Persons) of this Chapter, a Party to this Chapter shall not require that a juridical person of that Party appoint to senior management positions natural persons of any particular nationality.

SECTION IV. MOVEMENT OF NATURAL PERSONS

ARTICLE 8.26

Scope

1. This Section shall apply to measures affecting temporary entry and stay of natural persons of a Party to this Chapter into the territory of the other Party to this Chapter with respect to the categories of such natural persons that are set out in that other Party's Schedule in Annex 4 to Protocol No. 1. Such categories of natural persons may include:
- a) business visitors;
 - b) intra-corporate transferees;
 - c) installers or servicers;
 - d) investors; or

e) contractual services supplier.

This Section shall not apply to provision of subsidies or other forms of State or municipal support to service suppliers or their services covered by this Section.

2. This Section shall not apply to measures affecting natural persons of a Party to this Chapter seeking access to the employment market of the other Party to this Chapter, nor shall it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.
3. For greater certainty, nothing in this Agreement shall be construed as a commitment of a Party to this Chapter in respect of any requirement or procedure related to granting visas to the natural persons of the other Party to this Chapter.
4. For the purposes of this Section, “temporary entry or stay” means entry or stay by a natural person of a Party to this Chapter, without the intent to reside permanently within the territory of the other Party to this Chapter.
5. Neither Party to this Chapter may impose or maintain any numerical restriction or requirement of economic needs test relating to temporary entry or stay of natural persons referred to in paragraph 1 of this Article except as provided for in its Schedule in Annex 4 to Protocol No. 1.

ARTICLE 8.27

Recognition

Article VII of GATS shall apply between the Parties to this Chapter, *mutatis mutandis*.

SECTION V. INVESTMENT

ARTICLE 8.28

Definitions

For the purposes of this Section:

- a) **“investment”** means any type of asset invested by the investor of a Party to this Chapter in the territory of the other Party to this Chapter in accordance with the latter Party's laws and regulations, that has the characteristics of an investment, including such characteristics as the commitment to capital or other resources, the expectation of profit and assumption of risk, in particular, though not exclusively:
 - i. movable and immovable property as well as any property rights such as mortgages or pledges;

- ii. shares, stocks and any other form of participation in capital of a juridical person;
- iii. bonds and debentures;
- iv. claims to money or claims under contracts having an economic value³, relating to investments;
- v. intellectual property rights;
- vi. goodwill;
- vii. rights conferred by law or under contract to conduct business activity and having financial value, including, but not limited to construction, production, revenue-sharing contracts and concessions related in particular to exploration, development, extraction and exploitation of natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as investments. Such change shall be made in accordance with laws and regulations of the Party to this Chapter in which territory the investments were made.

- b) **“investor of a Party to this Chapter”** means any natural or juridical person of a Party to this Chapter in accordance with its laws and regulations that has made investments in the territory of the other Party to this Chapter;
- c) **“returns”** means the amounts derived from an investment including but not limited to profit, dividends, interest, capital gains, royalties and other fees; and
- d) **“freely usable currency”** means a freely usable currency as determined by the International Monetary Fund in accordance with Articles of Agreement of the International Monetary Fund.

ARTICLE 8.29

Scope

1. This Section shall apply to all investments made by investors of a Party to this Chapter in the territory of the other Party to this Chapter after 19 June 1981, in existence as of the date of entry into force of this Agreement, but it shall not apply to any act or fact that took place or any situation or dispute that arose or ceased to exist before entry into force of this Agreement.
2. Investments of investors of a Party to this Chapter made in the territory of the other Party to this Chapter in the form of establishment and commercial presence, as defined and governed

³ For greater certainty, investment does not mean claims to money that arise solely from:

- a) commercial contracts for sale of goods or services; or
- b) the extension of credit in connection with such commercial contracts.

by Section III (Establishment, Commercial Presence and Activities) of this Chapter shall not be covered by Articles 8.30, 8.31, 8.32 and 8.33 of this Agreement.

3. This Section shall not apply to provision of subsidies or other forms of State or municipal support to investors and its investments, except for those subsidies and other forms of State or municipal support to investors and its investments under Article 8.34 of this Agreement.

