

# AGREEMENT BETWEEN AUSTRALIA AND THE UNITED ARAB EMIRATES ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the United Arab Emirates ("the UAE") and the Government of Australia ("Australia"), hereinafter referred to individually as a "Party" and collectively as "the Parties", resolving to:

RECOGNISING the importance of foreign investments in creating, maintaining, and enhancing sustainable economic growth and prosperity for both Parties;

ACKNOWLEDGING each Party's right to protect its security, safety, and environment within its territory; and

RECOGNISING their inherent right to regulate and resolving to preserve the flexibility of the Parties to set legislative and regulatory priorities, safeguard public welfare, and protect legitimate public welfare objectives, such as public health, safety, the environment, the conservation of living or non-living exhaustible natural resources, the integrity and stability of the financial system and public morals;

HAVE AGREED as follows:

## **Section A. Terms Used In this Agreement**

### **Article 1. Definitions**

For the purposes of this Agreement:

Agreement means the Agreement between the United Arab Emirates and Australia on the Promotion and Protection of Investments;

covered investment means, with respect to a Party, an investment:

(a) in its territory of an investor of the other Party;

(b) existing on the date of entry into force of this Agreement, or established, acquired, or expanded thereafter, and which, where applicable, has been admitted, by the host Party, subject to its relevant laws, regulations, and policies; (1)

(1) For greater certainty, covered investments will not include investments in the pre-establishment phase of investment.

enterprise means any entity duly constituted or organised under the applicable law, whether or not for profit, and whether private or government-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, company or similar organisation;

enterprise of a Party means an enterprise that is constituted or organised under the law of that Party and carrying out substantial business activities in the territory of that Party;

existing measures means measures that are in effect on the date of the entry into force of this Agreement;

freely usable currency means "freely usable currency" as defined under the Articles of Agreement of the International Monetary Fund;

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

(a) an enterprise;

- (b) shares, stocks and other forms of equity participation in an enterprise;
- (c) bonds, debentures, and other forms of debt of an enterprise;
- (d) a loan to a State enterprise;
- (e) futures, options, and other derivatives;
- (f) public debt;
- (g) rights under a contract, including turnkey, construction, management, production, or revenue-sharing contracts;
- (h) claims to money or to any contractual performance related to a business and having a financial value;
- (i) intellectual property rights and goodwill, which are recognised pursuant to the laws and regulations of the host Party;
- (j) rights conferred pursuant to the laws and regulations of the host Party or contracts, such as concessions, licenses, authorisations or permits, excluding those for the exploration and exploitation of 'Natural Resources'. Natural Resources means all hydrocarbons such as oil, gas, and condensates, derivatives and primary by-products thereof but does not include renewable energy resources;
- (k) movable and immovable property and any related property rights, such as leases, mortgages, liens, or pledges;
- (l) For greater certainty, investment shall not include the following:
  - (a) claims to money that arise solely from:
    - (i) commercial contracts for the sale of goods or services; and
    - (ii) the extension of credit in connection with a commercial transaction, such as trade financing;
  - (b) an order or judgment entered in a judicial or administrative action or an arbitral proceeding;

For the purposes of the definition of investment in subparagraph (l), returns that are invested shall be treated as an investment and any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment;

investor of a Party means a natural person of a Party or an enterprise of a Party that has made an investment in the territory of the other Party;

measures include any law, regulation, rules, procedure, decisions, administrative actions or practice;

natural person of a Party means a natural person who under the law of the Party:

- (a) for Australia, is an Australian citizen or a permanent resident of Australia; and
- (b) for the United Arab Emirates, has the nationality of the United Arab Emirates;

territory means:

(a) with respect to Australia, the territory of Australia:

(i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) including Australia's air space, territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereignty, sovereign rights or jurisdiction in accordance with international law particularly the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982;

(b) with respect to the United Arab Emirates, the term "United Arab Emirates" when used in a geographical sense, means the territory of the United Arab Emirates which is under its sovereignty as well as the area outside the territorial water, airspace, and submarine areas over which the United Arab Emirates exercises, in accordance of its international law and the law of United Arab Emirates, sovereign and jurisdictional rights including the Exclusive Economic Zone and the mainland under its jurisdiction in respect of any activity carried on in its water, sea bed, subsoil, in connection with the exploration for or the exploitation of natural resources by virtue of its law and international law;

WTO Agreement means the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

## **Section B. Investment Promotion and Protection**

### **Article 2. Scope and Coverage**

1. This Agreement shall apply to measures adopted or maintained by a Party relating to:

- (a) investors of the other Party; and
- (b) covered investments.

