# Singapore - Australia Free Trade Agreement

Australia and Singapore ("the Parties")

Conscious of their longstanding friendship and growing trade and investment relationship;

Desiring to improve the efficiency and competitiveness of their goods and services sectors and expand trade and investment between them;

Recognising that strengthening of their closer economic partnership will bring economic and social benefits and improve the living standards of their people;

Building on their rights, obligations and undertakings under the World Trade Organization, and other multilateral, regional and bilateral agreements and arrangements;

Recognising their commitment to securing trade liberalisation and an outward looking approach to trade and investment;

Mindful of the Asia-Pacific Economic Cooperation goals of free and open trade and investment;

Conscious that a framework of rules for trade in goods and services, and investment will contribute to the promotion of closer links with other economies, especially in the Asia-Pacific region;

Recognising the need for good corporate governance and a predictable, transparent and consistent business environment to enable businesses to conduct transactions freely, use resources efficiently and take investment and planning decisions with certainty; and

Believing that their cooperative framework could be a dynamic one that also covers newer areas of economic cooperation;

Have agreed as follows:

# Chapter 01. Objectives and General Definitions

## Article 1. Objectives

The objectives of the Parties in concluding this Agreement are:

(a) to strengthen the relationship between them;

(b) to liberalise trade in goods and services between them and to establish a framework conducive for bilateral investments;

(c) to support the wider liberalisation process in the Asia-Pacific Economic Cooperation consistent with its goals of free and open trade and investment;

(d) to build upon their commitments at the World Trade Organization, and to support its efforts to create a predictable, and more free and open global trading environment;

(e) to improve the efficiency and competitiveness of their goods and services sectors and expand trade and investment between them;

(f) to establish a framework of transparent rules to govern trade and investment between them; and

(g) to explore newer areas of economic cooperation.

## Article 2. General Definitions

For the purposes of this Agreement:

(a) "APEC" means Asia-Pacific Economic Cooperation;

(b) "central level of government" means for Australia, the Commonwealth Government, and for Singapore, the national level of government;

(c) "covered investment" means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

(d) "customs administration" means the competent authority that is responsible under the laws of a Party for the administration of customs laws, regulations and, where applicable, policies, and means:

(i) for Australia, the Department of Immigration and Border Protection; and

(ii) for Singapore, the Singapore Customs;

(e) "customs duty" includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with Article II:2 of GATT 1994;

(ii) fee or other charge in connection with the importation commensurate with the cost of services rendered; or

(iii) anti-dumping or countervailing duty;

(f) "days" means calendar days, including weekends and holidays;

(g) "GATS" means the General Agreement on Trade in Services, set out in Annex 1B to the WTO Agreement;

(h) "GATT 1994" means the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

(i) "goods" and "products" shall be understood to have the same meaning unless the context otherwise requires;

(j) "Harmonized System (HS)" means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes as adopted and implemented by the Parties in their respective laws;

(k) "regional level of government" means for Australia, a state of Australia, the Australian Capital Territory, or the Northern Territory; for Singapore, the term "regional level of government" is not applicable;

(l) "remanufactured good" means a good classified in Chapters 84 to 90 or under heading 94.02 of the Harmonized System, that is entirely or partially composed of recovered materials and:

(i) has a similar life expectancy and performs the same as or similar to anew good; and

(ii) has a factory warranty similar to that applicable to such a new good;

(m) "territory" means:

(i) in respect of Australia, the territory of Australia:

(A) 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

(B) including Australia's air space, territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law;

(ii) in respect of Singapore, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources;

(n) "WTO" means the World Trade Organization; and

(o) "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on April 15, 1994.

# Chapter 02. Trade In Goods

## Article 1. Definitions

For the purposes of this Chapter:

(a) "AD Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

(b) "advertising films and recordings" means recorded visual media or audio materials, consisting essentially of images or sound, showing the nature or operation of goods or services offered for sale or lease by a person of a Party, that are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public;

(c) "Agreement on Agriculture" means the Agreement on Agriculture, set out in Annex 1A to the WTO Agreement;

(d) "commercial samples of negligible value" means commercial or trade samples: having a value, individually or in the aggregate as shipped, of not more than one U.S. dollar or the equivalent amount in the currency of either Party; or so marked, torn, perforated or otherwise treated that they are unsuitable for sale or for use except as commercial samples;

(e) "consumed" means, with respect to a good:

(i) actually consumed; or

(ii) further processed or manufactured:

(A) so as to result in a substantial change in the value, form or use of the good; or

(B) in the production of another good;

(f) "distributor" means a person of a Party who is responsible for the commercial distribution, agency, concession or representation in the territory of that Party of goods of another Party;

(g) "duty-free" means free of customs duty;

(h) "enterprise" means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;

(i) "export subsidy" means a subsidy as defined by Article 3 of the SCM Agreement and includes export subsidies listed in Article 9 of the Agreement on Agriculture;

(j) "goods" means any merchandise, product, article or material;

(k) "goods admitted for sports purposes" means sports requisites admitted into the territory of the importing Party for use in sports contests, demonstrations or training in the territory of that Party;

(l) "goods intended for display or demonstration" includes their component parts, ancillary apparatuses and accessories;

(m) "import licensing" means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body of the importing Party as a prior condition for importation into the territory of that Party;

(n) "Import Licensing Agreement" means the Agreement on Import Licensing Procedures, set out in Annex 1A to the WTO Agreement;

(o) "measure" includes any law, regulation, procedure, requirement or practice;

(p) "national" means:

(i) for Australia, a natural person who is an Australian citizen as defined in the Australian Citizenship Act 2007, as amended from time to time, or any successor legislation;

(ii) for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws; or

(iii) a permanent resident of either Party;

(q) "performance requirement" means a requirement that:

(i) a given level or percentage of goods or services be exported;

(ii) domestic goods or services of the Party granting a waiver of customs duties or an import licence be substituted for imported goods;

(iii) a person benefiting from a waiver of customs duties or a requirement for an import licence purchase other goods or services in the territory of the Party that grants the waiver of customs duties or the import licence or accord a preference to domestically produced goods;

(iv) a person benefiting from a waiver of customs duties or a requirement for an import licence produce goods or supply services in the territory of the Party that grants the waiver of customs duties or the import licence, with a given level or percentage of domestic content; or

(v) relates in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows;

but does not include a requirement that an imported good be: (vi) subsequently exported;

(vii) used as a material in the production of another good that is subsequently exported;

(viii) substituted by an identical or similar good used as a material in the production of another good that is subsequently exported; or

(ix) substituted by an identical or similar good that is subsequently exported;

(r) "person" means a natural person or an enterprise;

(s) "person of a Party" means a national or an enterprise of a Party;

(t) "printed advertising materials" means those goods classified in Chapter 49 of the Harmonized System, including brochures, pamphlets, leaflets, trade catalogues, yearbooks published by trade associations, tourist promotional materials and posters, that are used to promote, publicise or advertise a good or service, are essentially intended to advertise a good or service, and are supplied free of charge;

(u) "Safeguards Agreement" means the Agreement on Safeguards, set out in Annex 1A to the WTO Agreement; and

(v) "SCM Agreement" means the Agreement on Subsidies and Countervailing Measures, set out in Annex 1A to the WTO Agreement.

## Article 2. National Treatment on Internal Taxation and Regulation

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes. To this end, Article HI of the GATT 1994 and its interpretative notes are incorporated into and shall form part of this Agreement, mutatis mutandis.

## Article 3. Customs Duties

1. Each Party shall eliminate all customs duties on goods originating in the territory of the other Party that meet the requirements for originating goods as set out in Chapter 3 (Rules of Origin). All customs duties on such goods shall thereby be free from the date of entry into force of this Agreement.

2. The classification of goods traded between the Parties shall be in conformity with the Harmonized System (HS).

## Article 4. Customs Value

The Parties shall determine the customs value of goods traded between them in accordance with Article VI of the GATT 1994 and the WTO Agreement on Implementation of Article VI of the GATT 1994.

## Article 5. Goods Re-entered after Repair and Alteration

1. Neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that

good has been temporarily exported from the Party's territory to the territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good.

2. Neither Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

3. For the purposes of this Article, "repair or alteration" does not include an operation or process that:

(a) destroys a good's essential characteristics or creates a new or commercially different good; or

(b) transforms an unfinished good into a finished good.

## Article 6. Duty-free Entry of Commercial Samples of Negligible Value and Printed Advertising Material

Each Party shall grant duty-free entry to commercial samples of negligible value and printed advertising material imported from the territory of the other Party, regardless of their origin, but may require that:

(a) commercial samples of negligible value be imported solely for the solicitation of orders for goods, or services provided from the territory, of another Party or a non-Party; or

(b) printed advertising material be imported in packets that each contain no more than one copy of the material and that neither that material nor those packets form part of a larger consignment.

## Article 7. Temporary Admission of Goods

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin:

(a) professional equipment, including equipment for the press or television, software, and broadcasting and cinematographic equipment, that is necessary for carrying out the business activity, trade or profession of a person who qualifies for temporary entry pursuant to the laws of the importing Party;

(b) goods intended for display or demonstration;

(c) commercial samples and advertising films and recordings; and

(d) goods admitted for sports purposes.

2. Each Party shall, at the request of the person concerned and for reasons its customs authority considers valid, extend the time limit for duty-free temporary admission beyond the period initially fixed.

3. Neither Party shall condition the duty-free temporary admission of the goods referred to in paragraph 1, other than to require that those goods:

(a) be used solely by or under the personal supervision of a national of the other Party in the exercise of the business activity, trade, profession or sport of that national of the other Party;

(b) not be sold or leased while in its territory;

(c) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the goods;

(d) be capable of identification when imported and exported;

(e) be exported on the departure of the national referred to in subparagraph (a), or within any other period reasonably related to the purpose of the temporary admission that the Party may establish, or within one year, unless extended;

(f) be admitted in no greater quantity than is reasonable for their intended use; and

(g) be otherwise admissible into the Party's territory under its laws.

4. Each Party shall grant duty-free temporary admission for containers and pallets regardless of their origin, that are in use or to be used in the shipment of goods in international traffic.

(a) For the purposes of this paragraph, "container" means an article of transport equipment that is: fully or partially enclosed to constitute a compartment intended for containing goods; substantial and has an internal volume of one cubic metre or more; of a permanent character and accordingly strong enough to be suitable for repeated use; used in significant numbers in international traffic; specially designed to facilitate the carriage of goods by more than one mode of transport without intermediate reloading; and designed both for ready handling, particularly when being transferred from one mode of transport to another, and to be easy to fill and to empty, but does not include vehicles, accessories or spare parts of vehicles or packaging.

(b) For the purposes of this paragraph, "pallet" means a small, portable platform, which consists of two decks separated by bearers or a single deck supported by feet, on which goods can be moved, stacked, and stored, and which is designed essentially for handling by means of fork lift trucks, pallet trucks, or other jacking devices.

5. If any condition that a Party imposes under paragraph 3 has not been fulfilled, the Party may apply the customs duty and any other charge that would normally be owed on the good in addition to any other charges or penalties provided for under its law.

6. Each Party shall adopt and maintain procedures providing for the expeditious telease of goods admitted under this Article. To the extent possible, those procedures shall provide that when a good admitted under this Article accompanies a national of the other Party who is seeking temporary entry, the good shall be released simultaneously with the entry of that national.

7. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than the port through which it was admitted.

8. Each Party shall, in accordance with its laws, provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good was destroyed within the period fixed for temporary admission, including any lawful extension.

9. Subject to Chapters 7 (Cross-Border Trade in Services) and 8 (Investment):

(a) each Party shall allow a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on any route that is reasonably related to the economic and prompt departure of that container;

(b) neither Party shall require any security or impose any penalty or charge solely by reason of any difference between the customs port of entry and the customs port of departure of a container;

(c) neither Party shall condition the release of any obligation, including any security, that it imposes in respect of the entry of a container into its territory on the exit of that container through any particular customs port of departure; and

(d) neither Party shall require that the carrier bringing a container from the territory of the other Party into its territory be the same carrier that takes such container to the territory of the other Party.

## Article 8. Import and Export Restrictions

1. Except as otherwise provided in this Agreement, neither Party shall adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994 and its interpretative notes, and to this end Article XI of the GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, mutatis mutandis.

2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, a Party from adopting or maintaining:

(a) export and import price requirements, except as permitted in enforcement of countervailing and anti-dumping duty orders and undertakings;

(b) import licensing conditioned on the fulfilment of a performance requirement; or

(c) voluntary export restraints inconsistent with Article VI of the GATT 1994, as implemented under Article 18 of the SCM Agreement and Article 8.1 of the AD Agreement.

3. For greater certainty, paragraph 1 shall apply to the importation of commercial cryptographic goods.

4. For the purposes of paragraph 3, "commercial cryptographic goods" means any good implementing or incorporating cryptography, if the good is not designed or modified specifically for government use and is sold or otherwise made

available to the public.

5. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, no provision of this Agreement shall be construed to prevent that Party from:

(a) limiting or prohibiting the importation of the good of the non-Party from the territory of the other Party; or

(b) requiring, as a condition for exporting the good of that Party to the territory of the other Party, that the good not be re-exported to the non- Party, directly or indirectly, without being consumed in the territory of the other Party.

6. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, it shall, on the request of the other Party, consult with the other Party a view to avoiding undue interference with or distortion of pricing, marketing, or distribution arrangements in that other Party.

7. Neither Party shall, as a condition for engaging in importation or for the importation of a good, require a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory.

8. For greater certainty, paragraph 7 does not prevent a Party from requiring a person referred to in that paragraph to designate a point of contact for the purpose of facilitating communications between its regulatory authorities and that person.

## Article 9. Remanufactured Goods

1. For greater certainty, Article 8.1 (import and Export Restrictions) shall apply to prohibitions and restrictions on the importation of remanufactured goods.

2. If a Party adopts or maintains measures prohibiting or restricting the importation of used goods, it shall not apply those measures to remanufactured goods. (1)

(1) For greater certainty, subject to its obligations under this Agreement and the WTO Agreement, a Party may require that remanufactured goods: (a) be identified as such for distribution or sale in its territory; and (b) meet all applicable technical requirements that apply to equivalent goods in new condition.

## Article 10. Import Licensing

1. Neither Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Promptly after this Agreement enters into force for a Party, that Party shall notify the other Parties of its existing import licensing procedures, if any. The notice shall include the information specified in Article 5.2 of the Import Licensing Agreement and any information required under paragraph 6.

3. A Party shall be deemed to be in compliance with paragraph 2 with respect to an existing import licensing procedure if:

(a) it has notified that procedure to the WTO Committee on Import Licensing provided for in Article 4 of the Import Licensing Agreement together with the information specified in Article 5.2 of that agreement;

(b) in the most recent annual submission due before the date of entry into force of the Agreement to Amend the Singapore-Australia Free Trade Agreement for that Party to the WTO Committee on Import Licensing in response to the annual questionnaire on import licensing procedures described in Article 7.3 of the Import Licensing Agreement, it has provided, with respect to that procedure, the information requested in that questionnaire; and

(c) it has included in either the notice described in subparagraph (a) or the annual submission described in subparagraph (b) any information required to be notified to the other Party under paragraph 6.

4. Each Party shall comply with Article 1.4(a) of the Import Licensing Agreement with respect to any new or modified import licensing procedure. Each Party shall also publish on an official government website any information that it is required to publish under Article 1.4(a) of the Import Licensing Agreement.

5. Each Party shall notify the other Party of any new import licensing procedures it adopts and any modifications it makes to its existing import licensing procedures, if possible, no later than 60 days before the new procedure or modification takes effect. In no case shall a Party provide the notification later than 60 days after the date of its publication. The notification shall include any information required under paragraph 6. A Party shall be deemed to be in compliance with this obligation

if it notifies a new import licensing procedure or a modification to an existing import licensing procedure to the WTO Committee on Import Licensing in accordance with Articles 5.1, 5.2 or 5.3 of the Import Licensing Agreement, and includes in its notification any information required to be notified to the other Party under paragraph 6.

6. (a) A notice under paragraph 2, paragraph 3 or paragraph 5 shall state if, under any import licensing procedure that is a subject of the notice:

(i) the terms of an import licence for any product limit the permissible end users of the product; or

(ii) the Party imposes any of the following conditions on eligibility for obtaining a licence to import any product:

(A) membership in an industry association;

(B) approval by an industry association of the request for an import licence;

(C) a history of importing the product or similar products;

(D) minimum importer or end user production capacity;

(E) minimum importer or end user registered capital; or

(F) a contractual or other relationship between the importer and a distributor in the Party's territory.

(b) A notice that states, under subparagraph (a), that there is a limitation on permissible end users or a licence-eligibility condition shall:

(i) list all products for which the end-user limitation or licence eligibility condition applies; and

(ii) describe the end-user limitation or licence-eligibility condition.

7. Each Party shall respond within 60 days to a reasonable enquiry from the other Party concerning its licensing rules and its procedures for the submission of an application for an import licence, including the eligibility of persons, firms and institutions to make an application, the administrative body or bodies to be approached and the list of products subject to the licensing requirement.

8. If a Party denies an import licence application with respect to a good of the other Party, it shall, on request of the applicant and within a reasonable period after receiving the request, provide the applicant with a written explanation of the reason for the denial. 9. Neither Party shall apply an import licensing procedure to a good of the other Party unless it has, with respect to that procedure, met the requirements of paragraph 2 or paragraph 4, as applicable.

## Article 11. Export Duties

A Party shall not impose any export duty on the goods set out in Annex 1 (Export Duties), when exported from its territory to the territory of the other Party.

## Article 12. Non-tariff Measures

1. Neither Party shall adopt or maintain any non-tariff measures on the importation of any good of the other Party or on the exportation of any good destined for the territory of the other Party except in accordance with its WTO rights and obligations or in accordance with this Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures permitted under paragraph 1 and that they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to trade between the Parties.

## Article 13. Subsidies and Countervailing Measures

1. The Parties agree to prohibit export subsidies on all goods, including agricultural goods.

2. The Parties reaffirm their commitment to abide by the SCM Agreement.

## Article 14. Anti-dumping Measures

1. With respect to the application of anti-dumping measures, the Parties reaffirm their commitment to the AD Agreement.

2. The Parties agree to observe the following practices in anti-dumping cases between them:

(a) the time frame to be used for determining the volume of dumped imports in an investigation or review shall be representative of the imports of both dumped and non-dumped goods, for a reasonable period, and such reasonable period shall normally be at least 12 months;

(b) if a decision is taken to impose an anti-dumping duty pursuant to Article 9.1 of the AD Agreement, the Party taking such a decision shall normally apply the "lesser duty rule" by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry; and

(c) notification procedures shall be as follows:

(i) immediately following the acceptance by a Party of a properly documented application from an industry in that Party for the initiation of an anti-dumping investigation in respect of goods from the other Party, the first Party shall immediately inform the other Party;

(ii) where a Party considers that, in accordance with Article 5 of the AD Agreement, there is sufficient evidence to justify the initiation of an anti-dumping investigation, it shall give written notice to the other Party and shall act in accordance with Article 17.2 of that Agreement concerning consultations. 3. At reviews of this Agreement under Article 7 (Review) of Chapter 17 (Final Provisions), the Parties shall review this Article, including a consideration of any recommendations by the WTO Committee on Anti-Dumping Practices.

## Article 15. Safeguard Measures

A Party shall not initiate or take any safeguard measure within the meaning of the Safeguards Agreement against the goods of the other Party from the date of entry into force of this Agreement.

## Article 16. Transparency

Article X of the GATT 1994 is incorporated into and shall form part of this Agreement, mutatis mutandis.

## Article 17. Measures to Safeguard the Balance of Payments

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may, in accordance with the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994, adopt restrictive import measures.

## Article 18. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals; necessary to protect human, animal or plant life or health; relating to the importations or exportations of gold or silver;

(b) necessary to secure compliance with laws or regulations which are not inconsistent with this Chapter, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article If and Article XVII of the GATT 1994, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;

(c) relating to the products of prison labour;

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

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

(f) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the WTO and not disapproved by it or which is itself so submitted and not so disapproved;

(g) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a

domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Chapter relating to non-discrimination;

(h) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all WTO members are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with this Chapter shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

# Chapter 03. Rules of Origin and Origin Procedures

# Section A. Rules of Origin

## Article 1. Definitions

For the purposes of this Chapter:

(a) "aquaculture" means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock such as eggs, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;

(b) "Customs Valuation Agreement" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, set out in Annex 1A to the WTO Agreement;

(c) "enterprise" means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;

(d) "fungible goods or materials' means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

(e) "Generally Accepted Accounting Principles" means those principles recognised by consensus or with substantial authoritative support in the territory of a Party with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines for general application, as well as detailed standards, ptactices and procedures;

(f) "good" means any merchandise, product, article or material;

(g) "indirect material" means a material used in the production, testing or inspection of a good but not physically incorporated into the good; or a material used in the maintenance of buildings or the operation of equipment, associated with the production of a good, including:

(i) fuel, energy, catalysts and solvents;

(ii) equipment, devices and supplies used to test or inspect the good;

(iii) gloves, glasses, footwear, clothing, safety equipment and supplies;

(iv) tools, dies and moulds;

(v) spate parts and materials used in the maintenance of equipment and buildings;

(vi) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings; and

(vii) any other material that is not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

(h) "material" means a good that is used in the production of another good;

(i) "non-originating good" or "non-originating material" means a good or material that does not qualify as originating in accordance with this Chapter;

(j) "originating good" or "originating material" means a good or material that qualifies as originating in accordance with this

Chapter;

(k) "packing materials and containers for shipment" means goods used to protect another good during its transportation, but does not include the packaging materials or containers in which a good is packaged for retail sale;

(l) "person" means a natural person or an enterprise;

(m) "person of a Party" means a national (1) or an enterprise of a Party;

(n) "producer" means a person who engages in the production of a good;

(o) "production" means operations including growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling a good;

(p) "recovered material" means a material in the form of one or more individual parts that results from:

(i) the disassembly of a used good into individual parts; and

(ii) the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition;

(q) "transaction value" means the price actually paid or payable for the good when sold for export or other value determined in accordance with the Customs Valuation Agreement; and

(r) "value of the good" means the transaction value of the good excluding any costs incurred in the international shipment of the good.

(1) For the purposes of this Chapter, a "national" means, for Australia, a natural person whois an Australian citizen as defined in the Australian Citizenship Act 2007 as amended from time to time, or any successor legislation; for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws; or a permanent resident of either Party.

## Article 2. Originating Goods

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating if it is:

(a) wholly obtained or produced entirely in the territory of one or both of the Parties by one or more producers as established in Article 3 (Wholly Obtained or Produced Goods);

(b) produced entirely in the territory of one or both of the Parties by one or more producers, exclusively from originating materials; or

(c) produced entirely in the territory of one or both of the Parties by one or more producers using non-originating materials provided the good satisfies all applicable requirements of Annex 2 (Product-Specific Rules of Origin), and the good satisfies all other applicable requirements of this Chapter.

## Article 3. Wholly Obtained or Produced Goods

Each Party shall provide that for the purposes of Article 2 (Originating Goods), a good is wholly obtained or produced entirely in the territory of one or both of the Parties if it is:

(a) a plant or plant good, grown, cultivated, harvested, picked or gathered there;

(b) a live animal born and raised there;

(c) a good obtained from a live animal there;

(d) an animal obtained by hunting, trapping, fishing, gathering or capturing there;

(e) a good obtained from aquaculture there;

(f) a mineral or other naturally occurring substance, not included in subparagraphs (a) to (e), extracted or taken from there;

(g) fish, shellfish and other marine life taken from the high seas, by vessels that are entitled to fly the flag of that Party;

(h) a good produced from goods referred to in subparagraph (g) on board a factory ship that is registered, listed or recorded

with a Party and entitled to fly the flag of that Party;

(i) a good other than fish, shellfish and other marine life taken by a Party or a person of a Party from the seabed or subsoil outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction provided that Party or person of that Party has the right to exploit that seabed or subsoil in accordance with international law;

(j) a good that is:

(i) waste or scrap derived from production there; or

(ii) waste or scrap derived from used goods collected there, provided that those goods are fit only for the recovery of raw materials; and

(k) a good produced there, exclusively from goods referred to in subparagraphs (a) to (j), or from their derivatives.

