

## CHAPTER 9

### INVESTMENT

#### Article 1: Definitions

For the purposes of this Chapter, the term:

**covered investment** means with respect to a Party, an investment in its territory of an investor of another Party, in existence as of the date of entry into force of this Agreement, or established, acquired or expanded thereafter, which has been admitted by the host Party subject to its relevant laws, regulations and policies;

**freely usable currency** means freely usable currency as determined under the IMF Articles of Agreement and amendments thereafter, or any currency that is used to make international payments and is widely traded in international principal exchange markets;

**investment** means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) tangible or intangible, movable or immovable property and related property rights such as mortgages, liens or pledges;<sup>1</sup>
- (c) shares, stock and other forms of equity participation in an enterprise;
- (d) bonds, debentures, other debt instruments, and loans;<sup>2</sup>
- (e) futures, options, and other derivatives;
- (f) intellectual property rights;
- (g) turnkey, construction, management, production and revenue sharing contracts, concessions and other similar contracts; and
- (h) licences, authorisations, permits and similar rights conferred pursuant to a Party's domestic law.<sup>3</sup>

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<sup>1</sup> For greater certainty, market share, market access, expected gains and opportunities for profit-making are not, by themselves, investments.

<sup>2</sup> Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics. Loans issued by one Party to another Party are not investments.

<sup>3</sup> Whether a particular type of licence, authorisation, permit or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on factors

An investment does not, however, include:

- (a) claims to payment resulting solely from the commercial sale of goods and services unless it is a loan that has the characteristics of an investment;
- (b) a bank letter of credit; or
- (c) the extension of credit in connection with a commercial transaction, such as trade financing.

For the purposes of the definition of investment in this chapter, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

**investor** of a Party means a Party, or a natural person or an enterprise of a Party that has made or seeks to make an investment in the territory of another Party;<sup>4</sup>

**measures adopted or maintained** by a Party means any measure taken by:

- (a) central, state, regional or local Government or authorities; or
- (b) non-governmental bodies in the exercise of powers delegated by central, state, regional or local Governments or authorities;

**permanent resident** of a Party means a natural person who has permanent residence status in a Party in accordance with its laws and regulations;

**TRIMS Agreement** means the *Agreement on Trade-Related Investment Measures*, in Annex 1A to the WTO Agreement; and

**TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property*, in Annex 1C to the WTO Agreement.

## Article 2: Objectives

This Chapter is intended to encourage a stable and predictable environment to attract and promote the flow of investment between the Parties with due respect to national policy objectives and to the right of each Party to regulate.

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such as the nature and extent of the rights that the holder has under the law of the Party that granted such rights. Among the licences, authorisations, permits and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the licence, authorisation, permit or similar instrument has the characteristics of an investment.

<sup>4</sup> For greater certainty, the Parties understand that, for the purposes of the definition of “investor” of a Party, an investor “seeks to make” an investment when that investor has taken concrete action or actions to make an investment, such as channeling resources or capital in order to set up a business, or obtained a permit or licence.

### **Article 3: Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of other Parties;
  - (b) covered investments; and
  - (c) with respect to Article 11 all investments in the territory of the Party.
2. This Chapter shall not apply to:
  - (a) procurement by a Party; and
  - (b) subsidies or grants provided by a Party, except subsidies provided in connection with measures prohibited under Article 11.

### **Article 4: Relation to Other Chapters**

1. This Chapter shall not apply to measures adopted or maintained by a Party affecting trade in services.<sup>5</sup>
2. Notwithstanding paragraph 1, Article 9, Article 10, Article 12, Article 13, Article 14, and Article 17 shall apply, *mutatis mutandis*, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of any other Party pursuant to Chapter 7 (Trade in Services), but only to the extent that any such measures relate to a covered investment and an obligation under this Chapter, regardless of whether such a service sector is scheduled in a Party's Schedules of Specific Commitments in Annex 7-A (Schedule of Specific Services Commitments).

### **Article 5: Obligation to Comply with Domestic Law and Corporate Social Responsibility**

1. The Parties acknowledge that investors of a Party and their investments are subject to the laws, regulations and standards of the host state Party.
2. The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.

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<sup>5</sup> For the purposes of this Chapter, the definition of Trade in Services in Article 1 of Chapter 7 (Trade in Services) shall apply.

## **Article 6: National Treatment**

1. In the sectors specified in Annex 9-A of this Agreement, and subject to any conditions and qualifications set out therein, each Party shall accord to investors and covered investments of investors of any other Party treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. In respect of intellectual property rights, a Party may derogate from the obligations set out in this Article provided this is not inconsistent with the TRIPS Agreement.

## **Article 7: Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors and covered investments of investors of any other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-party or to their investments with respect to the acquisition, establishment, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. A Party may maintain a measure inconsistent with paragraph 1 provided that such a measure falls within the scope of exemptions lists in Annex I (Schedule of Most-Favoured-Nation Exemptions on Services and Investment).
3. In respect of intellectual property rights, a Party may derogate from the obligations set out in this Article provided this is not inconsistent with the TRIPS Agreement.

## **Article 8: Scheduling of Commitments**

1. Each Party shall set out in Annex 9-A the sectors where it undertakes specific commitments with respect to Article 6. With respect to sectors where such commitments are undertaken, each Schedule shall specify any conditions or qualifications on national treatment.
2. Schedules of specific commitments are annexed to this Agreement and shall form an integral part thereof.

## **Article 9: Minimum Standard of Treatment**

1. Each Party shall accord to covered investments of investors of any other Party the customary international law minimum standard of treatment of aliens including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law<sup>6</sup> minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” shall not require treatment in addition to or beyond that which is required by that standard, and shall not create additional substantive rights. The obligation in paragraph 1 to provide:

- (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
- (b) “full protection and security” requires each Party to provide the level of police protection required under customary international law.

3. 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 10: Senior Management and Boards of Directors**

1. No Party may require that an enterprise of that Party that is a covered investment appoint to Senior Management positions natural persons of any particular nationality.

2. No Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the Party.

3. A Party may maintain a measure inconsistent with this Article provided that such a measure falls within the scope of any exemptions listed in Annex 9-B.

#### **Article 11: Prohibition of Performance Requirements**

1. If a Party is a WTO Member, it shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, ensure that any measure taken is consistent with the TRIMS Agreement.

2. (a) If a Party is not a WTO Member, it shall, to the extent of its capacity, strive to ensure that, in connection with the establishment, acquisition, expansion, management, conduct, operation, sale or other disposition of an investment of an

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<sup>6</sup>The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 9 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 9, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

investor of a Party or of a non-Party in its territory, any measure taken is consistent with the TRIMS Agreement.

- (b) For greater certainty, if a Party is not a WTO Member, a list of that Party's measures that do not comply with the TRIMS Agreement shall be listed in Annex 9-D within two years of the date of entry into force of this Agreement. After the expiry of this date, new measures that are inconsistent with the TRIMS Agreement may not be introduced.

### **Article 12: Compensation for Losses**

1. Each Party shall accord to investors of any other Party and to their covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife or state of emergency, treatment no less favourable than that it accords, in like circumstances, to:

- (a) its own investors and their investments; and
- (b) investors of any other Party or non-Party and their investments.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:

- (a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
- (b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor with restitution, compensation, or both as appropriate, for such loss.<sup>7</sup> Any compensation shall be made in accordance with Articles 13.2, 13.3 and 13.4 which shall apply *mutatis mutandis*.

### **Article 13: Expropriation and Compensation**

1. A Party shall not expropriate or nationalise a covered investment of an investor from another Party, either directly or indirectly through measures equivalent to expropriation or nationalisation, except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;

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<sup>7</sup> For greater certainty, in the event of providing both restitution and compensation, their combined value shall not exceed the loss suffered.

- (c) in accordance with due process of law; and
- (d) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 2, 3 and 4.

2. Compensation shall be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. Compensation shall be determined in accordance with the generally recognised principles of valuation and equitable principles, taking into account, *inter alia*, the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors. Compensation shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without undue delay. Such compensation shall be in a freely usable currency and include interest at a commercially reasonable rate, taking into account the length of time before payment occurs. It shall be effectively realisable and freely transferable.

4. An investor of a Party affected by a direct expropriation may seek, under the law of the host state making the expropriation, a review, by a judicial or other independent authority of the host country, of the decision to expropriate and of the valuation of its investment in accordance with the principles set out in this Article.

5. For those Parties that are WTO Members, this Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement or the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

6. For those Parties that are not currently WTO Members, this Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with relevant international agreements or the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is in accordance with relevant international agreements on intellectual property rights.

#### **Article 14: Free Transfer of Funds**

1. Each Party shall allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

- (a) contributions to capital, including the initial contribution;
- (b) profits, capital gains, dividends, royalties, licence fees, technical assistance and technical and management fees, interest and other current income accruing from any covered investment;
- (c) proceeds from the total or partial sale or liquidation of any covered investment;

- (d) payments made under a contract, including a loan agreement;
  - (e) payments made pursuant to Article 12 and Article 13;
  - (f) payments arising out of the settlement of a dispute or an agreement between the disputing parties; and
  - (g) earnings and other remuneration of personnel engaged from abroad in connection with that investment.
2. Each Party shall allow such transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:
- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
  - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
  - (c) criminal or penal offences and the recovery of the proceeds of crime;
  - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;
  - (f) taxation;
  - (g) social security, public retirement, or compulsory savings schemes; and
  - (h) severance entitlements of employees.

### **Article 15: Transparency**

1. On request by a Party, information shall be exchanged relating to measures of another Party that may have a material impact on any covered investment under this Chapter.
2. A Party may request, in writing, consultations with another Party regarding any actual or proposed measure or any other matter that it considers might materially affect the operation of this Chapter. The other Party shall engage in consultations in accordance with Article 5 of Chapter 14 (Consultations and Dispute Settlement).



## **Article 16: Special Formalities and Disclosure of Information**

1. Nothing in Article 6 or Article 7 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, including a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not substantially impair the protections afforded by a Party to investors of any other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 6, a Party may require an investor of another Party to provide information concerning an investment solely for informational or statistical purposes. The Party shall protect, to the extent possible, any confidential information which has been provided from any disclosure that would prejudice legitimate commercial interests of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## **Article 17: Subrogation**

1. If a Party or an agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of an investment, other Parties shall recognise the subrogation or transfer of any right or claim in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. If a Party or an agency of a Party has made a payment to an investor of that Party and has taken over the investor's rights and claims, that investor shall not, unless authorised to act on behalf of the Party or the agency making the payment, pursue those rights and claims against any other Party.

3. In any proceedings involving an investment dispute, a Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

## **Article 18: Denial of Benefits**

1. Following notification through the contact point of a Party, a Party may deny the benefits of this Chapter:

- (a) to an investor of another Party where the covered investment is being made by an enterprise that is owned or controlled by persons of a non-party and the enterprise has no substantive business operations in the territory of any other Party; or

- (b) to an investor of another Party where the covered investment is being made by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operation in the territory of any other Party.

### **Article 19: Investment and Environment, Health and Other Regulatory Objectives**

1 Parties recognise that it is inappropriate to encourage investment by investors of another Party and of non-Parties by not enforcing their own environmental, health, labour, safety or other regulatory standards.

2 Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining any measure otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to its environmental, health, or other regulatory objectives.

### **Article 20: Promotion and Facilitation of Investment**

Taking into account the different levels of economic development of the Parties, the developed country Parties shall aim to assist the developing country Parties in the promotion and facilitation of foreign investment to their countries. In that regard, the Parties shall aim to explore through Chapter 10 (Development and Economic Cooperation) and the *Implementing Arrangement for Development And Economic Cooperation under the Pacific Agreement on Closer Economic Relations Plus* how the developing country Parties may be assisted to attract investment into their territories.

