

## CHAPTER 9

### INVESTMENT

#### ARTICLE 9.1

##### Definitions

For the purposes of this Chapter:

- (a) "commercial presence" means any type of business establishment within the territory of a State Party, for the purpose of performing an economic activity, including through:
  - (i) the constitution, acquisition or maintenance<sup>1</sup> of a juridical person; or
  - (ii) the creation or maintenance<sup>2</sup> of a branch or a representative office.
- (b) "juridical person of a State Party" means a juridical person constituted or otherwise organised under the laws and regulations of a State Party and engaged in substantive business operations in the territory of that State Party;
- (c) "juridical person" means any legal entity duly constituted or otherwise organised under applicable laws and regulations, whether for profit or otherwise, and whether privately owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (d) "freely usable currency" means "freely usable currency" as determined by the IMF under its Articles of Agreement;

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<sup>1</sup> For greater certainty, maintenance includes management, conduct and operation.

<sup>2</sup> For greater certainty, maintenance includes management, conduct and operation.

- (e) "natural person of a State Party" means a person who, under the laws and regulations of that State Party, is a national of that State Party.

## ARTICLE 9.2

### Scope and coverage<sup>3</sup>

1. This Chapter applies to measures by a State Party affecting:
  - (a) juridical persons or natural persons of another State Party in respect of their constitution, acquisition, maintenance<sup>4</sup> or expansion of a commercial presence within the territory of the first-mentioned State Party; and
  - (b) commercial presence of such juridical or natural persons of another State Party within the territory of the first-mentioned State Party,

such commercial presence being in all sectors, with the exception of services sectors under the scope of Chapter 10 (Trade in Services).<sup>5</sup>

2. Notwithstanding paragraph 1, the provisions Article 9.5 (Access to Justice and Due Process of Law), Article 9.13 (Subcommittee on Investment), Article 9.14 (Focal Points or Ombudspersons) and Article 9.15 (Dispute Prevention and Mediation) apply also to measures affecting commercial presence within the territory of a State Party of juridical persons or

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<sup>3</sup> For greater certainty, this Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a State Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis. This Chapter shall not prevent a State Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory.

<sup>4</sup> For greater certainty, maintenance includes management, conduct and operation.

<sup>5</sup> It is understood that services excluded from the scope of Chapter 10 (Trade in Services) under paragraph 3 of Article 10.1 (Scope and Coverage) of Chapter 10 (Trade in Services) shall not fall within the scope of this Chapter.

natural persons of another State Party in services sectors under the scope of Chapter 10 (Trade in Services).

3. Nothing in any other international agreements relating to investment to which Singapore and one or more Signatory MERCOSUR States are parties shall be interpreted or applied so as to invalidate, extend or otherwise affect the rights and obligations of the State Parties arising out of this Chapter.

4. This Chapter shall not apply to:

- (a) government procurement, which shall be subject to Chapter 13 (Government Procurement);
- (b) any taxation measure; and
- (c) subsidies or grants provided by a State Party, including government-supported loans, guarantees, and insurance. For greater certainty, the State Parties understand that this includes conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to its own juridical persons or natural persons and to the commercial presence of such persons.

5. For greater certainty, this Chapter does not impose any obligation on a State Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

### ARTICLE 9.3

#### National Treatment

1. Where a State Party schedules commitments in accordance with Article 9.8 (Schedules of Specific Commitments) in the sectors inscribed in its Schedule of Specific Commitments in Annex I (Schedules of Specific Commitments for Investment), and subject to any

conditions and qualifications set out therein, it shall accord to the juridical persons or natural persons of another State Party, and to the commercial presence of such persons, treatment no less favourable than that it accords, in like circumstances, to its own juridical persons or natural persons, and to the commercial presence of such persons, with respect to the constitution, acquisition, maintenance<sup>6</sup> and expansion of a commercial presence.