2. For greater certainty, this Agreement 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.

3. Nothing in this Agreement shall apply to:

- (a) government procurement;
- (b) subsidies or grants provided by a Party including government supported loans, guarantees, and insurance;
- (c) services supplied in the exercise of governmental authority within the respective territories of the Parties;
- (d) any measure to the extent it affects the supply of service by a service supplier of a Party, through commercial presence in the territory of the other Party; or
- (e) any measure regarding taxation, including measures taken to enforce taxation obligations.

### **Article 3. Treatment of Investment (2)**

(2) For greater certainty, the treatment in this Article does not require treatment beyond that which is required under the customary international law regarding the minimum standard of treatment of aliens.

1. Each Party shall accord to covered investments of investors of the other Party treatment in accordance with customary international law (3).

(3) The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 3 (Treatment of Investment), including in relation to the customary international law minimum standard of treatment of aliens, results from a general and consistent practice of States that they follow from a sense of legal obligation.

2. A Party breaches this obligation only if a measure constitutes:

- (a) denial of justice in criminal, civil or administrative proceedings;
- (b) fundamental breach of due process, including a fundamental breach of transparency in judicial and administrative proceedings;
- (c) manifest arbitrariness;
- (d) targeted discrimination on manifestly wrongful grounds, such as gender, race, or religious belief;
- (e) abusive treatment, such as coercion, duress and harassment; or
- (f) a failure to provide full protection and security.

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.

## **Article 4. National Treatment (4)**

(4) For greater certainty, whether treatment is accorded in "like circumstances" under Article 4 (National Treatment) or Article 5 (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.

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 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 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 5. 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 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 management, conduct, operation and sale or other disposition of investments.
3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms.
4. Substantive obligations in other international investment treaties and other trade agreements shall not in themselves constitute "treatment" and thus shall not give rise to a breach of this Article, absent measures adopted or maintained by a Party pursuant to those obligations.
5. Nothing in this Agreement shall be construed so as to oblige a Party to extend to investors of the other Party and to their covered investments the benefits of any treatment resulting from:
  - (a) any bilateral or multilateral international agreement for the promotion and protection of investments which was signed prior to the date of entry into force of this Agreement; and
  - (b) for the UAE, treatment granted to the Gulf Cooperation Council (GCC) Member States, and by the UAE to Arab League Members (5).

(5) "Gulf Cooperation Council (GCC) Member States" refers to members of the GCC established under the Charter of the Cooperation Council for the Arab States of the Gulf, done at Abu Dhabi on 25 May 1981, and "Arab League Members" refers to members of the Arab League established under the Charter of the League of Arab States, done at Cairo on 22 March 1945.

6. Subject to paragraph 5, if, after the date of entry into force of this Agreement, a Party subsequently enters into any agreement with a non-party in which it provides treatment to investors of that non-party more favourable than it accords to investors of the other Party in like circumstances, the other Party may request consultations with a view to implementing that more favourable treatment in accordance with paragraphs 1 and 2.
7. Upon receiving such a request, the Parties shall conduct friendly consultations in good faith with a view to reaching agreement within 60 days to implement the more favourable treatment. Subject to the agreement between the Parties, the more favourable treatment shall take effect automatically six months from the date of completion of the consultations. If the Parties do not reach an agreement, the provisions of this article shall not apply.

## **Article 6. Treatment In Case of Armed Conflict or Civil Strife**

1. 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 (6).

(6) This includes the treatment set out in Article 3 (National Treatment) and Article 4 (Most-Favoured- Nation Treatment)

2. Notwithstanding paragraph 1, if an investor 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 with restitution or adequate compensation for such loss.

## **Article 7. Expropriation and Compensation (7)**

(7) This Article shall be interpreted in accordance with Annex I (Expropriation).

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 (8);

(8) 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".

(b) in accordance with due process of law;

(c) in a non-discriminatory manner; and

(d) on payment of prompt, adequate and effective compensation, in accordance with paragraphs 2 through 4.

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 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 Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement ("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 the TRIPS Agreement (9).

(9) 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.

6. Subject to and in accordance with the law of the Party making the expropriation, the affected investor shall have a right to review, by an independent judicial authority of that Party, of the legality of the expropriation and of the valuation of their investment.

## **Article 8. 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:

- (a) contributions to capital, including the initial contribution and additional amounts to maintain or increase the investment;
- (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 in accordance with Articles 6 (Treatment in Case of Armed Conflict or Civil Strife) and 7 (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 relating to:

- (a) the payment of taxes;
- (b) bankruptcy, insolvency, or the protection of the rights of creditors;
- (c) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (d) criminal or penal offences;
- (e) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (f) ensuring compliance with an order or judgment in judicial or administrative proceedings;
- (g) social security, public retirement, superannuation, compulsory savings schemes, or other arrangements to provide pension, end of service scheme or similar retirement benefits; or
- (h) severance entitlements of employees.

5. Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Article, including as set out in paragraph 4.

## **Article 9. Performance Requirements**

1. Neither Party may impose or enforce any requirement, or enforce any commitment or undertaking in connection with the management, conduct, operation, sale or other disposition of an investor of a Party or of a non-party in its territory:

- (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; or

(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.

2. For greater certainty, paragraph 1 shall not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

## **Article 10. Senior Management and Board of Directors**

1. No Party shall require that an enterprise of that Party that is a covered investment appoint to a senior management or board of director positions natural persons of a particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

## **Article 11. Denial of Benefits**

1. A Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of the 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 transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of the other Party, and to investments of that investor, if the enterprise is owned or controlled, directly or indirectly, by persons of a non-party or of the denying Party, provided that, prior to invoking its rights under this paragraph, the denying Party shall consult with the other Party.

## **Article 12. Special Formalities and Information Requirements**

1. Nothing in Article 3 (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 covered investments 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 Agreement.

2. Notwithstanding Article 3 (National Treatment) and Article 4 (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 its covered investment, pursuant to applicable law.

## **Article 13. Non-Conforming Measures**

1. Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 9 (Prohibition of Performance Requirements), and Article 10 (Senior Management and Board of Directors) shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party;

(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 the Articles listed in paragraph 1.

2. Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 9 (Prohibition of Performance Requirements), and Article 10 (Senior Management and Board of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities as set out in its Schedule.

## **Article 14. Corporate Social Responsibility**

1. 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.

2. Each Party should encourage investors or enterprises operating within its territory to undertake and maintain meaningful engagement and dialogue with First Nations people, in accordance with international responsible business conduct standards, guidelines and principles that have been endorsed or are supported by that Party, such as the UN Declaration on the Rights of Indigenous Peoples of 13 September 2007.

## **Section C. Exceptions**

### **Article 15. Prudential Measures**

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, (10) including the protection of investors, depositors, policyholders, or persons to whom a fiduciary duty is owed by a financial service supplier to ensure the integrity and stability of the financial system.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

(10) The Parties understand that "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or financial service suppliers, as well as the safety and financial and operational integrity of payment and clearing systems.

### **Article 16. General Exceptions**

1. For the purposes of this Agreement and subject to the requirement that such measures are not applied in a manner which would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international investment, nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures:

(a) necessary to protect human, animal, or plant life or health;

(b) necessary to protect public morals or to maintain public order (11);

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on a contract;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety;

(d) imposed for the protection of national treasures of artistic, historical, or archaeological value; or

(e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. The Parties understand that the measures referred to in paragraph 1(a) include environmental measures necessary to protect human, animal or plant life or health.

(11) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.



## **Article 17. Security Exception**

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 the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

## **Section D. Settlement of Disputes between the Parties**

### **Article 18. Settlement of Disputes between the Parties**

1. Each Party shall afford adequate opportunity for prompt and friendly consultation regarding any dispute with the other Party connected with this Agreement.
2. If a dispute connected with this Agreement is not resolved, by such means in accordance with paragraph 1, within a period of six months from the date of a Party's written request for negotiations or consultations, it shall be submitted upon the request of either Party to an Arbitral Tribunal established in accordance with the provisions of this Article of this Agreement or, as agreed by the Parties, to any other international tribunal.
3. The Arbitral Tribunal referred to in paragraph 2 shall consist of three persons appointed as follows:
  - (a) each Party shall appoint an arbitrator;
  - (b) the two arbitrators appointed by the Parties shall, within 30 days of the appointment of the second of them, or such longer period as otherwise agreed, select a third arbitrator, by agreement, who shall be a citizen or permanent resident of a non-party which has diplomatic relations with both Parties; and
  - (c) the Parties shall, within 30 days of the selection of the third arbitrator, approve the selection of that arbitrator who shall act as Chair of the Arbitral Tribunal.
4. Arbitration proceedings shall be instituted upon notice of arbitration being given through diplomatic channels by the Party instituting such proceedings to the other Party. Such notice of arbitration shall:
  - (a) specify for each claim, the provision of this Agreement alleged to have been breached and any other relevant provisions;
  - (b) specify the legal and factual basis for each claim, including where relevant, details of an investment;
  - (c) specify the relief sought; and
  - (d) contain the name of the arbitrator appointed by the Party instituting such proceedings.