## Article 4. Treatment of Recovered Materials Used In Production of a Remanufactured Good

1. Each Party shall provide that a recovered material derived in the territory of one or both of the Parties is treated as originating when it is used in the production of, and incorporated into, a remanufactured good.

2. For greater certainty:

(i) a remanufactured good is originating only if it satisfies the applicable requirements of Article 2 (Originating Goods); and

(ii) a recovered material that is not used or incorporated in the production of

a remanufactured good is originating only if it satisfies the applicable requirements of Article 2 (Originating Goods).

## Article 5. Regional Value Content

1. Each Party shall provide that a regional value content requirement specified in this Chapter, including related Annexes, to determine whether a good is originating, is calculated as follows:

(a) Build-down Method: Based on Value of Non-Originating Materials

RVC = Value of the Good — VNM x 100

Value of the Good

or

(b) Build-up Method: Based on Value of Originating Materials

RVC = VOM x 100

Value of the Good

where:

"RVC" is the regional value content of a good, expressed as a percentage;

"VNM" is the value of non-originating materials, including materials of undetermined origin, used in the production of the good; and

"VOM" is the value of originating materials used in the production of the good in the territory of one or both of the Parties.

2. Each Party shall provide that all costs considered for the calculation of regional value content are recorded and maintained in conformity with the Generally Accepted Accounting Principles applicable in the territory of a Party where the good is produced.

## Article 6. Materials Used In Production

1. Each Party shall provide that if a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material is treated as originating when determining the originating status of the

subsequently produced good, regardless of whether that material was produced by the producer of the good. 2. Each Party shall provide that if a non-originating material is used in the production of a good, the following may be counted as originating content for the purpose of determining whether the good meets a regional value content requirement:

(a) the value of processing of the non-originating materials undertaken in the territory of one or both of the Parties; and

(b) the value of any originating material used in the production of the non- originating material undertaken in the territory of one or both of the Parties.

## Article 7. Value of Materials Used In Production

Each Party shall provide that for the purposes of this Chapter, the value of a material is:

(a) for a material imported by the producer of the good, the transaction value of the material at the time of importation, including the costs incurred in the international shipment of the good;

(b) for a material acquired in the territory where the good is produced:

(i) the price paid or payable by the producer in the Party where the producer is located;

(ii) the value as determined for an imported material in subparagraph (a); or

(iii) the earliest ascertainable price paid or payable in the territory of the Party; or

(c) for a material that is self-produced:

(b) for a material acquired in the territory where the good is produced:

(i) the price paid or payable by the producer in the Party where the producer is located;

(ii) the value as determined for an imported material in subparagraph (a); or

(iii) the earliest ascertainable price paid or payable in the territory of the Party; or

(c) for a material that is self-produced:

(i) all the costs incurred in the production of the material, which includes general expenses; and

(i) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

## Article 8. Further Adjustments to the Value of Materials

1. Each Party shall provide that for an originating material, the following expenses may be added to the value of the material, if not included under Article 7 (Value ofMaterials Used in Production):

(a) the costs of freight, insurance, packing and all other costs incurred to transport the material to the location of the producer of the good;

(b) duties, taxes and customs brokerage fees on the material, paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by- product.

2. Each Party shall provide that, for a non-originating material or material of undetermined origin, the following expenses may be deducted from the value of the material:

(a) the costs of freight, insurance, packing and all other costs incurred in transporting the material within the territories of the Parties to the location of the producer of the good;

(b) duties, taxes and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, which include credit against duty or tax paid or payable; and

(c) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of reusable scrap or by- product.

3. If the cost or expense listed in paragraph 1 or 2 is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost.

## Article 9. Accumulation

1. Each Party shall provide that an originating good or material of one of the Parties that is used in the production of another good in the territory of the other Party is considered as originating in the territory of the other Party.

2. Each Party shall provide that production undertaken on a non-originating material in the territory of one or both of the Parties by one or more producers may contribute toward the originating content of a good for the purpose of determining its origin, regardless of whether that production was sufficient to confer originating status to the material itself.

## Article 10. De Minimis

1. Each Party shall provide that a good that contains non-originating materials that do not satisfy the applicable change in tariff classification requirement specified in Annex 2 (Product-Specific Rules of Origin) for the good is nonetheless an originating good if:

(a) the value of all these materials does not exceed 10 per cent of the value of the good, as defined under Article 5 (Regional Value Content), and the good meets all the other applicable requirements of this Chapter; or

(b) for a good classified in Chapters 50 through 63 of the Harmonized System, the total weight of all such materials does not exceed 10 per cent of the total weight of the good, or the total value of all such materials does not exceed 10 per cent of the value of the good.

2. Paragraph 1 applies only when using a non-originating material in the production of another good.

## Article 11. Fungible Goods or Materials

Each Party shall provide that a fungible good or material is treated as originating based on the:

(a) physical segregation of each fungible good or material; or

(b) use of any inventory management method recognised in the Generally Accepted Accounting Principles if the fungible good or material is commingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

## Article 12. Accessories, Spare Parts, Tools and Instructional or other Information Materials

1. Each Party shall provide that:

(a) in determining whether a good is wholly obtained, or satisfies a process or change in tariff classification requirement as set out in Annex 2 (Product-Specific Rules of Origin), accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be disregarded; or

(b) in determining whether a good meets a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, are to be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

2. Each Party shall provide that a good's accessories, spare parts, tools or instructional or other information materials, as described in paragraph 3, have the originating status of the good with which they are delivered.

3. For the purposes of this Article, accessories, spare parts, tools, and instructional or other information materials are covered when:

(a) the accessories, spare parts, tools and instructional or other information materials are classified with, delivered with but not invoiced separately from the good; and

(b) the types, quantities, and value of the accessories, spare parts, tools and instructional or other information materials are

customary for that good.

### Article 13. Packaging Materials and Containers for Retail Sale

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, are disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change in tariff classification requirement set out in Annex 2 (Product-Specific Rules of Origin) or whether the good is wholly obtained or produced.

2. Each Party shall provide that if a good is subject to a regional value content requirement, the value of the packaging materials and containers in which the good is packaged for retail sale, if classified with the good, are taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

### Article 14. Packing Materials and Containers for Shipment

Each Party shall provide that packing materials and containers for shipment are disregarded in determining whether a good is originating.

### Article 15. Indirect Materials

Each Party shall provide that an indirect material is considered to be originating without regard to where it is produced.

### Article 16. Sets of Goods

1. Each Party shall provide that for a set classified as a result of the application of tule 3(a) or 3(b) of the General Rules for the Interpretation of the Harmonized System, the originating status of the set shall be determined in accordance with the product- specific rule of origin that applies to the set.

2. Each Party shall provide that for a set classified as a result of the application of tule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating only if each good in the set is originating and both the set and the goods meet the other applicable requirements of this Chapter.

3. Notwithstanding paragraph 2, for a set classified as a result of the application of rule 3(c) of the General Rules for the Interpretation of the Harmonized System, the set is originating if the value of all the non-originating goods in the set does not exceed 10 per cent of the value of the set.

4. For the purposes of paragraph 3, the value of the non-originating goods in the set and the value of the set shall be calculated in the same manner as the value of non- originating materials and the value of the good.

### Article 17. Transit and Transhipment

1. Each Party shall provide that an originating good retains its originating status if the good has been transported to the importing Party without passing through the territory of a non-Party.

2. Each Party shall provide that if an originating good is transported through the territory of one or more non-Parties, the good retains its originating status provided that the good does not undergo any operation outside the territories of the Parties other than: unloading; reloading; separation from a bulk shipment; storing; labelling or marking required by the importing Party; or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party.

## Section B. Origin Procedures

### Article 18. Claims for Preferential Treatment

1. Each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a certification of origin completed by the exporter, producer or importer or an authorised representative of the exporter, producer or importer. (2)

2. Each Party shall provide that a certification of origin:

(a) need not follow a prescribed format;

(b) be in writing, including electronic format;

(c) specifies that the good is both originating and meets the requirements of this Chapter; and

(d) contains a set of minimum data requirements as set out in Annex 3-A (Minimum Data Requirements).

3. Each Party shall provide that a certification of origin may apply to: (a) a single shipment of a good into the territory of a Party; or

(b) multiple shipments of identical goods within any period specified in the certification of origin, but not exceeding 12 months.

4. Each Party shall provide that a certification of origin is valid for one year after the date that it was issued or for such longer period specified by the laws and regulations of the importing Party.

5. Each Party shall allow an importer to submit a certification of origin in English.

(2) This article does not prevent parties maintaining laws and regulations governing the issuance of certificates of origin.

## Article 19. Basis of a Certification of Origin

1. Each Party shall provide that if a producer certifies the origin of a good, the certification of origin is completed on the basis of the producer having information that the good is originating.

2. Each Party shall provide that if the exporter is not the producer of the good, a certification of origin may be completed by the exporter of the good on the basis of:

(a) the exporter having information that the good is originating; or

(b) reasonable reliance on the producer's information that the good is originating.

3. Each Party shall provide that a certification of origin may be completed by the importer of the good on the basis of:

(a) the importer having documentation that the good is originating; or

(b) reasonable reliance on supporting documentation provided by the exporter or producer that the good is originating.

4. Each Party shall provide that a certification of origin may be completed by an authorised representative of a producer, exporter or importer of the good on the basis of:

(a) the authorised representative having documentation that the good is originating; or

(b) reasonable reliance on supporting documentation provided by the producer, exporter or importer that the good is originating.

5. For greater certainty, nothing in paragraph 1 or paragraph 2 shall be construed to allow a Party to require an exporter or producer to complete a certification of origin or provide a certification of origin to another person.

## Article 20. Discrepancies

Each Party shall provide that it shall not reject a certification of origin due to minor errors or discrepancies in the certification of origin.

## Article 21. Waiver of Certification of Origin

Neither Party shall require a certification of origin if:

(a) the customs value of the importation does not exceed 1000 Australian dollars for Australia or the equivalent amount in the importing Party's currency or any higher amount as the importing Party may establish; or

(b) it is for an importation of a good for which the importing Party has waived the requirement for a certificate of origin, provided that the importation does not form part of a series of importations carried out or planned for the purpose of

evading compliance with the importing Party's laws governing claims for preferential tariff treatment under this Agreement.

## Article 22. Obligations Relating to Importation

1. Except as otherwise provided for in this Chapter, each Party shall provide that, for the purpose of claiming preferential tariff treatment, the importer shall:

(a) make a declaration (3) that the good qualifies as an originating good;

(b) have a valid certification of origin in its possession at the time the declaration referred to in subparagraph (a) is made; and

(c) provide a copy of the certification of origin to the importing Party if required by the Party.

2. Each Party shall provide that, if the importer has reason to believe that the certification of origin is based on incorrect information that could affect the accuracy or validity of the certification of origin, the importer shall correct the importation document and pay any customs duty and, if applicable, penalties owed.

3. No importing Party shall subject an importer to a penalty for making an invalid claim for preferential tariff treatment if the importer, on becoming aware that such a claim is not valid and prior to discovery of the error by that Party, voluntarily corrects the claim and pays any applicable customs duty under the circumstances provided for in the Party's law.

(3) A Party shall specify its declaration requirements in its laws, regulations or procedures that are published or otherwise made available in a manner as to enable interested persons to become acquainted with them.

## Article 23. Obligations Relating to Exportation

Each Party shall provide that an exporter or a producer, or their authorised representative, that has completed and signed a certificate of origin, shall, on request, provide a copy of the certificate of origin and such other documents to its customs administration, if required by the Party's laws and regulations.

## Article 24. Record Keeping Requirements

1. Each Party shall provide that an importer claiming preferential tariff treatment for a good imported into the territory of that Party shall maintain, for a period of no less than five years from the date of importation of the good:

(a) the documentation related to the importation, including the certification of origin that served as the basis for the claim; and

(b) all records necessary to demonstrate that the good is originating and qualified for preferential tariff treatment, if the claim was based on a certification of origin completed by the importer.

2. Each Party shall provide that a producer or exporter in its territory that provides a certification of origin shall maintain, for a period of no less than five years from the date the certification of origin was issued, all records necessary to demonstrate that a good for which the exporter or producer provided a certification of origin is originating. Each Party shall endeavour to make available information on types of records that may be used to demonstrate that a good is originating.

3. Each Party shall provide that an importer, exporter or producer in its territory may choose to maintain the records specified in paragraph 1 and paragraph 2 in any medium that allows for prompt retrieval, including electronic, optical, magnetic or written form in accordance with that Party's law.

## Article 25. Verification of Origin

1. For the purposes of determining whether a good imported into a Party from the other Party qualifies as an originating good, the customs administration of the importing Party may conduct a verification action by means of:

(a) written requests for information from the importer;

(b) written requests for information from the exporter or producer of the exporting Party;

(c) requests that the customs administration of the exporting Party assist in verifying the origin of the good; or

(d) verification visits to the premises of the exporter or the producer in the territory of the other Party to observe the facilities and the production processes of the good and to review the records referring to origin, including accounting records.

2. For the purposes of paragraph 1(a) and paragraph 1(b), the customs administration shall allow the importer, exporter, or producer a period of 30 days from the date of the written request to respond. During this period the importer, exporter, or producer may request, in writing, an extension not exceeding 30 days.

3. For the purposes of this Article and Article 26 (Verification Visit), all the information requested by the importing Party and responded to by the exporting Party shall be communicated in English.

4. The customs administration of the importing Party shall complete any action under paragraph 1 to verify eligibility for preferential tariff treatment within the period specified in the laws, regulations or administrative procedures of the importing Party. Upon completion of the verification action, the customs administration shall provide written advice to the importer, exporter or producer of its decision as well as the legal basis and findings of fact on which the decision was made within 90 days.

5. Where a verification visit was undertaken, the customs administration shall also provide advice of the decision to the exporting Party.

## Article 26. Verification Visit

1. Prior to conducting a verification visit under Article 25.1(d) (Verification of Origin), the customs administration of the importing Party shall:

(a) make a written request to the exporter or producer to conduct a verification visit of their premises; and

(b) obtain the written consent of the exporter or producer whose premises are to be visited.

2. An exporter or producer should provide its written consent to a proposed verification visit within 30 days from the receipt of notification in accordance with paragraph 1(a).

3. The written request referred to in paragraph 1(a) shall include:

(a) the identity of the customs administration issuing the request;

(b) the name of the exporter of the good in the exporting Party to whom the request is addressed;

(c) the date the written request is made;

(d) the proposed date and place of the visit;

(e) the objective and scope of the proposed visit, including specific reference to the good that is the subject of the verification referred to in the certificate of origin; and

(f) the names and titles of the officials of the customs administration of the importing Party who will participate in the visit.

4. The customs administration of the importing Party shall notify the customs administration of the exporting Party when it requests a verification visit in accordance with this Article.

5. Officials of the customs administration of the exporting Party may participate in the verification visit as observers.

## Article 27. Determinations on Claims for Preferential Tariff Treatment

1. Except as otherwise provided in paragraph 2, each Party shall grant a claim for preferential tariff treatment made on or after the date of entry into force of this Agreement for that Party.

2. The importing Party may deny a claim for preferential tariff treatment if:

(a) it determines that the good does not qualify for preferential treatment;

(b) pursuant to a verification under Article 25 (Verification of Origin), it has not received sufficient information to determine that the good qualifies as originating;

(c) the exporter, producer or importer fails to respond to a written request for information in accordance with Article 25

(Verification of Origin);

(d) after receipt of a written notification for a verification visit, the exporter or producer does not provide its written consent in accordance with Article 25 (Verification of Origin); or

(e) the importer, exporter or producer fails to comply with the requirements of this Chapter.

3. If an importing Party denies a claim for preferential tariff treatment, it shall issue a determination to the importer that includes the reasons for the determination.

4. A Party shall not reject a claim for preferential tariff treatment for the sole reason that the invoice was issued in a non-Party.

### Article 28. Refunds and Claims for Preferential Tariff Treatment after Importation

1. Each Party shall provide that an importer may apply for preferential tariff treatment and a refund of any excess duties paid for a good if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the good would have qualified for preferential tariff treatment when it was imported into the territory of the Party.

2. As acondition for preferential tariff treatment under paragraph 1, the importing Party may require that the importer:

(a) make a claim for preferential tariff treatment;

(b) provide a statement that the good was originating at the time of importation;

(c) provide a copy of the certification of origin; and

(d) provide such other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or a longer period if specified in the importing Party's law.

### Article 29. Penalties

A Party may establish or maintain appropriate penalties for violations of its laws and regulations related to this Chapter.

### Article 30. Confidentiality

Each Party shall maintain the confidentiality of the information collected in accordance with this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.

## Section C. Other Matters

### Article 31. Consultation on Rules of Origin and Origin Procedures

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter.

2. The Parties shall consult to discuss possible amendments or modifications to this Chapter and its Annexes, taking into account developments in technology, production processes or other related matters.

3. Prior to the entry into force of an amended version of the Harmonized System, the Committee shall consult to prepare updates to this Chapter that are necessary to reflect changes to the Harmonized System.

### ANNEX 3-A. Minimum data requirements

A certification of origin that is the basis for a claim for preferential tariff treatment under this Agreement shall include the following elements:

*1. Importer, Exporter, Producer or Authorised Representative Certification of Origin*

Indicate whether the certifier is the exporter, producer or importer or an authorised representative of the exporter, produce or importer in accordance with Article 18 (Claims for Preferential Treatment).

*2. Certifier*

Provide the certifier's name, address (including country), telephone number and e-mail address.

*3. Exporter*

Provide the exporter's name, address (including country), e-mail address and telephone number if different from the certifier. This information is not required if the producer is completing the certification of origin and does not know the identity of the exporter.

*4. Producer*

Provide the producer's name, address (including country), e-mail address and telephone number, if different from the certifier or exporter or, if there are multiple producers, state "Various" or provide a list of producers. A person that wishes for this information to remain confidential may state "Available upon request by the importing authorities".

*5. Importer*

Provide, if known, the importer's name, address, e-mail address and telephone number.

*6. Description and HS Tariff Classification of the Good*

(a) Provide a description of the good and the HS tariff classification of the good to the 6-digit level. The description should be sufficient to relate it to the good covered by the certification; and

(b) If the certification of origin covers a single shipment of a good, indicate, if known, the invoice number related to the exportation.

*7. Origin Criterion*

Specify the rule of origin under which the good qualifies.

*8. Blanket Period*

Include the period if the certification covers multiple shipments of identical goods for a specified period of up to 12 months as set out in Article 18.4 (Claims for Preferential Treatment).

*9. Authorised Signature and Date:*

The certification must be signed and dated by the certifier and accompanied by the following statement:

I certify that the goods described in this document qualify as originating and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.

# Chapter 04. Customs Procedures

## Article 1. Purpose and Definitions

1. The purpose of this Chapter is to promote the objectives of this Agreement by simplifying customs procedures in relation to bilateral trade between the Parties.

2. For the purposes of this Chapter:

(a) "customs law" means any statutory and regulatory provisions applicable or enforceable by the respective customs administration of each Party; and

(b) "customs procedures" means the treatment applied by the customs administration of each Party to goods which are subject to customs control.

## Article 2. Scope

This Chapter shall apply, in accordance with the Parties' respective national laws, rules and regulations, to customs procedures required for clearance of goods traded between the Parties.

## Article 3. General Provisions

1. Customs procedures of both Parties shall conform, where possible and to the extent permitted by their respective domestic laws, rules and regulations, to the standards and recommended practices of the World Customs Organisation, including the principles of the revised International Convention on the Simplification and Harmonisation of Customs Procedures.

2. The customs administrations of both Parties shall periodically review their customs procedures with a view to their further simplification and the development of further mutually beneficial arrangements to facilitate bilateral trade.

3. To the extent permitted by their domestic laws, rules and regulations, the

Customs administrations of both Parties shall provide each other with information to assist in the investigation and prevention of infringements of customs law.

4. Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:

(a) be contrary to the public interest as determined by its law, rules and regulations;

(b) be contrary to any of its laws, rules and regulations including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions; or

(c) impede law enforcement.

## Article 4. Paperless Trading

1. The customs administrations of both Parties, in implementing initiatives which provide for the use of paperless trading, shall take into account the methodologiesagreed in APEC and the World Customs Organisation.

2. The customs administration of each Party shall work towards having electronic means for all its customs reporting requirements as soon as practicable.

3. The customs administration of each Party shall provide electronic systems that support business applications between it and its trading community.

## Article 5. Risk Management

1. The Parties shall administer customs procedures at their respective borders so as to facilitate the clearance of low-risk goods and focus on high-risk goods.

2. The Parties shall apply and further develop risk management techniques in the performance of their customs procedures.

## Article 6. Sharing of Best Practices

For future cooperative arrangements, both Parties shall facilitate initiatives to enhance further the exchange of information on best practices in relation to customs procedures, including the application of risk management techniques.

# Chapter 05. Technical Regulations and Sanitary and Phytosanitary Measures

## Article 1. Purposes and Definitions

The purposes of this Chapter are to:

(a) facilitate trade and investment between the Parties through collaborative efforts which minimise the impact of mandatory requirements and/or assessments of manufacturers or manufacturing processes on the goods traded between the Parties, in the most appropriate or cost-effective manner;

(b) complement bilateral agreements and arrangements between the Parties relating to mandatory requirements; and

(c) build on the Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the

Government of the Republic of Singapore.

For the purposes of this Chapter, unless the context otherwise requires or it is otherwise defined in a Sectoral Annex:

(a) "conformity assessment" shall have the same meaning as in the Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the Government of the Republic of Singapore;

(b) "equivalence" means the state wherein mandatory requirements applied in the territory of the exporting Party, though different from the mandatory requirements applied in the territory of the importing Party, meet the legitimate objective or achieve the appropriate level of sanitary or phytosanitary protection of the mandatory requirements applied in the territory of the importing Party;

(c) "mandatory requirements" means all technical regulations and sanitary and phytosanitary measures as may be set out in a Party's laws, regulations and administrative requirements;

(d) "regulatory authority" means an entity of a Party that exercises a legal right to determine the mandatory requirements, control the import, use or supply of goods within its territory and/or take enforcement action to ensure that goods marketed within its territory comply with its mandatory requirements;

(e) "sanitary or phytosanitary measure" shall have the same meaning as in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures;

(f) "Sectoral Annex" means an annex to this Chapter which specifies the arrangements in respect of a specific product sector; and

(g) "technical regulation" shall have the same meaning as in the WTO Agreement on Technical Barriers to Trade.

## Article 2. Scope and Obligations

1. This Chapter shall apply to mandatory requirements adopted or maintained by the Parties to fulfil their legitimate objectives and/or achieve their appropriate level of sanitary or phytosanitary protection.

2. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations:

(a) mandatory requirements, as appropriate to its particular national circumstances; and

(b) mandatory requirements necessary to ensure the quality of its imports, or for the protection of human, animal or plant life or health, or the environment, or for the prevention of deceptive practices or to fulfil other legitimate objectives, at the levels it considers appropriate.

3. Each Party shall retain all authority under its laws to interpret and implement its mandatory requirements. This includes the authority to take appropriate measures for goods that do not conform to the Party's mandatory requirements. Such measures may include withdrawing goods from the market, prohibiting their placement on the market or restricting their free movement, initiating a product recall or prohibiting an import.

4, The provisions of this Chapter shall apply to particular Sectoral Annexes as provided therein.

## Article 3. Origin

This Chapter applies to all goods and/or assessments of manufacturers or manufacturing processes of goods traded between the Parties, regardless of the origin of those goods, unless otherwise specified in a Sectoral Annex, or unless otherwise specified by any mandatory requirement of a Party.

## Article 4. Harmonisation

The Parties shall, where appropriate, endeavour to work towards harmonisation of their respective mandatory requirements taking into account relevant international standards, recommendations and guidelines, in accordance with their international rights and obligations.

## Article 5. Equivalence of Mandatory Requirements

1. The Parties shall give favourable consideration to accepting the equivalence of each other's mandatory requirements

consistent with the purpose of this Chapter.