### **Article 21: Competent Authorities and Contact Points**

1. Each Party shall provide all other Parties with a description of its competent authorities and their division of responsibilities.
2. Each Party shall provide all other Parties with a Contact Point to facilitate distribution of requests and notifications made in accordance with this Chapter.
3. Each Party shall ensure that the information provided under paragraphs 1 and 2 is kept up to date.

### **Article 22: Technical Discussions**

1. A Party may, through Contact Points, request technical discussions with another Party on any measure affecting investment between them. The Party to which the request was made shall respond promptly to any such request. The Parties shall seek to clarify any measure at issue and, where there is any remaining difference of view, they shall endeavour to find a mutually acceptable solution, taking into account the objectives of this Chapter. In the case of

measures affecting the investment interests of a developing country Party, the Parties shall endeavour to resolve any concerns in a timely manner.

2. A Party may, through Contact Points, arrange to undertake technical discussions with other Parties on investment matters of mutual interest. Technical discussions should be conducted using electronic means. If this is not possible, they may be conducted in person or by any other means, as mutually determined by the Parties.

3. The Parties participating in technical discussions pursuant to this Chapter may mutually agree to invite another Party or a relevant international or regional organisation in the field of investment to participate for the purpose of providing technical advice.

### **Article 23: Review of Commitments**

1. The Parties shall review commitments on investment, with the first review to be undertaken within three years of the date of entry into force of this Agreement and periodically thereafter as determined by the Joint Committee, with the aim of improving the overall commitments undertaken by the Parties under this Chapter.

2. The Parties recognise the limited capacities of developing country Parties which will be taken into account in the review process.

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF AUSTRALIA

1. Unless otherwise indicated, the classification of investment sectors is based on the 2002 International Standard Industrial Classification of All Economic Activities (ISIC) Revision 3.1 of the United Nations Statistical Office.
2. Australia's commitments apply only in relation to the sectors set out below and, in accordance with Article 4 (Relation to Other Chapters) of Chapter 9 (Investment), limited to measures not affecting trade in services. Australia specifies below any limitations to Article 6 (National Treatment) in accordance with Article 8 (Scheduling of Commitments) of Chapter 9 (Investment).
3. For clarity, an entry of 'none' means no limitations except as listed elsewhere in the schedule, including in either or all of Part I or Limitations on National Treatment column. The inscription 'unbound' means that no commitments are taken with respect to particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
4. Australia reserves the right to maintain and to add to this schedule any measure at the regional level of government that existed at 1 January 2005, but was not listed in this schedule, including by the date of entry into force of this Agreement, against Article 6 (National Treatment) of Chapter 9 (Investment).

Sector or Sub-sector	National Treatment Limitations
<b>PART I. HORIZONTAL COMMITMENTS</b>	
ALL SECTORS INCLUDED IN PART II OF THIS SCHEDULE	Under Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy, the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) (FATA); Foreign Acquisitions and Takeovers Regulations 2015 (Cth); <i>Foreign Acquisitions and Takeovers Fees Imposition Act 2015</i> (Cth);

Sector or Sub-sector	National Treatment Limitations
	<p>Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 (Cth); <i>Financial Sector (Shareholdings) Act 1998</i> (Cth); and Ministerial Statements, the following investments<sup>1</sup> are subject to approval by the Australian Government and may also require notification<sup>2</sup> to the Government:</p> <ul style="list-style-type: none"> <li>– a proposed investment by a ‘foreign person’* in an entity or Australian business valued above A\$252 million<sup>†</sup>;</li> <li>– a proposed direct investment by a ‘foreign government investor’<sup>3</sup> of any interest regardless of value;</li> <li>– a proposed investment by a foreign person* of 5 per cent or more in the media sector, regardless of the value of the investment;</li> <li>– a proposed acquisition by a foreign person* of an interest in developed commercial land<sup>4</sup> where the value of the interest is more than A\$252 million<sup>†</sup>, unless the land meets the conditions for the lower developed commercial land threshold of A\$55million<sup>‡5</sup>;</li> </ul> <p>Investments may be refused, subject to orders, and/or approved subject to conditions. Foreign persons* that do not comply with the foreign investment framework may be subject to civil and criminal penalties.</p>

<sup>1</sup> “Investment” means activities covered by Part II of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) or, where applicable, ministerial statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

<sup>2</sup> The *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cth) and the *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015* (Cth) sets the fees for foreign investment applications and notices. Fees are indexed annually on 1 July.

\* The term “foreign person” has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

<sup>†</sup> This is the figure as at 1 January 2016. To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year.

<sup>3</sup> The term “foreign government investor” has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

<sup>4</sup> The term “developed commercial land” means commercial land that is not vacant within the meaning of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

<sup>5</sup> The conditions for the lower threshold are those set out in *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

Sector or Sub-sector	National Treatment Limitations
	<p>The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control<sup>6</sup> of an existing financial sector company, may be refused, or be subject to certain conditions<sup>7</sup>;</p> <p>Unbound with respect to the proposed acquisition by a foreign person* of an interest in agricultural land<sup>8</sup> where the cumulative value of agricultural land owned by the foreign person* alone or together with associates, including the proposed acquisition, is above A\$15 million;</p> <p>Unbound with respect to the proposed acquisition by a foreign person* of an interest in an agribusiness<sup>9</sup> where the cumulative value of the interest held the foreign person* in that agribusiness, alone or together with associates, including the proposed acquisition, is above A\$55 million<sup>†</sup>;</p> <p>Unbound with respect to proposed acquisitions by a foreign person* of an interest in Australian land<sup>10</sup>, other than developed commercial land or land that is used wholly and exclusively for a primary production business;</p> <p>For greater certainty, where an investment could qualify for the application of one or more of the above screening thresholds, approval and/or notification requirements apply from the lowest applicable threshold.</p>

<sup>6</sup> “Unacceptable shareholding situation” and “practical control” as defined in the *Financial Sector (Shareholdings) Act 1998* (Cth).

<sup>7</sup> Ministerial statements on foreign investment policy including the Treasurer’s Press Release No. 28 of 9 April 1997.

<sup>8</sup> The term “agricultural land” has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

<sup>9</sup> The term “agribusiness” has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

<sup>10</sup> The terms “Australian land” and “interest in Australian land” have the meanings set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

<b>Sector or Sub-sector</b>	<b>National Treatment Limitations</b>
	<p>Unbound for any measure that Australia considers necessary for the protection of its essential security interests with respect to proposals by foreign persons * to invest in Australia.</p> <p>For greater certainty, terms used in the above entries should be interpreted in accordance with Australia's Foreign Investment Framework as at the date of entry into force of this Agreement.</p> <p>Unbound for any measure with respect to investment that accords preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation. For the purpose of this Schedule, an Indigenous person means a person of the Aboriginal and Torres Strait Islander peoples.</p> <p>Unbound for any measure with respect to:</p> <ul style="list-style-type: none"> <li>– the privatisation of government owned entities or assets; and</li> <li>– the devolution to the private sector of services provided in the exercise of governmental authority at the date of entry into force of this Agreement.</li> </ul>
<b>PART II. SECTOR-SPECIFIC COMMITMENTS</b>	
<p>A. AGRICULTURE, HUNTING AND FORESTRY (excluding related and incidental services) (ISIC rev. 3.1: 01 and 02)</p>	<p>None, except as indicated in the horizontal section.</p>

Sector or Sub-sector	National Treatment Limitations
<p>B. FISHING (excluding related and incidental services) (ISIC rev.3.1: 05)</p>	<p>Foreign fishing vessels<sup>11</sup> seeking to undertake fishing activity, including any activity in support of or in preparation for any fishing activity or the processing, carrying or transshipment of fish, in the Australian Fishing Zone must be authorised. Where foreign fishing vessels are authorised they may be subject to a levy<sup>12</sup>.</p> <p>A foreign person or a foreign-owned body is not permitted to hold shares in a share management fishery in New South Wales.</p> <p>In Victoria, a fishery access licence or aquaculture licence can only be issued to:</p> <ul style="list-style-type: none"> <li>(a) an individual who is an Australian resident;</li> <li>(b) a single corporation that has a registered office in Australia; or</li> <li>(c) a co-operative that has a registered office in a jurisdiction that administers the Co-operatives National Law (currently New South Wales, Victoria, South Australia, the Northern Territory and Tasmania).</li> </ul> <p>In Western Australia, only an individual who is an Australian citizen or permanent resident may be a licensee within the Western Australian pearling industry. In the case of corporations, partnerships or trusts holding licences, these must be Australian owned and/or controlled (at least 51 per cent of the issued share capital, partnership interest or trust property must be owned by Australians; the chairman, majority of the board of directors and all the company officers must be Australians and must be nominated by, and represent, Australian interests).</p>
<p>C. MINING AND QUARRYING (excluding related and incidental services) (ISIC rev. 3.1: 10 through 14)</p>	<p>None, except as indicated in the horizontal section.</p>

<sup>11</sup> For the purposes of this reservation, a “foreign fishing vessel” is one that does not meet the definition of an Australian boat under the *Fisheries Management Act 1991* (Cth), that is, an Australian flagged boat (not owned by a foreign resident) or a boat owned by an Australian resident or corporation and built, and whose operations are based in, Australia

<sup>12</sup> The levy charged will be in accordance with the *Foreign Fishing Licences Levy Act 1991* (Cth) or any amendments thereto.



Sector or Sub-sector	National Treatment Limitations
D. MANUFACTURING (excluding related and incidental services) (ISIC rev. 3.1.: 15 through 37)	None, except as indicated in the horizontal section.
E. ELECTRICITY, GAS AND WATER SUPPLY (excluding related and incidental services) (ISIC rev. 3.1: 40 and 41)	None, except as indicated in the horizontal section.

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF THE COOK ISLANDS

1. The Cook Islands' commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), the Cook Islands specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' for the listed sector or sub-sector, means no limitations to the obligation of national treatment are maintained. The inscription 'unbound' means that no commitments are taken with respect to a particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.
4. Sectoral entries have been scheduled on the basis of ISIC rev 3.1, which means the International Standard Industrial Classification of all Economic Activities as set out in the Statistical Office of the United Nations.

Sector	Limitations
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	Investment in the Cook Islands by a natural person or by an enterprise of another Party requires approval from the Business Trade Investment Board (BTIB). <sup>1</sup> The BTIB shall approve a foreign enterprise to carry on

<sup>1</sup> This entry in the schedule is in accordance with the Cook Islands' foreign investment rules at time of entry into force, which principally consists of the *Development Investment Act 1995-96*, the *Development Investment (Investment Code) Order 2003*, the *Development Investment Regulations 1996*. The Cook Islands has interest in further refining and improving its laws regulating foreign investment. Should the Cook Islands adopt, after entry into force, new or revised laws and regulations on foreign investment, it would consider reflecting, where appropriate, any better treatment under PACER Plus through a revised Schedule of Commitments on Investment.

