

**EK-2:**

## **CHAPTER XX INVESTMENT FACILITATION**

### **Article 1 *Objectives and Scope***

1. The purpose of this Chapter is to ensure facilitation of procedures as much as possible to increase the direct investment flows between the Parties and create a better and safer environment for doing business [of investors] in the territory of each Party.
2. This Chapter applies to the administration of [measures (of general application) affecting] [requirements necessary for] the authorization of investment activities.
3. Parties recognise the right to regulate, and to introduce new regulations in order to meet national policy objectives and in a manner consistent with their obligations and commitments under this Agreement.
4. Nothing in this Chapter shall be construed to confer any rights for market access and establishment.
5. This Chapter is without prejudice to the terms, limitations, conditions and qualifications set out in each Party's Schedule of Specific Commitments and the List of MFN Exemptions.
6. This Chapter shall not apply to government procurement and public concessions. In case of inconsistency between this Chapter and the terms of a public concession, the latter shall prevail.

### **Article 2 *Definitions***

1. For the purposes of this Chapter;
  - a) **“authorization”** means the permission to pursue [investment activities], resulting from a procedure an investor must adhere to in order to demonstrate compliance with the necessary requirements.
  - b) **“investment”** means [an enterprise and a branch of an enterprise]
  - c) **“investor”** means a natural person of a Party or an enterprise of a Party that seeks to make, is making or has made investments in the territory of the other Party.
  - d) **“enterprise”** means any juridical person or any other entity duly constituted or organised under the applicable laws and regulations, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organisation or company
  - e) **“investment activities”** means establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments in [services and non-services sectors];

**Article 3**  
***Transparency and Predictability***

1. Each Party shall ensure that laws, regulations, procedures, and other measures of general application as well as international agreements affecting investments are promptly published or otherwise made available in a manner that enables interested persons and the other Parties to become acquainted with them.
2. If a Party requires authorization for investment activities, the Party shall promptly publish or otherwise make publicly available in writing the information necessary to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. Such information shall include, *inter alia*, where it exists:
  - (a) the requirements and procedures;
  - (b) contact information of relevant competent authorities;
  - (c) fees;
  - (d) technical standards;
  - (e) procedures for appeal or review of decisions concerning applications;
  - (f) procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;
  - (g) opportunities for public involvement, such as through hearings or comments; and
  - (h) indicative timeframes for processing of an application.
3. Each Party shall ensure that laws it proposes to adopt in relation to matters falling within the scope of this Chapter are published in advance in electronic form.
4. Each Party shall endeavour to ensure that regulations it proposes to adopt in relation to matters falling within the scope of this Chapter are published in advance in electronic form.
5. Each Party should endeavour to provide reasonable opportunity for investors of the Parties to comment on such proposed laws and regulations and to address collectively in writing substantive issues raised in the comments received.

**Article 4**  
**Procedures**

*Submission of Applications*

1. Each Party shall, to the extent practicable, endeavour avoid requiring an applicant to approach more than one competent authority for each application in order to demonstrate compliance with licensing and qualification requirements.
2. To the extent practicable, the competent authorities shall accept applications in electronic format under the same conditions of authenticity as paper submissions.

*Application Timeframes*

3. The competent authorities shall, to the extent practicable, permit an applicant to submit an application at any time. Where specific time periods for applications exist, they shall be of reasonable length.

*Acceptance of Copies*

4. The competent authorities of each Party shall, in accordance with its domestic law and practice, accept authenticated copies in place of original documents

*Processing of Applications*

5. If a Party requires authorisation, it shall ensure that its competent authorities:

(a) to the extent practicable, provide an indicative timeframe for processing of an application;

(b) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's domestic laws and regulations;

(c) at the request of the applicant, provide without undue delay information concerning the status of the application, if possible in electronic form.

(d) process an application which they consider complete under the Party's domestic laws and regulations, as expeditiously as possible.