2. A Party shall accept the equivalence of the mandatory requirements, and/or the results of conformity assessment and approval procedures, of the other Party in accordance with the respective Sectoral Annex.

3. For the purposes of Article 5.2, a Sectoral Annex shall provide the following details:

(a) the procedures for determining and implementing the equivalence of each Party's mandatory requirements; and/or

(b) the procedures for accepting the results of the conformity assessment and approval procedures; and

(c) the regulatory authorities designated by each Party.

## Article 6. Cooperative Activities on Sanitary and Phytosanitary/quarantine Matters

1. The Parties shall endeavour to develop a work programme and mechanisms for co-operative activities in the areas of technical assistance and capacity building to address plant, animal and public health and food safety issues of mutual interest.

2. The Parties shall, where appropriate, endeavour to develop further the use andproduct coverage of electronic means of data transfer, including electronic health certificates.

## Article 7. Conformity Assessment

1. The Parties, through the Joint Committee established by Article 11 of the Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the Government of the Republic of Singapore, shall consider arrangements additional to those provided for in this Chapter to ensure that differences between the structure, organization and operation of conformity assessment procedures in their respective territories do not unnecessarily impede trade between them.

2. For the purposes of conformity assessment, each Party shall, on the request of the other Party, and in accordance with relevant international obligations and its respective applicable domestic laws, rules and regulations, take reasonable steps to facilitate access in its territory for inspection, testing and other relevant procedures.

3. The Parties affirm their intention to adopt and apply, with such modifications as may be necessary, the principles set out in the APEC Information Notes on Good Regulatory Practice for Technical Regulation with respect to conformity assessment and approval procedures in meeting their international obligations under the WTO Agreement on Technical Barriers to Trade.

## Article 8. Exchange of Information, and Consultation

1. The Parties shall provide notification of any changes to their mandatory requirements in accordance with their WTO obligations or in specific cases as appropriate.

2, The Parties shall, within the context of this Chapter, establish contact points to expeditiously:

(a) broaden the exchange of information; and

(b) give favourable consideration to any written request for consultation.

3. The Parties shall, upon a request in writing of either Party and where appropriate, jointly:

(a) identify and develop new Sectoral Annexes for priority sectors for this Chapter;

(b) agree to amend or increase the scope of existing Sectoral Annexes with

a view to minimising the impact of mandatory requirements on goods traded between the Parties; and

(c) agree on a work programme for the implementation of this Article, consistent with the provisions of this Chapter, and implement that work programme expeditiously.

## Article 9. Confidentiality

Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of

which it considers would:

(a) be contrary to its essential security interests;

(b) be contrary to the public interest as determined by its domestic laws, rules and regulations;

(c) be contrary to any of its domestic laws, rules and regulations, including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(d) impede law enforcement; or

(e) prejudice legitimate commercial interests of particular enterprises, public or private.

### Article 10. Final Provisions on Sectoral Annexes

1. The Parties shall conclude as appropriate Sectoral Annexes which shall provide the implementing arrangements for this Chapter.

2. A Sectoral Annex shall enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of that Sectoral Annex,

3. A Party may terminate a Sectoral Annex in its entirety by giving the other Party six months' advance notice in writing unless otherwise stated in the relevant Sectoral Annex. However, a Party shall continue to accept the results of conformity assessment or equivalence for the duration of the six-month advance notice period.

4. Where urgent problems of safety, health, consumer or environmental protection or national security arise or threaten to arise for a Party, that Party may suspend the operation of any Sectoral Annex, in whole or in part, immediately. In such cases, the Party shall immediately advise the other Party of the nature of the urgent problem, the goods covered and the objective and rationale of the suspension.

## Chapter 06. Government Procurement

### Article 1. Definitions

For the purposes of this Chapter:

(a) "build-operate-transfer contract and public works concession contract" means a contractual arrangement the primary purpose of which is to provide for the construction or rehabilitation of physical infrastructure, plants, buildings, facilities or other government-owned works and under which, as consideration for a supplier's execution of a contractual atrangement, a procuring entity grants to the supplier, for a specified period of time, temporary ownership or a right to control and operate, and demand payment for the use of those works for the duration of the contract;

(b) "commercial goods or services" means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non- governmental purposes;

(c) "enterprise" means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;

(d) "in writing or written" means any worded or numbered expression that can be read, reproduced and may be later communicated. It may include electronically transmitted and stored information;

(e) "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(f) "measure" includes any law, regulation, procedure, requirement or practice;

(g) "multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

(h) "notice of intended procurement" means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender or both;

(i) "offset" means any condition or undertaking that requires the use of domestic content, a domestic supplier, the licensing

of technology, technology transfer, investment, counter-trade or similar action to encourage local development or to improve a Party's balance of payments accounts;

(j) "open tendering" means a procurement method whereby all interested suppliers may submit a tender;

(k) "person" means a natural person or an enterprise;

(l) "procuring entity" means an entity listed in Annex 3;

(m) "publish" means to disseminate information through paper or electronic means that is distributed widely and is readily accessible to the general public;

(n) "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(o) "selective tendering" means a procurement method whereby the procuring entity invites only qualified suppliers to submit a tender;

(p) "services" includes construction services, unless otherwise specified;

(q) "SME" means a small and medium-sized enterprise, including a micro- sized enterprise;

(r) "supplier" means a person or group of persons that provides or could provide a good or service to a procuring entity; and

(s) "technical specification" means a tendering requirement that:

(i) sets out the characteristics of:

(A) goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or

(B) services to be procured, or the processes or methods for their provision, including any applicable administrative provisions; or

(i) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

## Article 2. Scope

*Application of Chapter*

1. This Chapter shall apply to any measure regarding covered procurement.

2. For the purposes of this Chapter, covered procurement means government procurement:

(a) of a good, service or any combination thereof as specified in each Party's Schedule to Annex 3;

(b) by any contractual means, including: purchase; rental or lease, with or without an option to buy; build-operate-transfer contracts and public works concessions contracts;

(c) for which the value, as estimated in accordance with paragraph 8, paragraph 9 and paragraph 10, equals or exceeds the relevant threshold specified in a Party's Schedule to Annex 3, at the time of publication of a notice of intended procurement;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage under this Agreement.

*Activities Not Covered*

3. Unless otherwise provided in a Party's Schedule to Annex 3, this Chapter shall not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party, including its procuring entities, provides, including cooperative agreements, grants, loans, equity infusions, guarantees, subsidies, fiscal incentives and sponsorship arrangements;

(c) the procurement or acquisition of: fiscal agency or depository services; liquidation and management services for

regulated financial institutions; or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts; procurement:

(i) conducted for the specific purpose of providing international assistance, including development aid;

(ii) funded by an international organisation or foreign or international grants, loans or other assistance to which procurement procedures or conditions of the international organisation or donor apply. If the procedures or conditions of the international organisation or donor do not restrict the participation of suppliers then the procurement shall be subject to Article 4.1 (General Principles); or

(iii) conducted under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project;

(f) procurement of a good or service outside the territory of the Party of the procuring entity, for consumption outside the territory of that Party; and

(g) procurement of asset management and financial advisory services pertaining to reserves held by each Party's Government or its entities.

*Schedules*

4. Each Party shall specify the following information in its Schedule to Annex 3:

(a) in Section A, the central government entities whose procurement is covered by this Chapter;

(b) in Section B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C, other entities whose procurement is covered by this Chapter;

(d) in Section D, the goods covered by this Chapter;

(e) in Section E, the services, other than construction services, covered by this Chapter;

(f) in Section F, the construction services covered by this Chapter;

(g) in Section G, any General Notes;

(h) in Section H, the applicable Threshold Adjustment Formula;

(i) in Section I, the publication information required under Article 5.2 (Publication of Procurement Information); and

(j) in Section J, any Implementation Arrangements.

*Compliance*

5. Each Party shall ensure that its procuring entities comply with this Chapter in conducting covered procurements.

6. No procuring entity shall prepare or design a procurement, or otherwise structure or divide a procurement into separate procurements in any stage of the procurement, or use a particular method to estimate the value of a procurement, in order to avoid the obligations of this Chapter.

7. Nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from developing new procurement policies, procedures or contractual means, provided that they are not inconsistent with this Chapter.

*Valuation*

8. In estimating the value of a procurement for the purposes of ascertaining whether it is a covered procurement, a procuring entity shall include the estimated maximum total value of the procurement over its entire duration, taking into account:

(a) all forms of remuneration, including any premium, fee, commission, interest or other revenue stream that may be provided for under the contract;

(b) the value of any option clause; and

(c) any contract awarded at the same time or over a given period to one or more suppliers under the same procurement.

9. If the total estimated maximum value of a procurement over its entire duration is not known, the procurement shall be deemed a covered procurement, unless otherwise excluded under this Agreement.

10. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in the case of a fixed-term contract:

(i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or

(ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and

(c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

11. For the procurement described in paragraph 10, paragraph 9 may also be used as a valid valuation method.

## Article 3. Exceptions

1. Subject to the requirement that the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade between the Parties, nothing in this Chapter shall be construed to prevent a Party, including its procuring entities, from adopting or maintaining a measure:

(a) necessary to protect public morals, order or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to the good or service of a person with disabilities, of philanthropic or not-for-profit institutions, or of prison labour.

2. The Parties understand that paragraph 1(b) includes environmental measures necessary to protect human, animal or plant life or health.

## Article 4. General Principles

*National Treatment and Non-Discrimination*

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to domestic goods, services and suppliers.

2. With respect to any measure regarding covered procurement, neither Party, including its procuring entities, shall:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the good or service offered by that supplier for a particular procurement is a good or service of the other Party.

3. All orders under contracts awarded for covered procurement shall be subject to paragraph 1 and paragraph 2 of this Article.

*Procurement Methods*

4. A procuring entity shall use an open tendering procedure for covered procurement unless Article 8 (Qualification of Suppliers) or Article 9 (Limited Tendering) applies.

*Rules of Origin*

5. Each Party shall apply to covered procurement of a good the rules of origin that it applies in the normal course of trade to

that good.

*Offsets*

6. With regard to covered procurement, neither Party, including its procuring entities, shall seek, take account of, impose or enforce any offset, at any stage of a procurement.

*Measures Not Specific to Procurement*

7. Paragraph 1 and paragraph 2 shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations or formalities, and measures affecting trade in services other than measures governing covered procurement.

*Use of Electronic Means*

8. The Parties shall seek to provide opportunities for covered procurement to be undertaken through electronic means, including for the publication of procurement information, notices and tender documentation, and for the receipt of tenders.

9. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and

(b) establish and maintain mechanisms that ensure the integrity of information provided by suppliers, including requests for participation and tenders.

## Article 5. Publication of Procurement Information

1. Each Party shall promptly publish any measure of general application relating to covered procurement, and any change or addition to this information.

2. Each Party shall list in Section I of its Schedule to Annex 3 the paper or electronic means through which the Party publishes the information described in paragraph 1 and the notices required by Article 6 (Notices of Intended Procurement), Article 8.3 (Qualification of Suppliers) and Article 15.3 (Post-Award Information).

3. Each Party shall, on request, respond to an inquiry relating to the information referred to in paragraph 1.

## Article 6. Notices of Intended Procurement

1. For each covered procurement, except in the circumstances described in Article 9 (Limited Tendering), a procuring entity shall publish a notice of intended procurement through the appropriate paper or electronic means listed in Annex 3. The notices shall remain readily accessible to the public until at least the expiration of the time period for responding to the notice or the deadline for submission of the tender.

2. The notices shall, if accessible by electronic means, be provided free of charge:

(a) for central government entities that are covered under Annex 3, through a single point of access; and

(b) for sub-central government entities and other entities covered under Annex 3, through links in a single electronic portal.

3. Unless otherwise provided in this Chapter, each notice of intended procurement shall include the following information, unless that information is provided in the tender documentation that is made available free of charge to all interested suppliers at the same time as the notice of intended procurement:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and the cost and terms of payment to obtain the relevant documents, if any;

(b) a description of the procurement, including, if appropriate, the nature and quantity of the goods or services to be procured and a description of any options, or the estimated quantity if the quantity is not known;

(c) if applicable, the time-frame for delivery of goods or services or the duration of the contract;

(d) if applicable, the address and any final date for the submission of requests for participation in the procurement;

(e) the address and the final date for the submission of tenders;

(f) the language or languages in which tenders or requests for participation may be submitted, if other than an official language of the Party of the procuring entity;

(g) a list and a brief description of any conditions for participation of suppliers, that may include any related requirements for specific documents or certifications that suppliers must provide;

(h) if, pursuant to Article 8 (Qualification of Suppliers), a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, if applicable, any limitation on the number of suppliers that will be permitted to tender; and

(i) an indication that the procurement is covered by this Chapter, unless that indication is publicly available through information published pursuant to Article 5.2 (Publication of Procurement Information).

4. For greater certainty, paragraph 3 does not preclude a Party from charging a fee for tender documentation if the notice of intended procurement includes all of the information set out in paragraph 3.

*Notice of Planned Procurement*

5. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans (notice of planned procurement), which should include the subject matter of the procurement and the planned date of publication of the notice of intended procurement.

## Article 7. Conditions for Participation

1. A procuring entity shall limit any conditions for participation in a covered procurement to those conditions that ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to fulfil the requirements of that procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, the supplier has previously been awarded one or more contracts by a procuring entity of a Party or that the supplier has prior work experience in the territory of that Party; and

(b) may require relevant prior experience if essential to meet the requirements of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity shall:

(a) evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) base its evaluation solely on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. If there is supporting material, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy or insolvency;

(b) false declarations;

(c) significant or persistent deficiencies in the performance of any substantive requirement or obligation under a prior contract or contracts;

or

(d) failure to pay taxes.

## Article 8. Qualification of Suppliers

*Registration Systems and Qualification Procedures*

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Neither Party, including its procuring entities, shall:

(a) adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement; or

(b) use such registration system or qualification procedure to prevent or delay the inclusion of suppliers of the other Party on a list of suppliers or prevent those suppliers from being considered for a particular procurement.

*Selective Tendering*

3. Ifa procuring entity intends to use selective tendering, the procuring entity shall:

(a) publish a notice of intended procurement that invites suppliers to submit a request for participation in a covered procurement; and

(b) include in the notice of intended procurement the information specified in Articles 6.3(a), (b), (d), (g), (hb) and (i) (Notices of Intended Procurement).

4. The procuring entity shall:

(a) publish the notice sufficiently in advance of the procurement to allow interested suppliers to request participation in the procurement;

(b) provide, by the commencement of the time period for tendering, at least the information in Articles 6.3 (c), (e) and (f) (Notices of Intended Procurement) to the qualified suppliers that it notifies as specified in Article 13.3(b) (Time Periods); and

(c) allow all qualified suppliers to submit a tender, unless the procuring entity stated in the notice of intended procurement a limitation on the number of suppliers that will be permitted to tender and the criteria or justification for selecting the limited number of suppliers.

5. If the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 3, the procuring entity shall ensure that the tender documentation is made available at the same time to all the qualified suppliers selected in accordance with paragraph 4(c).

*Multi-Use Lists*

6. A Party, including its procuring entities, may establish or maintain a multi-use list provided that it publishes annually, or otherwise makes continuously available by electronic means, a notice inviting interested suppliers to apply for inclusion on the list.

The notice shall include:

(a) a description of the goods and services, or categories thereof, for which the list may be used;

(b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity or other government agency will use to verify a supplier's satisfaction of those conditions;

(c) the name and address of the procuring entity or other government agency and other information necessary to contact the procuring entity and to obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination or, if the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list;

(e) the deadline for submission of applications for inclusion on the list, if applicable; and

(f) an indication that the list may be used for procurement covered by this Chapter, unless that indication is publicly available through information published pursuant to Article 5.2 (Publication of Procurement Information).

7. A Party, including its procuring entities, that establishes or maintains a multi- use list, shall include on the list, within a reasonable period of time, all suppliers that satisfy the conditions for participation set out in the notice referred to in paragraph 6.

8. If a supplier that is not included on a multi-use list submits a request for participation in a procurement based on the multi-use list and submits all required documents, within the time period provided for in Article 13.2 (Time Periods), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement unless the procuring entity is not able to complete the examination of the request within the time

period allowed for the submission of tenders.

*Information on Procuring Entity Decisions*

9. A procuring entity or other entity of a Party shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the decision with respect to the request or application.

10. If a procuring entity or other entity of a Party rejects a supplier's request for participation or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and on request of the supplier, promptly provide the supplier with a written explanation of the reason for its decision.

## Article 9. Limited Tendering

1. Provided that it does not use this provision for the purpose of avoiding competition between suppliers, to protect domestic suppliers or in a manner that discriminates against suppliers of the other Party, a procuring entity may use limited tendering.

2. If a procuring entity uses limited tendering, it may choose, according to the nature of the procurement, not to apply Articles 6 (Notices of Intended Procurement), 7 (Conditions for Participation), 8 (Qualification of Suppliers), 10 (Negotiations), 11 (Technical Specifications), 12 (Tender Documentation), 13 (Time Periods) or 14 (Treatment of Tenders and Awarding of Contracts). A procuring entity may use limited tendering only under the following circumstances:

(a) if, in response to a prior notice, invitation to participate or invitation to tender:

(i) no tenders were submitted or no suppliers requested participation;

(ii) no tenders were submitted that conform to the essential requirements in the tender documentation;

(iii) no suppliers satisfied the conditions for participation; or

(iv) the tenders submitted were collusive,

provided that the procuring entity does not substantially modify the essential requirements set out in the notices or tender documentation;

(b) if the good or service can be supplied only by a particular supplier and no reasonable alternative or substitute good or service exists for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection of patents, copyrights or other exclusive rights; or

(iii) due to an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier or its authorised agents, of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:

(i) cannot be made for technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement, or due to conditions under original supplier warranties; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) for a good purchased on a commodity market or exchange;

(e) if a procuring entity procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a prototype or a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the prototype or the first good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs. Subsequent procurements of these newly developed goods or services, however, shall be subject to this Chapter;

(f) if additional construction services that were not included in the initial contract but that were within the objectives of the

original tender documentation have, due to unforeseeable circumstances, become necessary to complete the construction services described therein. However, the total value of contracts awarded for additional construction services may not exceed 50 per cent of the value of the initial contract;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership, but not for routine purchases from regular suppliers;

(h) if a contract is awarded to the winner of a design contest, provided that:

(i) the contest has been organised in a manner that is consistent with this Chapter; and

(ii) the contest is judged by an independent jury witha view to award a design contract to the winner; or

(i) in so far as is strictly necessary if, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the good or service could not be obtained in time by means of open or selective tendering.

3. For each contract awarded in accordance with paragraph 2, a procuring entity shall prepare a report in writing, or maintain a record, that includes the name of the procuring entity, the value and kind of good or service procured, and a statement that indicates the circumstances and conditions described in paragraph 2 that justified the use of limited tendering.

## Article 10. Negotiations

A Party may provide for its procuring entities to conduct negotiations in the context of covered procurement if:

(a) the procuring entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 6 (Notices of Intended Procurement); or

(b) it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

## Article 11. Technical Specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or effect of creating an unnecessary obstacle to trade between the Parties.

2. In prescribing the technical specifications for the good or service being procured, a procuring entity shall, if appropriate:

(a) set out the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specifications on international standards, if these exist; otherwise, on national technical regulations, recognised national standards or building codes.

3. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in these cases, the procuring entity includes words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

5. For greater certainty, a procuring entity may conduct market research in developing specifications for a particular procurement.

6. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting or applying technical specifications to promote the conservation of natural resources or the protection of the environment.

7. For greater certainty, this Chapter is not intended to preclude a Party, or its procuring entities, from preparing, adopting or applying technical specifications required to protect sensitive government information, including specifications that may affect or limit the storage, hosting or processing of such information outside the territory of the Party.

## Article 12. Tender Documentation

1. A procuring entity shall promptly make available or provide on request to any interested supplier tender documentation that includes all information necessary to permit the supplier to prepare and submit a responsive tender. Unless already provided in the notice of intended procurement, that tender documentation shall include a complete description of:

(a) the procurement, including the nature, scope and, if known, the quantity of the good or service to be procured or, if the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings or instructional materials;

(b) any conditions for participation, including any financial guarantees, information and documents that suppliers are required to submit;

(c) all criteria to be considered in the awarding of the contract and the relative importance of those criteria;

(d) if there will be a public opening of tenders, the date, time and place for the opening;

(e) any other terms or conditions relevant to the evaluation of tenders; and ® any date for delivery of a good or supply of a service.

2. In establishing any date for the delivery of a good or the supply of a service being procured, a procuring entity shall take into account factors such as the complexity of the procurement.

3. A procuring entity shall promptly reply to any reasonable request for relevant information by an interested or participating supplier, provided that the information does not give that supplier an advantage over other suppliers.

*Modifications*

4. If, prior to the award of a contract, a procuring entity modifies the evaluation criteria or requirements set out in a notice of intended procurement or tender documentation provided to a participating supplier, or amends or re-issues a notice or tender documentation, it shall publish or provide those modifications, or the amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating in the procurement at the time of the modification, amendment or re-issuance, if those suppliers are known to the procuring entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time to allow those suppliers to modify and re-submit their initial tender, if appropriate.

## Article 13. Time Periods General

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for a supplier to obtain the tender documentation and to prepare and submit a request for participation and a responsive tender, taking into account factors such as:

(a) the nature and complexity of the procurement; and

(b) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points if electronic means are not used.

*Deadlines*

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of a request for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders this time period impracticable, the time period may be reduced to no less than 10 days.

3. Except as provided in paragraph 4 and paragraph 5, a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the procuring entity notifies the suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time period for tendering set out in paragraph 3 by five days for each one of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

(b) the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the procuring entity accepts tenders by electronic means.

5. A procuring entity may reduce the time period for tendering set out in paragraph 3 to no less than 10 days if:

(a) the procuring entity has published a notice of planned procurement under Article 6 (Notices of Intended Procurement) at least 40 days and no more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) the address from which documents relating to the procurement may be obtained; and

(iv) as much of the information that is required for the notice of intended procurement as is available;

(b) a state of urgency duly substantiated by the procuring entity renders impracticable the time period for tendering set out in paragraph 3; or

(c) the procuring entity procures commercial goods or services.

6. The use of paragraph 4, in conjunction with paragraph 5, shall in no case result in the reduction of the time periods for tendering set out in paragraph 3 to less than 10 days.

7. A procuring entity shall require all interested or participating suppliers to submit requests for participation or tenders in accordance with a common deadline. These time periods, and any extension of these time periods, shall be the same for all interested or participating suppliers.

## Article 14. Treatment of Tenders and Awarding of Contracts

*Treatment of Tenders*

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders.

2. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

*Awarding of Contracts*

3, To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notice and tender documentation and be submitted by a supplier who satisfies the conditions for participation.

4. Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be fully capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notice and tender documentation, submits:

(a) the most advantageous tender; or

(b) if price is the sole criterion, the lowest price.

5. A procuring entity shall not use options, cancel a covered procurement, or modify or terminate awarded contracts in order to avoid the obligations of this Chapter.

## Article 15. Post-award Information

*Information Provided to Suppliers*

1. A procuring entity shall promptly inform suppliers that have submitted a tender of the contract award decision. The procuring entity may do so in writing or through the prompt publication of the notice in paragraph 3, provided that the notice includes the date of award. If a supplier has requested the information in writing, the procuring entity shall provide it in writing.

2. Subject to Article 16 (Disclosure of Information), a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the procuring entity did not select the unsuccessful supplier's tender or an explanation of the relative advantages of the successful supplier's tender.

*Publication of Award Information*

3. A procuring entity shall, promptly after the award of a contract for a covered procurement, publish in an officially designated publication a notice containing at least the following information:

(a) a description of the good or service procured;

(b) the name and address of the procuring entity;

(c) the name and address of the successful supplier;

(d) the value of the contract award;

(e) the date of award or, if the procuring entity has already informed suppliers of the date of the award under paragraph 1, the contract date; and

(f) the procurement method used and, if a procedure was used pursuant to Article 9 (Limited Tendering), a brief description of the circumstances justifying the use of that procedure.

