

## CHAPTER 13

### INVESTMENT

#### Article 13.1 Definitions

For the purposes of this Chapter:

“activities carried out in the exercise of governmental authority” means activities carried out neither on a commercial basis nor in competition with one or more economic operators;

“enterprise” means an enterprise as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions), and a branch of an enterprise;

“enterprise of a Party” means:

- (a) an enterprise, as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions), constituted or organised under the law of that Party, or a branch located in the territory of that Party,<sup>1</sup> and carrying out substantial business activities in the territory of that Party; or
- (b) an enterprise, as defined in Article 1.4 (General Definitions – Initial Provisions and General Definitions), constituted or organised under the law of that Party and directly or indirectly owned or controlled by a national of that Party or by an enterprise referred to in subparagraph (a);

“freely usable currency” means “freely usable currency” as determined by the International Monetary Fund under the *Articles of Agreement of the International Monetary Fund* done at Bretton Woods on 22 July 1944 (“IMF Articles of Agreement”);

“investment” means every 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:

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<sup>1</sup> For greater certainty, the inclusion of a “branch” in the definitions of “enterprise” and “enterprise of a Party” is without prejudice to a Party’s ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;<sup>2, 3</sup>
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licences, authorisations, permits, and similar rights conferred pursuant to the Party's law;<sup>4</sup> and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action;

“investor of a non-Party” means, with respect to a Party, an investor that attempts to make,<sup>5</sup> is making, or has made an investment in the territory of that Party, that is not an investor of the other Party;

“investor of a Party” means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party.

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<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, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

<sup>3</sup> A loan issued by a Party to the other Party is not an investment.

<sup>4</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 such factors as the nature and extent of the rights that the holder has under the Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

<sup>5</sup> For greater certainty, the Parties understand that, for the purposes of the definitions of “investor of a non-Party” and “investor of a Party”, an investor “attempts to make” an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.

## **Article 13.2**

### **Scope**

1. This Chapter applies to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party;
  - (b) covered investments; and
  - (c) with respect to Article 13.11 (Performance Requirements), Article 13.17 (Investment and Environmental, Health, and other Regulatory Objectives), Article 13.18 (Investment and Environment), and Article 13.19 (Corporate Social Responsibility), all investments in the territory of that Party.
2. A Party's obligations under this Chapter apply to measures adopted or maintained by:
  - (a) the central, regional, or local governments or authorities of that Party; and
  - (b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional, or local governments or authorities of that Party.<sup>6</sup>
3. For greater certainty, this Chapter does not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement.
4. With respect to the establishment, expansion or acquisition of an investment, Article 13.4 (Market Access), Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment), Article 13.11 (Performance Requirements), and Article 13.12 (Senior Management and Boards of Directors) do not apply to activities carried out in the exercise of governmental authority.
5. Article 13.4 (Market Access), Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment), Article 13.11 (Performance Requirements), and Article 13.12 (Senior Management and Boards of Directors) do not apply to audio-visual services.

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<sup>6</sup> For greater certainty, governmental authority is delegated under the Party's law, including through a legislative grant or a government order, directive, or other action transferring or authorising the exercise of governmental authority.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral, or multilateral air services agreement to which both Parties are party, the air services agreement shall prevail in determining the rights and obligations of the Parties.
7. If the Parties have the same obligations under this Agreement and a bilateral, plurilateral, or multilateral air services agreement, a Party may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

### **Article 13.3** **Relation to Other Chapters**

1. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement of a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 9 (Financial Services).

### **Article 13.4** **Market Access**

1. Neither Party shall adopt or maintain, with respect to market access through the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of any investment in its territory by an investor of the other Party, either on the basis of its entire territory or on the basis of the territory of a central, regional, or local level of government, a measure<sup>7</sup> that:
  - (a) imposes limitations on:

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<sup>7</sup> This paragraph does not prohibit measures which apply to a specific site or a particular limited area within the territory of a Party.

- (i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive suppliers, or the requirement of an economic needs test;
  - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;<sup>8</sup>
  - (iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
  - (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or
  - (v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test; or
- (b) requires that an economic activity is carried out through a specific type of legal entity or by a joint venture.