ARTICLE 8.30

Promotion and Admission of Investments

Each Party to this Chapter shall encourage and create favourable conditions to investors of the other Party to make investments in its territory and admit the investments of investors of the other Party to this Chapter in accordance with the laws and regulations of the former Party.

ARTICLE 8.31

Fair and Equitable Treatment and Full Protection and Security

1. Each Party to this Chapter shall accord to investments of investors of the other Party to this Chapter fair and equitable treatment and full protection and security.
2. "Fair and equitable treatment" referred to in paragraph 1 of this Article requires, in particular, each Party to this Chapter not to deny justice in any judicial or administrative proceedings.
3. "Full protection and security" referred to in paragraph 1 of this Article requires each Party to this Chapter to take such measures as may be reasonably necessary to ensure the protection and security of investments of an investor of the other Party to this Chapter.
4. With respect to investments of an investor of the other Party to this Chapter in the territory of the former Party, "fair and equitable treatment" and "full protection and security" referred to in paragraph 1 of this Article do not require treatment more favourable than that accorded to the former Party's own investors and/or investors of any third country in accordance with its laws and regulations.
5. 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.

ARTICLE 8.32

National Treatment

1. Each Party to this Chapter shall accord to investors of the other Party to this Chapter and investments of an investor of the other Party to this Chapter treatment no less favourable

than that it accords, in like circumstances, to its own investors and their investments in its territory.

2. Each Party to this Chapter shall reserve the right in accordance with its laws and regulations to apply and introduce exemptions from national treatment, referred to in paragraph 1 of this Article, to foreign investors and their investments including reinvestments.

ARTICLE 8.33

Most-Favoured-Nation Treatment

1. Each Party to this Chapter shall accord to investors of the other Party to this Chapter and investments of an investor of the other Party to this Chapter treatment no less favourable than that it accords, in like circumstances, to investors of any third country and their investments in its territory.
2. For greater certainty, this Article shall not apply to international dispute settlement procedures or mechanisms such as those set out in Article 8.38 of this Agreement.
3. Nothing in this Section shall be construed as to oblige a Party to this Chapter to provide to investors of the other Party to this Chapter or their investments benefits or privileges that the former Party is providing or will provide in future:
 - a) in accordance with the economic integration agreements of the former Party; or
 - b) on the basis of the agreements on avoidance of double taxation or other arrangements on taxation issues.

ARTICLE 8.34

Compensation for Losses

Each Party to this Chapter shall accord to investors of the other Party to this Chapter and to investments of investors of the other Party to this Chapter with respect to measures it adopts or maintains relating to losses suffered by investments of such investors in its territory owing to war or other armed conflict, revolt, insurrection, revolution, riot, civil strife or civil disturbance, treatment no less favourable than that it accords, in like circumstances, to:

- a) its own investors and their investments; or
- b) investors of any third country and their investments.

ARTICLE 8.35

Expropriation and Compensation

1. Neither Party to this Chapter shall nationalise, expropriate or subject to measures equivalent in effect to nationalisation or expropriation an investment of the investor of the other Party to this Chapter (hereinafter referred to as “expropriation”), except:
 - a) for a public purpose;
 - b) in accordance with the procedure established by the laws and regulations of the former Party;
 - c) in a non-discriminatory manner; and
 - d) on payment of prompt, adequate and effective compensation in accordance with paragraph 3 of this Article.
2. The determination of whether a measure or series of such measures of either Party to this Chapter have an effect equivalent to nationalisation or expropriation shall require a case-by-case, fact-based inquiry to consider, inter alia:
 - a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of either Party to this Chapter has an adverse effect on the economic value of investments does not establish that an expropriation has occurred;
 - b) the character of the measure or series of measures of either Party to this Chapter.
3. The compensation referred to in subparagraph d) of paragraph 1 of this Article shall:
 - a) be paid without undue delay;
 - b) be equivalent to the fair market value of the expropriated investment calculated on date when the actual or impending expropriation has become publicly announced whichever is earlier; and
 - c) be paid in a freely usable currency or, if agreed by the investor, in the currency of the expropriating Party to this Chapter and be freely transferable subject to the provisions of Article 8.37 of this Agreement. From the date of expropriation until the date of payment the amount of compensation shall be subject to accrued interest at a commercial rate established on a market basis.
4. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement.
5. Notwithstanding paragraphs 1 through 4 of this Article, expropriation relating to land within the territory of either Party to this Chapter shall be carried out in accordance with the laws and regulations of that Party for a purpose established in accordance with such laws and regulations, and upon payment of compensation, which shall be assessed with due consideration to market value and paid without undue delay, in accordance with the laws and regulations of that Party.