Within 60 days after giving such notice of arbitration the respondent Party shall notify the Party instituting proceedings of the name of the arbitrator appointed by the respondent Party.

5. If, within the time limits provided for in paragraph 3(b), paragraph 3(c) and paragraph 4, the required appointment has not been made or the required approval has not been given, either Party may request the President of the International Court of Justice to make the necessary appointment. If the President is a citizen or permanent resident of either Party or is otherwise unable to act, the Vice-President shall be invited to make the appointment. If the Vice-President is a citizen or permanent resident of either Party or is unable to act, the Member of the International Court of Justice next in seniority who is not a citizen or permanent resident of either Party shall be invited to make the appointment (12).

(12) The President, Vice President or Member of the International Court of Justice must be a citizen or permanent resident of a non-party which has diplomatic relations with both Parties to make an appointment pursuant to this paragraph. An arbitrator appointed pursuant to this paragraph shall be a citizen or permanent resident of a non-party which has diplomatic relations with both Parties.

6. In case any arbitrator appointed as provided for in this Article shall resign or become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

7. The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Chair of the Tribunal. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit. The Arbitration shall be held in a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958.

8. The Arbitral Tribunal shall decide all questions relating to its competence, in accordance with Annex VI (Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings Under this Agreement), and shall determine its own procedure, subject to any agreement between the Parties.

9. Before the Arbitral Tribunal makes a decision, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The Arbitral Tribunal shall reach its award by majority vote, taking into account the provisions of this Agreement, the international agreements that both Parties have concluded and the generally recognised principles of international law.

10. Each Party shall bear the cost of its appointed arbitrator. The cost of the Chair of the Arbitral Tribunal and the other expenses associated with the conduct of the arbitration board shall be borne, in equal parts, by both Parties.

11. The Arbitral Tribunal shall afford to the Parties a fair hearing. It may render an award on the default of a Party. Any award shall be rendered in writing and shall state its legal basis. A signed counterpart of the award shall be transmitted to each Party.

12. An award shall be final and binding on the Parties.

## **Section E. Institutional Provisions**

### **Article 19. Council on Investment (13)**

(13) For greater certainty, references to Ministers and government departments shall include their successors.

1. The Parties hereby establish an Australia-United Arab Emirates Council on Investment (“the Council”).

2. The Council will promote and enhance economic cooperation between the Parties on investment including in relation to any investment priorities as may be identified by the Parties in accordance with the role and objectives of the Council set out in Article 20 (Role and Objectives of the Council).

3. The Council shall be convened at Ministerial or senior official level within 12 months of entry into force of this Agreement and thereafter at least once every two years. In principle, the Council shall be convened alternately in Australia and the UAE, unless agreed otherwise by the Parties.

4. When convened, the Council shall be co-chaired:

(a) for Australia, jointly by the Treasurer and Minister for Trade and Tourism or their authorised representatives; and

(b) for the UAE, jointly by the Minister of Investment and the Minister of Finance or their authorised representatives.

### **Article 20. Role and Objectives of the Council**

1. The objectives of the Council are to enhance communication, exchanges and practical economic cooperation between Australia and the UAE, with a focus on the following areas:

(a) macroeconomic environments and settings in Australia, the UAE, and globally;

(b) economic challenges and reform policies;

(c) investment trends and policies; and

(d) other mutually beneficial topics and areas of cooperation as may be agreed between the Co-Chairs.

2. Senior officials may take forward the work of the Council, pursuant to Article 19 (Council on Investment), by:

(a) promoting and enhancing engagement and partnership with First Nations people in relation to investment;

(b) monitoring trade and investment relations, identifying opportunities for expanding investment, and identifying issues relevant to investment that may be appropriate for negotiation in an appropriate forum;

- (c) holding consultations on specific investment policy matters of interest to the Parties;
- (d) working toward the enhancement of investment flows under investment projects;
- (e) identifying and working toward the removal of impediments of investment flows under investment projects;
- (f) seeking the views of the private sector, where appropriate, on matters related to the work of the Council;
- (g) establishing or maintaining contact points in their designated agency to provide assistance and advisory services to investors;
- (h) discussing matters of mutual interest to the investment relationship, as may be agreed between the Co-Chairs; and
- (i) establishing mechanisms to make recommendations to its relevant government bodies addressing recurrent issues affecting investors of the other Party.

3. A Party may refer specific investment matters to the Council by delivering a written request to the other Party that includes a description of the matter concerned. The Council may take up the matter promptly after the request is delivered unless the requesting Party agrees to postpone discussion of the matter.