### **Article 13.5 National Treatment<sup>9</sup>**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment,

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<sup>8</sup> Sub-paragraphs 1(a)(i) through (iii) do not cover measures taken in order to limit the production of an agricultural good.

<sup>9</sup> For greater certainty, whether treatment is accorded in “like circumstances” under Article 13.5 (National Treatment) or Article 13.6 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

### **Article 13.6 Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.<sup>10</sup>
3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms.

### **Article 13.7 Minimum Standard of Treatment<sup>11</sup>**

1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which

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<sup>10</sup> For greater certainty, paragraphs 1 and 2 do not cover treatment accorded by the United Kingdom to investors (and to their investments) of territories for whose international relations the United Kingdom is responsible.

<sup>11</sup> Article 13.7 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 13A (Customary International Law).

is required by that standard, and do 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.
  4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.
  5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

### **Article 13.8**

#### **Treatment in Case of Armed Conflict or Civil Strife**

1. Notwithstanding subparagraph 6(b) of Article 13.13 (Non-Conforming Measures), each Party shall accord to investors of the other Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of the other 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 restitution, compensation, or both, as appropriate, for that loss.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 13.5 (National Treatment) but for subparagraph 6(b) of Article 13.13 (Non-Conforming Measures).

### **Article 13.9 Expropriation and Compensation<sup>12</sup>**

1. Neither Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:
  - (a) for a public purpose;<sup>13</sup>
  - (b) in a non-discriminatory manner;
  - (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
  - (d) in accordance with due process of law.
2. Compensation shall:
  - (a) be paid without delay;
  - (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);
  - (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
  - (d) be fully realisable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate

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<sup>12</sup> Article 13.9 (Expropriation and Compensation) shall be interpreted in accordance with Annex 13B (Expropriation).

<sup>13</sup> For greater certainty, for the purposes of this Article, the term “public purpose” refers to a concept in customary international law. Domestic law may express this or a similar concept by using different terms, such as “public necessity”, “public interest”, or “public use”.

for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:
  - (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus
  - (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. 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 to the revocation, limitation, or creation of intellectual property rights, to the extent that the issuance, revocation, limitation, or creation is consistent with Chapter 15 (Intellectual Property) and the TRIPS Agreement.<sup>14</sup>
6. For greater certainty, a Party's decision not to issue, renew, or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant,
  - (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy or grant; or
  - (b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction, and maintenance of that subsidy or grant,standing alone, does not constitute an expropriation.

### **Article 13.10 Transfers**

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

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<sup>14</sup> For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

- (a) contributions to capital;<sup>15</sup>
  - (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees, and other fees;
  - (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
  - (d) payments made under a contract, including a loan agreement;
  - (e) payments made pursuant to Article 13.8 (Treatment in Case of Armed Conflict or Civil Strife) and Article 13.9 (Expropriation and Compensation); and
  - (f) payments arising out of a dispute.
2. Each Party shall permit 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. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of the other Party.
4. Notwithstanding paragraphs 1 through 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its law<sup>16</sup> 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;
  - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
  - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

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<sup>15</sup> For greater certainty, contributions to capital include the initial contribution.

<sup>16</sup> For greater certainty, this Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's law relating to its social security, public retirement, or compulsory savings programmes.

5. Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.
6. For greater certainty, nothing in this Article shall be construed to prevent a Party from applying its law relating to the imposition of economic sanctions in good faith.

### **Article 13.11** **Performance Requirements**

1. Neither Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking:<sup>17</sup>
  - (a) to export a given level or percentage of goods or services;
  - (b) to achieve a given level or percentage of domestic content;
  - (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
  - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investment;
  - (e) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;
  - (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;
  - (g) to supply exclusively from the territory of the Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market;

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<sup>17</sup> For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “requirement” or a “commitment or undertaking” for the purposes of paragraph 1.

- (h)
  - (i) to purchase, use, or accord a preference to, in its territory, technology of the Party or of a person of the Party;<sup>18</sup> or
  - (ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a particular technology;
- (i) to locate the regional or world headquarters of an enterprise in its territory;
- (j) to achieve a given level or value of research and development in its territory;
- (k) to adopt:
  - (i) a rate or amount of royalty below a certain level; or
  - (ii) a given duration of the term of a licence contract,<sup>19</sup>

with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the investment and a person in the territory of the Party, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of a non-judicial governmental authority of the Party.<sup>20</sup>

2. Neither Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:
  - (a) to achieve a given level or percentage of domestic content;
  - (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

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<sup>18</sup> For the purposes of this Article, the term “technology of the Party or of a person of the Party” includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive licence.