*Maintenance of Records*

4. A procuring entity shall maintain the documentation, records and reports relating to tendering procedures and contract awards for covered procurement, including the records and reports provided for in Article 9.3 (Limited Tendering), for at least three years after the award of a contract.

## Article 16. Disclosure of Information

*Provision of Information to Parties*

1. On request of the other Party, a Party shall provide promptly information sufficient to demonstrate whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including, if applicable, information on the characteristics and relative advantages of the successful tender, without disclosing confidential information. The Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

*Non-Disclosure of Information*

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not, except to the extent required by law or with the written authorisation of the supplier that provided the information, disclose information that would prejudice legitimate commercial interests of a particular supplier or that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information if that disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

## Article 17. Ensuring Integrity In Procurement Practices

Each Party shall ensure that criminal or administrative measures exist to address corruption in its government procurement. These measures may include procedures to render ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to government procurement in the Party's territory. Each Party shall also ensure that it has in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over a procurement.

## Article 18. Domestic Review

1. Each Party shall maintain, establish or designate at least one impartial administrative or judicial authority (review authority) that is independent of its procuring entities to review, in a non-discriminatory, timely, transparent and effective manner, a challenge or complaint (complaint) by a supplier that there has been:

(a) a breach of this Chapter; or

(b) if the supplier does not have a right to directly challenge a breach of this Chapter under the law of a Party, a failure of a procuring entity to comply with the Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or had, an interest. The procedural rules for all complaints shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage, if appropriate, the procuring entity and the supplier to seek resolution of the complaint through consultations. The procuring entity shall accord impartial and timely consideration to the complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or to its right to seek corrective measures under the administrative or judicial review procedure. Each Party shall make information on its complaint mechanisms generally available.

3. If a body other than the review authority initially reviews a complaint, the Party shall ensure that the supplier may appeal the initial decision to the review authority that is independent of the procuring entity that is the subject of the complaint.

4. If the review authority has determined that there has been a breach or a failure as referred to in paragraph 1, a Party may limit compensation for the loss or damages suffered to either the costs reasonably incurred in the preparation of the tender or in bringing the complaint, or both.

5. Each Party shall ensure that, if the review authority is not a court, its review procedures are conducted in accordance with the following procedures:

(a) a supplier shall be allowed sufficient time to prepare and submit a complaint in writing, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;

(b) a procuring entity shall respond in writing to a supplier's complaint and provide all relevant documents to the review authority;

(c) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and

(d) the review authority shall provide its decision on a supplier's complaint in a timely fashion, in writing, with an explanation of the basis for the decision.

6. Each Party shall adopt or maintain procedures that provide for:

(a) prompt interim measures, pending the resolution of a complaint, to preserve the supplier's opportunity to participate in

the procurement and to ensure that the procuring entities of the Party comply with its measures implementing this Chapter; and

(b) corrective action that may include compensation under paragraph 4.

The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether those measures should be applied. Just cause for not acting shall be provided in writing.

## Article 19. Modifications and Rectifications of Annex

1. A Party shall notify any proposed modification or rectification ("modification") to its Schedule to Annex 3 by providing a notice in writing to the other Party through the contact points designated under Article 6 (Contact Point) of Chapter 17 (Final Provisions). A Party shall provide compensatory adjustments for a change in coverage if necessary to maintain a level of coverage comparable to the coverage that existed prior to the modification. The Party may include the offer of compensatory adjustment in its notice.

2. A Party is not required to provide compensatory adjustments to the other Party if the proposed modification concerns one of the following:

(a) a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement by that procuring entity; or

(b) rectifications of a purely formal nature and minor modifications to its Schedule to Annex 3, such as:

(i) changes in the name of a procuring entity;

(ii) the merger of one or more procuring entities listed in its Schedule;

(iii) the separation of a procuring entity listed in its Schedule into two or more procuring entities that are all added to the procuring entities listed in the same Section of Annex 3; and

(iv) changes in website references,

and the other Party does not object under paragraph 3 on the basis that the proposed modification does not concern subparagraph (a) or subparagraph (b).

3. A Party whose rights under this Chapter may be affected by a proposed modification that is notified under paragraph 1 shall notify the other Party of any objection to the proposed modification within 45 days of the date of provision of the notice.

4. Ifa Party objects to a proposed modification, including a modification regarding a procuring entity on the basis that government control or influence over the entity's covered procurement has been effectively eliminated, that Party may request additional information, including information on the nature of any government control or influence, with a view to clarifying and reaching agreement on the proposed modification, including the procuring entity's continued coverage under this Chapter. The Parties shall make every attempt to resolve the objection through consultations.

5. If the Parties resolve the objection through consultations, the Parties shall notify the contact points designated under Article 6 (Contact Point) of Chapter 17 (Final Provisions) of the resolution, including any agreed modification to Annex 3.

## Article 20. Facilitation of Participation by Smes

1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in government procurement.

2. If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for eligibility, is transparent.

3. To facilitate participation by SMEs in covered procurement, each Party shall, to the extent possible and if appropriate:

(a) provide comprehensive procurement-related information that includes a definition of SMEs in a single electronic portal;

(b) endeavour to make all tender documentation available free of charge;

(c) conduct procurement by electronic means or through other new information and communication technologies; and

(d) consider the size, design and structure of the procurement, including the use of subcontracting by SMEs.

### Article 21. Cooperation and Further Negotiations

1. The Parties recognise their shared interest in cooperating to promote international liberalisation of government procurement markets with a view to achieving enhanced understanding of their respective government procurement systems and to improving access to their respective markets.

2. A Party may request consultations regarding this Chapter, and the Parties may decide to hold further negotiations with a view to:

(a) improving market access coverage through enlargement of procuring entity lists and reduction of exclusions and exceptions as set out in Annex 3;

(b) revising the thresholds set out in Annex 3;

(c) revising the Threshold Adjustment Formula in Section H of Annex 3;

(d) reducing and eliminating discriminatory measures.

## Chapter 07. Cross-border Trade In Services

### Article 1. Definitions

For the purposes of this Chapter:

(a) "cross-border trade in services" or "cross-border supply of services" means the supply of a service:

(i) from the territory of a Party into the territory of the other Party;

(ii) in the territory ofa Party to a person of the other Party; or

(iii) by a natural person of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by a covered investment;

(b) "enterprise" means:

(i) any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation; and

(ii) a branch of an enterprise;

(c) "existing measures" means measures in force as of the date of entry into force of this Agreement;

(d) "measure" includes any law, regulation, procedure, requirement or practice;

(e) "measures adopted or maintained by a Party" means measures adopted or maintained by:

(i) central, regional or local governments and authorities; or

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(f) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

(g) "natural person of a Party" means:

(i) for Australia, a natural person who is an Australian citizen as defined in the Australian Citizenship Act 2007 as amended from time to time, or any successor legislation;

(ii) for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws; or

(iii) a permanent resident of either Party;

(h) "new measures" means measures adopted after the date of entry into force of this Agreement;

(i) "person" means either a natural person or an enterprise;

(j) "person of a Party" means a natural person of a Party or an enterprise of a Party;

(k) "service consumer" means any person that receives or uses a service;

(l) "service of the other Party" means a service which is supplied:

(i) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

(ii) in the case of the supply of a service as defined in subparagraph (a)(iii), by a service supplier of the other Party;

(m) "service supplied in the exercise of governmental authority" means for each Party any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

(n) "service supplier of a Party" means a person of a Party that seeks to supply or supplies a service; and

(o) "services" means all services including new and variant services in any sector except services supplied in the exercise of governmental authority.

## Article 2. Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by a service supplier of the other Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale or delivery of a service; (b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;

(d) the presence ina Party's territory of a service supplier of the other Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service except to the extent that such bond or financial security is a covered investment.

2. In addition to paragraph 1, Articles 3 (Market Access), 9 (Transparency) and 11 (Domestic Regulation) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment. (1)

3. This Chapter shall not apply to:

(a) a "financial service" as defined in Article 1 (Definitions) of Chapter 9 (Financial Services), except that paragraph 2 shall apply if the financial service is supplied by a covered investment that is not a covered investment in a "financial institution" as defined in Article 1 (Definitions) of Chapter 9 (Financial Services) in the Party's territory;

(b) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, including government-supported loans, guarantees and insurance;

(c) a service supplied in the exercise of governmental authority within the territory of each respective Party; and

(d) government procurement.

4. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

5. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Chapter.

(1) For greater certainty, nothing in this Chapter, including Annex 7-A (Professional Services), is subject to investor-State dispute settlement pursuant to Section B (Investor-State Dispute Settlement) of Chapter 8 (Investment).

## Article 3. Market Access

Neither Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (2)

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

(2) This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

## Article 4. National Treatment (3)

1. Each Party shall accord to services and service suppliers of the other Party, treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 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 service suppliers of the Party of which it forms a part.

(3) For greater certainty, whether treatment is accorded in "like circumstances" under Articles 4 (National Treatment) or 5 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

## Article 5. Most-favoured-nation Treatment

Each Party shall accord to service suppliers of the other Party treatment no lessfavourable than that it accords, in like circumstances, to service suppliers of a non- Party.

## Article 6. Local Presence

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

## Article 7. Reservations

1. Articles 3 (Market Access), 4 (National Treatment), 5 (Most-Favoured- Nation Treatment) and 6 (Local Presence) shall not apply to:

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

(i) the central level of government or a regional level of government, as set out by that Party in its Schedule to Annex 4- I; or

(ii) a local level of government; or

(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 Articles 3 (Market Access), 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) or 6 (Local Presence).

2. Articles 3 (Market Access), 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) and 6 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities as set out in Annex 4-II.

3. Article 11 (Domestic Regulation) shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party as set out in Annex 4-I; or

(b) any existing or new measure that a Party adopts or maintains with respect to sectors, subsectors or activities as set out in Annex 4-II.

## Article 8. Additional Commitments

The Parties shall set out their respective additional commitments in Annex 4-II of this Agreement with respect to measures affecting trade in services not covered by:

(a) Articles 3 (Market Access), 4 (National Treatment), 5 (Most-Favoured- Nation Treatment) and 6 (Local Presence); or

(b) Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 7 (Prohibition of Performance Requirements) and 8 (Senior Management and Boards of Directors) of Chapter 8 (Investment)

including those regarding qualifications, standards or licensing matters and any other matters as may be mutually agreed.

## Article 9. Transparency

1. Each Party shall publish promptly and, except in an emergency situation, at the latest by the date of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Chapter. An international agreement pertaining to or affecting trade in services to which a Party is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Party shall also establish one or more enquiry points to provide specific information to the other Party, upon request, on all such matters.

4. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations that relate to the subject matter of this Chapter.

5. To the extent possible, each Party shall allow reasonable time between the publication of final regulations and the date they enter into effect.

## Article 10. Disclosure of Confidential Information

Nothing in this Chapter shall require a Party to furnish or allow access to confidential information, the disclosure of which would be contrary to its law, impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

## Article 11. Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall ensure that its judicial, arbitral or administrative tribunals or procedures which provide for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services are open on a non- discriminatory basis to a service supplier of the other Party. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Paragraph 2 shall not be construed to require a Party to institute such tribunals or procedures where this would be

inconsistent with its constitutional structure or the nature of its legal system.

4. If a Party requires authorisation for the supply of a service, it shall:

(a) where specific time periods exist for applications, allow an applicant a reasonable period for the submission of an application;

(b) initiate the processing of an application without undue delay;

(c) in the case of an application considered incomplete for processing under domestic laws and regulations, within a reasonable period of time, to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) at the request of the applicant provide guidance on why the application is considered incomplete;

(iii) provide the applicant with the opportunity to provide the additional information that is required to complete the application; and

(iv) where none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;

(d) to the extent practicable, establish an indicative timeframe for the processing of an application;

(e) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;

(f) on request of the applicant, provide, without undue delay, information concerning the status of the application;

(g) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate;

(h) to the extent practicable, provide the applicant with the opportunity to correct any minor errors or omissions in the application and endeavour to provide guidance on the additional information required;

(i) if it deems appropriate, accept copies of documents that are authenticated in accordance with the Party's laws in place of original documents; and

(j) to the extent practicable, ensure that authorisation, once granted, enters into effect without undue delay subject to the applicable terms and conditions.

5. Each Party shall ensure that any authorisation fee charged is reasonable, transparent and does not, in itself, restrict the supply of the relevant service. (4)

6. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of a service in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service; and

(b) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

7. In determining whether a Party is in conformity with its obligations under paragraph 6, account shall be taken of international standards of relevant international organisations applied by that Party. (5)

8. Each Party shall:

(a) explain, on request, the policy rationale of a measure, particularly of a new measure; and

(b) to the extent possible:

(i) publish in advance any measure referred to in paragraph 1 of Article 9 (Transparency) that it proposes to adopt;

(ii) provide interested persons with a reasonable opportunity to comment on those proposed measures; and

(iii) consider comments received under paragraph 8(b)(ii).

9. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

(a) the examination is scheduled at reasonable intervals; and

(b) a reasonable period of time is provided to enable interested persons to submit an application.

10. Further to paragraph 9, each Party should explore, as appropriate, the possibility of:

(a) using electronic means for conducting such examinations;

(b) conducting such examinations orally; and

(c) providing opportunities for taking such examinations in the territory of the other Party.

11. Each Party shall ensure that there are procedures in place domestically to assess the competency of professionals of the other Party.

12. Subject to its laws and regulations, a Party shall permit service suppliers of the other Party to use the enterprise names under which they trade in the territory of the other Party and otherwise ensure that the use of enterprise names is not unduly restricted.

13. If the results of the negotiations related to paragraph 4 of Article VI of GATS, or the results of any similar negotiations undertaken in other multilateral fora in which the Parties participate, enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement.

(4) For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

(5) "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of both Parties to the Agreement.

## Article 12. Monopoly and Exclusive Service Supplier

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Party's obligations under Articles 3 (Market Access) and 4 (National Treatment).

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's obligations under Articles 3 (Market Access) and 4 (National Treatment), the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or paragraph 2, it may request the other Party establishing, maintaining or authorising such a supplier to provide specific information concerning the relevant operations in its territory.

4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those service suppliers in its territory.

## Article 13. Safeguard Measures

Neither Party shall take safeguard action against services and service suppliers of the other Party from the date of entry into force of this Agreement. Neither Party shall initiate or continue any safeguard investigations in respect of services and service suppliers of the other Party.

## Article 14. Payments and Transfers

1. Subject to its reservations pursuant to Article 7 (Reservations) and except under the circumstances envisaged in Article 4

(Temporary Safeguard Measures) of Chapter 17 (Final Provisions), a Party shall not apply restrictions on international transfers and payments for current transactions.

2. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 4 (Temporary Safeguard Measures) of Chapter 17 (Final Provisions) or at the request of the Fund.

## Article 15. Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non- Party, 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 Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of the other Party if the service supplier is an enterprise owned or controlled by persons of a non- Party or by persons of the denying Party that has no substantial business activities in the territory of the other Party.

## Article 16. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals or to maintain public order (6);

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

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

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

(6) 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. Review of Subsidies

1. The Parties shall review the treatment of subsidies in the context ofdevelopments in international fora of which both Parties are Members.

2. The Parties shall consult on appropriate steps in regard to subsidies related to trade in services where any subsidies issues arise under this Chapter.

## Article 18. Air Transport Services

1. For the purposes of this Article:

(a) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

(b) "air transport" means the public carriage by aircraft of passengers, baggage, cargo or mail, separately or in combination, for remuneration or hire; and

(c) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

2. This Chapter and Chapter 16 (Dispute Settlement), shall not apply to measures affecting:

(a) rights in relation to air transport, however granted; or

(b) services directly related to the exercise of rights in relation to air transport, except as provided in paragraph 3.

3. This Chapter shall apply to measures affecting:

(a) aircraft repair and maintenance services; and

(b) computer reservation system (CRS) services.

4. Both Parties agree to review developments in the air transport sector at the first review of this Agreement under Article 7 (Review) of Chapter 17 (Final Provisions) or at any other time agreed between the Parties, with a view to including these developments in this Agreement.

5. While both Parties affirm their rights and obligations under the Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Singapore relating to Air Services, signed on 3 November 1967 and any subsequent amendments thereto, both Parties agree to work towards an Open Skies Air Services Agreement and to review that work in accordance with paragraph 4.

6. The Parties affirm, mutatis mutandis, their rights and obligations under the GATS, including the Annex on Air Transport Services.

## Article 19. Recognition

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing or certification of a service supplier, and subject to the requirements of paragraph 4, it may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party or a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the Party or non-Party concerned, or may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of a non-Party, nothing in Article 5 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licences or certifications granted, in the territory of the other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity to the other Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity to the other Party to demonstrate that education, experience, licences or certifications obtained or requirements met in the other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between the other Party and non-Parties in the application of its standards or criteria for the authorisation, licensing or certification of a service supplier, or a disguised restriction on trade in services.

5. As set out in Annex 7-A (Professional Services), the Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Professional Services Working Group.

## ANNEX 7-A. Professional services

*Licensing, certification and mutual recognition*

1. The Parties shall encourage relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional services suppliers.

2. Without limiting the potential scope of work, the standards and criteria referred to in paragraph 1 may be developed with regard to the following matters:

(a) education — accreditation of schools or academic programs;

(b) examinations — qualifying examinations for licensing, including alternative methods of assessment, such as oral examinations and interviews;

(c) experience — length and nature of experience required for licensing;

(d) conduct and ethics — standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;

(e) professional development and re-certification — continuing education and ongoing requirements to maintain professional certification;

(f) scope of practice — extent of, or limitations on, permissible activities;

(g) local knowledge — requirements for knowledge of such matters as local laws, regulations, geography, or climate; and

(h) consumer protection — alternatives to any residency requirements, including bonding, professional liability insurance, and client restitution funds, to provide for the protection of consumers.

3. A Party may consider, if feasible, taking steps to implement a temporary or project specific licensing or registration regime based on a foreign supplier's home licence or recognised professional body membership, without the need for further written examination. That temporary or limited licence regime should not operate to prevent a foreign supplier from gaining a local licence once that supplier satisfies the applicable local licensing requirements.

4. On request of the other Party, a Party shall to the extent practicable provide information concerning standards and criteria for the licensing and certification of professional service suppliers, including information concerning the appropriate regulatory or other body to consult regarding these standards and criteria.

*Consultations*

5. Without prejudice to each Party's rights and obligations under this Agreement, and while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet policy objectives, each Party should refrain from raising new barriers to trade in professional services. Where a Party considers that a new barrier has been adopted, or is proposed to be adopted, it may request consultations with the other Party.

*Working Group*

6. The Parties hereby establish a Working Group on Professional Services, comprising representatives of each Party, to facilitate activities listed in paragraphs 1 to 4. The Working Group shall meet annually, or as agreed by the Parties.

7. The issues that the Working Group should consider, for professional services generally and, as appropriate, for individual professional services, include:

(a) procedures for fostering the development of mutual recognition arrangements between relevant bodies;

(b) the feasibility of developing model procedures for the licensing and certification of professional services suppliers; and

(c) other issues of mutual interest relating to the supply of professional services.

8. In implementing this Annex, the Working Group should consider, as appropriate, relevant bilateral, plurilateral and multilateral agreements relating to professional services.

9. To assist the Working Group in its activities, the Parties should, as appropriate, encourage the involvement of relevant industry bodies. This may include encouraging relevant industry bodies to provide joint views on potential initiatives within the scope ofthe Working Group's activities, including views on mutual recognition opportunities. The Parties should consider and provide a response to any joint views, advancing projects where feasible and mutually agreed.

10. Each Party shall encourage its relevant bodies to implement any decisions or recommendations of the Working Group within a mutually agreed time.

11. The Working Group, at each meeting, shall review progress made, including with respect to any recommendation for initiatives to promote mutual recognition of standards and criteria and temporary licensing, and agree on the further direction of its work.

# Chapter 08. Investment

# Section A.

## Article 1. Definitions

For the purposes of this Chapter:

(a) "Centre" means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

(b) "claimant" means an investor of a Party that is a party to an investment dispute with the other Party. If that investor is a natural person, who is a permanent resident of a Party and a national of the other Party, that natural person may not submit a claim to arbitration against that latter Party;

(c) "disputing parties" means the claimant and the respondent;

(d) "disputing party" means either the claimant or the respondent;

(e) "enterprise" means

(i) any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation; and

(ii) a branch of an enterprise;

(f) "enterprise of a Party" means an enterprise constituted or organised under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there (1);

(g) "freely usable currency" means "freely usable currency" as determined by the International Monetary Fund under its Articles of Agreement;

(h) "ICC Arbitration Rules" means the arbitration rules of the International Chamber of Commerce;

(i) "ICSID Additional Facility Rules" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

(j) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965;

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

(i) an enterprise;

(ii) shares, stock and other forms of equity participation in an enterprise;

(iii) bonds, debentures, other debt instruments and loans; (2) (3)

(iv) futures, options and other derivatives;

(v) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;

(vi) intellectual property rights;

(vii) licences, authorisations, permits and similar rights conferred pursuant to the Party's law; and

(viii) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges,

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

(l) "investor of a non-Party" means, with respect to a Party, an investor that attempts to make,(4) is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

(m) "investor of a Party" means a Party, or a national (5) or an enterprise of a Party, that attempts to make, is making, or has

made an investment in the territory of the other Party;

(n) "measure" includes any law, regulation, procedure, requirement or practice;

(o) "non-disputing Party" means the Party that is not a party to an investment dispute;

(p) "New York Convention' means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;

(q) "person" means a natural person or an enterprise;

(r) "protected information" means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, including classified government information;

(s) "respondent" means the Party that is a party to an investment dispute;

(t) "Secretary-General" means the Secretary-General of ICSID;

(u) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement;(6) and

(v) "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law.

(1) For greater certainty, the inclusion of a "branch" in the definitions of "enterprise" and "enterprise of a Party" is without prejudice to a Party's ability to treat a branch under its laws as an entity that has no independent legal existence and is not separately organised.

(2) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

(3) A loan issued by one Party to the other Party is not an investment.

(4) For greater certainty, the Parties understand that, for the purposes of the definitions of "investor of a non-Party" and "investor of a Party', an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.

(5) For the purposes of this Chapter, a "national" means, for Australia, a natural person who is an Australian citizen as defined in the Australian Citizenship Act 2007 as amended from time to time, or any successor legislation; for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws; or a permanent resident of either Party.

(6) For greater certainty, a reference in this Agreement to the TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

## Article 2. Scope

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

(a) investors of the other Party;

(b) covered investments; and

(c) all investments in the territory of that Party with respect to:

(i) Article 7 (Prohibition of Performance Requirements); and

(ii) Article 20 (investment and Environmental, Health and other Regulatory Objectives).

2. This Chapter shall not apply to:

(a) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments; or

(b) a natural person who is a permanent resident but not a citizen of a Party where:

(i) the provisions of an investment protection agreement between the other Party and the country of which the person is a citizen have already been invoked in respect of the same matter; or

(ii) the person is a citizen of the other Party.

3. An enterprise of a Party shall not be treated as an investor of the other Party, but any investments in that enterprise by investors of that other Party shall be protected by this Chapter.

4. Nothing in this Chapter shall be construed to impose an obligation on a Party to privatise.

5. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:

(a) the central, regional or local governments or authorities of that Party; and

(b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party. (7)

(7) For greater certainty, governmental authority is delegated under the Party's law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

## Article 3. Relation to other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement of a Party that a service supplier of the other Party post a bond ot other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 9 (Financial Services).

## Article 4. National Treatment (8)

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

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

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

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

## 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 any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, 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 such as those included in Section B (Investor-State Dispute Settlement).