	<p>business in the Cook Islands if it is satisfied that the investment would likely result in a net benefit to the Cook Islands.<sup>2</sup></p> <p>Investments in the following areas are reserved to Cook Islanders and to enterprises fully-owned by Cook Islanders: commercial agricultural or food production; pearl farming; commercial aquaculture or harvesting of pearl shell, shell fish or other reef or lagoon products; fresh fish processing; fresh fish exporting; fish bait production; food processing including freezing and drying, or drink bottling; screen printing of fabrics or other piece goods; garment manufacture; making of traditional or cultural handicrafts and artifacts (including commercial reproductions); recordings of cultural performances; jewelry; bakeries or pastry shops<sup>3</sup></p> <p>However, investments in the reserved areas may be approved if: - Cook Islanders or enterprises owned by Cook Islanders are not providing the service, or; - the foreign investor brings a capital investment of, in the case of Rarotonga, not less than NZ\$1 million, and, in the case of other islands, of not less than NZ\$500,000. Approval shall also be based on the criteria indicated above.</p>
<p>All sectors included in this schedule</p>	<p>The ownership of freehold interest in land is restricted only to Cook Islanders. Natural persons who are not Cook Islanders or Permanent Residents of the Cook Islands and Enterprises may only acquire a leasehold interest in land to a maximum term of 60 years but subject to approval from the Leases Approval Tribunal pursuant to the <i>Leases Restrictions Act 1976</i>, the <i>Leases Restrictions Regulations 1977</i> and their amendments, under a non-discriminatory process.</p>
<p><b>II. SECTOR-SPECIFIC COMMITMENTS</b></p>	

<sup>2</sup> The criteria on which this decision will be based include: (a) the demand for the product to be provided; (b) whether the product to be provided is currently available in the Cook Islands; (c) the participation by Cook Islanders in the enterprise; (d) the employment of Cook Islanders in the enterprise; (e) training to be provided to Cook Islanders; (f) the degree of innovations, new processes or products, or new skills and technology associated with the proposed activity; (g) whether a significant proportion of financing for the enterprise would be sourced from outside the Cook Islands; (h) whether a significant proportion of the capital expenditure proposed in relation to the enterprise would be spent on businesses in the Cook Islands; (i) whether the activities concerned would be carried out in an island other than Rarotonga; (j) whether the activities concerned would generate a demonstrable net economic benefit to the Cook Islands or to at least one island in the Cook Islands; (k) whether the activities concerned would have a significant adverse effect on the social and cultural fabric of the Cook Islands, or the island or community where the activities would be carried out.

<sup>3</sup> For greater certainty, nothing in section II of this schedule (sector-specific commitments) can be taken to somehow lessen or modify the limitations listed in this section.

<p>AGRICULTURE, HUNTING AND FORESTRY (excluding related and incidental services) (ISIC rev. 3.1: 01 and 02)</p>	<p>None</p>
<p>MINING AND QUARRYING (excluding related and incidental services) (ISIC rev. 3.1: 10-14)</p>	<p>Unbound with respect to measures that reserve blocks of seabed mineral activity for situations where the government wishes to enter into sponsorship arrangements or where the government has a financial or operational stake or benefit.</p>
<p>FISHING (excluding incidental services) -Limited to Aquaculture</p>	<p>None</p>
<p>MANUFACTURING (excluding related and incidental services) (ISIC rev. 3.1.: 15 through 37)</p>	<p>None</p>

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF THE FEDERATED STATES OF MICRONESIA

1. The Federated States of Micronesia's commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), the Federated States of Micronesia specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligations of national treatment are maintained. The inscription 'unbound' means that no commitments are taken with respect to particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

Sector or Sub-Sector	National Treatment Limitations
<b>PART I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	Investment by an investor of another Party requires a Foreign Investment Permit in relation to economic sectors under national jurisdiction, and State Foreign Investment Permits from any state in which it wants to conduct business in relation to sectors under the jurisdiction of states. <sup>1</sup>

<sup>1</sup> This entry in the schedule is in accordance with the Federated States of Micronesia's foreign investment rules at time of entry into force of the Agreement, which principally consists of the *FSM Investment Law 2005*, the *Pohnpei Foreign Investment Act 2011*, the *Yap Foreign Investment Act 2012*, the *Chuuk State Foreign Investment Act 1998*, *Kosrae Foreign Investment Act 1998*, and related instruments. Should the Federated States of Micronesia adopt, after entry into force of the Agreement, new or revised laws and regulations on foreign investment, it would consider reflecting, where appropriate, any better treatment under PACER Plus through a revised Schedule of Commitments on Investment. Permits may be refused to applicants who have criminal records, carry outstanding debts to the Federated States of Micronesia persons or governments, or who have had a Foreign Investment Permit revoked in the past. For the purpose of this schedule, no discriminatory economic needs tests are applied at the national level. Investment for the purpose of this entry is defined as per the relevant laws at time of entry into force of the Agreement.

Foreign Investment Permits are subject to the following additional limitations in the following States:

Chuuk State:

Issuance of permits is subject to an economic needs test which is based on the following criteria:

- the value of the investment and its economic benefits for Chuuk;
- effect on competition; and
- impact on employment of locals.

Kosrae State:

For real property brokering, tourism other than eco-tourism, and live reef fish trade or coral harvesting, maintenance of a minimum investment of US\$5,000 is required.

Yap State:

All foreign investments in which total capital is less than US\$3 million shall require a partner who is Yapese by birth.

Pohnpei State:

Issuance of permits is subject to an economic needs test which is based on the following criteria:

- the value of the investment and its economic benefits for Pohnpei;
- the degree of domestic ownership; and
- impact on employment of locals.

This economic needs test will not apply when these conditions are met:

- A) (i) the proposed investment is a joint venture where at least 60 per cent of the total equity is beneficially held by citizens of FSM; and  
(ii) the initial capital of the foreign investment is greater than US\$250,000.

or

- B) (i) the proposed investment is a joint venture where at least 51 per cent of the total equity is beneficially held by citizens of FSM;
- (ii) the initial capital of the foreign investment is greater than US\$250,000; and
- (iii) the foreign investment relates to one of the following sectors:
- the exploration, development and extraction of land-based mineral resources and of marine-based resources within the jurisdiction of the state;
  - the exploration, cutting and milling of timber resources.

A foreign investor applying for a Foreign Investment Permit shall designate a person residing within FSM as a designated agent upon whom relevant documents can be served. Holders of Foreign Investment Permits are required to produce an annual report to the competent authorities.

Natural persons who are not citizens of FSM and enterprises that are not wholly-owned by citizens of FSM are prohibited from owning or acquiring land or any interest in land.

Limits to lease of land are:

- Up to 99 years in Chuuk State;
- Up to 55 years in Yap State;
- 55 years renewable but no more than 99 years for private land, and 40 years renewable for public land in Kosrae State; and
- 55 years renewable up to 99 years in Pohnpei State.

Natural persons who are not citizens of FSM and enterprises that are not wholly-owned by citizens of FSM cannot sub-lease land.

The lease of real estate by natural persons who are not citizens of FSM and by enterprises that are not wholly-owned by citizens of FSM requires an authorization by the competent State authority which will consider among other things whether important economic, social or cultural interests

	<p>are affected or not.</p> <p>Foreign investors and their investments are required to provide training to local employees.</p> <p>Unbound for measures: a) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force; or, b) regarding the sale or disposal of government-owned entities or assets.</p>
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
<p><b>A. AGRICULTURE, HUNTING AND FORESTRY</b> (excluding related and incidental services) (ISIC rev. 3.1: 01 and 02), except activities relating to copra.</p>	None
<p><b>B. FISHING</b> (excluding related and incidental services) - Limited to Aquaculture (ISIC rev. 3.1: 0502)</p>	None
<p><b>C. MINING AND QUARRYING</b> (excluding related and incidental services) (ISIC rev. 3.1: 10-14).</p>	None
<p><b>D. MANUFACTURING</b> (excluding related and incidental services)</p>	None



(ISIC rev. 3.1.: 15-37), except:

- activities of vessels engaged in the processing and preservation of fish (ISIC rev. 3.1: 1512\*\*)

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF KIRIBATI

1. Kiribati's commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), Kiribati specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligation of national treatment are maintained. The inscription 'unbound' means that no commitments are taken with respect to particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

Sector or Sub-Sector	National Treatment Limitations
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	Natural persons who are not citizens of Kiribati and enterprises that are not wholly-owned by citizens of Kiribati are prohibited from owning or acquiring land or any interest in land.  Such natural persons and enterprises may lease land in Kiribati, provided that the lease is approved by the Competent Authority. Land may be leased for a period of 25 years which is renewable. Sub-lease of land involving natural persons that are not citizens of Kiribati and enterprises that are not wholly-owned by citizens of Kiribati is not allowed

	Investment by natural persons who are not I-Kiribati and by enterprises of another Party requires approval from the Foreign Investment Commission <sup>1</sup> . Approval is granted subject to meeting an economic needs test on the basis of established criteria. <sup>2</sup>
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
A. AGRICULTURE, HUNTING AND FORESTRY (excluding related and incidental services) Growing of crops, market gardening, livestock and horticulture for large commercial purposes	None
B. FISHING (excluding related and incidental services) - Aquaculture (ISIC rev.3.1: 0502)	None
C. MINING AND QUARRYING (excluding related and incidental services) (ISIC rev. 3.1: 10-14)	None
D. MANUFACTURING (excluding related and incidental services) (ISIC rev. 3.1: 15 through 37) except for	A joint venture with a local partner is required for manufacturing activities in relation to coconut virgin oil and salt.

<sup>1</sup> This entry in the schedule is in accordance with Kiribati's foreign investment rules at the time of entry into force of the Agreement, which principally consists of the *Foreign Investment Act 1985*, the *Foreign Investment (Amendment) Act 1989*, the *Foreign Investment (Amendment) Act of 1992*, the *Foreign Investment (Amendment) Act 1997*, and the *Foreign Investment (Amendment) Act 2000*. Kiribati has interest in further refining and improving its laws regulating the admission of foreign investment. Should Kiribati adopt, after entry into force of the Agreement, new or revised laws and regulations as a result, it would positively consider reflecting, where appropriate, such better treatment under PACER Plus through a revised Schedule of Commitments on Investment.

<sup>2</sup> The economic needs test is set out in Article 10(1) of the *Foreign Investment Act 1985* as at the time of entry into force of the Agreement.

- Saw Milling
- Traditional Garment Designing and Production.



## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF NAURU

1. Nauru's commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), Nauru specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligation of national treatment are maintained. The inscription 'unbound' means that no commitments are taken with respect to a particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

<b>Sector or Sub-Sector</b>	<b>National Treatment Limitations</b>
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	The establishment or acquisition of an enterprise in Nauru by natural persons who are not Nauruan citizens or by enterprises that are not wholly owned by Nauruan citizens requires approval from Cabinet. Approval is granted subject to meeting the economic needs criteria administered by Cabinet at the time the application is made. <sup>1</sup>

<sup>1</sup>Nauru has interest in further refining and improving its laws regulating foreign investment. Should Nauru adopt after entry into force of the Agreement, new or revised laws and regulations on foreign investment, it would consider reflecting, where appropriate, any better treatment under PACER Plus through a revised Schedule of Commitments on Investment.

	Natural persons of another Party and enterprises that are not wholly-owned by citizens of Nauru are prohibited from owning land, or acquiring any interest in or control over land in Nauru, whether by purchase, receipt of gift, transfers by operation of law, or any other means. Lease of land by enterprises established in Nauru is subject to a non-discriminatory approval process.
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
A. AGRICULTURE, HUNTING AND FORESTRY (excluding related and incidental services) (ISIC rev. 3.1: 01 and 02) - Excluding: small scale agriculture for local markets	None
B. FISHING (excluding related and incidental services) - Only Aquaculture (ISIC rev. 3.1: 0502)	None
D. MANUFACTURING (excluding related and incidental services) (ISIC rev. 3.1: 15- 37), except: - activities of vessels engaged in the processing and preservation of fish (part of ISIC rev. 3.1: 1512)	None

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF NEW ZEALAND

1. Unless otherwise indicated, the classification of investment sectors is based on the 2002 International Standard Industrial Classification of All Economic Activities (ISIC) Revision 3.1 of the United Nations Statistical Office.
2. New Zealand's commitments apply only in relation to the sectors as set out in the table below, and in accordance with Article 4 (Relation to Other Chapters) of Chapter 9 (Investment), limited to measures not affecting trade in services.
3. Any limitations to Article 6 (National Treatment) in accordance with Article 8 (Scheduling of Commitments) of Chapter 9 (Investment) are specified in the table below.
4. For clarity, the inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligations of national treatment are maintained. The inscription 'unbound' means that no commitments are taken with respect to particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.