<sup>19</sup> A “licence contract” referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

<sup>20</sup> For greater certainty, subparagraph (k) does not apply when the licence contract is concluded between the investment and a Party.

- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investment; or
  - (d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings.
- 3. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
- 4. Subparagraphs 1(f), 1(h), and 1(k) do not apply:
  - (a) if a Party authorises use of an intellectual property right in accordance with of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or
  - (b) if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a court or administrative tribunal or by a competition authority to prevent or remedy a restriction or distortion of competition after a judicial or administrative process conducted pursuant to a Party's competition law.<sup>21</sup>
- 5. Subparagraph 1(k) does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under the Party's copyright law.
- 6. Subparagraphs 1(a) through 1(c), 2(a), and 2(b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
- 7. Subparagraphs 1(b), 1(c), 1(f) through 1(j), 2(a) and 2(b) do not apply to government procurement.
- 8. Subparagraphs 2(a) and 2(b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

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<sup>21</sup> The Parties recognise that a patent does not necessarily confer market power.

9. Subparagraphs (1)(h) and (1)(k) shall not be construed to prevent a Party from adopting or maintaining measures to protect legitimate public welfare objectives, provided that such measures are not applied in an arbitrary or unjustifiable manner, or in a manner that constitutes a disguised restriction on international trade or investment.
10. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement, or enforcing a commitment or undertaking, to employ or train workers in its territory provided that the employment or training does not require the transfer of a particular technology, production process, or other proprietary knowledge to a person in its territory.
11. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.
12. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, if a Party did not impose or require the commitment, undertaking, or requirement.

**Article 13.12**  
**Senior Management and Boards of Directors**

A Party shall not require that an enterprise of that Party that is a covered investment appoint to senior management or board of director positions natural persons of a particular nationality or who are resident in the territory of that Party.

**Article 13.13**  
**Non-Conforming Measures**

1. Article 13.4 (Market Access), Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment), Article 13.11 (Performance Requirements) and Article 13.12 (Senior Management and Boards of Directors) do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at:

- (i) the central level of government, as set out by that Party in its Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment);
  - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment); or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment), Article 13.11 (Performance Requirements) or Article 13.12 (Senior Management and Boards of Directors).
2. Article 13.4 (Market Access), Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment), Article 13.11 (Performance Requirements) and Article 13.12 (Senior Management and Boards of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by that Party in its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment).
  3. If a Party considers that a non-conforming measure applied by a regional level of government of the other Party, as referred to in subparagraph 1(a)(ii), creates a material impediment to investment in relation to the former Party, it may request consultations with regard to that measure. The Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.<sup>22</sup>
  4. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

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<sup>22</sup> For greater certainty, a Party may request consultations with the other Party regarding a non-conforming measure applied by a central level of government, as referred to in subparagraph 1(a)(i).

5. Article 13.5 (National Treatment) and Article 13.6 (Most-Favoured-Nation Treatment) do not apply to any measure that falls within Article 5 of the TRIPS Agreement, and any measure that is covered by an exception to, or derogation from, the obligations imposed by Article 15.8 (National Treatment) of Chapter 15 (Intellectual Property), or by Article 3 or Article 4 of the TRIPS Agreement.
6. Article 13.4 (Market Access), Article 13.5 (National Treatment), Article 13.6 (Most-Favoured-Nation Treatment) and Article 13.12 (Senior Management and Boards of Directors) do not apply to:
  - (a) government procurement; or
  - (b) subsidies or grants provided by a Party, including government supported loans, guarantees, and insurance.
7. For greater certainty, any amendments or modifications to a Party's Schedules to Annex I or Annex II (Schedules of Non-Conforming Measures for Services and Investment), pursuant to this Article, shall be made in accordance with Article 32.2 (Amendments – Final Provisions).
8. Australia shall work towards further liberalisation and transparency as regards subparagraphs 1(h) through (k) of Article 13.11 (Performance Requirements). To that end, Australia shall conduct consultations at the regional level of government in respect of subparagraphs 1(h) through (k) of Article 13.11 (Performance Requirements), against the measures maintained at the regional level of government in respect of which entry 45 in its Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment) and entry 30 in its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment) have been made.
9. Australia shall endeavour to conclude the consultations referred to in paragraph 8 within nine months of entry into force of this Agreement. Following the conclusion of these consultations, Australia shall:
  - (a) promptly notify the United Kingdom of the outcome of the consultations; and
  - (b) unless the Parties agree otherwise, amend accordingly Australia's Schedule to Annex I (Schedules of Non-Conforming Measures for Services and Investment) and its Schedule to Annex II (Schedules of Non-Conforming Measures for Services and Investment), as soon as is reasonably practicable.

