

18. Replace Chapter 18 (Final Provisions) with:

CHAPTER 18

GENERAL PROVISIONS AND EXCEPTIONS

Article 1

General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures), Chapter 10 (Electronic Commerce) and Chapter 11 (Investment), Article XX of GATT 1994 shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Movement of Natural Persons), Chapter 10 (Electronic Commerce) and Chapter 11 (Investment), Article XIV of GATS including its footnotes shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.

3. For the purposes of this Agreement, the Parties understand that measures referred to in Article XX(f) of GATT 1994 include measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.¹

4. For the purposes of Chapter 8 (Trade in Services) and Chapter 11 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between

¹ "Creative arts" include the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

Parties where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in these Chapters shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value.²

5. A Party shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by the Parties under Chapter 8 (Trade in Services) and Chapter 11 (Investment) if requested by a Party affected by the measures referred to in Paragraph 4.

Article 2 Security Exceptions

Nothing in this Agreement shall be construed to:

- (a) require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) preclude a Party from applying measures that it considers necessary for:
 - (i) the fulfilment of its obligations under the United Nations Charter for the maintenance or restoration of international peace or security; or

² "Creative arts" include the performing arts – including theatre, dance and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

- (ii) the protection of its own essential security interests.

Article 3 Taxation Measures

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

- (a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;
- (b) they are granted or imposed under Article 9 (Transfers) of Chapter 11 (Investment); or
- (c) they are granted or imposed under Article 10 (Expropriation and Compensation) of Chapter 11 (Investment).

3. Where Paragraph 2(b) or (c) applies, Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall also apply in respect of taxation measures.

4. If there is a dispute described in Article 19.1 (Scope and Definitions) of Chapter 11 (Investment) that may relate to a taxation measure, the relevant Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established pursuant to Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall accord serious consideration to a joint decision of the relevant Parties as to whether the measure in question is a taxation measure. For this purpose, Article 26.7 (Conduct of the Arbitration) of Chapter 11 (Investment) shall apply *mutatis mutandis*.

5. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention relating to the avoidance of double taxation in force between any of the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail. Any consultations between the relevant Parties about whether an inconsistency relates to a taxation measure shall be done by the competent tax authorities, as stipulated under the domestic laws and regulations of the relevant Parties. The request for such consultations shall be addressed through the contact points designated in accordance with Article 2 (Communications) of Chapter 19 (Institutional Provisions).

6. Nothing in this Agreement shall oblige a Party to extend to any other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement relating to the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

7. For the purposes of this Article, taxation measures do not include any import or customs duties.

Article 4

Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

- (a) in the case of trade in goods, in accordance with GATT 1994 and the *Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994* in Annex 1A to the WTO Agreement, adopt restrictive import measures;
- (b) in the case of trade in services, adopt or maintain restrictions on trade in services on which it has

undertaken commitments, including on payments or transfers for transactions related to such commitments.

2. In the case of investments, where a Party is in serious balance of payments and external financial difficulties or under threat thereof, or where, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management, it may adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 1 (Definitions) of Chapter 11 (Investment).

3. Restrictions adopted or maintained under Paragraph 1(b) or 2 shall:

- (a) be consistent with the IMF Articles of Agreement;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of any other Party;
- (c) not exceed those necessary to deal with the circumstances described in Paragraph 1(b) or 2;
- (d) be temporary and be phased out progressively as the situation specified in Paragraph 1(b) or 2 improves; and
- (e) be applied on a non-discriminatory basis such that no Party is treated less favourably than any other Party or non-Party.

4. With respect to trade in services and investment,

- (a) it is recognised that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure,

inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition;

- (b) in determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

5. Any restrictions adopted or maintained by a Party under Paragraph 1 or 2, or any changes therein, shall be notified promptly to the other Parties.

6. A Party adopting or maintaining any restrictions under Paragraph 1 or 2 shall:

- (a) in the case of investment, respond to any other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement;
- (b) in the case of trade in services, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, a Party, if requested, shall promptly commence consultations with any interested Party.

Article 5 Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Māori in respect of

matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 20 (Consultations and Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Arbitral Tribunals) of Chapter 20 (Consultations and Dispute Settlement) may be requested to determine only whether any measure (referred to in Paragraph 1) is inconsistent with their rights under this Agreement.

Article 6

Screening Regime and Dispute Settlement

A decision by a competent authority, including a foreign investment authority, of a Party^{3, 4} on whether or not to approve or admit a foreign investment proposal, and the enforcement of any conditions or requirements that an approval or admission is subject to, shall not be subject to the dispute settlement provisions under Section B (Investment Disputes between a Party and an Investor) of Chapter 11

³ For the purposes of this Article, “a competent authority, including a foreign investment authority” means, as of the date of entry into force of the Second Protocol:

- (a) for Australia, the Treasurer of the Commonwealth of Australia under Australia’s Foreign Investment Framework including the *Foreign Acquisitions and Takeovers Act 1975* (Commonwealth), and any amendments thereto;

(Investment) or Chapter 20 (Consultations and Dispute Settlement).