(e) inform the applicant of the final decision in writing<sup>1</sup> without undue delay.

6. Each Party shall ensure that an authorisation is granted when all the applicable requirements have been fulfilled and, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

7. The competent authorities shall, within a reasonable period of time after the receipt of an application which they consider incomplete:

(a) inform the applicant that the application is considered incomplete;

(b) identify the additional information required to complete the application or otherwise provide guidance on why the application is considered incomplete; and

(c) provide the applicant the opportunity to complete its application within a reasonable period of time or, if appropriate, to submit a new application.

8. If the competent authorities reject an application, they shall inform the applicant, in writing<sup>2</sup>:

(a) of the reasons for rejection of the application and, if applicable, the procedures for resubmission of an application

(b) of the timeframe and procedures for any available review or appeal against the decision

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<sup>1</sup> “In writing” may include electronic form.

<sup>2</sup> “In writing” may include electronic form.

9. An applicant should not be prevented from submitting another application solely on the basis of a previously rejected application.

**Article 5  
Fees**

Each Party shall ensure that authorization fees<sup>3</sup> are based on authority set out in a measure, reasonable and if possible commensurate with the costs incurred by the competent authorities, including those for supervision of the investment activities.

**Article 6  
Appeal and Review**

1. Each Party shall provide that an investor to whom a competent authority issues a decision has the right, within its territory, to:

- a. an administrative appeal to or review by an administrative authority higher than or independent of the competent authority that issued the decision<sup>4</sup>; and/or
- b. a judicial appeal or review of the decision.

2. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

**Article 7  
Independence and Impartiality**

1. Each Party shall ensure that the procedures used by, and the related decisions of, the competent authorities are impartial with respect to all applicants.

2. The competent authorities should be operationally independent of, and not accountable to, any investor for which the authorisation is required.

**Article 8  
Digitilization and Electronic Governance**

*Electronic Documents*

1. Parties shall endeavour to reach the highest possible level of digitalization of procedures related to investments.

2. For the purposes of this Agreement, electronic documents and electronic signatures shall produce the same legal effects as those of paper documents and handwritten signatures,

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<sup>3</sup> For the purposes of this paragraph, fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

<sup>4</sup>In situations in which a decision is issued at a ministerial level or higher, the decision shall be subject to a request for reconsideration by the same competent authorities.

subject to the Party's domestic laws and regulations on electronic documents and electronic signatures

*Single Contact Point*

3. The Single Contact Point (SCP) shall constitute a single entry point for the submission of all documents required by the agencies or regulatory bodies involved in the investment activities.
4. Documents uploaded through the SCP shall not be subsequently required by any agency or regulatory body by any other means, except in cases in which the authenticity of the electronic document cannot be established or ensured through electronic means alone.
5. The SCP website shall provide information regarding policy, laws and regulations relating to the investment activities. Parties shall endeavour to include subnational information regarding policy, laws and regulations relating to the investment activities.
6. The SCP shall contain the information referred to in Article 3 (2) of this Chapter.
7. The provisions regarding SCP shall be implemented within 3 (three) years after the entry into force of this Agreement.

**Article 9  
Working Group on Investment Facilitation**

1. A Working Group on Investment Facilitation is hereby established in accordance with Article VII (3).
2. The Working Group shall meet as needed but at least once a year as envisaged by Article VII (2), for the purpose of affording Parties the opportunity to raise any matters related to the implementation of this Chapter or the furtherance of its objectives.
3. The Working Group shall carry out such responsibilities such as:
  - a. follow the implementation of this Chapter;
  - b. discuss issues related to investment facilitation of general interest;
  - c. propose cooperation and facilitation agendas, which may include issues such as: transfer of funds, personnel mobility and logistical matters, among others;
  - d. exchange experiences in investment facilitation;
  - e. discuss views and requests from investors and other relevant stakeholders, when applicable, on specific issues; and
  - f. compile and disseminate international best practices.