Sector or subsector	National Treatment Limitations
<b>PART I. HORIZONTAL COMMITMENTS</b>	
ALL SECTORS	Overseas Investment Office (OIO) approval is required for the following investments by an 'overseas person': <sup>1</sup> (a) acquisition or control of 25 per cent or more of any class of shares <sup>2</sup> or voting power <sup>3</sup> in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ\$10 million; (b) commencement of business operations or acquisition of an existing business, including business assets, in

<sup>1</sup> An "overseas person" is defined as an individual not normally resident in New Zealand; a company not incorporated in New Zealand; a New Zealand-incorporated company in which 25 per cent or more of any class of shares or 25 per cent or more of the voting power is held by overseas persons; or a nominee of the overseas person, whether or not the nominee is himself/herself an overseas person.

<sup>2</sup> For greater certainty, the term 'shares' includes shares and other types of securities.

<sup>3</sup> For greater certainty, 'voting power' includes the power to control the composition of 25 percent or more of the governing body of the New Zealand entity.

Sector or subsector	National Treatment Limitations
	<p>New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceeds NZ\$10 million;</p> <p>(c) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's Overseas Investment legislation; and</p> <p>(d) acquisition, regardless of the dollar value, of 25 per cent or more of any class of shares or voting power in a New Zealand entity that owns commercial fishing quota or annual catch entitlement, or the acquisition of commercial fishing quota or annual catch entitlement.</p> <p>Overseas investors must comply with the criteria set out in the overseas investment regime and any conditions specified by the Regulator and the relevant Minister or Ministers.</p> <p>Unbound for enterprises currently in State ownership.</p>
	<p>New Zealand reserves the right to accord different treatment to investments by an overseas person formed in accordance with the laws and regulations in relation to the control, management or use of:</p> <p>(a) protected areas, including resources on land, interests in land or water, that are set up for heritage management purposes (both historic and natural heritage), public recreation and scenery preservation; or</p> <p>(b) species owned under enactments by the Crown or that are protected by or under an enactment.</p>
	<p>New Zealand reserves the right to accord different treatment to investments by an overseas person formed in accordance with the laws and regulations in relation to:</p> <p>(a) animal welfare; and</p> <p>(b) the preservation of plant, animal and human life and health; including in particular:</p> <p>(i) food safety of domestic and exported foods;</p> <p>(ii) animal feeds;</p> <p>(iii) food standards;</p> <p>(iv) biosecurity; and</p> <p>(v) certification of the plant or animal health status of goods.</p>



Sector or subsector	National Treatment Limitations
	<p>Nothing in this limitation shall be construed to derogate from the obligations of Chapter 5 (Sanitary and Phytosanitary Measures), or the obligations of the SPS Agreement.</p> <p>Nothing in this reservation shall be construed to derogate from the obligations of Chapter 6 (Technical Regulations, Standards and Conformity Assessment Procedures), or the obligations of the TBT Agreement.</p>
	<p>New Zealand reserves the right to accord different treatment to investments by an overseas person formed in accordance with the laws and regulations in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone and the continental shelf, including for the issuance of maritime concessions in the continental shelf.</p>
	<p>Consistent with New Zealand's financial reporting regime established under the <i>Companies Act 1993</i> and <i>Financial Reporting Act 1993</i>, the following overseas non-issuer companies are required to file audited financial statements with the Registrar of Companies:</p> <ul style="list-style-type: none"> <li>(a) any company that is incorporated outside New Zealand that carries on business in New Zealand;</li> <li>(b) any large company incorporated in New Zealand in which shares that carry the right to exercise or control the exercise of 25 per cent or more of the voting power are held by: <ul style="list-style-type: none"> <li>(i) a subsidiary of a company or body corporate incorporated outside New Zealand;</li> <li>(ii) a company or body corporate incorporated outside New Zealand; or</li> <li>(iii) a person not ordinarily resident in New Zealand;</li> </ul> </li> <li>(c) any company that is a subsidiary of a company or body corporate incorporated outside New Zealand.</li> </ul> <p>A company is 'large' if it meets at least two of the following criteria:</p> <ul style="list-style-type: none"> <li>(a) the total assets of the company and its subsidiaries exceeds NZ\$10 million;</li> <li>(b) the company and its subsidiaries have a total turnover of NZ\$10 million or more; and</li> <li>(c) the company and its subsidiaries have 50 or more full-time equivalent employees.</li> </ul> <p>These requirements do not apply if the overseas company is a subsidiary of a New Zealand company that has</p>

Sector or subsector	National Treatment Limitations
	already filed audited group financial statements with the Registrar.
	New Zealand reserves the right to accord different treatment to investments by an overseas person formed in accordance with the laws and regulations in relation to water, including the allocation, collection, treatment and distribution of drinking water.
	Where the New Zealand Government wholly owns or has effective control over an enterprise, New Zealand reserves the right to accord different treatment to investments by an overseas person formed in accordance with the laws and regulations in relation to the sale of any shares in that enterprise or any assets of that enterprise to any person, including according more favourable treatment to New Zealand nationals.
	New Zealand reserves the right to accord different treatment to New Zealand nationals and permanent residents in the form of incentives or other programmes to help develop local entrepreneurs and assist local companies to expand and upgrade their operations.
ENERGY	New Zealand reserves the right to accord different treatment to investments by an overseas person in order to prohibit, regulate, manage or control the production, use, distribution or retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so.
AGRICULTURE	<p>The <i>Dairy Industry Restructuring Act 2001</i> (DIRA) and regulations provide for the New Zealand to acquire, free of charge and without condition, a copy of a regulated database held by the Livestock Improvement Corporation Ltd (LIC) in the event of its demutualisation or certain other events.</p> <p>Furthermore, should LIC be liquidated or removed from New Zealand's register of companies or should the New Zealand government receive a copy of the database as specified above, the New Zealand government may determine arrangements for the database to be managed by another dairy industry entity. In doing so it may take into account nationality and residency considerations, including in relation to senior management and composition of the board of directors.</p>

Sector or subsector	National Treatment Limitations
	<p>In addition, the DIRA sets out data reporting obligations to the LIC applying to those engaged in herd testing of dairy cattle.</p> <p>The DIRA also provides for access to the data held in the core database to be denied if access is not beneficial, or is harmful, to the New Zealand dairy industry, which could take into account nationality or residency considerations and the intended use of the data. Conditions may also be applied to data use.</p> <p>The DIRA restricts who may hold shares in LIC, and this regime may not be amended without the consent of the responsible Minister.</p>
	<p>New Zealand reserves the right to accord different treatment to investments by an overseas person in relation to:</p> <ul style="list-style-type: none"> <li>– the holding of shares in co-operative dairy company arising from the amalgamation authorised by section 7(1)(a) of the <i>Dairy Industry Restructuring Act 2001</i> (DIRA) (or any successor body); and</li> <li>– the disposition of assets of that dairy company or its successor bodies.</li> </ul>
	<p>Under the <i>Primary Products Marketing Act 1953</i>, the New Zealand Government may impose regulations necessary to enable producers of products derived from beekeeping; fruit growing; deer farming or game deer; or of goats, being the fur bristles or fibres grown by the goat (“primary products”) to control the marketing of primary products. In particular, the <i>Primary Products Marketing Act 1953</i> provides for the establishment of statutory marketing authorities with monopoly marketing and acquisition powers (or lesser powers), and provision of a range of measures relating to such aspects as:</p> <ul style="list-style-type: none"> <li>– the functions, powers, appointment, membership, and dissolution of the marketing authorities;</li> <li>– the management of the affairs of the marketing authorities;</li> <li>– the acquisition of primary products by the marketing authorities and matters relating to the pricing and method of payment for primary products so acquired;</li> <li>– matters relating to the production, distribution, licensing, and sale of primary products;</li> <li>– matters relating to the payment of fees and levies on primary products;</li> <li>– the acquisition of information required of fees and levies on primary products;</li> <li>– the acquisition of information required for the purposes of the marketing authorities; and</li> </ul>

Sector or subsector	National Treatment Limitations
	<ul style="list-style-type: none"> <li>- the prescription of offences and penalties relating to the <i>Primary Products Marketing Act 1953</i>.</li> </ul>
	<p>New Zealand reserves the right to accord different treatment to investments by an overseas person necessary to give effect to the establishment or the implementation of mandatory marketing plans (also referred to as “export marketing strategies”) for the export marketing of products derived from:</p> <ul style="list-style-type: none"> <li>- agriculture;</li> <li>- beekeeping;</li> <li>- horticulture;</li> <li>- arboriculture;</li> <li>- arable farming; and</li> <li>- the farming of animals,</li> </ul> <p>where there is support within the relevant industry that a mandatory collective marketing plan should be adopted or activated.</p> <p>For the avoidance of doubt, mandatory marketing plans in the context of this reservation exclude measures limiting the number of market participants or limiting the volume of exports.</p>
FISHERIES	<p>Under the <i>Fisheries Act 1996</i>, no vessel owned or operated by an overseas person may be registered to carry out commercial fishing or fishing carrying activities without the permission of the Minister of Fisheries, and subject to any conditions that he or she thinks fit to impose.</p> <p>No vessel that is not a New Zealand ship will be used for commercial fishing within the territorial sea of New Zealand.</p> <p>Foreign fishing vessels or fish carriers are required to obtain the approval of the Minister of Fisheries before entering New Zealand internal waters. If the Minister of Fisheries is satisfied that the vessel has undermined international convention and management measures he or she may deny the vessel approval to enter New Zealand internal waters.</p>

Sector or subsector	National Treatment Limitations
	Ministerial approval is required before any overseas person may be allocated, purchase or own any provisional catch history, quota or annual catch entitlement.
	Treatment less favourable may be accorded to investments by an overseas person in relation to the activities of foreign fishing, including fishing landing, first landing of fish processed at sea, and access to New Zealand ports (port privileges) consistent with the provisions of the <i>United Nations Convention on the Law of the Sea</i> .
BUSINESS SERVICES Research and Development	New Zealand reserves the right to accord different treatment to investments by an overseas person in relation to: (a) the entry on Research and Development services carried out by State funded tertiary institutions or by research organisations that are part of the New Zealand State sector when such research is conducted for a public purpose; and (b) research and experimental development services on physical sciences, chemistry, biology, engineering and technology, agricultural sciences, medical, pharmaceutical and other natural sciences i.e., CPC 8510.
<b>PART II. SECTOR-SPECIFIC COMMITMENTS</b>	
<b>A. AGRICULTURE, HUNTING AND FORESTRY</b> (ISIC rev. 3.1: 01)	
Agriculture and hunting (ISIC rev. 3.1: 011-013)	None, except as indicated in the horizontal section.
Growing of fruit, nuts, beverage and spice crops (ISIC rev. 3.1: 0113)	Unbound with respect to the export marketing of fresh kiwifruit to all markets other than Australia.
Forestry and logging (ISIC rev. 3.1: 02)	None, except as indicated in the horizontal section.
<b>B. FISHING</b> (ISIC rev. 3.1: 05)	

Sector or subsector	National Treatment Limitations
Fisheries and aquaculture (ISIC rev. 3.1: 05)	None, except as indicated in the horizontal section.
<b>C. MINING AND QUARRYING</b> (ISIC rev. 3.1: 10-14)	
Mining and quarrying (ISIC rev. 3.1: 10, 13-14)	None, except as indicated in the horizontal section.
<b>D. MANUFACTURING</b> (ISIC rev. 3.1: 15-36)	
Manufacturing (ISIC rev. 3.1: 15-16, 18-21, 24-36)	None, except as indicated in the horizontal section.
Manufacture of textiles (ISIC rev. 3.1: 17)	Unbound with respect to: <ul style="list-style-type: none"> <li>– wool, degreased or carbonised, not carded or combed;</li> <li>– noils of wool or of fine animal hair;</li> <li>– wool and fine or coarse animal hair, carded or combed.</li> </ul>

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF NIUE

1. Niue's commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), Niue specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligation of national treatment are maintained. The inscription 'unbound' means that no commitments are taken with respect to a particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

<b>Sector or Sub-Sector</b>	<b>National Treatment Limitations</b>
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	Natural persons who are not Niueans and enterprises that are not wholly-owned by Niueans are prohibited from owning or acquiring land or any interest in land.  Investors from other Parties must source capital from overseas. Investors from other Parties and their investments are prohibited from accessing the loan facility of the Niue Development Bank.