2. For a State Party making commitments in accordance with Article 9.9 (Schedules of Non-Conforming Measures), it shall accord to the juridical persons or natural persons of another State Party, and to the commercial presence of such persons treatment no less favourable than that it accords, in like circumstances, to its own juridical persons or natural persons, and to the commercial presence of such persons, with respect to the constitution, acquisition, maintenance<sup>7</sup> and expansion of a commercial presence.

3. For greater certainty, whether treatment is accorded in "like circumstances" pursuant to this Article depends on the totality of the circumstances, including whether the treatment distinguishes between juridical persons, natural persons, or commercial presence on the basis of legitimate public welfare objectives.

## ARTICLE 9.4

### Special Formalities and Information Requirements

1. Nothing in Article 9.3 (National Treatment) shall be construed to prevent a State Party from adopting or maintaining any measure that prescribes special formalities in connection with a commercial presence within its territory of a juridical person or a natural person of the another State Party, such as a residency requirement for registration or a requirement that such commercial presence be legally constituted under the laws or regulations of the State Party, provided that such formalities do not materially impair the protections afforded by a State Party to natural persons and juridical persons of the another State Party and to the commercial presence of such persons pursuant to this Chapter.

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<sup>6</sup> For greater certainty, maintenance includes management, conduct and operation.

<sup>7</sup> For greater certainty, maintenance includes management, conduct and operation.

2. Notwithstanding Article 9.3 (National Treatment), a State Party may require a natural person or juridical person of another State Party or the commercial presence within its territory of such persons to provide information concerning that commercial presence solely for informational or statistical purposes. The State Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the natural person or juridical person of another State Party or the commercial presence of such persons. Nothing in this paragraph shall be construed to prevent a State Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws and regulations.

## ARTICLE 9.5

### Access to Justice and Due Process of Law

1. A State Party shall not deny to a commercial presence within its territory of a juridical person or a natural person of another State Party access to justice, including in criminal, civil or administrative proceedings conducted in accordance with the laws and regulations of the first-mentioned State Party.

2. Each State Party shall grant to a commercial presence within its territory of a juridical person or a natural person of another State Party treatment in accordance with due process of law, including in criminal, civil or administrative proceedings.

## ARTICLE 9.6

### Senior Management and Boards of Directors

1. Where a State Party schedules commitments in accordance with Article 9.8 (Schedules of Specific Commitments), in the sectors inscribed in its Schedule of Specific Commitments

in Annex I (Schedules of Specific Commitments for Investment), and subject to any conditions and qualifications set out therein, it shall not require that a commercial presence within its territory of a juridical person or a natural person of another State Party appoint to senior management positions natural persons of any particular nationality.

2. For a State Party making commitments in accordance with Article 9.9 (Schedules of Non-Conforming Measures), it shall not require that a commercial presence within its territory of a juridical person or a natural person of another State Party appoint to senior management positions natural persons of any particular nationality.

3. A State Party may require that a majority of the board of directors, or any committee thereof, of a commercial presence within its territory of a juridical person or a natural person of another State Party, be of a particular nationality, or resident in the territory of the State Party, provided that the requirement does not materially impair the ability of the natural person or juridical person of another State Party to exercise control over that commercial presence.

#### ARTICLE 9.7

##### Schedules of Specific Commitments for Investment and Schedules of Reservations and Non-Conforming Measures for Services and Investment

Schedules of Specific Commitments for Investment are annexed to this Agreement as Annex I (Schedules of Specific Commitments for Investment), in the case of Argentina, Paraguay and Uruguay (Positive Listing Approach). Schedules of Reservations and Non-Conforming Measures for Services and Investment are annexed to this Agreement as Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), in the case of Brazil and Singapore (Negative Listing Approach).

#### ARTICLE 9.8

##### Schedules of Specific Commitments

1. A State Party making commitments in accordance with this Article shall set out in Annex I (Schedules of Specific Commitments for Investment) the specific commitments it undertakes under Article 9.3 (National Treatment) and Article 9.6 (Senior Management and Boards of Directors). With respect to sectors where such commitments are undertaken, each list shall specify:

- (a) conditions and qualifications on National Treatment; and
- (b) conditions and qualifications on Senior Management and Boards of Directors.