4. Each Party shall endeavour to provide for an opportunity for the Council to discuss a matter before taking actions that could affect adversely the trade or investment interests of the other Party.

## **Article 21. Amendment**

The Parties may agree in writing to amend this Agreement, upon the request of a Party. Such amendments shall enter into force in accordance with the procedures required for the entry into force of this Agreement or as otherwise agreed by the Parties.

## **Article 22. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force 60 days after the date on which the Parties exchange written notifications that they have completed their respective internal procedures necessary for the entry into force of this Agreement, or on such other date as the Parties may agree. This Agreement shall remain in force for a period of 10 years after its entry into force and shall continue to be in force unless replaced by the mutual consent of the Parties or terminated as provided for in paragraph 2.

2. A Party may terminate this Agreement at the end of the initial 10 year period or at any time thereafter by giving a one-year's advance written notice of termination to the other Party through diplomatic channels. Such termination shall become effective twelve months after the date of receipt of such notice of termination by the other Party.

3. Where the Agreement is terminated in accordance with paragraph 2, in respect of investments made prior to the date of termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of 10 years from the date of termination of this Agreement.

4. The Annexes and Footnotes to this Agreement shall constitute an integral part of this Agreement.

Signed at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ two thousand and twenty-four, in the Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

## **Annex I. 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 7 (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 7 (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.

4. The determination of whether an action or series of actions by a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the government action, although the fact that an action or 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;

(b) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; (14) and

(c) the character of the government action.

5. Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health (15), safety, and the environment, do not constitute indirect expropriations, except in rare circumstances.

(14) 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.

(15) For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such actions 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.

## **Annex II. Temporary Safeguard Measures**

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital:

(a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or

(b) if, in exceptional cases, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management.

2. Any measure adopted or maintained under paragraph 1 shall:

(a) not be inconsistent with Article 4 (National Treatment) and Article 5 (Most-Favoured-Nation Treatment);

(b) not exceed those necessary to deal with the circumstances set out in paragraph 1;

(c) be temporary and be phased out progressively as the situations specified in paragraph 1 improve;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and

(e) be consistent with the Articles of Agreement of the International Monetary Fund.

3. A Party adopting or maintaining measures under paragraph 1 shall:

(a) promptly notify, in writing, the other Party of the measures, including any changes therein; and

(b) on request of the other Party, promptly commence consultations with the other Party to review the measures adopted or maintained under paragraph 1, provided that:

(i) in the case of capital movements, such consultations are not otherwise taking place outside of this Agreement; or

(ii) in the case of current account restrictions, such consultations are not otherwise taking place outside this Agreement.

## **Annex III. Foreign Investment Framework of Australia**

Notwithstanding any other provision of this Agreement, Australia reserves the right to adopt or maintain any measure (16) with respect to its Foreign Investment Framework.

(16) For greater certainty, "measure" includes a decision or requirement of the Treasurer under Australia's Foreign Investment Framework.

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 and Guidance Notes as statements of policy, shall not be subject to dispute settlement under Article 18 (Settlement of Disputes Between the Parties).

## **Annex IV. Foreign Investment Framework of the United Arab Emirates**

UAE reserves the right to adopt or maintain any measure within the scope of the Cabinet Resolution No. (55) of 2021 and Federal Decree Law No. (32) of 2021 on Commercial Companies. Those measures are applicable to investors of Australia and their investments, and those Ministerial Statements and Guidance Notes as statements of policy, shall not be subject to dispute settlement under Article 18 (Settlement of Disputes Between the Parties).

## **Annex V. Investment Related to Digital Trade**

### **1. Definitions**

For the purposes of this Agreement:

computing facilities means computer servers and storage devices for processing or storing information for commercial use;

covered person means, as defined in Section A (Definitions) of this Agreement, a covered investment or an investor of the other Party; and

personal data means any information, including data, about an identified or identifiable natural person.

### **2. General Provisions and Scope**

1. This Annex shall apply to measures adopted or maintained by a Party that affect data used by an investor in the conduct of business associated with a covered investment, including with regard to the cross-border transfer of such data by electronic means.

2. This Annex shall not apply to:

(a) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection;

(b) a measure to the extent that the measure is not subject to an obligation of this Agreement by reason of:

(i) Article 12 (Non-Conforming Measures) of Section B (Investment Promotion and Protection) of this Agreement; or

(ii) any exception that is applicable to that obligation.

### **3. Cross-Border Transfer of Information by Electronic Means**

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. Neither Party shall prohibit or restrict the cross-border transfer of information by electronic means, including personal data, if this activity is for the conduct of the business of a covered person.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade; and

(b) does not impose restrictions on transfers of information greater than are required to achieve the objective.