- (b) For Brunei Darussalam, a competent authority includes an authority designated under any relevant law, regulation and policy, as may be amended;
- (c) for Cambodia, the competent authorities established under relevant laws, regulations and policies, including the Council for the Development of Cambodia designated under the *Royal Kram No. NS/RKM/1021/014* dated 15 October 2021 promulgating *Law on Investment of the Kingdom of Cambodia*, Municipal-Provincial Investment Sub-Committees designated under the *Sub-Decree No. 120 ANK/BK* dated 20 June 2022 on the Establishment and Management of Capital-Provincial Investment Sub-Committees, as may be amended;
- (d) for Indonesia, competent authority including a foreign investment authority designated under the *Law Number 25 Year 2007 on Investment*, *Law Number 8 Year 1995 on Capital Market*, *Law Number 21 Year 2011 on Financial Service Authority*, *Law Number 7 Year 1992 on Banking*, *Law Number 40 Year 2014 on Insurance*, *Law Number 11 Year 1992 on Pension Fund*, *Law Number 1 Year 2013 on Micro Finance Institution*, *Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation* and other relevant laws, regulations, and policies, as may be amended;
- (e) for Lao PDR, the Ministry of Planning and Investment under the *Law on Investment Promotion* (No. 14/NA, dated 17 November 2016), the Ministry of Industry and Commerce under the *Law on Enterprise* (No. 46/NA, dated 26 December 2013), and other competent authorities under relevant laws, regulations and policies, and any amendments thereto;
- (f) for Malaysia, the Ministers performing functions and exercising powers under, but not limited to, the *Promotion of Investments Act 1986* [Act 327], the *Income Tax Act 1967* [Act 53], the *Petroleum Development Act 1974* [Act 144], and the *Industrial Co-ordination Act 1975* [Act 156], and any amendments thereto;
- (g) for Myanmar, the Myanmar Investment Commission and Region/State Investment Committees under the *Myanmar Investment Law*, the *Pyidaungsu Hluttaw Law No. 40/2016* dated 18 October 2016 and the *Myanmar Investment Rules, Notification No. 35/2017* dated 30 March 2017, and committees under the *Myanmar Special Economic Zone Law*, the *Pyidaungsu Hluttaw Law No. 1/2014* dated 23 January 2014 and the *Industrial Zone Law, the Pyidaungsu Hluttaw Law No. 7/2020* dated 26 May 2020, and other relevant laws, regulations, and policies, and any amendments thereto;
- (h) for New Zealand, the decision-making Ministers authorised under New Zealand's overseas investment framework including the *Overseas Investment Act 2005* and the *Fisheries Act 1996*, and any amendments thereto;

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- (i) for Singapore, a competent authority includes an authority designated under any relevant law, regulation and policy, as may be amended;
 - (j) for Thailand, the competent authorities responsible under its laws, regulations, and policies, as may be amended, for the sectors or activities where foreign investment is proposed or approved; and
 - (k) for Viet Nam, the competent authority as defined in the *Law on Investment* and other relevant laws and regulations such as *Law on Securities*, *Law on Credit Institutions*, *Law on Insurance Business*, *Law on Oil and Gas* and policies, as may be amended.

If a Party establishes a competent authority, including a foreign investment authority after the date of entry into force of the Second Protocol, this Article shall also apply to such competent authority.

⁴ For the purposes of this Article, “a decision by a competent authority, including a foreign investment authority” means, for the Philippines, the decision by the Securities and Exchange Commission under *Republic Act No. 11232*, otherwise known as the *Revised Corporation Code of the Philippines*; the National Security Council under *Executive Order No. 292*, otherwise known as the *Administrative Code of 1987*, as amended; the Board of Investments under *Executive Order No. 226*, otherwise known as the *Omnibus Investments Code of 1987*, as amended; the Office of the President and Inter-Agency Investment Promotion Coordination Committee (IIPCC) under *Republic Act No. 11647*, otherwise known as an *Act Promoting Foreign Investments*, amending thereby *Republic Act No. 7042*, otherwise known as the *Foreign Investments Act of 1991*, as amended, and *Republic Act No. 11659*, otherwise known as an *Act Amending Commonwealth Act No. 146*, otherwise known as the *Public Service Act*, as amended; and the relevant agencies of the Philippine Government vested with jurisdiction and mandate to regulate specific sectors or activities under such other laws; and any amendments thereto.