#### **Article 13.14 Subrogation**

If a Party, or any agency, institution, statutory body, or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance, or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

#### **Article 13.15 Special Formalities and Information Requirements**

1. Nothing in Article 13.5 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the law of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.
2. Notwithstanding Article 13.5 (National Treatment) and Article 13.6 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position 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 13.16 Denial of Benefits<sup>23</sup>**

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit

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<sup>23</sup> For greater certainty, the benefits of this Chapter may be denied at any time before or after an investment is made.

transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

**Article 13.17**  
**Investment and Environmental, Health, and other Regulatory Objectives**

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

**Article 13.18**  
**Investment and the Environment**

1. The Parties recall the provisions of this Agreement that are applicable to promoting mutually supportive investment and environmental outcomes and that are consistent with the sovereign right of each Party to set its levels of environmental protection, including as set out in the relevant provisions, exceptions, and exclusions of this Chapter, of Annex I (Schedules of Non-Conforming Measures for Services and Investment) and Annex II (Schedules of Non-Conforming Measures for Services and Investment), of Chapter 31 (General Provisions and Exceptions), and of Chapter 22 (Environment).
2. The Parties further recall that such provisions, exceptions, and exclusions include those applicable to:
  - (a) maintaining and effectively enforcing domestic environmental law and policies;
  - (b) recognising that it is inappropriate to waive or derogate from environmental law to encourage investment;
  - (c) affirming commitments under multilateral environmental agreements;
  - (d) supporting the transition to low carbon and climate resilient economies; and
  - (e) encouraging investment in environmental goods and services.

**Article 13.19**  
**Corporate Social Responsibility**

Each Party reaffirms the importance of encouraging investors operating within its territory or subject to its jurisdiction voluntarily to incorporate into their internal policies those internationally recognised standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party, such as the *OECD Guidelines for Multinational Enterprises* done at Paris on 21 June 1976 and the *United Nations Guiding Principles on Business and Human Rights* done at Geneva on 16 June 2011.

## **ANNEX 13A**

### **CUSTOMARY INTERNATIONAL LAW**

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 13.7 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

## ANNEX 13B

### EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Paragraph 1 of Article 13.9 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by paragraph 1 of Article 13.9 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
  - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
    - (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
    - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;<sup>24</sup> and
    - (iii) the character of the government action.
  - (b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health,<sup>25</sup> safety, and the environment,

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<sup>24</sup> For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

<sup>25</sup> For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances, and blood and blood-related products.

do not constitute indirect expropriations, except in rare circumstances.

## ANNEX 13C

### FOREIGN INVESTMENT FRAMEWORK

1. A decision or requirement under Australia's Foreign Investment Framework, which comprises Australia's *Foreign Investment Policy*; *Foreign Acquisitions and Takeovers Act 1975* (Cth); *Foreign Acquisitions and Takeovers Regulation 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Cth); *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2020* (Cth); *Financial Sector (Shareholdings) Act 1998* (Cth); and Ministerial Statements, shall not be subject to dispute settlement under Chapter 30 (Dispute Settlement).
2. A decision or requirement by the United Kingdom under the *National Security and Investment Act 2021* or on public interest grounds under Part 3 of the *Enterprise Act 2002*, shall not be subject to dispute settlement under Chapter 30 (Dispute Settlement).