#### **4. Location of Computing Facilities**

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. Neither Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade; and

(b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.

#### **Annex VI. Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings Under this Agreement**

##### Definitions

1. For the purposes of this Annex:

(a) assistant means a person who, under the terms of appointment of a panellist, conducts research or provides support for the panellist;

(b) candidate means a person who is under consideration for selection as a panellist;

(c) panellist means a member of the Arbitral Tribunal established under Article 18 (Settlement of Disputes Between the Parties);

(d) proceeding, unless otherwise specified, means the proceeding of a panel under this Agreement;

(e) staff, in respect of a panellist, means persons under the direction and control of the panellist, other than assistants; and

(f) expert means an individual or body providing information or technical advice.

##### Provision of Code of Conduct

2. The Parties shall provide this Code of Conduct and Annex VI-A (Initial Disclosure Statement) to a candidate prior to confirmation of their appointment to serve as a panellist under Article 18 (Settlement of Disputes Between the Parties).

3. A panellist shall provide this Code of Conduct and Annex VI-A (Initial Disclosure Statement) to their assistants and staff.

4. The Panel shall provide this Code of Conduct and Annex VI-A (Initial Disclosure Statement) to an expert when they are requested to provide information or technical advice to the Arbitral Tribunal established under Article 18 (Settlement of Disputes Between the Parties).

##### Responsibilities to the Process

5. Every panellist shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved.

##### Disclosure Obligations

6. Prior to confirmation of their selection as a panellist under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

7. Once selected, a panellist shall continue to make all reasonable efforts to become aware of any interests, relationships

and matters referred to in paragraph 6 and shall disclose them by communicating them in writing to the Parties. The obligation to disclose is a continuing duty, which requires a panellist to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

#### Performance of Duties by Panellists

8. A panellist shall comply with the provisions of this Agreement and its Annexes.

9. On selection, a panellist shall perform their duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

10. A panellist shall not deny other panellists the opportunity to participate in all aspects of the proceeding.

11. A panellist shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person.

12. A panellist shall take all appropriate steps to ensure that the panellist's assistant and staff are aware of, and comply with, paragraphs 5, 6, 7, 24, 25, 26 and 27 of this Annex.

13. A panellist shall not engage in ex parte contacts concerning the proceeding.

14. Each panellist shall keep a record and render a final account of the time devoted to the panel proceedings and of their expenses, as well as the time and expenses of their staff and assistants.

15. A panellist shall not communicate matters concerning actual or potential violations of this Annex by another panellist unless the communication is to both Parties or is necessary to ascertain whether that panellist has violated or may violate this Annex.

#### Independence and Impartiality of Panellists

16. A panellist shall be independent and impartial. A panellist shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

17. A panellist shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

18. A panellist shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the panellist's duties.

19. A panellist shall not use their position on the panel to advance any personal or private interests. A panellist shall avoid actions that may create the impression that others are in a special position to influence the panellist. A panellist shall make every effort to prevent or discourage others from representing themselves as being in such a position.

20. A panellist shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the panellist's conduct or judgment.

21. A panellist or former panellist shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the panellist's impartiality or that might reasonably create an appearance of impropriety or bias.

#### Duties in Certain Situations

22. A panellist or former panellist shall avoid actions that may create the appearance that the panellist was biased in carrying out the panellist's duties or would benefit from the decision or report of the panel.

23. In any proceeding under Article 18 (Settlement of Disputes Between the Parties), a panellist shall refrain, for the duration of the proceeding, from acting as counsel or party-appointed expert witness in any new or pending dispute, under the Agreement or another international agreement, that directly addresses the same measure in dispute in, or arises out of the facts giving rise to, the proceeding under Article 18 (Settlement of Disputes Between the Parties).

#### Maintenance of Confidentiality

24. A panellist, former panellist or expert shall not at any time disclose or use any confidential or non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage, or advantage for others, or to affect adversely the interest of others.

25. A panellist, former panellist or expert shall not disclose a panel report, or parts thereof, prior to its publication.

26. A panellist or former panellist shall not at any time disclose the deliberations of a panel, or any panellist's view, except as required by applicable laws and regulations.

27. A panellist, former panellist or expert shall not make a public statement regarding the panel proceeding.

## **Appendix VI-A. INITIAL DISCLOSURE STATEMENT**

1. I acknowledge having received a copy of the Code of Conduct for dispute settlement under Article 18 (Settlement of Disputes Between the Parties) of this Agreement.

2. I acknowledge having read and understood the Code of Conduct and hereby undertake to comply with my obligations under the Code of Conduct.