Sector or Sub-Sector	National Treatment Limitations
	<p>Foreign enterprises seeking to carry on business activities in Niue require registration by Cabinet.<sup>1</sup> Registration is granted subject to meeting an economic needs test on the basis of established criteria reflected in relevant laws and regulations.<sup>23</sup></p> <p>Unbound for measures in relation to the transfer or disposal of government-owned entities or assets.</p>
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
<p>A. AGRICULTURE, HUNTING AND FORESTRY (excluding related and incidental services) (ISIC rev. 3.1: 01 and 02)</p>	None
<p>B. FISHING (excluding related and incidental services) Only Aquaculture (ISIC rev. 3.1: 0502)</p>	None
<p>C. MINING AND QUARRYING (excluding related and incidental services) (ISIC rev. 3.1: 10-14).</p>	None

<sup>1</sup> For the purpose of this limitation, foreign enterprises mean enterprises in which 50 per cent or more of the voting shares or power are not held by Niueans, or where 50 per cent or more of the shares are not beneficially owned or controlled by Niueans, or where the enterprise does not have its central management or control in Niue.

<sup>2</sup> The economic needs test is based on the following criteria: impact on local employment and upgrade of local skills; economic impact, including magnitude of local value added and use of local resources, external trade, income, infrastructure demand, and secondary effects on other activities; environmental and cultural impact. For greater clarity, Cabinet approval can be conditional on compliance with aspects of the criteria mentioned above.

<sup>3</sup> This entry in the schedule is in accordance with Niue's foreign investment rules at time of entry into force of the Agreement, which principally consist of the *Development Investment Act 1992* and related instruments. Should Niue adopt, after entry into force of the Agreement, new or revised laws and regulations on foreign investment, it would consider reflecting, where appropriate, any better treatment under PACER Plus through a revised Schedule of Commitments on Investment.



<b>Sector or Sub-Sector</b>	<b>National Treatment Limitations</b>
D. MANUFACTURING (excluding related and incidental services) (ISIC rev. 3.1.: 15-37), except: Activities of vessels engaged in the processing and preservation of fish (ISIC rev. 3.1: 1512**)	None

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF PALAU

1. Palau's commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), Palau specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligations of national treatment and senior management and boards of directors are maintained. The inscription 'unbound' means that no commitments are taken with respect to particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

<b>Sector or Sub-Sector</b>	<b>National Treatment Limitations</b>
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	The Palau Constitution prohibits natural persons that are not citizens of Palau and enterprises that are not wholly-owned by citizens of Palau from owning land, or acquiring any interest in or control over land in Palau, whether by purchase, receipt of gift, transfers by operation of law, or any other means other than as provided in the following paragraph.  Lease of land is limited to 50 years for foreign natural persons and enterprises that are not wholly owned by Palauans.

	<p>Enterprises that are not wholly-owned by Palauans are required to pay a yearly levy for each non-citizen employee<sup>1</sup> and may be required to provide training to Palauan employees.</p> <p>Palau citizens must constitute 20 per cent of employees of enterprises that are not wholly-owned by Palau citizens when the value of the initial investment is less than US\$500,000 or, in the case of hotel or other short-term lodging facility, US\$5 million.<sup>2</sup></p> <p>A foreign investment approval certificate must be obtained pursuant to the <i>Foreign Investment Act 1990</i> and subsequent amendments before investors of another Party can establish a business enterprise in Palau. Approval of an investment is subject to an economic needs criteria<sup>3</sup> and non-discriminatory requirements, and the fulfilment of the minimum investment and local ownership requirements in sections 105 and 106 of the <i>Foreign Investment Act 1990</i> and subsequent amendments.</p> <p>Foreign investors are required to deposit a stipulated sum of money with a bank in Palau and maintain it there during the validity of the investment.</p>
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<sup>1</sup> For information: in 2015, this levy was of US\$500 per year for each foreign employee. This amount may be adjusted in the future to take account of inflation.

<sup>2</sup> This entry in the schedule is in accordance with Palau's foreign investment rules at time of entry into force of the Agreement, which principally consists of the *Foreign Investment Act 1990*. Palau has an interest in further refining and improving its laws regulating foreign investment. Should Palau adopt, after entry into force of the Agreement, new or revised laws and regulations on foreign investment, it would consider reflecting, where appropriate, any better treatment under PACER Plus through a revised Schedule of Commitments on Investment.

<sup>3</sup> The economic needs test is based on the following criteria: (a) the economic need for the proposed activity; (b) the extent of the current availability of the service in the Republic; (c) the likely impact on same or similar activities currently being carried on by citizens; (d) the overall benefit to the national economy; (e) the bona fides, financial capacity, experience and expertise of the applicant; (f) the technical and economic viability of the proposed project; (g) the overall contributions to the national economy; (h) the extent of direct and indirect employment generation; (i) the extent of import earnings or import savings; (j) the extent of utilization of domestic raw materials and natural resources, including the benefits or adverse impact of such utilization; (k) the extent of transfer of managerial and technical skills to citizens, including well-defined training programs for achieving such transfer; (l) the size of the foreign investment as well as the total investment required for the project; (m) the impact of the proposed activity upon the social and cultural values upon the environmental integrity of the Republic, and (n) whether the capital investment and technical and managerial skills required for a business are such as to be within the capacity of citizens.

<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
<b>A. AGRICULTURE AND FORESTRY</b> (excluding related and incidental services) (ISIC rev. 3.1: 011-014, and 02)	None
<b>B. FISHING</b> (excluding related and incidental services) - Limited to Aquaculture (ISIC rev. 3.1: 0502)	None
<b>D. MANUFACTURING</b> (excluding related and incidental services) (ISIC rev. 3.1.: 15-37)	The following business activity is reserved exclusively for citizens and business enterprises in which Palauans have an ownership interest: - Production of goods already produced by wholly-owned Palauan enterprises.

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF THE REPUBLIC OF THE MARSHALL ISLANDS

1. The Republic of the Marshall Islands' commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), RMI specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligations of national treatment and senior management and boards of directors are maintained. The inscription 'unbound' means that no commitments are taken with respect to particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

Sector or Sub-Sector	National Treatment Limitations
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule. <sup>1</sup>	Natural persons who are not citizens of the Republic of the Marshall Islands and enterprises that are not wholly-owned by citizens of RMI are prohibited from owning land. Land may, however, be leased for investment purposes.  Enterprises that are not wholly-owned by Republic of the Marshall Islands citizens are required to incorporate as a domestic limited company or register as a foreign company.

<sup>1</sup> Should the Republic of the Marshall Islands adopt, after entry into force of the Agreement, new or revised laws and regulations on foreign investment, it would consider reflecting, where appropriate, any better treatment under PACER Plus through a revised Schedule of Commitments on Investment.

	<p>The following activities are reserved for Republic of the Marshall Islands citizens and enterprises wholly-owned by Republic of the Marshall Islands citizens:</p> <ul style="list-style-type: none"> <li>- Small scale mariculture for local markets</li> <li>- Bakeries and pastry shops</li> <li>- Tailoring / sewing shops.</li> </ul> <p>Application for a business license is required in order to establish an enterprise that is not wholly-owned by citizens of RMI, or to acquire an interest in an existing enterprise in RMI. Investors of other Parties must incorporate as a domestic limited company or register as a foreign company.</p>
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
<p><b>A. AGRICULTURE, HUNTING AND FORESTRY</b> (excluding related and incidental services)</p>	<p>None except that a joint venture with local investors is required in the following activities:</p> <ul style="list-style-type: none"> <li>011: Growing of Crops, Market Gardening, Horticulture</li> <li>012: Farming of Animals</li> <li>013: Growing of Crops combined with farming of animals (mixed farming)</li> <li>014: Agricultural and Animal Husbandry services except for Veterinary Services</li> </ul> <p>The shares in the investment to be agreed between the local and foreign investors.</p>
<p><b>B. FISHING</b> (excluding related and incidental services) Applicable to Aquaculture (ISIC rev 3.1: 0502)</p>	<p>A joint venture is required with local investors. The shares in the investment are to be agreed between the local and foreign investors.</p>
<p><b>C. MINING AND QUARRYING</b> (excluding related and incidental services) (ISIC rev. 3.1: 10-14)</p>	<p>None, except that a joint venture may be required for certain activities. The shares in the investment to be agreed between the local and foreign investors.</p>
<p><b>D. MANUFACTURING</b> (excluding related and incidental services) (ISIC rev. 3.1.: 15-37), except:</p>	<p>None, except that a joint venture is required in the manufacture of pandanus juice, coconut drink and noni drink. The shares in the investment are to be agreed between the local and foreign investors.</p>

- activities of vessels engaged in the processing and preservation of fish (part of ISIC rev. 3.1: 1512)	
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## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF SAMOA

1. Samoa's commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), Samoa specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligations of national treatment are maintained. The inscription 'unbound' means that no commitments are taken with respect to a particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

Sector or Sub-Sector	National Treatment Limitations
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	Non-Samoan natural persons and enterprises that are not wholly-owned by natural persons of Samoa are prohibited from owning or acquiring land or any interest in land. Land may be leased for up to 30 years renewable once in the case of land leased or licensed for industrial purposes or a hotel and 20 years renewable once in the other cases.  Foreign invested enterprises may be required to provide training to local employees.  Unbound for measures: a) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force; or, b) regarding the sale or disposal of government-owned entities or assets.



<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
<p><b>A. AGRICULTURE, HUNTING AND FORESTRY</b>  (excluding related and incidental services)  - Limited to growing of crops, market gardening, and horticulture, except for subsistence purposes (part of ISIC rev. 3.1: 011)</p>	None
<p><b>B. FISHING</b>  (excluding related and incidental services)  - Limited to Aquaculture (ISIC rev. 3.1: 0502)</p>	None
<p><b>C. MINING AND QUARRYING</b>  (excluding related and incidental services)  (ISIC rev. 3.1: 10-14)</p>	None
<p><b>D. MANUFACTURING</b>  (excluding related and incidental services)  (ISIC rev. 3.1: 15-37), except:  - Saw milling (ISIC rev. 3.1.: 2010)  - Traditional elei garment designing and printing  - Activities of vessels engaged in the processing and preservation of fish (ISIC rev. 3.1: 1512)</p>	Joint venture with a local partner is required for manufacturing activities in relation to <i>nonu</i> or virgin coconut oil.

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF SOLOMON ISLANDS

1. Solomon Islands' commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), Solomon Islands specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligations of national treatment and senior management and boards of directors are maintained. The inscription 'unbound' means that no commitments are taken with respect to particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

<b>Sector or Sub-Sector</b>	<b>National Treatment Limitations</b>
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	Natural persons who are not citizens of the Solomon Islands and enterprises that are not wholly-owned by citizens of the Solomon Islands are prohibited from owning or acquiring land or any interest in land. Land may be leased from government and land-holding groups.

	<p>Pursuant to the <i>Foreign Investment Act 2005</i> and <i>Foreign Investment Regulations 2006</i>, as at the date of signature of the PACER Plus, a certificate of registration must be obtained by investors of another Party that intends to conduct an investment activity.<sup>1</sup></p> <p>Unbound for measures: a) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force; or, b) regarding the sale or disposal of government-owned entities or assets.</p>
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
<p><b>A. AGRICULTURE, HUNTING AND FORESTRY</b> (excluding related and incidental services) (part of ISIC rev. 3.1: 01 and 02), except:</p> <ul style="list-style-type: none"> <li>- Cultivating plant crops exclusively for sale on the domestic market;</li> <li>- Farming of livestock for sale exclusively on the domestic market;</li> <li>- Gathering of wild forest products for sale exclusively on the domestic market.</li> </ul>	None
<p><b>B. FISHING</b> (excluding related and incidental services)</p>	None

<sup>1</sup> Should Solomon Islands adopt, after entry into force of the Agreement, new or revised laws and regulations on foreign investment, it would consider reflecting, where appropriate, any changes under PACER Plus through a revised Schedule of Commitments on Trade in Services.