## ARTICLE 9.9

### Schedules of Non-Conforming Measures

1. For a State Party making commitments in accordance with this Article, Article 9.3 (National Treatment) and Article 9.6 (Senior Management and Boards of Directors) shall not apply to:

- (a) any existing non-conforming measure that is maintained by that State Party at:
  - (i) the central level of government as set out by that State Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-conforming Measures for Services and Investment);
  - (ii) a regional level of government; or
  - (iii) 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 at the date of entry into force of the Agreement, with Article 9.3 (National Treatment), or Article 9.6 (Senior Management and Boards of Directors).

2. Article 9.3 (National Treatment) and Article 9.6 (Senior Management and Boards of Directors) shall not apply to any measure that a State Party adopts or maintains with respect to sectors, sub-sectors or activities set out in List B of its Schedule in Annex III (Schedules of Reservations and Non-conforming Measures for Services and Investment).

3. Articles 9.3 (National Treatment) shall not apply to any measure that is an exception to, or derogation from, a State Party's obligations under Chapter 15 (Intellectual Property Rights) and the TRIPS Agreement, as specifically provided for in that Agreement.

## ARTICLE 9.10

### Payments and Transfers

1. Except under the circumstances envisaged in Article 19.10 (Temporary Safeguard Measures) of Chapter 19 (Institutional, General and Final Provisions), each State Party shall permit all transfers relating to a commercial presence of a juridical person or natural person of another State Party within its territory, to be made freely and without undue delay into and out of its territory. Such transfers include:

(a) contributions to capital, including the initial contribution;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the commercial presence or from the partial or complete liquidation of the commercial presence;

(c) interest, royalty payments, management fees, and technical assistance and other fees;  
and

(d) payments made under a contract, including a loan agreement.

2. Each State Party shall permit such transfers 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 State Party may delay or prevent 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) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings;  
or

(f) social security, public retirement or compulsory savings schemes.

4. Nothing in this Chapter shall affect the rights and obligations of the State Parties under the Articles of Agreement of the IMF, including the use of exchange actions, which are in conformity with the Articles of Agreement of the IMF, provided that a State Party shall not impose restrictions on capital transactions inconsistent with its commitments under this Chapter regarding such transactions, except under Article 19.10 (Temporary Safeguard

Measures) of Chapter 19 (Institutional, General and Final Provisions Chapter) or on request of the IMF.

## ARTICLE 9.11

### Right to Regulate

1. The State Parties reaffirm their inherent right to regulate within their territories to achieve legitimate public welfare objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection, the conservation of living or non-living exhaustible natural resources, or the promotion and protection of cultural diversity.
2. The State Parties recognize that it is inappropriate to encourage the constitution, acquisition or maintenance<sup>8</sup> of a commercial presence in its territory by relaxing or reducing the protections set out in paragraph 1.

## ARTICLE 9.12

### Responsible Business Conduct

1. Each State Party shall encourage juridical and natural persons of another State Party and their commercial presence within its territory to voluntarily incorporate into their business practices and internal policies internationally recognized principles, standards and guidelines of responsible business conduct that have been endorsed or are supported by that State Party.
2. In accordance with its laws and regulations, each State Party should encourage juridical and natural persons of another State Party and their commercial presence within its territory

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<sup>8</sup> For greater certainty, maintenance includes management, conduct and operation.

to undertake and maintain meaningful engagement and dialogue, in accordance with international Responsible Business Conduct principles, standards and guidelines that have been endorsed or are supported by that State Party, with Indigenous peoples, traditional communities and local communities.

3. Each State Party recognises the importance of juridical and natural persons of another State Party and their commercial presence within its territory implementing due diligence in order to identify and address adverse impacts, such as on the environment and labour conditions, in their operations, their supply chains and other business relationships.