ARTICLE 8.36**Subrogation**

1. If a Party to this Chapter or its designated agency made a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity against non-commercial risks it has granted in respect of an investment, the other Party to this Chapter shall recognise the subrogation or transfer of any right or claim of the investor in respect of such investment to the former Party or its designated agency. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor. For greater certainty, such right or claim shall be exercised in accordance with the laws and regulations of the latter Party, but without prejudice to Articles 8.21, 8.22, 8.23, 8.24 and 8.25 of this Agreement.
2. Where a Party to this Chapter or its designated agency has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of that Party or its designated agency making the payment, pursue those rights and claims against the other Party to this Chapter.

ARTICLE 8.37**Transfer of Payments**

1. Except under the circumstances envisaged in Article 8.8 of this Agreement each Party to this Chapter shall guarantee to investors of the other Party to this Chapter, upon fulfilment by them of all tax and other obligations in accordance with the laws and regulations of the former Party, a free transfer abroad of payments related to their investments, and in particular:
 - a) returns;
 - b) funds in repayment of loans and credits recognised by each Party to this Chapter as investments, as well as accrued interest;
 - c) proceeds from sale or full or partial liquidation of investments;
 - d) compensation, stipulated in the Articles 8.34 and 8.35 of this Agreement;
 - e) wages and other remunerations received by investors and natural persons of the other Party to this Chapter authorised to work in connection with investments in the territory of the former Party.
2. Transfer of payments shall be made without undue delay in a freely usable currency at the rate of exchange applicable on the date of the transfer pursuant to the exchange laws and regulations of the Party to this Chapter in which territory the investments were made.

ARTICLE 8.38

Settlement of Disputes between a Party to this Chapter and Investor of the Other Party to this Chapter

1. Disputes between a Party to this Chapter and an investor of the other Party to this Chapter arising from an alleged breach of an obligation of the former Party under this Chapter in connection with an investment made by the investor in the territory of the former Party shall be settled to the extent possible amicably by means of negotiations. Such negotiations may include the use of non-binding, third-party procedures, such as good offices, conciliation and mediation.
2. The written request submitted by the investor for negotiations referred to in paragraph 1 of this Article shall include:
 - a) the name and address of the investor who is a party to a dispute;
 - b) for each claim the specific provisions under this Chapter alleged to have been breached;
 - c) the legal and factual basis for each claim;
 - d) the relief sought and approximate amount of damages claimed.
3. If a dispute cannot be settled amicably by means of negotiations during a period of six months starting from the date of receipt by the Party who is a party to the dispute of the written request of the investor of the other Party to this Chapter, it shall be submitted at the choice of the investor for consideration to:
 - a) a competent court of the Party to this Chapter in which territory the investments were made, or
 - b) an *ad hoc* arbitration court in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law; or
 - c) arbitration by the International Centre for Settlement of Investment Disputes (hereinafter referred to as "ICSID"), created pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965 (ICSID Convention), provided that both the Party who is a party to the dispute and the Party of the investor are party to the ICSID Convention; or
 - d) arbitration under the ICSID Additional Facility Rules, provided that either the Party who is a party to the dispute or the Party of the investor is a party to the ICSID Convention; or
 - e) if the parties to a dispute so agree, to any other arbitration institution or under any other arbitration rules.
4. The choice of the institution referred to in paragraph 3 of this Article shall be final.

5. An arbitration award shall be final and binding upon both parties to the dispute. Each Party to this Chapter undertakes to enforce this award in accordance with its laws and regulations.
6. No claim can be submitted to arbitration under this Section if more than three years have elapsed from the date on which the investor who is a party to a dispute first acquired or reasonably should have first acquired, knowledge of the breach alleged under paragraph 1 of this Article.
7. A natural person possessing the nationality of a Party to this Chapter on the date the investments were made may not pursue a claim against that Party under this Article.