<ul style="list-style-type: none"> <li>- Limited to Aquaculture (ISIC rev. 3.1: 0502)</li> </ul>	
<p><b>C. MINING AND QUARRYING</b> (excluding related and incidental services) (ISIC rev. 3.1: 10-14), except:</p> <ul style="list-style-type: none"> <li>- Alluvial mining.<sup>2</sup></li> </ul>	None
<p><b>D. MANUFACTURING</b> (excluding related and incidental services) (ISIC rev. 3.1: 151-192, 202-372), except:</p> <ul style="list-style-type: none"> <li>- Timber milling operations producing not more than 2,500m<sup>3</sup> sawn per year;</li> <li>- Production of handicrafts and cultural artifacts.</li> </ul>	None

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<sup>2</sup> Alluvial mining as defined in the *Mines and Minerals (Amendment) Act 2008*, especially part VI, paras 53-54.

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF TONGA

1. Tonga's commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), Tonga specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligations of national treatment are maintained. The inscription 'unbound' means that no commitments are taken with respect to a particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

Sector or Sub-Sector	National Treatment Limitations
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	Natural persons who are not citizens of Tonga and enterprises that are not wholly-owned by citizens of Tonga are prohibited from owning or acquiring land or any interest in land. Land may be leased.  All foreign investors are required to register and obtain a Foreign Investment Registration Certificate. <sup>1</sup> For greater certainty, the granting of certificates, as well as their renewal, are not

<sup>1</sup> Holders of such certificates notably have to pay related fees and to produce an annual status report for authorities. This entry in the schedule is in accordance with Tonga's foreign investment rules at time of entry into force of the Agreement, which principally consists of the *Foreign Investment Act 2002*. Should Tonga adopt, after entry into force of the Agreement, new or revised laws and regulations on foreign investment, it would consider reflecting, where appropriate, any better treatment under PACER Plus through a revised Schedule of Commitments on Investment.

	<p>conditional on discriminatory economic needs tests or the level of foreign ownership. However, for the activities listed in this paragraph, foreign investors are not allowed to own or acquire more than 25 per cent of voting shares in such enterprises.<sup>2</sup></p> <p>The reserved activities are:</p> <ul style="list-style-type: none"> <li>- Baking of white loaf bread;</li> <li>- Tongan cultural activities, including: folktales, folk poetry, and folk riddles; folk songs and instrumental folk music; folk dances, and folk plays; production of folk arts in particular, drawings, paintings, carvings, sculptures, woodwork, jewelry, handicrafts, costumes, and indigenous textile;</li> <li>- Raising of chickens for the production of eggs;</li> <li>- Export of green and mature coconuts;</li> <li>- Production/farming of: (a) root crops (yams, taro, sweet potato, cassava); (b) squash; (c) paper mulberry; (d) pandanus; and (e) kava;</li> </ul> <p>Unbound for measures: a) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force; or, b) regarding the sale or disposal of government-owned entities or assets.</p>
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
<p><b>A. AGRICULTURE, HUNTING AND FORESTRY</b> (excluding related and incidental services) (ISIC rev. 3.1: 01 and 02).</p>	None
<p><b>B. FISHING</b></p>	None

<sup>2</sup> 'Foreign investors' means: natural persons that are not citizens of Tonga, enterprises incorporated outside of Tonga, and enterprises incorporated in Tonga that are not wholly-owned by citizens of Tonga.

<p>(excluding related and incidental services)  - Limited to Aquaculture (ISIC rev. 3.1: 0502)</p>	
<p><b>C. MINING AND QUARRYING</b>  (excluding related and incidental services)  (ISIC rev. 3.1: 10-14).</p>	None
<p><b>D. MANUFACTURING</b>  (excluding related and incidental services)  (ISIC rev. 3.1.: 15-37), except:  - activities of vessels engaged in the processing and preservation of fish (part of ISIC rev. 3.1: 1512)</p>	None

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF TUVALU

1. Tuvalu's commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), Tuvalu specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligation of national treatment are maintained. The inscription 'unbound' means that no commitments are taken with respect to a particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

Sector or Sub-Sector	National Treatment Limitations
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	Investment by natural persons that are not Tuvalu citizens and by enterprises of another Party is subject to approval by the Government. Approval shall be granted to investments which are determined by the Government to likely confer economic benefits on Tuvalu. <sup>1</sup>  Natural persons who are not citizens of Tuvalu and enterprises that are not wholly-owned by

<sup>1</sup> This entry in the schedule reflects Tuvalu's foreign investment rules at time of entry into force of this Agreement, which includes the *Foreign Direct Investment Act 1996* as amended by the *Foreign Direct Investment Act 2008* (revised edition). Should Tuvalu adopt, after entry into force of the Agreement, new or revised laws and regulations on foreign investment, it would consider reflecting, where appropriate, any better treatment under PACER Plus through a revised Schedule of Commitments on Investment.



	<p>citizens of Tuvalu may be required to provide short-term training to local employees.</p> <p>Investors of another Party are prohibited prohibited from owning land. Land may be leased for a period not exceeding 25 years. Leases have to be approved by the Lands Court and by the relevant Minister under a non-discriminatory process.</p> <p>Land leases are for a duration of up to 25 years. Leases have to be approved by Lands Courts and the Minister responsible under a non-discriminatory process.</p>
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
<p><b>A. AGRICULTURE, HUNTING AND FORESTRY</b> (excluding related and incidental services) (ISIC rev. 3.1: 01 and 02)</p>	<p>Unbound for measures in relation to the export of copra and related products.</p>
<p><b>B. FISHING</b> (excluding related and incidental services) - Limited to Aquaculture (ISIC rev. 3.1: 0502)</p>	<p>None</p>
<p><b>C. MINING AND QUARRYING</b> (excluding related and incidental services) (ISIC rev. 3.1: 10-14)</p>	<p>None</p>
<p><b>D. MANUFACTURING</b> (excluding related and incidental services) (ISIC rev. 3.1: 15-37)</p>	<p>None</p>

## ANNEX 9-A: SCHEDULE OF COMMITMENTS ON INVESTMENT (CHAPTER 9)

### SCHEDULE OF VANUATU

1. Vanuatu's commitments under Article 6 (National Treatment) of Chapter 9 (Investment) apply only in relation to the sectors set out below. In accordance with Article 6 (National Treatment) and Article 8 (Scheduling of Commitments) of Chapter 9 (Investment), Vanuatu specifies below any terms, conditions, limitations or qualifications.
2. The inscription 'none' indicates that, for the listed sector or sub-sector, no limitations to the obligation of national treatment are maintained. The inscription 'unbound' means that no commitments are taken with respect to a particular subsector or area. Limitations listed in the horizontal section condition all sector-specific commitments.
3. Commitments on national treatment in this schedule shall not prevent a Party from imposing a requirement, in connection with an investment in its territory of an investor of another Party, to locate production, establish an enterprise, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided this is also applied, in like circumstances, to investments of its own investors.

<b>Sector or Sub-Sector</b>	<b>National Treatment Limitations<sup>1</sup></b>
<b>I. HORIZONTAL COMMITMENTS</b>	
All sectors included in this schedule	The Vanuatu Constitution prohibits freehold ownership of land. Only indigenous Ni-Vanuatu can own land under customary law provisions. Indigenous citizens and expatriates can hold land in leasehold.  Unbound for measures: a) as part of the act of devolving a service that is provided in the

<sup>1</sup> Should Vanuatu adopt after entry into force of the Agreement, new or revised laws and regulations on foreign investment, it would consider reflecting, where appropriate, any better treatment under PACER Plus through a revised Schedule of Commitments on Investment.

	exercise of governmental authority at the time the Agreement enters into force; or, b) regarding the sale or disposal of government-owned entities or assets.
<b>II. SECTOR-SPECIFIC COMMITMENTS</b>	
<b>A. AGRICULTURE, HUNTING AND FORESTRY</b> (excluding related and incidental services) (ISIC rev. 3.1: 01 and 02**), excluding: - Export of sandalwood in stick and chips form; - Local trading of sandalwood; - Export of seeds and other minor forest products; - Production of kava and export of kava in root, chips and stick form; - Small scale production of sawn timber from natural forest using portable sawmills.	None
<b>B. FISHING</b> (excluding related and incidental services) - Aquaculture (ISIC rev. 3.1: 0502)	None
<b>C. MINING AND QUARRYING</b> (excluding related and incidental services) (ISIC rev. 3.1: 10-14)	None
<b>D. MANUFACTURING</b> (excluding related and incidental services) (ISIC rev. 3.1.: 15-37), excluding:	None

<ul style="list-style-type: none"><li>- Small scale production of sawn timber from natural forest using a portable sawmill;</li><li>- Production of handcrafts and artefacts;</li><li>- Small scale production of coconut oil.</li></ul>	
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## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF AUSTRALIA

1. Australia specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Board of Directors) of Chapter 9 (Investment).
2. Limitations are listed in the horizontal and sector-specific sections, using references that correspond to the International Standard Industrial Classification of all Economic Activities as set out by the Statistical Office of the United Nations (ISIC Rev.3.1), unless otherwise stated.

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	Australia reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Australia provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	Australia reserves the right to adopt or maintain any measure according preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the service sector. Australia reserves the right to adopt or maintain any measure with respect to investment that accords preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation. For the purpose of this Schedule, an Indigenous person means a person of the Aboriginal and Torres Strait Islander peoples.
All sectors	Australia reserves the right to maintain any existing measure at the regional level of government.
All sectors	Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.

Sector	Exemption
All sectors	Australia reserves the right to adopt or maintain any measure with respect to: <ul style="list-style-type: none"> <li>(a) the creative arts<sup>1</sup>, cultural heritage<sup>2</sup> and other cultural industries, including audio-visual services, entertainment services and libraries, archives, museums and other cultural services; and</li> <li>(b) broadcasting and audio-visual services, including measures with respect to planning, licensing and spectrum management, and including:               <ul style="list-style-type: none"> <li>i) services offered in Australia; and</li> <li>ii) international services originating from Australia.</li> </ul> </li> </ul>
All sectors	Australia reserves the right to adopt or maintain any measure with respect to proposed investments by foreign persons* that are subject to approval by the Australian Government and may also require notification under Australia's Schedule of Commitments on Investment (National Treatment) or its Schedule of Specific Commitments on Trade in Services.
All sectors	Australia reserves the right to adopt or maintain any measure that it considers necessary for the protection of its essential security interests with respect to proposals by foreign persons* to invest in Australia.
All sectors	Australia reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services <sup>3</sup> to the extent that they are social

<sup>1</sup> "Creative arts" include: the performing arts – including theatre, dance and music – visual arts and craft, literature, film, television, video, radio, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid arts work which uses new technologies to transcend discrete artform divisions.

<sup>2</sup> "Cultural heritage" includes: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable or built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions.