## Article 6. Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security. (9)

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens referred to in paragraph 1 and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

(9) The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

## Article 7. Prohibition of Performance Requirements

1. Neither Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking, to: (10)

(a) export a given level or percentage of goods or services;

(b) achieve a given level or percentage of domestic content;

(c) purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) 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 such investment;

(e) restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) transfer a particular technology, a production process or other proprietary knowledge to a person in its territory; or

(g) supply exclusively from the territory of the Party the goods that such investment produces or the services that such investment supplies to a specific regional market or to the world market.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement to:

(a) achieve a given level or percentage of domestic content;

(b) purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) 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 such investment; or

(d) restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraph 1(f) shall not apply:

(i) when a Party authorises use of an intellectual property right in accordance with Article 31 (11) of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under a Party's competition laws. (12)

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on investment or international trade, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

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

(iii) related to the conservation of living or non-living exhaustible natural resources.

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (), and (g), and 2(a) and (b), do not apply to government procurement.

(f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

(10) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.

(11) The reference to Article 31 includes footnote 7 to Article 31 and includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN (01)/DEC/2).

(12) The Parties recognise that a patent does not necessarily confer market power.

## Article 8. Senior Management and Boards of Directors

1. A Party shall not require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person of any 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 9. Special Formalities and Information Requirements

1. Nothing in Article 4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## Article 10. Transparency

Each Party shall promptly make public its laws, regulations and investment policies, and any amendments thereto, of general application that pertain to or affect investments in its territory by investors of the other Party.

## Article 11. Reservations

1. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 7 (Prohibition of Performance Requirements) and 8 (Senior Management and Boards of Directors) shall not apply to:

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

(i) the central level of government or a regional level of government, as set out by that Party in its Schedule to Annex 4- I; or

(ii) a local level of government; or

(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 Articles 4 (National Treatment), 5 (Most-Favoured- Nation Treatment), 7 (Performance Requirements) or 8 (Senior Management and Board of Directors).

2. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 7 (Prohibition of Performance Requirements) and 8 (Senior Management and Boards 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 to Annex 4-II.

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement for that Party and covered by its Schedule to Annex 4-II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. (a) Article 4 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by Article 3 of the TRIPS Agreement; and

(b) Article 5 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by: Article 4 of the TRIPS Agreement.

5. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) and 8 (Senior Management and Boards of Directors) shall not apply to government procurement.

6. For greater certainty, any amendments or modifications to a Party's Schedules to Annex 4-I or Annex 4-II, pursuant to this Article, shall be made in accordance with Article 11 (Amendments) of Chapter 17 (Final Provisions).

## Article 12. Additional Commitments

1. The Parties shall set out their respective additional commitments in Annex 4- Ill of this Agreement with respect to investment matters not covered by Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 7 (Prohibition of Performance Requirements) and 8 (Senior Management and Board of Directors).

2. Section B (investor-State Dispute Settlement) shall not apply to these additional commitments.

## Article 13. Expropriation and Nationalisation

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; (13)

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and

(d) in accordance with due process of law.

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realisable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate 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. Notwithstanding paragraphs 1, 2, 3 and 4, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation and any subsequent amendments thereto relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

6. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that the issuance, revocation, limitation or creation is consistent with the TRIPS Agreement. (14)

7. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce

a subsidy or grant,

(a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or

(b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant;

standing alone, does not constitute an expropriation.

(13) 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".

(14) 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.

## Article 14. Treatment In Cases 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 armedconflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation or both, as appropriate, for that loss.

## Article 15. 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; (15)

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;

(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

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

(e) payments made pursuant to Article 14 (Treatment in Cases of Armed Conflict or Civil Strife) and Article 13 (Expropriation and Nationalisation); 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 another Party.

4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws (16) relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, futures, options or derivatives;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

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

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

6. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 4 (Temporary Safeguard Measures) of Chapter 17 (Final Provisions) or at the request of the Fund.

(15) For greater certainty, contributions to capital include the initial contribution.

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

## Article 16. Subrogation

1. If a Party or a designated agency of a Party makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights or title the investor would have possessed under this Chapter in respect of such covered investment but for the subrogation. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or a designated agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the designated agency of the Party making the payment, pursue those rights and claims against the other Party.

## Article 17. Review of Subsidies

1. The Parties shall review the treatment of subsidies in the context of developments at international fora to which both Parties are Members.

2. The Parties shall consult on appropriate steps in regard to subsidies related to investments or investors where any subsidies issues arise under this Chapter.

## Article 18. Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to investments of that investor if the enterprise:

(a) is owned or controlled by a person of a non-Party or of the denying Party; and

(b) has no substantial business activities in the territory of the other Party.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

## Article 19. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or

unjustifiable discrimination between the Parties where like conditions prevail, or a disguised restriction on investments in the territory of a Party by investors of the other Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals or to maintain public order; (17)

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

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter 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, historic 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.

(17) 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 20. Investment and Environmental, Health and other Regulatory Objectives

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

### Article 21. Disclosure of Confidential Information

Nothing in this Chapter shall require a Party to furnish or allow access to confidential information, the disclosure of which would be contrary to its law, impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

## Section B. Investor-state Dispute Settlement (18)

(18) No claim may be brought under this Section in respect of the following measures of Australia: measures comprising or related to the Pharmaceutical Benefits Scheme, Medicare Benefits Scheme, Therapeutic Goods Administration and Office of the Gene Technology Regulator. A reference to a body or program in this footnote includes any successor of that body or program.

### Article 22. Tobacco Control Measures

No claim may be brought under this Section in respect of a tobacco control measure (19) of a Party.

(19) "Tobacco control measure" means a measure of a Party related to tobacco products (including products made or derived from tobacco), such as for their production, consumption, distribution, labelling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well as fiscal measures such as internal taxes and excise taxes, and enforcement measures, such as inspection, recordkeeping, and reporting requirements. "Tobacco products" means products under Chapter 24 of the Harmonised System, including processed tobacco, or any product that contains tobacco, that is manufactured to be used for smoking, sucking, chewing or snuffing.

### Article 23. Consultation and Negotiation

1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute

through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.

2. The claimant shall deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue.

3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

## Article 24. Submission of a Claim to Arbitration

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 23.2 (Consultation and Negotiation):

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:

(i) that the respondent has breached an obligation under Section A; and

(i) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:

(i) that the respondent has breached an obligation under Section A; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. At least 90 days before submitting any claim to arbitration under this Section, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (notice of intent). The notice shall specify:

(a) the name and address of the claimant and, if a claim is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. The claimant may submit a claim referred to in paragraph 1 under one of the

following alternatives:

(a) the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings*;

(b) the ICSID Additional Facility Rules;

(c) the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration (notice of arbitration):

(a) referred to in the ICSID Convention is received by the Secretary-General;

(b) referred to in the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or

(d) referred to under any arbitral institution or arbitration rules selected under paragraph 3(d) is received by the respondent.

5. Acclaim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitration rules.

6. The arbitration rules applicable under paragraph 3 that are in effect on the date the claim or claims were submitted to arbitration under this Section shall govern the arbitration except to the extent modified by this Agreement.

7. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

## Article 25. Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article If of the New York Convention for an "agreement in writing".

## Article 26. Conditions and Limitations on Consent of Each Party

1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 24 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 24.1(a)) or the enterprise (for claims brought under Article 24.1(b)) has incurred loss or damage.

2. No claim shall be submitted to arbitration under this Section unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

(b) the notice of arbitration is accompanied:

(i) for claims submitted to arbitration under Article 24.1(a) (Submission of a Claim to Arbitration), by the claimant's written waiver; and

(ii) for claims submitted to arbitration under Article 24.1(b) (Submission of a Claim to Arbitration), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any court or administrative tribunal under the law of either Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 24 (Submission of a Claim to Arbitration).

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 24.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 24.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

## Article 27. Selection of Arbitrators

1. Unless the disputing parties agree otherwise, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within a period of 75 days after the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either Party as the presiding arbitrator unless the disputing parties agree otherwise.

4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules,

and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 24.1(a) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 24.1(b) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

5. Any person appointed as a member or chair of a tribunal shall meet the requirements set out in Article 5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement).

6. In addition to any applicable arbitral rules regarding independence and impartiality of arbitrators, arbitrators shall comply with Annex 7 (Code of Conduct for Arbitrators appointed under Chapter 8 (Investment) and Chapter 16 (Dispute Settlement)) and any other guidance on the application of relevant rules or guidelines on conflicts of interest in international arbitration that the Parties may provide.

## Article 28. Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 24.4 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. After consultation with the disputing parties, the tribunal may accept and consider written amicus curiae submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 33 (Awards) or that a claim is manifestly without legal merit.

(a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter- memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 33 (Awards), the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument

on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 6 (Minimum Standard of Treatment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.

8. A respondent may not assert as a defence, counterclaim, right of set-off or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

9. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 24 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.

10. In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.

11. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements including under another Agreement to which both Parties are party, the Parties shall consider whether awards rendered under Article 33 (Awards) should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 29 (Transparency of Arbitral Proceedings).

## Article 29. Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Articles 28.2 and 28.3 (Conduct of the Arbitration) and Article 32 (Consolidation);

(d) minutes or transcripts of hearings of the tribunal, if available; and (e) orders, awards and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.

3. Nothing in this Section, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 2 (Security Exceptions) of Chapter 17 (Final Provisions) or Article 21 (Disclosure of Confidential Information)(20).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;

(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and

(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:

(i) withdraw all or part of its submission containing that information; or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).

In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavour to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.

(20) For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 2 (Security Exceptions) of Chapter 17 (Final Provisions) or Article 21 (Disclosure of Confidential Information), the respondent may still withhold that information from disclosure to the public.

## Article 30. Governing Law

When a claim is submitted under Articles 24.1(a) or 24.1(b) (Submission of a Claim to Arbitration), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. (21)

(21) For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent when it is relevant to the claim as a matter of fact.

## Article 31. Expert Reports

Without prejudice to the appointment of other kinds of experts when authorised by the applicable arbitration rules, a tribunal, on request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions that the disputing parties may agree.

## Article 32. Consolidation

1. If two or more claims have been submitted separately to arbitration under Article 24.1 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any

disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within a period of 30 days after the date of receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order agree otherwise, a tribunal established under this Article shall comprise three arbitrators:

(a) one arbitrator appointed by agreement of the claimants;

(b) one arbitrator appointed by the respondent; and

(c) the presiding arbitrator appointed by the Secretary-General, provided that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.

5. If, within a period of 60 days after the date when the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 24.1 (Submission of a Claim to Arbitration) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

(c) instruct a tribunal previously established under Article 27 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

(i) that tribunal, on request of a claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and

(ii) that tribunal shall decide whether a prior hearing shall be repeated.

7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 24.1 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6. The request shall specify:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought. The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 27 (Selection of Arbitrators) shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6,

may order that the proceedings of a tribunal established under Article 27 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.

## Article 33. Awards

1. When a tribunal makes a final award, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 24.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.

3. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance with this Section and the applicable arbitration rules.

4. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award to the respondent reasonable costs and attorney's fees.

5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 24.1(b) (Submission of a Claim to Arbitration) and an award is made in favour of the enterprise:

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.

6. A tribunal shall not award punitive damages.

7. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

8. Subject to paragraph 9 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

9. A disputing party shall not seek enforcement of a final award until: (a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 24.4 (d) (Submission of a Claim to Arbitration):

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

10. Each Party shall provide for the enforcement of an award in its territory.

11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a tribunal shall be established under Chapter 16 (Dispute Settlement). The requesting Party may seek in those proceedings:

(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and

(b) a recommendation that the respondent abide by or comply with the final award.

12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 11.

13. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

## Article 34. Service of Documents

1. Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade R.G. Casey Building

John McEwen Crescent

Barton ACT 0221

Australia

2. Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Singapore by delivery to:

Permanent Secretary Ministry of Trade & Industry

100 High Street #09-01 Singapore 179434

Singapore.

## ANNEX 8-A. 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. Article 13.1 (Expropriation and Nationalisation) addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 13.1 (Expropriation and Nationalisation) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

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

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

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

(iii) the character of the government action.

(b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, (22) safety, and the environment, do not constitute indirect expropriation, except in rare circumstances.

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

### ANNEX 8-B.

For greater certainty, a decision under Australia's foreign investment policy, which consists of the Foreign Acquisitions and Takeovers Act 1975, Foreign Acquisitions and Takeovers Regulations 2015, Foreign Acquisitions Fees Imposition Act 2015 (Commonwealth), Foreign Acquisitions Fees Imposition Regulation 2015 (Commonwealth), Financial Sector (Shareholdings) Act 1998 and associated Ministerial Statements by the Treasurer of the Commonwealth of Australia or a minister acting on his or her behalf, on whether or not to approve a foreign investment proposal, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 16 (Dispute Settlement).

# Chapter 09. Financial Services

## Article 1. Definitions

For the purposes of this Chapter:

(a) "Chapter 16 arbitral tribunal" means an arbitral tribunal appointed under Chapter 16 (Dispute Settlement);

(b) "cross-border financial service supplier of a Party" means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such a service;

(c) "cross-border trade in financial services or cross-border supply of financial services" means the supply ofa financial service:

(i) from the territory of a Party into the territory of the other Party;

(iI) in the territory of a Party to a person of the other Party; or (iii)

by a national of a Party in the territory of the other Party,

but does not include the supply of a financial service in the territory of a Party by an investment in that territory;

(d) "enterprise" means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;

(e) "financial institution" means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

(f) "financial institution of the other Party" means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

(g) "financial service" means any service of a financial nature. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a service of a financial nature. Financial services include the following activities:

*Insurance and insurance-related services*

(i) direct insurance (including co-insurance):

(A) life;

(B) non-life;

(ii) reinsurance and retrocession;

(iii) insurance intermediation, such as brokerage and agency; and

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

*Banking and other financial services (excluding insurance)*

(v) acceptance of deposits and other repayable funds from the public;

(vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) financial leasing;

(viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) guarantees and commitments;

(x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);

(B) foreign exchange;

(C) derivative products, including futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(E) transferable securities; and

(F) other negotiable instruments and financial assets, including bullion;

(xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) money broking;

(xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (g)(v) to (g)(xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(h) "financial service supplier of a Party" means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

(i) "investment" means "investment" as defined in Article 1 (Definitions) of Chapter 8 (Investment), except that, with respect to "loans" and "debt instruments" referred to in that Article:

(i) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(i) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (i)(i), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 8 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 1 (Definitions) of Chapter 8 (Investment);

(j) "investor of a Party" means a Party, or a person of a Party, that attempts to make,! is making, or has made an investment in the territory of the other Party;

(k) "measure" includes any law, regulation, procedure, requirement or practice;

(l) "national" means:

(i) for Australia, a natural person who is an Australian citizen as defined in the Australian Citizenship Act 2007 as amended from time to time, or any successor legislation;

(ii) for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws; or

(iii) a permanent resident of either Party;

(m) "new financial service" means a financial service not supplied in the Party's territory that is supplied within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

(n) "person" means a natural person or an enterprise; (1)

(o) "person of a Party" means a national or an enterprise ofa Party and, for greater certainty, does not include a branch of an enterprise of a non- Party;

(p) "public entity" means a central bank or monetary authority of a Party, or any financial institution that is owned or controlled by a Party;

(q) "self-regulatory organisation" means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from central or regional government;

(r) "Tribunal" means the tribunal established under Article 24 (Submission of a Claim to Arbitration) of Chapter 8 (Investment); and

(s) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement. (2)

(1) For greater certainty, the Parties understand that an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or licences.

(2) For greater certainty, a reference in this Agreement to the TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

## Article 2. Scope

This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) financial institutions of the other Party;

(b) investors of the other Party, and investments of those investors, in financial institutions in the Party's territory; and

(c) cross-border trade in financial services.

2. Chapter 7 (Cross-Border Trade in Services) and Chapter 8 (Investment) shall apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into this Chapter.

(a) Article 15 (Denial of Benefits) and 16 (General Exceptions) of Chapter 7 (Cross-Border Trade in Services), and Articles 6 (Minimum Standard of Treatment), 9 (Special Formalities and Information Requirements), 13 (Expropriation and Nationalisation), 14 (Treatment in Cases of Armed Conflict or Civil Strife), 15 (Transfers), 18 (Denial of Benefits), 19 (General Exceptions) and 20 (Investment and Environmental, Health and other Regulatory Objectives) of Chapter 8 (Investment) are hereby incorporated into and made a part of this Chapter.

(b) Section B (Investor-State Dispute Settlement) of Chapter 8 (Investment) is hereby incorporated into and made a part of this Chapter? solely for claims that a Party has breached Articles 6 (Minimum Standard of Treatment), 9 (Special Formalities and Information Requirements), 13 (Expropriation and Nationalisation), 14 (Treatment in Cases of Armed Conflict or Civil Strife), 15 (Transfers), or 18 (Denial of Benefits) of Chapter 8 (Investment) incorporated into this Chapter under subparagraph (a). (4)

(c) Article 14 (Payments and Transfers) of Chapter 7 (Cross-Border Trade in Services) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 6 (Cross-Border Trade).

3. This Chapter shall not apply to measures adopted or maintained by a Party relating to:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services conducted for the account or with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or subparagraph (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

4. This Chapter shall not apply to government procurement of financial services.

5. This Chapter shall not apply to subsidies or grants with respect to the cross- border supply of financial services, including government-supported loans, guarantees and insurance.

(3) For greater certainty, Section B (Investor-State Dispute Settlement) of Chapter 8 (Investment) shall not apply to cross-border trade in financial services.

(4) For greater certainty, if an investor of a Party submits a claim to arbitration under Section B (Investor- State Dispute Settlement) of Chapter 8 (Investment): (1) as referenced in Article 28.7 (Conduct of the Arbitration) of Chapter 8 (investment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international investment arbitration; (2) pursuant to Article 28.4 (Conduct of the Arbitration) of Chapter 8 (Investment), a Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 33 (Awards) of Chapter 8 (Investment); and (3) pursuant to Article 28.6 (Conduct of the Arbitration) of Chapter 8 (Investment), the Tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection and, in determining whether such an award is warranted, the Tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous and shall provide the disputing parties a reasonable opportunity to comment.

## Article 3. National Treatment (5)

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

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

3. For greater certainty, the treatment to be accorded by a Party under paragraph 1 and paragraph 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, financial institutions and investments of investors in financial institutions, of the Party of which it forms a part.

4. For the purposes of the national treatment obligations in Article 6.1 (Cross- Border Trade), a Party shall accord to cross-border financial service suppliers of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.

(5) For greater certainty, whether treatment is accorded in "like circumstances" under Articles 3 (National Treatment) or 4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors, investments, financial institutions or financial service suppliers on the basis of legitimate public welfare objectives.

## Article 4. Most-favoured-nation Treatment

1. Each Party shall accord to:

(a) investors of the other Party, treatment no less favourable than that it accords to investors of a non-Party, in like circumstances;

(b) financial institutions of the other Party, treatment no less favourable than that it accords to financial institutions of a non-

Party, in like circumstances;

(c) investments of investors of the other Party in financial institutions, treatment no less favourable than that it accords to investments of investors of a non-Party in financial institutions, in like circumstances; and

(d) cross-border financial service suppliers of the other Party, treatment no less favourable than that it accords to cross-border financial service suppliers of a non-Party, in like circumstances.

2. For greater certainty, the treatment referred to in paragraph 1 does not encompass international dispute resolution procedures or mechanisms such as those included in Article 2.2(b) (Scope).

## Article 5. Market Access for Financial Institutions

Neither Party shall adopt or maintain with respect to financial institutions of the other Party or investors of the other Party seeking to establish those institutions, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

(i) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (6) or

(iv) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service.

(6) Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of financial services.

## Article 6. Cross-border Trade

1. Each Party shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of the other Party to supply the financial services specified in Annex 9-A (Cross-Border Trade).

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of the other Party located in the territory of the other Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory.

A Party may define "doing business" and "solicitation" for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross- border financial service suppliers of the other Party and of financial instruments.

## Article 7. New Financial Services (7)

Each Party shall permit a financial institution of the other Party to supply a new financial service that the Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law. (8) Notwithstanding Article 5(b) (Market Access for Financial Institutions), a Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. If a Party requires a financial institution to obtain authorisation to supply a new financial service, the Party shall decide within a reasonable period of time whether to issue the authorisation and may refuse the authorisation only for prudential reasons.

(7) The Parties understand that nothing in this Article prevents a financial institution of a Party from applying to the other Party to request that it authorise the supply of a financial service that is not supplied in the territory of either Party. That application shall be subject to the law of the Party to which the application is made and, for greater certainty, shall not be subject to this Article.

(8) For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

## Article 8. Treatment of Certain Information

Nothing in this Chapter shall require a Party to furnish or allow access to:

(a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service suppliers; or

(b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

## Article 9. Senior Management and Boards of Directors

1. Neither Party shall require financial institutions of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. Neither Party shall require that more than a minority of the board of directors of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

## Article 10. Non-conforming Measures

1. Articles 3 (National Treatment), 4 (Most-Favoured-Nation Treatment), 5 (Market Access for Financial Institutions), 6 (Cross-Border Trade) and 9 (Senior Management and Boards of Directors) shall not apply to:

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

(i) the central level of government, as set out by that Party in Section A of its Schedule to Annex 6;

(ii) a regional level of government, as set out by that Party in Section A of its Schedule to Annex 6; or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed:

(i) immediately before the amendment, with Articles 3 (National Treatment), 4 (Most-Favoured-Nation Treatment), 5 (Market Access for Financial Institutions) or 9 (Senior Management and Boards of Directors); or

(ii) on the date of entry into force of the Agreement for the Party applying the non-conforming measure, with Article 6 (Cross- Border Trade).

2. Articles 3 (National Treatment), 4 (Most-Favoured-Nation Treatment), 5 (Market Access for Financial Institutions), 6 (Cross-Border Trade) and 9 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in Section B of its Schedule to Annex 6.

3. A non-conforming measure, set out in a Party's Schedule to Annex 4-I or 4-II as not subject to Articles 4 (National Treatment) or 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services) or Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) or 8 (Senior Management and Boards of Directors) of Chapter 8 (Investment) shall be treated as a non-conforming measure not subject to Articles 3 (National Treatment), 4 (Most-Favoured-Nation Treatment) or 9 (Senior Management and Boards of Directors), as the case may be, to the extent that the measure, sector, subsector or activity set out in the entry is covered by this Chapter.

4. (a) Article 3 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by Article 3 of the TRIPS Agreement.

(b) Article 4 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by Article 4 of the TRIPS Agreement.

## Article 11. Exceptions

1. Notwithstanding any other provisions of this Chapter and Agreement except for Chapters 2 (Trade in Goods), 3 (Rules of Origin), 4 (Customs Procedures) and 5 (Technical Regulations and Sanitary and Phytosanitary Measures), a Party shall not be prevented from adopting or maintaining measures for prudential reasons, (9) including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. If these measures do not conform with the provisions of this Agreement to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter, Chapters 7 (Cross-Border Trade in Services), 8 (Investment), 10 (Telecommunications Services), or 14 (Electronic Commerce) shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 7 (Prohibition of Performance Requirements) of Chapter 8 (Investment) with respect to measures covered by Chapter 8 (Investment), under Article 15 (Transfers) of Chapter 8 (Investment) or Article 14 (Payments and Transfers) of Chapter 7 (Cross-Border Trade in Services).

3. Notwithstanding Article 15 (Transfers) of Chapter 8 (Investment) and Article 14 (Payments and Transfers) of Chapter 7 (Cross-Border Trade in Services), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non- discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross- border financial service suppliers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

4. For greater certainty, nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties or between Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or cross-border trade in financial services as covered by this Chapter.

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

## Article 12. Recognition

1. A Party may recognise prudential measures of the other Party or a non-Party in the application of measures covered by this Chapter. (10) That recognition may be:

(a) accorded autonomously;

(b) achieved through harmonisation or other means; or

(c) based upon an agreement or arrangement with the other Party or a non- Party.

2. A Party that accords recognition of prudential measures under paragraph 1 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation and, if appropriate, procedures concerning the sharing of information between the Parties.

3. If a Party accords recognition of prudential measures under paragraph 1(c) and the circumstances set out in paragraph 2 exist, that Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

(10) For greater certainty, nothing in Article 4 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord recognition to prudential measures of the other Party.