3. I understand that I have a continuing obligation, while participating in the proceeding, to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process. As a part of this continuing obligation, I make the following initial disclosures:

(a) my financial interest in the proceeding for which I am under consideration or in its outcome is as follows:

(b) my financial interest in any administrative proceeding, domestic judicial proceeding, arbitration proceeding, or another international dispute settlement proceeding that involves issues that may be decided in the proceeding is as follows:

(c) the financial interest that any employer, business partner, business associate, or family member of mine may have in the proceeding or in its outcome is as follows:

(d) the financial interest that any employer, business partner, business associate, or family member of mine may have in any administrative proceeding, domestic judicial proceeding, arbitration proceeding, or another international dispute settlement proceeding that involves issues that may be decided in the proceeding is as follows:

(e) my past or existing financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, is as follows:

(i) the past or existing financial, business, professional, family, and social relationships with any interested parties in the proceeding, or their counsel, involving any employer, business partner, business associate or family member of mine is as follows:

(ii) my public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same matters is as follows:

(iii) my other interests, relationships, and matters that may bear on the integrity or impartiality of the dispute settlement process and that are not disclosed in paragraphs (a) to (h) of this Initial Disclosure Statement are as follows:

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By:

Signature \_\_\_\_\_

Name \_\_\_\_\_

## **Annex VII. Schedule of Australia**

### EXPLANATORY NOTES

1. This Annex sets out, pursuant to Article 13 (Non-Conforming Measures), the specific sectors, subsectors or activities for which Australia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 4 (National Treatment)

(b) Article 5 (Most-Favoured-Nation Treatment)

(b) Article 9 (Performance Requirements); or



(c) Article 10 (Senior Management and Board of Directors).

2. Each entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector where referenced, refers to the specific subsector for which the entry is made;

(c) Obligations Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article 13 (Non-Conforming Measures), do not apply to the sectors, subsectors or activities listed in the entry;

(d) Description sets out the scope of the sector, subsector or activities covered by the entry; and

(e) Existing Measures where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

3. In accordance with Article 13 (Non-Conforming Measures), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

4. For greater certainty, where Australia has more than one entry in this Annex that could apply to a measure, each entry is to be read independently, and is without prejudice to the application of any other entry to the measure.

1. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment, Performance Requirements, Senior Management and Boards of Directors

Description: Australia reserves the right to adopt or maintain any measure that accords preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation. For the purpose of this reservation, an Indigenous person means a person of the Aboriginal and Torres Strait Islander peoples.

Existing measures: Legislation and ministerial statements at all levels of government including Australia's Foreign Investment Framework, and the Native Title Act 1993 (Cth).

2. Sector: All Sectors

Subsector : -

Obligations Concerned : National Treatment, Most-Favoured-Nation Treatment, Performance Requirements, Senior Management and Boards of Directors

Description : Australia reserves the right to adopt or maintain any measure with respect to:

(a) the devolution to the private sector of services provided in the exercise of governmental authority at the time of entry into force of this Agreement; and

(b) the privatisation of government owned entities or assets.

Existing Measures : -

3. Sector : All Sectors

Subsector : -

Obligations Concerned : National Treatment, Most-Favoured-Nation Treatment, Performance Requirements, Senior Management and Boards of Directors

Description : Australia reserves the right to adopt or maintain any measure (17) with respect to the provision of law enforcement and correctional services, and the following services (18) to the extent that they are social services established or maintained for a public purpose:

- income security or insurance;
- social security or insurance;
- social welfare;

- public education;
- public training;
- health (19);
- child care;
- public utilities;
- public transport; and
- public housing.

Existing Measures : -

(17) For greater certainty, measures adopted or maintained with respect to the provision of services covered by this entry include measures for the protection of personal information relating to health and children.

(18) For the avoidance of doubt, this includes any measure with respect to: the collection of blood and its components, the distribution of blood and blood-related products, including plasma derived products, plasma fractionation services, and the procurement of blood and blood related products and services.

(19) For greater certainty, the subsidies programmes under Australia's Pharmaceutical Benefits Scheme and Medicare Benefits Scheme, or successor programmes, are not subject to this Agreement consistent with Article 2 (Scope).

#### 4. Sector : Communications Services; Recreational, Cultural and Sporting Services

Subsector : -

Obligations Concerned : National Treatment, Most-Favoured-Nation Treatment, Performance Requirements,,Senior Management and Boards of Directors

Description : Australia reserves the right to adopt or maintain any measure with respect to:

- (a) the creative arts (20), cultural heritage (21) and other cultural industries, including audio-visual services, entertainment services and libraries, archives, museums and other cultural services; and
- (b) broadcasting and audio-visual services, including measures with respect to planning, licensing and spectrum management, and including:
  - (i) services offered in Australia; and
  - (ii) international services originating from Australia.