\* The term "foreign person" has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

Sector	Exemption
	services established or maintained for a public purpose: income security or insurance; social security or insurance; social welfare; public education; public training; health; child care; public utilities; public transport; and public housing.
All sectors	Australia reserves the right to adopt or maintain any measure with respect to: <ul style="list-style-type: none"> <li>– the privatisation of government owned entities or assets; and</li> <li>– the devolution to the private sector of services provided in the exercise of governmental authority at the date of entry into force of this Agreement.</li> </ul>
<b>PART II. SECTOR-SPECIFIC LIMITATIONS</b>	
A. AGRICULTURE, HUNTING AND FORESTRY (ISIC rev. 3.1: 01 and 02)	<p>Australia reserves the right to adopt or maintain any measure with respect to the proposed acquisition by a foreign person* of an interest in agricultural land<sup>4</sup> where the cumulative value of agricultural land owned by the foreign person* alone or together with associates, including the proposed acquisition, is above A\$15 million.</p> <p>Australia reserves the right to adopt or maintain any measure with respect to the proposed acquisition by a foreign person* of an interest in an agribusiness<sup>5</sup> where the cumulative value of the interest held by the foreign person* in that agribusiness, alone or together with associates, including the proposed acquisition, is above A\$55 million.</p> <p>Australia reserves the right to adopt or maintain any measure with respect to marketing boards or</p>

<sup>3</sup> This includes any measure with respect to: the collection of blood and its components; the distribution of blood and blood-related products, including plasma derived products; plasma fractionation services; and the procurement of blood and blood-related products and services.

<sup>4</sup> The term “agricultural land” has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* and *Foreign Acquisitions and Takeovers Regulation 2015* (Commonwealth).

<sup>5</sup> The term “agribusiness” has the meaning set out in the *Foreign Acquisitions and Takeovers Act 1975* and *Foreign Acquisitions and Takeovers Regulation 2015* (Commonwealth).

Sector	Exemption
	similar arrangements.
<p data-bbox="197 363 658 427"><b>I. TRANSPORT, STORAGE AND COMMUNICATIONS</b></p> <p data-bbox="197 459 439 528">Water Transport (ISIC rev. 3.1: 61)</p> <p data-bbox="197 568 439 636">Air Transport (ISIC rev. 3.1: 62)</p> <p data-bbox="197 1059 577 1128">Post and telecommunications (ISIC rev. 3.1: 64)</p>	<p data-bbox="705 459 2024 564">Australia reserves the right to adopt or maintain any measure with respect to the registration of vessels in Australia. Australia reserves the right to adopt or maintain any measure with respect to maritime cabotage<sup>6</sup> services and offshore transport services.</p> <p data-bbox="705 568 1966 638">Australia reserves the right to adopt or maintain any measure with respect to investment in federal leased airports.</p> <p data-bbox="705 678 2024 713">Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent. In addition:</p> <ul data-bbox="705 719 1973 826" style="list-style-type: none"> <li>– at all times, at least two thirds of the directors of Qantas must be Australian citizens; and</li> <li>– at a meeting of the board of directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen.</li> </ul> <p data-bbox="705 868 2024 938">Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent. Furthermore, it is required that:</p> <ul data-bbox="705 944 1644 1018" style="list-style-type: none"> <li>– at least two-thirds of the Board members must be Australian citizens;</li> <li>– the Chairperson of the Board must be an Australian citizen.</li> </ul> <p data-bbox="705 1059 1995 1129">The Chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.</p> <p data-bbox="705 1133 2007 1166">The maximum aggregate foreign ownership allowed in Telstra is 35 per cent. The maximum individual</p>

<sup>6</sup> For the purposes of this reservation, cabotage is defined as the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia. Offshore transport refers to shipping services involving the transportation of passengers or goods between a port located in Australia and any location associated with or incidental to the exploration or exploitation of natural resources of the continental shelf of Australia, the seabed of the Australian coastal sea and the subsoil of that seabed.



Sector	Exemption
	foreign ownership allowed in Telstra is 5 per cent.
M. EDUCATION (ISIC rev. 3.1: 80)	Australia reserves the right to adopt or maintain any measure with respect to primary education or the supply of educational services through commercial presence.
N. HEALTH AND SOCIAL WORK (ISIC rev. 3.1: 85)	The votes attached to significant foreign shareholdings <sup>7</sup> may not be counted in respect of the appointment, replacement or removal of more than one third of the directors of Commonwealth Serum Laboratories (CSL) who hold office at a particular time. The head office, principal facilities used by CSL and any CSL subsidiaries used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must remain in Australia. Two-thirds of the directors of the board of CSL and the chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

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<sup>7</sup> For the purposes of this entry, “significant foreign shareholding” means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least 5 per cent of the voting shares in CSL.

## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF THE COOK ISLANDS

1. The Cook Islands specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).
2. Limitations are listed in the horizontal and sector-specific sections, using references that correspond to the International Standard Industrial Classification of all Economic Activities as set out by the Statistical Office of the United Nations (ISIC Rev.3.1), unless otherwise stated.

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	The Cook Islands reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in the Cook Islands provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	The Cook Islands reserves the right to adopt or maintain any measure in sectors in which it has not undertaken sector-specific commitments in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments.
All sectors	The Cook Islands reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or, b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.
All sectors	The Cook Islands reserves the right to adopt or maintain any measure in relation to the control, management or use of protected areas, including resources on land, interests in land or sea, that are set up for heritage or conservation management purposes (both historic and natural heritage), public recreation, and scenery

	preservation.
All sectors	The Cook Islands reserves the right to adopt or maintain any measure in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone, and the continental shelf, including for the issuance of maritime concessions in the continental shelf.
All sectors	Where the Cook Islands Government wholly owns or has effective control over an enterprise then the Cook Islands reserves the right to adopt or maintain any measures in relation to the sale of any shares in that enterprise or any assets of that enterprise to any person, including according more favourable treatment to Cook Islanders.
<b>PART II. SECTOR-SPECIFIC EXEMPTIONS</b>	
B. FISHING (ISIC Rev 3.1: 0501)	The Cook Islands reserves the right to maintain or adopt any measures in relation to the control of the activities of foreign fishing, including fishing landing, first landing of fish processed at sea, and access to the Cook Islands (port privileges) consistent with the provisions of the United Nations Convention on the Law of the Sea.
C. MINING AND QUARRYING (ISIC Rev 3.1: 101-142)	The Cook Islands reserves the right to adopt any measure in order to prohibit, regulate, manage or control the production, use, distribution, or retail of minerals or mineraloids or the like (including crystalline and abiogenic or of like makeup or composition that may include an aggregate of non minerals) in origin, including setting conditions for natural persons or juridical persons to do so.

## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF THE FEDERATED STATES OF MICRONESIA

1. The Federated States of Micronesia specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	The Federated States of Micronesia reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in the Federated States of Micronesia provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	The Federated States of Micronesia reserves the right to adopt or maintain any measure in sectors in which it has not undertaken sector-specific commitments in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments.
All sectors	The Federated States of Micronesia reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or, b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.

## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF KIRIBATI

1. Kiribati specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	Kiribati reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Kiribati provided that the requirement that does not materially impair the ability of the investor to exercise control over its investment.
All sectors	With respect to paragraph 1 of Article 10 of Chapter 9 (Investment), Kiribati reserves the right to adopt or maintain any measure in sectors in which it has not undertaken sector-specific commitments in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments.
All sectors	Kiribati reserves the right to adopt or maintain any measure a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; b) as part of the act devolving a service that is provided in the exercise of government authority at the time the agreement enters into force.

**ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS**

**SCHEDULE OF NAURU**

1. Nauru specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).

<b>Sector</b>	<b>Exemption</b>
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	Nauru reserves the right to adopt or maintain any measure requiring that a majority of the Board of Directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Nauru, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	Nauru reserves the right to adopt or maintain any measure in sectors in which no sector-specific commitments have been undertaken in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments.
All sectors	Nauru reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or, b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.

## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF NEW ZEALAND

1. New Zealand specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Board of Directors) of Chapter 9 (Investment).
2. Unless otherwise indicated, the classification of investment sectors is based on the 2002 International Standard Industrial Classification of All Economic Activities (ISIC) Revision 3.1 of the United Nations Statistical Office.

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	<p>New Zealand reserves the right to adopt or maintain any measure that requires the following investment activities to receive prior approval by the New Zealand Government under its overseas investment regime:</p> <ul style="list-style-type: none"> <li>(a) acquisition or control of 25 per cent or more of any class of shares<sup>1</sup> or voting power<sup>2</sup> in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ\$10 million;</li> <li>(b) commencement of business operations or acquisition of an existing business, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ\$10 million;</li> <li>(c) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's overseas investment legislation; and</li> <li>(d) acquisition, regardless of the dollar value, of 25 per cent or more of any class of shares or voting power in a New Zealand entity that owns commercial fishing quota or annual catch entitlement,</li> </ul>

<sup>1</sup> For greater certainty, the term 'shares' includes shares and other types of securities.

<sup>2</sup> For greater certainty, 'voting power' includes the power to control the composition of 25 percent or more of the governing body of the New Zealand entity.

Sector	Exemption
	<p>or the acquisition of commercial fishing quota or annual catch entitlement.</p> <p>New Zealand reserves the right to adopt or maintain any measure that sets out the approval criteria to be applied to the categories of transactions that require approval under New Zealand's overseas investment regime.</p>
All sectors	<p>New Zealand reserves the right to adopt or maintain any measures in relation to the control, management or use of:</p> <ul style="list-style-type: none"> <li>– protected areas, including resources on land, interests in land or water, that are set up for heritage management purposes (both historic and natural heritage), public recreation and scenery preservation; or</li> <li>– species owned under enactments by the Crown or that are protected by or under an enactment.</li> </ul>
All sectors	<p>New Zealand reserves the right to adopt or maintain any nationality or residency measures in relation to the management of:</p> <ul style="list-style-type: none"> <li>– animal welfare; and</li> <li>– the preservation of plant, animal and human life and health; including in particular: <ul style="list-style-type: none"> <li>– food safety of domestic and exported foods;</li> <li>– animal feeds;</li> <li>– food standards;</li> <li>– biosecurity; and</li> <li>– certification of the plant or animal health status of goods.</li> </ul> </li> </ul> <p>Nothing in this limitation shall be construed to derogate from the obligations of Chapter 5 (Sanitary and Phytosanitary Measures), or the obligations of the SPS Agreement.</p> <p>Nothing in this reservation shall be construed to derogate from the obligations of Chapter 6 (Technical Regulations, Standards and Conformity Assessment Procedures), or the obligations of the TBT Agreement.</p>



Sector	Exemption
All sectors	New Zealand reserves the right to adopt or maintain any measures in relation to water, including the allocation, collection, treatment and distribution of drinking water.
All sectors	New Zealand reserves the right to maintain or adopt any measures made by or under an enactment in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone and the continental shelf, including for the issuance of maritime concessions in the continental shelf.
All sectors	Where the New Zealand Government wholly owns or has effective control over an enterprise then New Zealand reserves the right to adopt or maintain any measures in relation to the sale of any shares in that enterprise or any assets of that enterprise to any person, including according more favourable treatment to New Zealand nationals.
All sectors	New Zealand reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in New Zealand provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
<b>PART II. SECTOR-SPECIFIC EXEMPTIONS</b>	
A. AGRICULTURE (ISIC rev. 3.1: 01)	<p>The <i>Dairy Industry Restructuring Act 2001</i> (DIRA) and regulations provide for the New Zealand government to acquire, free of charge, and without condition, a copy of a regulated database held by the Livestock Improvement Corporation Ltd (LIC) in the event of its demutualisation or certain other events.</p> <p>Furthermore, should LIC be liquidated or removed from New Zealand's register of companies, or the New Zealand government receives a copy of the database as specified above, the New Zealand government may determine arrangements for the database to be managed by another dairy industry entity. In doing so it may take into account nationality and residency considerations, including in relation to senior management and composition of the board of directors.</p>