## Article 13. Transparency and Administration of Certain Measures

1. The Parties recognise that transparent regulations and policies governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Chapter applies are administered in a reasonable, objective and impartial manner.

3. Each Party shall, to the extent practicable:

(a) publish in advance any such regulation that it proposes to adopt and the purpose of the regulation; and

(b) provide interested persons and the other Party with a reasonable opportunity to comment on that proposed regulation.

4. At the time that it adopts a final regulation, a Party should, to the extent practicable, address in writing the substantive comments received from interested persons with respect to the proposed regulation. (11)

5. To the extent practicable, each Party should allow a reasonable period of time between publication of a final regulation of general application and the date when it enters into effect.

6. Each Party shall ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party are promptly published or otherwise made available in a manner that enables interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Chapter.

8. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing an application relating to the supply of financial services.

9. On request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

10. A Party's regulatory authority shall make an administrative decision on a complete application of an investor in a financial institution, a financial institution or a cross-border financial service supplier of the other Party relating to the supply of a financial service, within 120 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings have been held and all necessary information has been received. If it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter.

11. On request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.

(11) For greater certainty, a Party may address those comments collectively on an official government website.

## Article 14. Self-regulatory Organisations

If a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self- regulatory organisation in order to provide a financial service in or into its territory, it shall ensure that the self-regulatory organisation observes the obligations contained in Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment).

## Article 15. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

## Article 16. Expedited Availability of Insurance Services

The Parties recognise the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include: allowing introduction of products unless those products are disapproved within a reasonable period of time; not requiring product approval or authorisation of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; or not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures, that Party shall endeavour to maintain or improve those procedures.

## Article 17. Performance of Back-office Functions

1. The Parties recognise that the performance of the back-office functions of a financial institution in its territory by the head office or an affiliate of the financial institution, or by an unrelated service supplier, either inside or outside its territory, is important to the effective management and efficient operation of that financial institution. While a Party may require financial institutions to ensure compliance with any domestic requirements applicable to those functions, they recognise the importance of avoiding the imposition of arbitrary requirements on the performance of those functions.

2. For greater certainty, nothing in paragraph 1 prevents a Party from requiring a financial institution in its territory to retain certain functions.

## Article 18. Specific Commitments

Annex 9-B (Specific Commitments) sets out certain specific commitments by each Party.

## Article 19. Committee on Financial Services

1. The Parties hereby establish a Committee on Financial Services (Committee). The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 9-C (Authorities Responsible for Financial Services).

2. The Committee shall:

(a) supervise the implementation of this Chapter and its further elaboration;

(b) consider issues regarding financial services that are referred to it by a Party; and

(c) participate in the dispute settlement procedures in accordance with Article 22 (Investment Disputes in Financial Services).

3, The Committee shall meet annually, or as it decides otherwise, to assess the functioning of this Agreement as it applies to financial services.

## Article 20. Consultations

1. A Party may request, in writing, consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request to hold consultations. The Parties shall report the results of their consultations to the Committee.

2. Consultations under this Article shall include officials of the authorities specified in Annex 9-C (Authorities Responsible for Financial Services).

3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its law regarding sharing of information between financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties, or to require a regulatory authority to take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

## Article 21. Dispute Settlement

1. Chapter 16 (Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. If a Party claims that a dispute arises under this Chapter, Article 5 (Composition of Arbitral Tribunals) of Chapter 16

(Dispute Settlement) shall apply, except that:

(a) if the Parties agree, each arbitrator shall meet the qualifications in paragraph 3; and

(b) in any other case:

(i) each disputing Party shall select arbitrators that meet the qualifications set out in either paragraph 3 or Article 5.5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement); and

(ii) if the responding Party indicates an intention to invoke or invokes Article 11 (Exceptions) prior to a Party's request for the establishment of a Chapter 16 arbitral tribunal, the chair of the Chapter 16 arbitral tribunal shall meet the qualifications set out in paragraph 3, unless the disputing Parties otherwise agree.

3. In addition to the requirements set out in Article 5.5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement), arbitrators in disputes arising under this Chapter shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

4, Pursuant to Article 22.2(c) (Investment Disputes in Financial Services), a Party may request the establishment of a Chapter 16 arbitral tribunal to consider whether and to what extent Article 11 (Exceptions) is a valid defence to a claim without having to request consultations under Article 2 (Consultations) of Chapter 16 (Dispute Settlement).

5. Ifa Party seeks to suspend benefits in the financial services sector, a Chapter 16 arbitral tribunal that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Article 10 (Compensation and Suspension of Benefits) of Chapter 16 (Dispute Settlement), shall seek the views of financial services experts, as necessary.

## Article 22. Investinent Disputes In Financial Services

1. If an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter 8 (Investment) challenging a measure relating to regulation or supervision of financial institutions, markets or instruments, the expertise or experience of any particular candidate with respect to financial services law or practice shall be taken into account in the appointment of arbitrators to the Tribunal.

2. If an investor of a Party submits a claim to arbitration under Section B (Investor-State Dispute Settlement) of Chapter 8 (Investment), and the respondent invokes Article 11 (Exceptions) as a defence, the following provisions of this Article shall apply.

(a) The respondent shall, no later than the date the Tribunal fixes for the respondent to submit its counter-memorial, or in the case of an amendment to the notice of arbitration, the date the Tribunal fixes for the respondent to submit its response to the amendment, submit in writing to the authorities responsible for financial services of the Party of the claimant, as set out in Annex 9-C (Authorities Responsible for Financial Services), a request for a joint determination by the authorities of the respondent and the Party of the claimant on the issue of whether and to what extent Article 11 (Exceptions) is a valid defence to the claim. The respondent shall promptly provide the Tribunal, if constituted, a copy of the request. The arbitration may proceed with respect to the claim only as provided in paragraph 4.

(b) The authorities of the respondent and the Party of the claimant shall attempt in good faith to make a determination as described in subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties, the Committee and, if constituted, to the Tribunal. The determination shall be binding on the Tribunal and any decision or award issued by the Tribunal must be consistent with that determination.

(c) If the authorities referred to in subparagraph (a) and subparagraph (b) have not made a determination within 120 days of the date of receipt of the respondent's written request for a determination under subparagraph (a), the respondent or the Party of the claimant may request the establishment of a Chapter 16 arbitral tribunal to consider whether and to what extent Article 11 (Exceptions) is a valid defence to the claim. A Chapter 16 arbitral tribunal established under Article 4 (Appointment of Arbitral Tribunals) of Chapter 16 (Dispute Settlement) shall be constituted in accordance with Article 21 (Dispute Settlement). The Chapter 16 arbitral tribunal shall transmit its final report to the disputing Parties and to the Tribunal.

3. The final report of a Chapter 16 arbitral tribunal referred to in paragraph 2(c) shall be binding on the Tribunal, and any decision or award issued by the Tribunal must be consistent with the final report.

4. If no request for the appointment of a Chapter 16 arbitral tribunal pursuant to paragraph 2(c) has been made within 10 days of the expiration of the 120 day period referred to in paragraph 2(c), the Tribunal may proceed with respect to the claim.

(a) The Tribunal shall draw no inference regarding the application of Article 11 (Exceptions) from the fact that the authorities have not made a determination as described in paragraph 2(a), paragraph 2(b) and paragraph 2(c).

(b) The Party of the claimant may make oral and written submissions to the Tribunal regarding the issue of whether and to what extent Article 11 (Exceptions) is a valid defence to the claim. Unless it makes such a submission, the Party of the claimant shall be presumed, for the purposes of the arbitration, to take a position on Article 11 (Exceptions) that is not inconsistent with that of the respondent.

5. For the purposes of this Article, the definitions of the following terms set out in Article 1 (Definitions) of Chapter 8 (Investment) are incorporated, mutatis mutandis: "claimant", "disputing parties", "disputing party" and "respondent".

## ANNEX 9-A. Cross-border trade

**Australia**

*Insurance and insurance-related services*

1. Article 6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c)(i) of the definition of "cross- border supply of financial services" in Article 1 (Definitions), with respect to:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom; and

(ii) goods in international transit; teinsurance and retrocession;

(b) services auxiliary to insurance, such as consultancy, risk assessment, actuarial and claim settlement services; and

(c) insurance intermediation, such as brokerage and agency, as referred to in subparagraph (g)(iii) of the definition of "financial service" in Article 1 (efinitions), of insurance of risks related to services listed in subparagraph (a) and subparagraph (b).

*Banking and other financial services (excluding insurance)*

2. Article 6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c)(i) of the definition of "cross- border supply of financial services" in Article 1 (Definitions), with respect to:

(a) provision and transfer of financial information, and financial data processing and related software relating to banking and other financial services, as referred to in subparagraph (g)(xv) of the definition of "financial service" in Article 1 (Definitions); and

(b) advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services, as referred to in subparagraph (g)(xvi) of the definition of "financial service" in Article 1 (Definitions).

**Singapore**

*Insurance and insurance-related services*

1. Article 6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c)(i) of the definition of "cross-border supply of financial services" in Article 1 (Definitions), with respect to:

(a) insurance of "MAT" risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising there from; and

(i) goods in international transit;

(b) reinsurance and retrocession;

(c) services auxiliary to insurance comprising actuarial, loss adjustors, average adjustors and consultancy services;

(d) reinsurance intermediation by brokerages; and (e) MAT intermediation by brokerages. Banking and other financial

services (excluding insurance)

2. Article 6.1 (Cross-Border Trade) shall apply to the cross-border supply of or trade in financial services, as defined in subparagraph (c)(i) of the definition of "cross-border supply of financial services (2) in Article 1 (Definitions), with respect to:

(a) provision and transfer of financial information, as described in subparagraph (g)(xv) of the definition of "financial service" in Article 1 (Definitions); and

(b) financial data processing and related software, as described in subparagraph (g)(xv) of the definition of "financial service" in Article 1 (Definitions), subject to prior authorisation from the relevant regulator, as required. (12)

(12) For greater certainty, if the financial information or financial data processing referred to in subparagraph (a) and subparagraph (b) pertain to outsourcing arrangements or involves personal data, the outsourcing arrangements and treatment of personal data shall be in accordance with the Monetary Authority of Singapore's regulatory requirements and guidelines on outsourcing and Singapore's law regulating the protection of such data, respectively. These regulatory requirements and guidelines shall not derogate from the commitments undertaken by Singapore in paragraph 2 and Section B (Transfer of Information) of Annex 9-B (Specific Commitments).

### ANNEX 9-B. Specific commitments

## Section A. Portfolio Management

1. A Party shall allow a financial institution organised in the territory of the other Party to provide the following services to a collective investment scheme located in its territory (13):

(a) investment advice; and

(B) portfolio management services, excluding:

(i) trustee services; and

(ii) custodial services and execution services that are not related to managing a collective investment scheme.

2. Paragraph 1 is subject to Article 6.3 (Cross-Border Trade).

3. For the purposes of paragraph 1, "collective investment scheme" means:

(a) For Australia, a "managed investment scheme" as defined under section 9 of the Corporations Act 2001 (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the Corporations Act 2001] (Cth), or an entity that:

(I) carries on a business of investment in securities, interests in land, or other investments; and

(i) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the Corporations Act 2001 (Cth)) made on terms that the funds subscribed would be invested.

(b) For Singapore, a "collective investment scheme" as defined under the Securities and Futures Act (Cap. 289), and includes the manager of the scheme, provided that the financial institution in paragraph 1 is authorised or regulated as a fund manager in the territory of the Party it is organised in and is not a trust company.

(13) For greater certainty, a Party may require a collective investment scheme or a person of a Party involved in the operation of the scheme located in the Party's territory to retain ultimate responsibility for the management of the collective investment scheme.

## Section B. Transfer of Information

Each Party shall allow a financial institution of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing if such processing is required in the institution's ordinary course of business. Nothing in this Section restricts the right of a Party to adopt or maintain measures to:

(a) protect personal data, personal privacy and the confidentiality of individual records and accounts; or

(b) require a financial institution to obtain prior authorisation from the relevant regulator to designate a particular enterprise as a recipient of such information, based on prudential considerations, (14)

provided that this right is not used as a means of avoiding the Party's commitments or obligations under this Section.

(14) For greater certainty, this requirement is without prejudice to other means of prudential regulation.

## Section C. Supply of Insurance by Postal Insurance Entities

1. This Section sets out additional disciplines that apply if a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this paragraph do not include the supply of insurance related to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.

2. Neither Party shall adopt or maintain a measure that creates conditions of competition that are more favourable to a postal insurance entity with respect to the supply of insurance services described in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:

(a) imposing more onerous conditions on a private supplier's licence to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or

(b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favourable than those it applies to private suppliers of like services.

3. With respect to the supply of insurance services described in paragraph 1 by a postal insurance entity, a Party shall apply the same regulations and enforcement activities that it applies to the supply of like insurance services by private suppliers.

4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services described in paragraph 1 to publish an annual financial statement with respect to the supply of those services. The statement shall provide the level of detail and meet the auditing standards required under the generally accepted accounting and auditing principles, or equivalent rules, applied in the Party's territory with respect to publicly traded private enterprises that supply like services.

5. If a Chapter 16 arbitral tribunal finds that a Party is maintaining a measure that is inconsistent with any of the commitments in paragraph 2, paragraph 3 and paragraph 4, the Party shall notify the complaining Party and provide an opportunity for consultations prior to allowing the postal insurance entity to:

(a) issue a new insurance product, or modify an existing product in a manner equivalent to the creation of a new product, in competition with like insurance products supplied by a private supplier in the Party's market; or

(b) increase any limitation on the value of insurance, either in total or with regard to any type of insurance product, that the entity may sell to a single policyholder.

6. This Section shall not apply to a postal insurance entity in the territory of a Party:

(a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantages that modify the conditions of competition in favour of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or

(b) if sales of direct life and non-life insurance underwritten by the postal insurance entity each account for no more than 10 per cent, respectively, of total annual premium income from direct life and non-life insurance in the Party's market as of January 1, 2013.

7. If a postal insurance entity in the territory of a Party exceeds the percentage threshold referred to in paragraph 6(b) after the date of signature of this Agreement by the Party, the Party shall ensure that the postal insurance entity is:

(a) regulated and subject to enforcement by the same authorities that regulate and conduct enforcement activities with respect to the supply of insurance services by private suppliers; and

(b) subject to the financial reporting requirements that apply to financial institutions supplying insurance services.

8. For the purposes of this Section, "postal insurance entity" means an entity that underwrites and sells insurance to the general public and that is owned or controlled, directly or indirectly, by a postal entity of the Party.

# Section D. Electronic Payment Card Services

1. A Party shall allow the supply of electronic payment services for payment card transactions (15) into its territory from the territory of the other Party by a person of that other Party. A Party may condition the cross-border supply of such electronic payment services on one or more of these requirements that a services supplier of the other Party:

(a) register with or be authorised (16) by relevant authorities;

(b) be a supplier who supplies such services in the territory of the other Party; or

(c) designate an agent office or maintain a representative or sales office in the Party's territory,

provided that such requirements are not used as a means to avoid a Party's obligation under this Section.

2. For the purposes of this Section, electronic payment services for payment card transactions does not include the transfer of funds to and from transactors' accounts. Furthermore, electronic payment services for payment card transactions include only those payment network services that use proprietary networks to process payment transactions. These services are provided on a business to business basis.

3. Nothing in this Section shall be construed to prevent a Party from adopting or maintaining measures for public policy purposes, provided that these measures are not used as a means to avoid the Party's obligation under this Section. For greater certainty, such measures may include:

(a) measures to protect personal data, personal privacy and the confidentiality of individual records, transactions and accounts, such as restricting the collection by, or transfer to, the cross-border services supplier of the other Party, of information concerning cardholder names;

(b) the regulation of fees, such as interchange or switching fees; and

(c) the imposition of fees as may be determined by a Party's authority, such as those to cover the costs associated with supervision or regulation or to facilitate the development of the Party's payment system infrastructure.

4. For the purposes of this Section, "payment card" means:

(a) For Australia, a credit card, charge card, debit card, cheque card, automated teller machine (ATM) card, prepaid card, and other physical or electronic products or services for performing a similar function as such cards, and any unique account number associated with that card, product or service.

(b) For Singapore:

(i) a credit card as defined in the Banking Act (Cap. 19), a charge card as defined in the Banking Act and a stored value facility as defined in the Payment Systems (Oversight) Act (Cap. 222A); and

(ii) a debit card and an automated teller machine (ATM) card. For greater certainty, both the physical and electronic forms of the cards or facility as listed in subparagraph (b)(i) and subparagraph (b)(ii) would be included as a payment card.

(15) For greater certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subparagraph (g)(viii) of the definition of "financial service" in Article 1 (Definitions), and within subcategory 71593 of the United Nations Central Product Classification, Version 2.0, and include only the processing of financial transactions such as verification of financial balances, authorisation of transactions, notification of banks (or credit card issuers) of individual transactions and the provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorised transactions.

(16) Such registration, authorisation and continued operation, for new and existing suppliers can be conditioned, for example: (i) on supervisory cooperation with the home country supervisor; and (ii) the supplier in a timely manner providing a Party's relevant financial regulators with the ability to examine, including onsite, the systems, hardware, software and records specifically related to that supplier's cross- border supply of electronic payment services into the Party.

# Section E. Transparency Considerations

In developing a new regulation of general application to which this Chapter applies, a Party may consider, in a manner

consistent with its laws and regulations, comments regarding how the proposed regulation may affect the operations of financial institutions, including financial institutions of the Party or the other Party. These comments may include:

(a) submissions to a Party by the other Party regarding its regulatory measures that are related to the objectives of the proposed regulation; or

(b) submissions to a Party by interested persons, including the other Party or financial institutions of the other Party, with regard to the potential effects of the proposed regulation.

### ANNEX 9-C. Authorities responsible for financial services

The authorities for each Party responsible for financial services are:

(a) for Australia, the Treasury and the Department of Foreign Affairs and Trade; and

(b) for Singapore, the Monetary Authority of Singapore.

# Chapter 10. Telecommunications Services

## Article 1. Definitions

For the purposes of this Chapter:

(a) "commercial mobile services" means public telecommunications services supplied through mobile wireless means;

(b) "cost-oriented" means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

(c) "cross-connect links" means the links in a submarine cable landing station used to connect submarine cable capacity to the transmission, switching, or routing equipment of any supplier of public telecommunications services co-located in that submarine cable landing station;

(d) "end-user" means a person (including a service consumer and a service supplier) to whom a public telecommunications network or service is supplied, other than for use in the further supply of a public telecommunications network or service;

(e) "enterprise" means:

(i) any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation; and

(ii) a branch of an enterprise;

(f) "essential facilities' means facilities of a public telecommunications network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(g) "facilities-based suppliers" means suppliers of public telecommunications networks or services that are:

(i) licensed carriers in Australia; or

(ii) facilities-based operators in Singapore;

(h) "interconnection" means linking with suppliers providing public telecommunications networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

(i) "international mobile roaming service" means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications services that enables end-users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end-user's home public telecommunications network is located;

(j) "leased circuit" means a telecommunications facility between two or more designated points which is set aside for the

dedicated use of, or availability to, a particular user;

(k) "licence" means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for that person to offer a telecommunications network or service, including concessions, permits or registrations;

(l) "major supplier' means a supplier of public telecommunications networks or services that has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market (1) for public telecommunications networks or services as a result of:

(i) control over essential facilities; or

(ii) use of its position in the market;

(m) "measure" includes any law, regulation, procedure, requirement or practice;

(n) "network element" means facilities or equipment used in the provision of a public telecommunications service, including features, functions, and capabilities that are provided by means of such facilities or equipment, which may include local loops, sub-loops and line sharing;

(o) "non-discriminatory" means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like circumstances, including with respect to timeliness;

(p) "number portability' means the ability of end-users of public telecommunications services to retain, at the same location, the same telephone numbers when switching between the same category of suppliers of public telecommunications services;

(q) "person" means a natural person or an enterprise;

(r) "physical co-location" means physical access to and control over space in order to install, maintain or repair equipment, at premises owned or controlled and used by a major supplier to provide public telecommunications services;

(s) "public telecommunications network" means the telecommunications infrastructure authorised by a Party to be used to provide public telecommunications services between defined network termination points;

(t) "public telecommunications service" means any telecommunications service required, explicitly or in effect, by a Party to be offered to the public generally; (2)

(u) "reference interconnection offer' means an interconnection offer extended by a major supplier and filed with, approved by or determined by, a telecommunications regulatory body that sufficiently details the terms, rates and conditions for interconnection so that a supplier of public telecommunications networks or services that is willing to accept it may obtain interconnection with the major supplier on that basis, without having to engage in negotiations with the major supplier concerned;

(v) "regulatory decisions" means decisions by a telecommunications regulatory body made pursuant to authority conferred under domestic law in relation to:

(i) the making of rules for the telecommunications industry excluding legislation and statutory rules;

(ii) ‘the approval of terms and conditions, standards and codes to apply in the telecommunications industry;

(iii) ‘the adjudication or other resolution of disputes between suppliers of public telecommunications networks or services; and

(iv) licensing;

(w) "submarine cable landing station" means the premises where interconnection takes place with the submarine cable system, as determined by the telecommunications regulatory body, if required;

(x) "supplier of public telecommunications networks or services" means a supplier of public telecommunications networks and/or public telecommunications services to users;

(y) "telecommunications" means the transmission and reception of signals by any electromagnetic means, including by photonic means;

(z) "telecommunications regulatory body" means a body or bodies responsible for the regulation of telecommunications;

(aa) "user" means an end-user or a supplier of public telecommunications network or services; and

(bb) "virtual co-location" means an arrangement whereby a requesting supplier that seeks co-location may specify equipment to be used in the premises of a major supplier but does not obtain physical access to those premises and allows the major supplier to install, maintain and repair that equipment.

(1) For the avoidance of doubt, "relevant market" may refer to a market for the supply of public telecommunications networks or services (or parts thereof) provided by any supplier of public telecommunications networks or services, that gives this supplier the ability to materially affect the terms of participation in the market (having regard to price and supply).

(2) "Public telecommunications service" includes Internet routing and connectivity services.

## Article 2. Scope

1. This Chapter shall apply to measures by a Party affecting trade in telecommunications services.

2. This Chapter shall not apply to measures by a Party affecting the distribution of broadcasting and audio-visual services, as defined in each Party's domestic law and regulations.

## Article 3. Access to and Use of Public Telecommunications Networks or Services (3)

1. Each Party shall ensure that all service suppliers of the other Party have access to and use of any public telecommunications network or service, including leased circuits, offered in its territory or across its borders in a timely fashion, on reasonable, transparent, and non-discriminatory terms and conditions, including as set out in this Article. (4)

2. Each Party shall ensure that a service supplier of the other Party is permitted to:

(a) purchase or lease and attach terminal or other equipment that interfaces with a public telecommunications network and which is necessary to supply a supplier's services;

(b) provide services to individual or multiple service consumers over any leased or owned circuits;

(c) interconnect leased or owned circuits with public telecommunications networks or services in the territory of that Party or across the borders of that Party or with circuits leased or owned by another service supplier;

(d) perform switching, signalling, processing and conversion functions; and

(e) use operating protocols of their choice in the supply of any service to ensure the availability of telecommunications networks and services to the public generally.

3. Each Party shall ensure that all service suppliers of the other Party may use public telecommunications networks or services for the movement of information in its territory or across its borders and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to:

(a) ensure the security and confidentiality of messages; and

(b) protect the privacy of personal data of end-users of public telecommunications networks or services,

subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public

telecommunications networks or services may include:

(a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks and services;

(b) requirements, where necessary, for the inter-operability of such networks and services;

(c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks; and

(d) notification, registration and licensing.

(3) For the avoidance of doubt, access to unbundled network elements is addressed in Article 9.3 (Additional Obligations Relating to Major Suppliers).

(4) For the avoidance of doubt, each Party may fulfil the obligations in this Article by any measure it considers necessary or appropriate, within the context of their respective domestic laws and regulations.