Existing Measures : Broadcasting Services Act 1992 (Cth) Radiocommunications Act 1992 (Cth) Income Tax Assessment Act 1936 (Cth) Income Tax Assessment Act 1997 (Cth) Screen Australia Act 2008 (Cth) Australia Council Act 2013 (Cth) Broadcasting Services (Australian Content and Children's Television) Standards 2020 Broadcasting Services (Australian Content in Advertising) Standard 2018 Broadcasting Services (Events) Notice (No.1) 2010 ABC Codes of Practice SBS Codes of Practice Commercial Radio Codes of Practice and Guidelines Community Radio Broadcasting Codes of Practice Subscription Narrowcast Radio Codes of Practice Open Narrowcasting Codes of Practice and the associated Narrowcasting for Radio Guidelines International Co-Production Programs.

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

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

## 5. Sector : Education Sector

Subsector : -

Obligations Concerned : National Treatment, Most-Favoured-Nation Treatment, Performance Requirements, Senior Management and Boards of Directors

Description : Australia reserves the right to adopt or maintain any measure with respect to primary education.

Existing Measures : -

## 6. Sector : Gambling and Betting

Subsector : -

Obligations Concerned : National Treatment, Performance Requirements Senior Management and Boards of Directors

Description : Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.

Existing Measures : Legislation and Ministerial Statements, including the Interactive Gambling Act 2001 (Cth).

## 7. Sector : Transport Services

Subsector : -

Obligations Concerned : National Treatment, Senior Management and Boards of Directors

Description : Australia reserves the right to adopt or maintain any measure with respect to investment in federal leased airports.

Existing Measures : Airports Act 1996 (Cth) Airports (Ownership-Interests in Shares) Regulations 1996 (Cth) Airports Regulations 1997 (Cth).

## 8. Sector : Maritime Transport

Subsector : -

Obligations Concerned : National Treatment, Performance Requirements Senior Management and Boards of Directors

Description : Australia reserves the right to adopt or maintain any measure with respect to maritime cabotage services and offshore transport services. (22)

Australia reserves the right to adopt or maintain any measure with respect to the registration of vessels in Australia.

Existing Measures : Customs Act 1901 (Cth) Fair Work Act 2009 (Cth) Seafarers' Rehabilitation and Compensation Act 1992 (Cth) Occupational Health and Safety (Maritime Industry) Act 1993 (Cth) Shipping Registration Act 1981 (Cth) Shipping Registration Regulations 1981 (Cth) Income Tax Assessment Act 1936 (Cth) Coastal Trading (Revitalising Australian Shipping) Act 2012 (Cth) Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012 (Cth) Shipping Reform (Tax Incentives) Act 2012 (Cth).

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

## 9. Sector : Agriculture

Subsector : -

Obligations Concerned : National Treatment, Most-Favoured-Nation Treatment, Performance Requirements, Senior Management and Boards of Directors

Description : Australia reserves the right to adopt or maintain any measure with respect to marketing boards or similar arrangements.

Existing Measures : -

10. Sector : All Sectors

Subsector : -

Obligations Concerned : Most-Favoured-Nation Treatment

Description : Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any investor under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement. (23)

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any investor taken as part of a process of economic integration or trade liberalisation between the parties to the Australia New Zealand Closer Economic Relations Trade Agreement done at Canberra on 28 March 1983 (ANZCERTA). (24)

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any investor of a Pacific Islands Forum member state under any international agreement in force or signed after the date of entry into force of this Agreement. Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any investor under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; or

(c) maritime matters, including salvage.

Existing Measures : -

(23) For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.

(24) For the avoidance of doubt, this includes measures adopted or maintained under any existing or future protocol to that agreement.

11. Sector : Financial Services

Subsector : -

Obligations Concerned : National Treatment

Description : Australia reserves the right to adopt or maintain any measure with respect to the guarantee by government of government-owned entities whose operations include the provision of financial services, including guarantees related to the privatisation of such entities.

Existing Measures : -

12. Sector : Financial Services

Subsector : -

Obligations Concerned : National Treatment, Most-Favoured-Nation Treatment

Description : Australia reserves the right to adopt or maintain any measure regarding solicitation in its territory.

Existing Measures : -

13. Sector : Financial Services

Subsector : -

Obligations Concerned : Performance Requirements

Description : Australia reserves the right to adopt or maintain any measure with respect to financial services.

Existing Measures : -