Sector	Exemption
	<p>In addition, the DIRA sets out data reporting obligations to the LIC applying to those engaged in herd testing of dairy cattle.</p> <p>The DIRA also provides for access to the data held in the core database to be denied if access is not beneficial, or is harmful, to the New Zealand dairy industry, which could take into account nationality or residency considerations and the intended use of the data. Conditions may also be applied to data use.</p> <p>The DIRA restricts who may hold shares in LIC, and this regime may not be amended without the consent of the responsible Minister.</p>
	<p>Under the <i>Primary Products Marketing Act 1953</i>, the New Zealand government may impose regulations necessary to enable producers of products derived from beekeeping; fruit growing; deer farming or game deer; or of goats, being the fur bristles or fibres grown by the goat (“primary products”) to control the marketing of primary products. In particular, the <i>Primary Products Marketing Act 1953</i> provides for the establishment of statutory marketing authorities with monopoly marketing and acquisition powers (or lesser powers), and provision of a range of measures relating to such aspects as:</p> <ul style="list-style-type: none"> <li>– the functions, powers, appointment, membership and dissolution of the marketing authorities;</li> <li>– the management of the affairs of the marketing authorities;</li> <li>– the acquisition of primary products by the marketing authorities and matters relating to the pricing and method of payment for primary products so acquired;</li> <li>– matters relating to the production, distribution, licensing and sale of primary products;</li> <li>– matters relating to the payment of fees and levies on primary products;</li> <li>– the acquisition of information required of fees and levies on primary products;</li> <li>– the acquisition of information required for the purposes of the marketing authorities; and</li> <li>– the prescription of offences and penalties relating to the <i>Primary Products Marketing Act 1953</i>.</li> </ul>
	<p>New Zealand reserves the right to adopt or maintain any measures in relation to:</p> <ul style="list-style-type: none"> <li>– the holding of shares in co-operative dairy company arising from the amalgamation authorised by section 7(1)(a) of the <i>Dairy Industry Restructuring Act 2001</i> (DIRA) (or any successor body); and</li> </ul>

Sector	Exemption
	<ul style="list-style-type: none"> <li>- the disposition of assets of that company or its successor bodies.</li> </ul>
	<p>New Zealand reserves the right to adopt or maintain any measures in relation to the export marketing of fresh kiwifruit to all markets other than Australia.</p>
	<p>New Zealand reserves the right to maintain or adopt any measures necessary to give effect to the establishment or the implementation of mandatory marketing plans (also referred to as “export marketing strategies”) for the export marketing of products derived from:</p> <ul style="list-style-type: none"> <li>- agriculture;</li> <li>- beekeeping;</li> <li>- horticulture;</li> <li>- arboriculture;</li> <li>- arable farming; and</li> <li>- the farming of animals,</li> </ul> <p>where there is support within the relevant industry that a mandatory collective marketing plan should be adopted or activated.</p> <p>For the avoidance of doubt, mandatory marketing plans in the context of this reservation exclude measures limiting the number of market participants or limiting the volume of exports.</p>
<p><b>B. FISHING</b> (ISIC rev. 3.1: 05)</p>	<p>New Zealand reserves the right to maintain or adopt any measures in relation to the control the activities of foreign fishing, including fishing landing, first landing of fish processed at sea, and access to New Zealand ports (port privileges) consistent with the provisions of the <i>United Nations Convention on the Law of the Sea</i>.</p>
<p><b>C. MINING AND QUARRYING</b> (ISIC rev. 3.1: 10-12)</p> <p><b>D. MANUFACTURING</b> (ISIC rev.</p>	<p>New Zealand reserves the right to adopt any measures in order to prohibit, regulate, manage or control the production, use, distribution, or retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so.</p>

<b>Sector</b>	<b>Exemption</b>
3.1: 23)	
I. TRANSPORT, STORAGE AND COMMUNICATIONS (ISIC rev. 3.1: 62)	<p>No one foreign national may hold more than 10 per cent of shares which confer voting rights in Air New Zealand unless they have the permission of the Kiwi Shareholder.<sup>3</sup> In addition:</p> <ul style="list-style-type: none"> <li>– at least three members of the Board of Directors must be ordinarily resident in New Zealand;</li> <li>– more than half of the Board of Directors must be New Zealand citizens; and</li> <li>– the Chairperson of the Board of Directors must be a New Zealand citizen.</li> </ul>

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<sup>3</sup> The Kiwi Share in Air New Zealand is a single NZ\$1 special rights convertible preference share issued to the Crown. The Kiwi Shareholder is Her Majesty the Queen in Right of New Zealand.

## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF NIUE

1. Niue specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	Niue reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Niue, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	Niue reserves the right to adopt or maintain any measure in sectors in which no sector-specific commitments have been undertaken in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments.
All sectors	Niue reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or, b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.

## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF PALAU

1. Palau specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).
2. Limitations are listed in the horizontal and sector-specific sections, using references that correspond to the International Standard Industrial Classification of all Economic Activities as set out by the Statistical Office of the United Nations (ISIC Rev.3.1), unless otherwise stated.

<b>Sector or Sub-sector</b>	<b>Exemption</b>
All	Palau reserves the right to adopt or maintain any measure requiring that a majority of the Board of Directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Palau, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	With respect to Article 10.1 of Chapter 9 (Investment), Palau reserves the right to adopt or maintain any measure:  (i) in sectors in which no sector-specific commitments have been undertaken in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments; and  (ii) activities reserved to Palauans, as listed in the horizontal sections of the Schedule of Specific Commitments on Trade in Services.
All sectors	Palau citizens should constitute 20 per cent of employees of enterprises that are not wholly-owned by Palau citizens when the value of the initial investment is less than US\$500,000 or, in the case of hotel or other short-term lodging facility, US\$5 million.

All sectors	Palau reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.
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## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF THE REPUBLIC OF THE MARSHALL ISLANDS

1. The Republic of Marshall Islands specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	The Republic of the Marshall Islands reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in the Republic of the Marshall Islands, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	The Republic of the Marshall Islands reserves the right to adopt or maintain any measure in: (i) sectors in which no sector-specific commitments have been undertaken in its Schedule of Commitments on Investment or in its Schedule of Specific Commitments on Trade in Services; (ii) areas reserved to the citizens of the Republic of the Marshall Islands, as listed in the horizontal sections of the Schedule of Commitments on Investment (National Treatment) or of the Schedule of Specific Services Commitments.
All sectors	The Republic of the Marshall Islands reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.



## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF SAMOA

1. Samoa specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	Samoa reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Samoa, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	Samoa reserves the right to adopt or maintain any measure in sectors in which no sector-specific commitments have been undertaken in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments.
All sectors	Samoa reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.

## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF SOLOMON ISLANDS

1. Solomon Islands specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	Solomon Islands reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Solomon Islands provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	Solomon Islands reserves the right to adopt or maintain any measure in sectors in which no sector-specific commitments have been undertaken in its Schedule of Commitments on Investment or its Schedule of Specific Services Commitments.
All sectors	Solomon Islands reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or, b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.

## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF TONGA

1. Tonga specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	Tonga reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Tonga, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	Tonga reserves the right to adopt or maintain any measure in sectors in which no sector- specific commitments have been undertaken in its Schedule of Commitments on Investment or its Schedule of Specific Services Commitments.
All sectors	Tonga reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.

## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF TUVALU

1. Tuvalu specifies below a list of exemptions from commitments under Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	Tuvalu reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Tuvalu, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	Tuvalu reserves the right to adopt or maintain any measure in sectors in which no sector-specific commitments have been undertaken in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments.
All sectors	Tuvalu reserves the right to adopt or maintain any measure: a) where the state wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or, b) as part of the act of devolving a service that is provided in the exercise of governmental authority.at the time the Agreement enters into force.

## ANNEX 9-B: SCHEDULE OF COMMITMENTS ON SENIOR MANAGEMENT AND BOARD OF DIRECTORS EXEMPTIONS

### SCHEDULE OF VANUATU

1. Vanuatu specifies below a list of exemptions from the obligation of Article 10.3 (Senior Management and Boards of Directors) of Chapter 9 (Investment).

Sector	Exemption
<b>PART I. HORIZONTAL EXEMPTIONS</b>	
All sectors	Vanuatu reserves the right to adopt or maintain any measure requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in Vanuatu, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
All sectors	Vanuatu reserves the right to adopt or maintain any measure in: (i) sectors in which no sector-specific commitments have been undertaken in its Schedule of Commitments on Investment or in its Schedule of Specific Services Commitments; (ii) areas reserved to the citizens of Vanuatu, as listed in the horizontal sections of the Schedule of Commitments on Investment (National Treatment) or of the Schedule of Specific Services Commitments on Trade in Services.
All sectors	Vanuatu reserves the right to adopt or maintain any measure: a) where it wholly owns or has effective control over an enterprise, as well as in relation to the transfer or disposal of government-owned entities or assets; or b) as part of the act of devolving a service that is provided in the exercise of governmental authority at the time the Agreement enters into force.

## ANNEX 9-C

### EXPROPRIATION AND COMPENSATION

1. An action or a series of related actions by a Party cannot constitute an expropriation, unless it interferes with a tangible or intangible property right or property interest in a covered investment.
2. Article 13 of Chapter 9 (Investment) addresses two situations:
  - (a) direct expropriation, where a covered investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
  - (b) where an action or series of related actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
3. The determination of whether an action or series of related actions by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in paragraph 2(b), requires a case-by-case, fact-based inquiry that considers, among other factors:
  - (a) the economic impact of the government action, although the sole fact that an action or series of related actions by a Party has an adverse effect on the economic value of an investment does not establish that such an expropriation has occurred;
  - (b) whether the government action breaches the government's prior binding written commitment to the investor whether by contract or licence; and
  - (c) the character of the government action, including its objective and rationale.
4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety and the environment do not constitute expropriation of the type referred to in paragraph 2(b).

## ANNEX 9-D: LIST OF MEASURES NOT COMPLIANT WITH TRIMS AGREEMENT

1. In accordance with the obligation in Article 11.2(b) of Chapter 9 (Investment), a list of measures of [name of Party] that do not comply with the TRIMS Agreement are included in the template below.<sup>1</sup>

<p><b>(i) Description of the measures and of their main features</b></p> <p>[The notification should clearly identify the measures. Any more general information about the programme of which the measures form a part and which the notifying Party wishes to communicate should be provided under point (ii) below.</p> <p>The measures and their main features should be described in sufficient detail to enable the nature and scope of the measures to be clearly defined. In particular, along with each measure, the following principal features should be described whenever relevant:</p> <ol style="list-style-type: none"><li>1. The category in the illustrative list under which the measure falls.</li><li>2. Whether the TRIM is applied by the government of the Party under discretionary authority or mandatory legislation. In the former case, each specific application shall be notified and enterprises subject to the measure identified.</li><li>3. Where the TRIM is general in nature, the criteria for determining to which enterprises it applies in sufficient detail to enable those enterprises to be identified.</li></ol>	
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<sup>1</sup> This template accords with the guidance in the WTO *Technical Cooperation Handbook On Notification Requirements* WT/TC/NOTIF/TRIMS/1 (15 October 1996).

<p>4. Where the TRIM is applied pursuant to mandatory legislation, whether the legislation requires the measure to be applied to new enterprises or new investments of existing enterprises.</p> <p>5. Whether compliance with the measure by the enterprise is (a) mandatory or enforceable under domestic law or administrative rulings or (b) necessary to obtain an advantage. In the latter case, the nature of the advantage should be described.<sup>2</sup></p> <p>6. When the TRIM relates to specific products, sufficient detail on these products to define the scope of the measure.</p> <p>7. The date of implementation of the TRIM.</p> <p>8. Whether the TRIM, as applied under domestic law, includes provision for its phasing-down and/or elimination. If so, details should be given.</p> <p>9. The domestic law, regulation or administrative guideline under which the TRIM is applied.</p> <p>10. The level of government applying the TRIM, the name of the implementing agency and any information on the procedures.]</p>	
<p><b>(ii) General information on the programme in question</b></p> <p>[Where appropriate, Parties should provide more general information about the programme of which the notified TRIM forms a part.]</p>	

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<sup>2</sup> Information that would prejudice the legitimate commercial interests of particular enterprises need not be notified.