## Article 4. Transparency

1. Each Party shall apply the measures referred to in Article 2.1 (Scope) in a transparent manner, which:

(a) provides suppliers of public telecommunications networks or services of the other Party who are likely to be affected by regulatory decisions with a fair and reasonable opportunity to obtain sufficient information to enable them to form informed views on proposed regulatory decisions and to provide these views to the telecommunications regulatory body;

(b) requires its telecommunications regulatory body to provide interested persons the opportunity to comment, and to the extent practicable, respond to all significant and relevant issues raised; and

(c) ensures that its telecommunications regulatory body makes available to suppliers of public telecommunications networks or services of the other Party its regulatory decisions and an explanation of its reasons for those regulatory decisions.

2. Each Party shall ensure that its measures relating to public telecommunications services are made publicly available, including:

(a) tariffs and other terms and conditions of service; specifications of technical interfaces;

(b) conditions for attaching terminal or other equipment to the public telecommunications network;

(c) licensing, permit, registration or notification requirements, if any;

(d) general procedures relating to resolution of telecommunications disputes provided for in Article 6 (Dispute Settlement and Appeal); and

any measures of the telecommunications regulatory body if the government delegates to other bodies the responsibility for preparing, amending and adopting standards-related measures affecting access and use.

3. At the request of a supplier of public telecommunications networks or services who is likely to be affected by regulatory decisions, a telecommunications regulatory body may, where necessary to avoid causing prejudice to the legitimate commercial interests of that supplier, impose reasonable limitations on the requirement to provide the information referred to in paragraph 1(a) and paragraph 1(c), provided that such limitations permit that supplier to submit a request to the telecommunications regulatory body for its consideration to treat certain information provided by the supplier as confidential. Where such information is found to be confidential by the telecommunications regulatory body, subject to domestic laws, regulations and policies, paragraph l(a) and paragraph 1(c) shall not apply to such information, provided that this:

(a) is applied only to the extent necessary to protect such commercial interests; and

(b) does not deprive suppliers of public telecommunications networks or services of the other Party of their right under paragraph 1(a) to provide their views to the telecommunications regulatory body.

4. Where a licence is required, the following shall be made publicly available:

(a) all the licensing criteria, any terms and conditions of the licence, and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of individual licences.

5. Each Party shall ensure that, on request, an applicant receives the reasons for the:

(a) denial of a licence;

(b) imposition of supplier-specific conditions on a licence;

(c) revocation of a licence; or

(d) refusal to renew a licence.

## Article 5. Independent Regulatory Bodies

1. Telecommunications regulatory bodies shall be independent of any supplier of public telecommunications networks or services.

2. The decisions of, and the procedures used by, telecommunications regulatory bodies shall be fair and impartial and shall be made and implemented without undue delay.

## Article 6. Dispute Settlement and Appeal

1. Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party have timely recourse to a telecommunications regulatory body to consider and, to the extent provided for in its domestic law, to resolve disputes regarding compliance with its domestic measures relating to the obligations contained in this Chapter.

2. Each Party shall ensure that any supplier of public telecommunications networks or services of the other Party aggrieved by a regulatory decision has the opportunity to appeal such regulatory decision to an independent judicial or administrative authority. Such an appeal shall not constitute grounds for non- compliance by that supplier with the regulatory decision unless an appropriate authority stays such decision.

3. Each Party shall ensure that, in the hearing of an appeal by an administrative authority referred to in paragraph 2: (5)

(a) suppliers of public telecommunications networks or services of the other Party which are party to the appeal have a fair and reasonable opportunity to obtain sufficient information to enable them to form informed views on the issues to be determined in the appeal and to provide these views to the administrative authority;

(b) the administrative authority takes into account views provided by such suppliers pursuant to subparagraph (a); and

(c) the administrative authority makes available to such suppliers its decision and an explanation of the reasons for its decision.

4. At the request of a supplier of public telecommunications networks or services which is a party to an appeal referred to in paragraph 3, an administrative authority may, where necessary to avoid causing prejudice to the legitimate commercial interests of that supplier, impose reasonable limitations on the requirement to provide the information referred to in paragraph 3(a) and paragraph 3(c) provided that such limitations:

(a) are applied only to the extent necessary to protect such commercial interests; and

(b) do not deprive suppliers of public telecommunications networks or services of the other Party which are party to an appeal referred to in paragraph 3 of their right under paragraph 3(a) to provide their views to the administrative authority.

(5) For the avoidance of doubt, this paragraph does not apply to judicial authorities of either Party.

## Article 7. General Competitive Safeguards

1. Each Party shall maintain appropriate measures (6) for the purpose of preventing suppliers of public telecommunications networks or services in its territory from engaging in or continuing anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include in particular:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available, on a timely basis, to suppliers of public telecommunications networks or services, technical information about essential facilities and commercially relevant information that is necessary for them to provide services.

(6) The maintenance of appropriate measures includes the effective enforcement of such measures.

## Article 8. Interconnection between Suppliers of Public Telecommunications Networks

1. Each Party shall maintain appropriate measures to achieve connectivity between public telecommunications networks in order to ensure that end-users of public telecommunications services can communicate with each other, including, where that Party considers it necessary, by requiring facilities-based suppliers to interconnect with one another.

2. In carrying out paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable steps to protect the confidentiality of commercially sensitive information of, or relating to, suppliers and end- users of public telecommunications services obtained as a result of interconnection atrangements and that those suppliers only use that information for the purpose of providing these services.

## Article 9. Additional Obligations Relating to Major Suppliers (7)

(7) For the avoidance of doubt, the obligations imposed under this Article only apply with respect to those public telecommunications networks or services, or parts thereof, that result in a supplier of public telecommunications networks or services being a major supplier.

1. Non-discrimination

Each Party shall ensure that major suppliers in its territory accord suppliers of public telecommunications networks or services of the other Party treatment no less favourable than such major supplier accords to itself, its subsidiaries, its affiliates, or any non-affiliated supplier of public telecommunications networks or services regarding the:

(a) availability, provisioning, rates, (8) or quality of like public telecommunications networks or services; and

(b) availability of technical interfaces necessary for interconnection,

where such suppliers of public telecommunications networks or services and subsidiaries, affiliates and non-affiliates of the major supplier are in like circumstances.

(8) The costs incurred by a major supplier in supplying public telecommunications networks or services to itself may be determined in accordance with any cost-oriented costing methodology considered appropriate by a Party. Treatment that is no less favourable regarding rates for like public telecommunications networks or services may take into account the legitimate transaction costs which the major supplier incurs in supplying such public telecommunications networks or services to suppliers of public telecommunications networks or services of the other Party.

2. Competitive Safeguards

(a) Each Party shall maintain appropriate measures (9) for the purpose of preventing major suppliers in its territory from engaging in or continuing anti-competitive practices.

(b) The anti-competitive practices referred to in subparagraph (a) shall include:

(i) engaging in anti-competitive cross-subsidisation;

(ii) using information obtained from competitors with anti- competitive results;

(iii) not making available, on a timely basis, to suppliers of public telecommunications networks or services of the other Party, technical information about essential facilities and commercially relevant information which is necessary for them to provide services; and

(iv) pricing services in a manner that is likely to unreasonably restrict competition, such as predatory pricing.

(9) The maintenance of appropriate measures includes the effective enforcement of such measures.

3. Unbundled Network Elements

(a) Each Party shall ensure that a major supplier in its territory provide to facilities-based suppliers of the other Party access to network elements for the provision of public telecommunications services at any technically feasible point, on an unbundled basis, in a timely fashion; and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.

(b) Each Party may determine, in accordance with its domestic laws and regulations, which network elements it requires major suppliers in its territory to provide access to in accordance with subparagraph (a) on the basis of the technical feasibility of unbundling and the state of competition in the relevant market.

4. Co-Location

(a) Subject to subparagraph (b) and subparagraph (c), each Party shall ensure that a major supplier in its territory provides to suppliers of public telecommunications services of the other Party in the Party's territory physical co-location of equipment necessary for interconnection or access to unbundled network elements based on a generally available offer, on a timely basis, and on terms and conditions and at cost-oriented rates, that are reasonable and non-discriminatory.

(b) Where physical co-location under subparagraph (a) is not practical for technical reasons or because of space limitations, each Party shall ensure that major suppliers co-operate with facilities-based suppliers to find and implement the most feasible alternative solution in a timely fashion and on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory. Such solutions may include:

(i) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network;

(i) conditioning additional equipment space;

(iii) optimizing the use of existing space;

(iv) finding adjacent space; or

(v) facilitating virtual co-location.

(c) Each Party may determine in accordance with its domestic laws and regulations the locations at which it requires major suppliers in its territory to provide co-location under subparagraph (a) on the basis of the state of competition in the relevant market, whether those premises can be substituted in an economically or technically feasible manner in order to provide a competing service, or other specified public interest factors.

5. Resale

Each Party shall ensure that major suppliers in its territory:

(a) allow suppliers of public telecommunications networks or services of the other Party to purchase at reasonable rates, for the purpose of resale, specific public telecommunications services supplied by the major suppliers at retail that are designated by the first Party; and

(b) do not impose unreasonable or discriminatory conditions or limitations on the resale of such public telecommunications services.

6. Rights of Way

(a) Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits, or any other structures deemed necessary by the Party, which are owned or controlled by those major suppliers to facilities-based suppliers of the other Party:

(i) in a timely fashion; and

(ii) on terms, conditions, and cost-oriented rates that are reasonable, transparent, and non-discriminatory.

(b) Each Party may determine in accordance with its domestic laws and regulations the poles, ducts, conduits or other

structures to which it requires major suppliers in its territory to provide access under subparagraph (a) on the basis of the state of competition in the relevant market.

7. Interconnection with a Major Supplier

(a) Each Party shall ensure that major suppliers in its territory provide interconnection to facilities-based suppliers of the other Party:

(i) at any technically feasible point in the major supplier's network;

(i) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;

(iii) of a quality no less favourable than that provided by the major supplier for its own like services or for like services of non- affiliated service suppliers or for its subsidiaries or other affiliates;

(iv) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(v) upon request, at points in addition to the network termination points offered to the majority of facilities-based suppliers, subject to charges that reflect the cost of construction of necessary additional facilities.

(b) Each Party shall ensure that suppliers of public telecommunications networks or services of the other Party may interconnect with major suppliers in its territory pursuant to at least one of the following options:

(i) a publicly available reference interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services;

(ii) any existing interconnection agreement between the major supplier and any similarly situated supplier of public telecommunications networks or services;

(iii) an individualised agreement between the major supplier and the supplier of public telecommunications networks or services that seeks to interconnect with it; or

(iv) binding arbitration.

(c) In addition to the options provided in subparagraph (b), each Party shall ensure that suppliers of public telecommunications services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through the negotiation of a new interconnection agreement.

(d) Each Party shall ensure that the applicable procedures for interconnection negotiations with major suppliers in its territory are made publicly available.

(e) Each Party shall ensure that major suppliers in its territory make publicly available either their interconnection agreements or a reference interconnection offer.

8. Resolution of Interconnection Disputes

(a) When facilities-based suppliers are unable to resolve disputes regarding the terms, conditions and rates on which interconnection is to be provided by a major supplier, they shall have recourse to the telecommunications regulatory body, which shall aim to resolve the disputes within 180 days of the referral to it. The Parties understand that the resolution of complex disputes may take longer than 180 days.

(b) Where the telecommunications regulatory body is unable to resolve the disputes referred to in subparagraph (a) within 180 days, each Party shall ensure that the telecommunications regulatory body endeavours to provide interim determinations on the disputes where necessary to ensure that facilities-based suppliers of the other Party are able to interconnect with a major supplier.

9. Access to Numbers

Each Party shall ensure that suppliers of public telecommunications services of the other Party established in its territory are afforded access to telephone numbers on a non-discriminatory basis.

10. Provisioning and Pricing of Leased Circuit Services by Major Suppliers

(a) Each Party shall ensure that a major supplier in its territory provides to service suppliers of the other Party leased circuits

services that are public telecommunications services in a reasonable period of time on terms and conditions, and at rates, that are reasonable and non-discriminatory, and based on a generally available offer.

(b) Further to subparagraph (a), each Party shall provide its telecommunications regulatory body or other appropriate bodies the authority to require a major supplier in its territory to offer leased circuits services that are public telecommunications services to service suppliers of the other Party at capacity-based and cost-oriented prices.

## Article 10. Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability, for those services designated by that Party, without impairment to quality and reliability, to the extent technically feasible, on a timely basis, and on reasonable and non-discriminatory terms and conditions.

## Article 11. International Mobile Roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade between the Parties and enhance consumer welfare.

2. A Party may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:

(a) ensuring that information regarding retail rates is easily accessible to consumers; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their choice.

3. The Parties recognise that a Party, when it has the authority to do so, may choose to adopt or maintain measures affecting rates for wholesale international roaming services with a view to ensuring that those rates are reasonable. If a Party considers it appropriate, it may cooperate and implement mechanisms with the other Party to facilitate the implementation of those measures, including by entering into arrangements with the other Party.

4. If a Party (the first Party) chooses to regulate rates or conditions for wholesale international mobile roaming services, it shall ensure that a supplier of public telecommunications services of the other Party (the second Party) has access to the regulated rates or conditions for wholesale international mobile roaming services for its customers roaming in the territory of the first Party in circumstances in which: (10)

(a) the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale international mobile roaming services for suppliers of both Parties (11); or

(b) in the absence of an arrangement of the type referred to in subparagraph (a), the supplier of public telecommunications services of the second Party, of its own accord:

(i) makes available to suppliers of public telecommunications services of the first Party wholesale international mobile roaming services at rates or conditions that are reasonably comparable to the regulated rates or conditions; (12) and

(ii) meets any additional requirements (13) that the first Party imposes with respect to the availability of the regulated rates or conditions.

The first Party may require suppliers of the second Party to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

5. A Party that ensures access to regulated rates or conditions for wholesale international mobile roaming services in accordance with paragraph 4 shall be deemed to be in compliance with its obligations under Article 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services), and Articles 3 (Access to and Use of Public Telecommunications Networks or Services) and 9.1 (Additional Obligations Relating to Major Suppliers — Non-Discrimination) with respect to international mobile roaming services.

6. Each Party shall endeavour to ensure that:

(a) suppliers of public telecommunications services in its territory; or

(b) its telecommunications regulatory body make publicly available retail rates for international mobile roaming services.

7. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

(10) For greater certainty, neither Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific nondiscrimination provision, in any existing international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale international mobile roaming services that is provided under this Article.

(11) For greater certainty, access under this subparagraph to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if such regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement referred to in this subparagraph. The telecommunications regulatory body of the first Party shall, in the case of disagreement, determine whether the rates or conditions are reasonably comparable.

(12) For the purposes of this subparagraph, rates or conditions that are reasonably comparable means rates or conditions agreed to be such by the relevant suppliers or, in the case of disagreement, determined to be such by the telecommunications regulatory body of the first Party.

(13) For greater certainty, such additional requirements may include, for example, that the rates provided to the supplier of the second Party reflect the reasonable cost of supplying international mobile roaming services by a supplier of the first Party to a supplier of the second Party, as determined through the methodology of the first Party.

## Article 12. International Submarine Cable Systems

1. This article applies to international submarine cable systems where, under national law and regulation, a Party has authorised a supplier of public telecommunications services in its territory to operate a submarine cable system as a public telecommunications service.

2. Where submarine cable systems cannot be economically or technically substituted, each Party shall provide its telecommunications regulatory body with the authority to:

(a) subject to technical feasibility and pre-existing contractual commitments, require a major supplier of public telecommunications services to allow suppliers of public telecommunications services of the other Party to:

(i) access the submarine cable landing station for the purpose of interconnection with the submarine cables owned by any supplier of telecommunications;

(ii) co-locate their transmission and routing equipment at the submarine cable landing station;

(iii) connect their equipment to submarine cable capacity, including by accessing the supplier's cross-connect links; and

(iv) access ancillary services; and

(b) ensure that the terms, conditions and rates for the services referred to in subparagraph (a) as supplied by a major supplier are reasonable and non- discriminatory.

3. For greater certainty, co-location should be consistent with Article 9.4 (Additional Obligations Relating to Major Suppliers — Co-Location) and interconnection should be consistent with Article 9.7 (Additional Obligations Relating to Major Suppliers — Interconnection with a Major Supplier).

## Article 13. Universal Service

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party shall administer any universal service obligation that it maintains in a transparent, non-discriminatory and competitively neutral manner, and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

## Article 14. Allocation and Use of Scarce Resources (14)

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be

carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government use shall not be required.

(14) Decisions on the allocation and assignment of spectrum and frequency management are not measures that are per se inconsistent with Article 3 (Market Access) of Chapter 7 (Cross-Border Trade in Services). Accordingly, each Party retains the ability to exercise its spectrum and frequency management policies, which may affect the number of service suppliers, provided that this is done in a manner that is consistent with this Agreement. The Parties also retain the right to allocate frequency bands taking into account existing and future needs.

### Article 15. Flexibility In the Choice of Technology

1. Neither Party shall prevent suppliers of public telecommunications services from choosing the technologies they wish to use to supply their services, subject to requirements necessary to satisfy legitimate public policy interests, provided that any measure restricting that choice is not prepared, adopted or applied in a manner that creates unnecessary obstacles to trade. For greater certainty, a Party adopting those measures shall do so consistent with Article 4 (Transparency).

2. When a Party finances the development of advanced networks, (15) it may make its financing conditional on the use of technologies that meet its specific public policy interests.

(15) For greater certainty, "advanced networks" includes broadband networks.

### Article 16. Industry Participation

1. Each Party shall, through any forum or other mechanism it considers appropriate:

(a) facilitate the involvement of suppliers of public telecommunications networks or services of the other Party operating in its territory in the development of industry standards and, where it considers appropriate, in the regulation of the telecommunications industry; and

(b) encourage suppliers of public telecommunications networks or services of the other Party operating in its territory to provide feedback to the telecommunications regulatory body on the regulation of the telecommunications industry.

### Article 17. Enforcement

Each Party shall adopt or maintain timely, proportionate and effective sanctions for the purpose of enforcing domestic measures relating to the obligations contained in this Chapter. Such sanctions may include financial penalties, injunctions, orders to cease and desist (on an interim or final basis), and/or the ability to suspend, modify or revoke licences.

### Article 18. Exceptions

This Chapter shall be subject to Article 16 (General Exceptions) of Chapter 7 (Cross-Border Trade in Services) and Article 19 (General Exceptions) of Chapter 8 (Investment), and to Article 2 (Security Exceptions) of Chapter 17 (Final Provisions).

## Chapter 11. Movement of Natural Persons

### Article 1. Scope and Definitions

1. This Chapter applies to measures affecting the movement of natural persons of a Party into the territory of the other Party where such persons are:

(a) business visitors;

(b) contractual service suppliers;

(c) independent executives;

(d) installers and servicers; and (e) intra-corporate transferees.

2. This Chapter reflects the Parties' mutual commitment to enhance the mobility of natural persons of either Party engaged

in the conduct of trade and investment between the Parties, by facilitating temporary entry and establishing streamlined, transparent immigration clearance procedures for natural persons.

3. For the purposes of this Chapter, the following definitions shall apply:

(a) "business visitors" means natural persons of a Party who are:

(i) seeking to travel to the other Party for business purposes and who must not engage in making direct sales to the general public or in supplying goods or services themselves;

(ii) service sellers;

(iii) investors of a Party or employees of an investor (who are managers, executives or specialists as defined under Article 1.3(g) (Scope and Definitions)) seeking temporary entry to establish an investment; or

(iv) seeking temporary entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sales to the general public;

(b) "contractual service suppliers" means natural persons of a Party who have trade, technical or professional skills and experience; and

(i) are employees of a service supplier or an enterprise of a Party which has concluded a contract for the supply of a service within the other Party and which does not have a commercial presence within the other Party; or

(ii) are engaged by an enterprise lawfully and actively operating in a Party in order to supply a service under a contract within that Party; and

who are assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in the other Party for their nominated occupation;

(c) "enterprise" means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;

(d) "immigration formality" means a visa, employment pass, or other document or electronic authority granting a natural person of a Party the right to reside or work in the territory of the other Party;

(e) For Australia, "independent executives" means natural persons of a Party whose work responsibilities match the description set out below and who intend, or are responsible for, the establishment in the other Party of a new branch or subsidiary of an enterprise which has its head of operations in the territory of the originating Party and which has no other representative, branch or subsidiary in the other Party. Independent executives will be responsible for the entire or a substantial part of the enterprise's operations in the other Party, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.

For Singapore, "independent executives" means natural persons of a Party with a local business presence seeking to:

(i) carry on substantial trade in goods or services principally between the territory of the Party of the natural person and the territory of the other Party into which entry is sought; or

(ii) establish, develop, administer, or provide advice or key technical services to the operation of an investment to which the natural person or the natural person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive, or involves essential skills;

(f) "installers and servicers" means natural persons of a Party who are installers or servicers of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase under contract of the said machinery or equipment, and who must not perform services which are not related to the service activity which is the subject of the contract;

(g) "intra-corporate transferees" means employees of a service supplier, investor or enterprise of a Party established in the territory of the other Party through a branch, subsidiary or affiliate, who have been so employed for a period of not less than one year immediately preceding the date of the application for temporary entry, and who are:

(i) managers — natural persons within an organisation who primarily direct the organisation or a department or sub-division

of the organisation, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or take other personnel actions (such as promotion or leave authorisation), and exercise discretionary authority over day-to-day operations. This does not include a first-line supervisor, unless the employees supervised are professionals, nor does this include an employee who primarily performs tasks necessary for the provision of the service or operation of an investment;

(ii) executives — natural persons within an organisation who primarily direct the management of the organisation, exercise wide latitude in decision-making, and receive only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. An executive would not directly perform tasks related to the actual provision of the service or the operation of an investment; or

(iii) — specialists — natural persons within an organisation who possess knowledge at an advanced level of expertise and who possess proprietary knowledge of the organisation's service, research equipment, techniques, or management. Specialists may include, but are not limited to, members of a licensed profession;

(h) "measure" includes any law, regulation, procedure, requirement or practice;

(i) "natural person of a Party" means:

(i) for Australia, a natural person who is an Australian citizen as defined in the Australian Citizenship Act 2007 as amended from time to time, or any successor legislation;

(ii) for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws; or

(iii) a permanent resident of either Party; (1)

(j) "service sellers" means natural persons of a Party who are sales representatives of a service supplier of that Party and are seeking temporary entry to the other Party for the purpose of negotiating the sale of services for that service supplier, where such representatives will not be engaged in making direct sales to the general public or in supplying services directly; and

(k) "temporary entry' means entry by a business visitor, a contractual service supplier, an independent executive, an installer or servicer, or an intra-corporate transferee, as the case may be, without the intent to establish permanent residence and for the purpose of engaging in activities which are clearly related to their respective business purposes. Additionally, in the case of a business visitor, the salaries of and any related payments to such a visitor should be paid entirely by the service supplier or enterprise which employs that visitor in the visitor's home country.

4. Nothing in this Chapter shall apply to measures affecting natural persons of either Party seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

(1) Unless otherwise provided in this Chapter, a Party shall grant the benefits of this Chapter to a permanent resident of the other Party provided that the permanent resident satisfies all the administrative, legal, repatriation and other requirements as may be imposed by the granting Party.

# Section 1. Short-term Temporary Entry

## Article 2. Business Visitors

A Party shall grant temporary entry to a business visitor of the other Party who otherwise meets its criteria for the grant of an immigration formality for a period of up to three months.

## Article 3. Installers and Servicers

A Party shall grant temporary entry to an installer and servicer of the other Party who otherwise meets its criteria for the grant of an immigration formality for a period of up to three months.

# Section 2. Long-term Temporary Entry

## Article 4. Contractual Service Suppliers

A Party shall grant temporary entry to a contractual service supplier of the other Party who otherwise meets its criteria for the grant of an immigration formality for a period of up to two years with the possibility of further stay.

## Article 5. Independent Executives

A Party shall grant temporary entry to an independent executive of the other Party who otherwise meets its criteria for the grant of an immigration formality for a period of up to two years.