4. Within the framework of the Subcommittee on Investment, the State Parties shall exchange information and best practices on issues covered by paragraphs 1 and 2, including on possible ways to facilitate the uptake of Responsible Business Conduct practices by juridical and natural persons of another State Party and their commercial presence within its territory.

## ARTICLE 9.13

### Subcommittee on Investment

1. This Chapter shall be administered by the Subcommittee on Investment, under the Joint Committee established on Article 19.1 of the Chapter 19 (Institutional, General and Final Provisions Chapter).

2. The Subcommittee shall meet within 1 (one) year of the date of entry into force of this Agreement. Thereafter, it shall meet whenever necessary but at least every 2 (two) years. Its meetings shall be chaired jointly by Singapore and one of the Signatory MERCOSUR States, and occur in such places and through such means as agreed by the State Parties.

3. The Subcommittee shall have the following functions and responsibilities:

- (a) oversee the implementation and operation of this Chapter and, if necessary, recommend amendments to this Chapter;
  - (b) discuss relevant subjects for commercial presence covered by this Chapter and share opportunities for the expansion of commercial presence, in consultations with private sector and civil society when appropriate;
  - (c) identify opportunities for cooperation and further investment facilitation, with a view to developing and coordinating, as appropriate, the implementation of cooperation and facilitation programmes which have been mutually agreed by the interested State Parties;
  - (d) endeavour to resolve and prevent disputes that may arise regarding the interpretation or application of this Chapter; and
  - (e) to the extent possible provide information on measures to promote and facilitate investments.
4. The Subcommittee shall establish its rules of procedure.

#### ARTICLE 9.14

##### Focal Points or Ombudspersons

1. Subject to its laws and regulations, the State Parties shall establish, designate, or maintain focal points or Ombudspersons in order to facilitate communication, information flow and respond to inquiries from another State Party regarding measures affecting matters covered by this Chapter.
2. The focal points or Ombudspersons shall:
  - (a) interact and cooperate with the focal points or Ombudspersons of other State Parties;

- (b) interact with natural persons or juridical persons of another State Party, including in the event of inquiries brought by such persons or facilitate their interaction, when deemed appropriate, with its own competent governmental authorities or agencies; and
  - (c) facilitate access for another State Party to the information referred to in Article 17.3 (Notification and provision of information) of Chapter 17 (Transparency).
3. The focal points or Ombudspersons referred to in paragraph 1 are set out in Annex 9-B (Focal Points or Ombudspersons).

## ARTICLE 9.15

### Dispute Prevention and Mediation

1. Without prejudice to a State Party's rights and obligations under Chapter 18 (Dispute Settlement), the State Parties shall endeavour to settle any differences arising out of this Chapter in an amicable manner and on the basis of mutually satisfactory solutions in particular through the Subcommittee on Investment.
2. A State Party and the natural persons or juridical persons of another State Party may agree at any time to resolve differences arising out of this Chapter through the use of voluntary procedures, such as mediation, which shall be without prejudice to their legal position or rights under this Agreement.

## ARTICLE 9.16

### Annexes

The following Annexes form an integral part of this Chapter:

- (a) Annex 9-A (Additional Investment Provisions for Brazil, Paraguay, Uruguay and Singapore);
- (b) Annex 9-B (Focal Points or Ombudspersons);
- (c) Annex I (Schedules of Specific Commitments for Investment); and
- (d) Annex III (Schedules of Reservations and Non-conforming Measures for Services and Investment).

#### ARTICLE 9.17

##### Savings Clause

1. For 2 (two) years from the date of termination of this Agreement, this Chapter (including the relevant Annexes) and other provisions in the Agreement as may be necessary for the application or interpretation of this Chapter shall continue to apply to a commercial presence which is in existence at the date of termination.
2. For the avoidance of doubt, paragraph 1 shall not apply to the constitution, acquisition or expansion of such commercial presence after the date of termination.