## Article 6. Intra-corporate Transferees

A Party shall grant temporary entry to an intra-corporate transferee of the other Party who otherwise meets its criteria for the grant of an immigration formality

(a) in the case of Singapore, for an initial period of up to three years which may be extended for periods of up to three years at a time for a total term not exceeding 15 years; and

(b) in the case of Australia, for an initial period of up to four years which

may be extended for further periods of up to four years at a time for a total term not exceeding 15 years.

## Article 7. Provision of Information

A Party shall:

(a) publish or otherwise make available to the other Party such information as will enable the other Party to become acquainted with its measures relating to this Chapter; and

(b) no later than six months after the date of entry into force of this Agreement, prepare, publish or otherwise make available in its own territory, and in the territory of the other Party, explanatory material regarding the requirements for temporary entry under this Chapter in such a manner as will enable natural persons of the other Party to become acquainted with them.

## Article 8. Dispute Settlement

1. A Party may not initiate proceedings under Chapter 16 (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

(a) the matter involves a pattern of practice; and

(b) its natural persons affected have exhausted the available domestic administrative remedies regarding the particular matter.

2. The remedies referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of proceedings for domestic administrative remedies, including proceedings by way of review, and the failure to issue a determination is not attributable to delays caused by the natural person.

## Article 9. Immigration Measures

1. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter.

2. The sole fact that a Party requires natural persons of the other Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to any Party under this Chapter.

## Article 10. Immigration Requirements and Procedures

1. For Australia, temporary entry of a natural person who is seeking temporary entry pursuant to this Chapter is subject to employer sponsorship. Full details of employer sponsorship requirements, including the list of eligible occupations for

sponsorship, are available on the website of the Australian government department responsible for immigration matters. Employer sponsorship requirements and eligible occupations may change from time to time.

2. For Singapore, temporary entry of a natural person who is seeking temporary entry pursuant to this Chapter is subject to employer sponsorship. Full details of employer sponsorship requirements, including the list of eligible occupations for sponsorship, and the requirements for Dependant's Passes, are available on the website of the Singapore government department responsible for immigration matters. Employer sponsorship requirements and eligible occupations may change from time to time.

## Article 11. Licensing Requirements

The sole fact that a Party grants temporary entry to a natural person of the otherParty pursuant to this Chapter shall not be construed to exempt that natural person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

## Article 12. Expeditious Application Procedures

1. A Party shall expeditiously process complete applications for immigration formalities from natural persons of the other Party, including further immigration formality requests or extensions thereof, particularly applications from members of professions for which mutual recognition arrangements have been concluded. 2. In relation to a complete application for an immigration formality covered by paragraph 1 the granting Party shall both make a decision and notify the natural person or its representative of that decision prior to the natural person' s arrival in its territory subject to the granting Party's immigration formality processing time service standards.

## Article 13. Notification of Outcome of Application

A Party shall notify the applicants for temporary entry, either directly or through their prospective employers, of the outcome of their applications, including the period of stay and other conditions.

## Article 14. Online Lodgement and Processing

As soon as possible after the date of entry into force of this Agreement, Parties shall provide facilities for online lodgement and processing:

(a) in the case of Australia, of immigration formalities; and (b) in the case of Singapore, of employment passes which shall be applied for by the prospective employers.

## Article 15. Resolution of Problems

The relevant authorities of both Parties shall endeavour to favourably resolve any specific or general problems (within the framework of their domestic laws, regulations and other similar measures governing the temporary entry of natural persons) which may arise from the implementation and administration of this Chapter.

## Article 16. Labour Market Testing

Neither Party shall require labour market testing, labour certification tests or other procedures of similar effect as a condition for temporary entry in respect of business visitors, contractual service suppliers, installers and servicers, independent executives and intra-corporate transferees on whom the benefits of this Chapter are conferred.

## Article 17. Immigration Formality Requirements

1. Australia shall accord to natural persons of Singapore conditions of entry and processing requirements relating to its Electronic Travel Authority ("ETA") no less favourable than those accorded to natural persons of any other country eligible under the ETA or equivalent processing system for immigration formalities.

2. Singapore shall waive visa requirements for natural persons of Australia, provided that such persons are not natural persons of a non-Party for which visa-requirements are imposed for entry into Singapore.

3. This Article shall not apply to permanent residents of either Party.

### Article 18. Employment of Spouses and Dependants

For natural persons of either Party who have been granted the right to temporaryentry under this Chapter as contractual service suppliers, independent executives or intra-corporate transferees and who have a spouse and dependant, a Party shall, upon application, grant the accompanying spouse or dependant who otherwise meets its criteria for the grant of an immigration formality the right of temporary entry, movement and work for an equal period to that granted to the natural person. For greater certainty, grant of temporary entry and work under this Article is subject to the accompanying spouse or dependant meeting the granting Party's prescribed application procedures and requirements for the relevant immigration formality and meet all relevant eligibility requirements for temporary entry and work or extension of temporary stay and work.

### Article 19. Relation to other Chapters

1. Except for this Chapter, Chapter 1 (Objectives and General Definitions), Chapter 16 (Dispute Settlement), Chapter 17 (Final Provisions) and Article 9 (Transparency) of Chapter 7 (Cross-Border Trade in Services), no provision of thisAgreement shall impose any obligation on a Party regarding its immigration measures.

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

## Chapter 12. Competition Policy

### Article 1. Purpose and Definitions

1. The purpose of this Chapter is to contribute to the fulfilment of the objectives of this Agreement through the promotion of fair competition and the curtailment of anti-competitive practices.

2. For the purposes of this Chapter, "anti-competitive practices" means business conduct or transactions that adversely affect competition, such as:

(a) anti-competitive horizontal arrangements between competitors;

(b) misuse of market power, including predatory pricing by businesses;

(c) anti-competitive vertical arrangements between businesses; and

(d) anti-competitive mergers and acquisitions.

### Article 2. Promotion of Competition

1. Each Party shall promote competition by addressing anti-competitive practices in its territory, adopting and enforcing such means or measures as it deems appropriate and effective to counter such practices.

2. Such means and measures may include the implementation of competition and regulatory arrangements.

### Article 3. Application of Competition Laws

1. The Parties shall ensure that all businesses registered or incorporated under their respective domestic laws are subject to such generic or relevant sectoral competition laws as may be in force in their respective territories.

2. Any measures taken by a Party to proscribe anti-competitive practices, and the enforcement actions taken pursuant to those measures, shall be consistent with the principles of transparency, timeliness, non-discrimination and procedural fairness.

### Article 4. Competitive Neutrality

1. The Parties shall take reasonable measures to ensure that governments at all levels do not provide any competitive advantage to any government-owned businesses in their business activities simply because they are government owned.

2. This Article applies to the business activities of government-owned businesses and not to their non-business, non-commercial activities.

### Article 5. Exemptions

Either Party may exempt specific measures or sectors from this Chapter, provided that such exemptions are transparent and are undertaken on the grounds of public policy or public interest.

### Article 6. Consultation and Review

1. At the request of a Party, the Parties shall consult with a view to eliminating particular anti-competitive practices that affect trade or investment between the Parties.

2. Within six months of a generic competition law coming into effect in Singapore, the Parties shall consult in order to review the scope and operation of this Chapter with a view to negotiating amendments to this Chapter that may be necessary to ensure the comprehensive protection in their respective territories of the legitimate commercial interests of businesses of the other Party.

3. In undertaking any consultations in accordance with Article 6.2, the Parties shall also discuss the desirability of concluding arrangements for cooperation and mutual assistance in competition policy and enforcement, either as amendments to this Chapter or as separate arrangements between their respective competition authorities.

4. Any information or documents exchanged between the Parties in relation to any mutual consultations and review conducted pursuant to the provisions of this Chapter shall be kept confidential. Neither Party shall, except to comply with its domestic legal requirements, release or disclose such information or documents to any person without the written consent of the Party which provided such information or documents. Where the disclosure of such information or documents is necessary to comply with the domestic legal requirements of a Party, that Party shall notify the other Party before such disclosure is made.

### Article 7. Transparency

The Parties shall publish or otherwise make publicly available their lawsaddressing fair competition.

### Article 8. General

1. Nothing in this Chapter permits a Party to reopen, re-examine or to challenge under any dispute settlement procedure under this Agreement, any finding, determination or decision made by a competition authority of the other Party in enforcing the applicable competition laws and regulations.

2. Neither Party shall have recourse to any dispute settlement procedures under this Agreement for any issue arising from or relating to this Chapter.

3. In the event of any inconsistency or conflict between any provision in thisChapter and any provision contained in any other Chapter of this Agreement, the latter shall prevail to the extent of such inconsistency or conflict. 97

## Chapter 13. Intellectual Property

### Article 1. Purpose and Definitions

1. The purpose of this Chapter is to increase the benefits from trade and investment through the protection and enforcement of intellectual property rights.

2. For the purposes of this Chapter:

(a) "intellectual property rights" refers to copyright and related rights; rights in trade marks, geographical indications, industrial designs, patents, and layout- designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as defined and described in the WTO TRIPS Agreement;

(b) "WIPO" means the World Intellectual Property Organisation; and

(c) "WTO TRIPS Agreement" means the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

### Article 2. Adherence to International Instruments

1. Each Party reaffirms its commitment to the provisions of the WTO TRIPS Agreement.

2. Each Party affirms that it has ratified or acceded to the following agreements, as revised and amended:

(a) the Berne Convention for the Protection of Literary and Artistic Works (1971) (the Berne Convention);

(b) the Brussels Convention Relating to the Distribution of Programme- Carrying Signals Transmitted by Satellite (1974) (the Brussels Convention);

(c) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980);

(d) the International Convention for the Protection of New Varieties of Plants (1991);

(e) the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (1979);

(f) the Paris Convention for the Protection of Industrial Property (1967) (the Paris Convention);

(g) the Patent Cooperation Treaty (1970);

(h) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989);

(i) the WIPO Copyright Treaty (1996) (WCT); (j) the WIPO Performances and Phonograms Treaty (1996) (WPPT); (k) the Singapore Treaty on the Law of Trademarks (2006); and

(j) the Convention Establishing the World Intellectual Property Organization (1967) (the WIPO Convention).

3. Each Party reaffirms its rights and obligations under the international agreements set out in paragraph 2 of this Article.

4. The Parties agree to comply with the provisions of the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs concluded at Geneva on 2 July 1999, subject to the enactment of laws necessary to apply those provisions in their respective territories.

## Article 3. Storage of Intellectual Property In Electronic Media

Copies of copyright material to which the right of reproduction applies shall includeelectronic copies of works, sound recordings, and cinematographic films. This is subject to limitations or exceptions as permitted under the laws of the Parties.

## Article 4. Term of Protection for Copyright

1. Each Party shall provide that where the term of protection of a work (including a photographic work), performance or sound recording is to be calculated:

(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) on a basis other than the life of a natural person, the term shall be:

(i) not less than 70 years from the end of the calendar year of the first authorised publication of the work, performance or sound recording; or

(ii) failing such authorised publication within 50 years from the creation of the work, performance or sound recording, not less than 70 years from the end of the calendar year of the creation of the work, performance or sound recording.

## Article 5. Effective Technological Measures

1. Each Party shall provide that any person who:

(a) knowingly, or having reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, sound recording or other subject matter; or

(b) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products or components, or offers to the public, or provides services, that:

(i) are promoted, advertised, or marketed for the purpose of circumvention of any effective technological measure;

(ii) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or (ii) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure,

shall be liable and subject to civil remedies. Each Party shall provide for criminal procedures and penalties to be applied where any person is found to have engaged wilfully and for the purposes of commercial advantage in any of the above activities. Each Party may provide that such criminal procedures and penalties do not apply to a non-profit library, archive, educational institution or public non-commercial broadcasting entity.

2. "Effective technological measure" means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, sound recording or other protected subject matter, or protects any copyright.

3. Each Party may provide for exceptions to the obligations in paragraph 1 of this Article, provided that such exceptions do not impair the adequacy of legal protection or the effectiveness of the legal remedies that the Party provides against the circumvention of effective technological measures.

4. A Party may derogate from paragraph 3 of this Article with regards to exceptions which it may provide for lawfully authorized activities carried out by government employees, agents or contractors for the purpose of law enforcement, intelligence, national defence, essential security or similar government activities.

## Article 6. Rights Management Information

1. In order to provide adequate and effective legal remedies to protect rights management information:

(a) each Party shall provide that any person who without authority, and knowingly, or, with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any copyright:

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority; or

(iii) distributes to the public, imports for distribution, broadcasts, communicates or makes available to the public copies of works or sound recordings, knowing that rights management information has been removed or altered without authority, shall be liable and subject to civil remedies. Each Party shall provide for criminal procedures and penalties to be applied where any person is found to have engaged wilfully and for the purposes of commercial advantage in any of the above activities. Each Party may provide that these criminal procedures and penalties do not apply to a non-profit library, archive, educational institution or public non-commercial broadcasting entity.

(b) "rights management information" means:

(i) electronic information that identifies a work, performance, or sound recording; the author of the work, the performer of the performance, or the producer of the sound recording; or the owner of any right in the work, performance or sound recording; or

(ii) electronic information about the terms and conditions of the use of the work, performance or sound recording; or

(iii) any electronic numbers or codes that represent such information,

when any of these items is attached to a copy of the work, performance or sound recording or appears in connection with the communication or making available of a work, performance or sound recording to the public. Nothing in this paragraph obligates a Party to require the owner of any right in the work, performance or sound recording to attach rights management information to copies of the work, performance or sound recording, or to cause rights management information to appear in connection with a communication of the work, performance or sound recording to the public.

## Article 7. Protection of Encrypted Programme-carrying Satellite Signals

1. Each Party shall make it a criminal offence to:

(a) manufacture, assemble, modify, import, export, sell, lease or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted

programme-carrying satellite signal without the authorisation of the lawful distributor of such signal; and

(b) wilfully receive and make use of, or further distribute, a programme-carrying signal that originated as an _ encrypted programme-carrying satellite signal knowing that it has been decoded without the authorisation of the lawful distributor of the signal.

2. In relation to the activities described in subparagraphs 1(a) and 1(b), each Party shall provide for civil remedies for any person that holds an interest in the encrypted programme-carrying satellite signal or its content.

## Article 8. Presumptions for Copyright

1. In civil, criminal and, if applicable, administrative procedures involving copyright, each Party shall provide for a presumption that:

(a) in the absence of evidence to the contrary, the natural person or legal entity whose name is indicated as the author, producer, performer or publisher of the work, performance or sound recording in the usual manner is the designated right holder in the work, performance or sound recording; and

(b) in the absence of evidence to the contrary, that copyright subsists in such subject matter in accordance with its domestic law.

## Article 9. Civil Enforcement of Intellectual Property Rights

1. In civil judicial proceedings concerning the acts described in Article 5 and Article 6, each Party shall provide that its judicial authorities shall have the authority to order or award at least:

(a) provisional measures, including the seizure of devices and products suspected of being involved in the proscribed activity;

(b) damages; (1)

(c) payment to a prevailing right holder of court costs and fees and reasonable attorney's fees by the party engaged in the proscribed activity at the conclusion of the civil judicial proceeding; and

(d) destruction of the devices and products found to be involved in the proscribed activity.

2. A Party may provide that damages shall not be available against a non- profit library, archive, education institution or public non-commercial broadcasting entity that sustains the burden of proving that it was not aware or had no reason to believe that its acts constituted a proscribed activity.

(1) Each Party may determine what constitutes ‘damages' for the purpose of this Article.

## Article 10. Measures to Prevent the Export of Goods That Infringe Copyright or Trade Marks

Each Party, on receipt of information or complaints, shall take measures to prevent the export of goods that infringe copyright or trade marks, in accordance with its laws, tules, regulations, directives or policies.

## Article 11. Criminal Procedures and Remedies

1. Each Party shall provide for criminal procedures and penalties to be applied to wilful copyright piracy on a commercial scale. Wilful copyright piracy on a commercial scale includes:

(i) significant wilful infringements of copyright that have no direct or indirect motivation of financial gain; and

(ii) wilful infringements for the purposes of commercial advantage or financial gain.

2. Specifically, each Party shall provide:

(a) penalties that include imprisonment and monetary fines sufficiently high to deter future acts of infringement consistent with a policy of removing the monetary incentive of the infringer. Also, each Party shall encourage its judicial authorities to impose fines at levels sufficient to provide a deterrent to future infringements;

(b) that its judicial authorities have the authority to order the seizure of suspected pirated goods, any related materials and implements that have been used in the commission of the offence, any assets traceable to the infringing activity and documentary evidence relevant to the offence that fall within the scope of the order. Items that are subject to seizure pursuant to such judicial order need not be individually identified so long as they fall within general categories specified in the order;

(c) that its judicial authorities shall have the authority, except in exceptional cases, to order the forfeiture and destruction of all pirated goods and, with respect to wilful copyright piracy, order the forfeiture and destruction of materials and implements that have been used in the creation of infringing goods. Each Party shall further provide that such forfeiture and destruction shall occur without compensation to the defendant; and

(d) that the appropriate authorities, as determined by each Party, shall have the authority to initiate criminal legal action ex officio with respect to the offences described in this Article without the need for a formal complaint by a private party or right holder.

## Article 12. Limitation on Liability of Service Providers

1. Each Party shall provide:

(a) legal incentives for service providers to cooperate with copyright owners in deterring the unauthorised storage and transmission of copyrighted materials; and

(b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this Article. (2)

2. These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions and shall be confined to those functions:

(a) transmitting, routing or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof;

(b) caching carried out through an automatic process;

(c) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and

(d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

3. These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in subparagraph 2(d) in itself entails some form of selection).

4. Qualification by a service provider for the limitations as to each function in subparagraphs 2(a) through 2(d) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in paragraphs 5 to 8 of this Article.

5. With respect to functions referred to in subparagraph 2(b), the limitations shall be conditioned on the service provider:

(a) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material;

(b) complying with rules concerning the refreshing, reloading or other updating of the cached material when specified by the person making the material available online in accordance with a relevant industry standard data communications protocol for the system or network through which that person makes the material available that is generally accepted in the Party's territory;

(c) not interfering with technology used at the originating site consistent with industry standards generally accepted in the Party's territory to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and

(d) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site.

6. With respect to the functions referred to in subparagraphs 2(c) and 2 (d), the limitations shall be conditioned on the service provider:

(a) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity;

(b) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with paragraph 10 of this Article; and

(c) publicly designating a representative to receive such notifications.

7. Eligibility for the limitations in this Article shall be conditioned on the service provider:

(a) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and

(b) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.

8. Eligibility for the limitations in this Article may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

9. If the service provider qualifies for the limitations with respect to the functions referred to in subparagraph 2(a), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in paragraph 2 of this Article, court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice of the court order proceedings referred to in this paragraph and an opportunity to appear before the judicial authority.

10. For purposes of the notice and take down process for the functions referred to in subparagraphs 2(c) and 2(d), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

11. If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.

12. Each Party shall provide for an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

13. For purposes of the functions referred to in subparagraph 2(a), "service provider" means a provider of transmission, routing or connections for digital online communications without modification of their content between or among points specified by the user of material of the user's choosing, and for purposes of the functions referred to in subparagraphs 2(b) through 2(d) "service provider" means a provider or operator of facilities for online services or network access.

(2) Subparagraph (b) is without prejudice to the availability of defences to copyright infringement that are of general applicability.

## Article 13. Cooperation on Enforcement

The Parties agree to cooperate with a view to eliminating trade in goods infringing intellectual property rights, subject to their respective laws, rules, regulations, directives or policies. Such cooperation shall include:

(a) the notification of contact points for the enforcement of intellectual property rights;

(b) the exchange, between respective agencies responsible for the enforcement of intellectual property rights, of information concerning infringement of intellectual property rights;

(c) policy dialogue on initiatives for the enforcement of intellectual property rights in multilateral and regional fora; and

(d) such other activities and initiatives for the enforcement of intellectual property rights as may be mutually agreed between the Parties.

## Article 14. Cooperation on Education and Exchange of Information on Protection, Management and Exploitation of Intellectual Property Rights

The Parties, through their competent agencies, agree to:

(a) exchange information and material on programmes pertaining to intellectual property rights education and awareness, and to commercialisation of intellectual property, to the extent permissible under their respective laws, tules, regulations and directives; and

(b) encourage and facilitate the development of contacts and cooperation between their respective government agencies, educational institutions, organisations and other entities in the field of intellectual property rights protection and development, including in the education and training of patent agents.

## Article 15. Settlement of Disputes Relating to Domain Names and Trade Marks

Both Parties shall continue to monitor and support, where appropriate, endeavours todevelop international policy or guidelines governing the resolution of disputes relating to domain names and trade marks.

# Chapter 14. Electronic Commerce

## Article 1. Definitions

1. The purposes of this Chapter are to promote electronic commerce between the Parties and to promote the wider use of electronic commerce globally.

2. For the purposes of this Chapter:

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

(b) "covered person" (1) means:

(i) a "covered investment" as defined in Article 2(c) (General Definitions) of Chapter 1 (Objectives and General Definitions);

(ii) an "investor of a Party" as defined in Article 1 (Definitions) of Chapter 8 (investment); but does not include an investor in a financial institution; or

(ii) a "service supplier of a Party" as defined in Article 1 (Definitions) of Chapter 7 (Cross-Border Trade in Services)

but does not include a "financial institution' or a "cross-border financial service supplier of a Party" as defined in Article 1 (Definitions) of Chapter 9 (Financial Services);

(c) "customs duty' has the same meaning as Article 2(e) (General Definitions) of Chapter 1 (Objectives and General Definitions);

(d) "digital product" means a computer programme, text, video, image, sound recording or other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically; (2) (3)

(e) "electronic authentication" means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

(f) "electronic transmission" or "transmitted electronically" means a transmission made using any electromagnetic means, including by photonic means;

(g) "electronic version" of a document means a document in an electronic format prescribed by a Party, including a document sent by facsimile transmission;

(h) "enterprise" means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation;

(i) "measure" includes any law, regulation, procedure, requirement or practice;

(j) "person" means a natural person or an enterprise;

(k) "person of a Party" means a national (4) or an enterprise of a Party;

(l) "personal information" means any information, including data, about an identified or identifiable natural person;

(m) "trade administration documents" means forms issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods;

(n) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in Annex 1C to the WTO Agreement;(5) and

(o) "unsolicited commercial electronic message" means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier or, to the extent provided for under the laws and regulations of each Party, other telecommunications service.

(1) For Australia, a "covered person" does not include a credit reporting body.

(2) For greater certainty, "digital product" does not include a digitised representation of a financial instrument, including money.

(3) The definition of "digital product" should not be understood to reflect a Party's view on whether trade in digital products through electronic transmission should be categorised as trade in services or trade in goods.

(4) For the purposes of this Chapter, a "national" means, for Australia, a natural person who is an Australian citizen as defined in the Australian Citizenship Act 2007 as amended from time to time, or any successor legislation; for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws; or a permanent resident of either Party.

(5) For greater certainty, a reference in this Agreement to the TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

## Article 2. Scope

1. The Parties recognise the economic growth and opportunities provided by electronic commerce and the importance of frameworks that promote consumer confidence in electronic commerce and of avoiding unnecessary barriers to its use and development.

2. This Chapter shall apply to measures adopted or maintained by a Party that affect trade by electronic means.

3. This Chapter shall not apply to:

(a) government procurement; or

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

4. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapters 7 (Cross-Border Trade in Services), 8 (Investment) and 9 (Financial Services), including any exceptions or non-conforming measures set out in this Agreement that are applicable to those obligations.

5. For greater certainty, the obligations contained in Articles 5 (Non- Discriminatory Treatment of Digital Products), 13 (Cross-Border Transfer of Information by Electronic Means), 15 (Location of Computing Facilities) and 19 (Source Code) are:

(a) subject to the relevant provisions, exceptions and non-conforming measures of Chapters 7 (Cross-Border Trade in Services), 8 (Investment) and 9 (Financial Services); and

(b) to be read in conjunction with any other relevant provisions in this Agreement.

6. The obligations contained in Articles 5 (Non-Discriminatory Treatment of Digital Products), 13 (Cross-Border Transfer of Information by Electronic Means) and 15 (Location of Computing Facilities) shall not apply to the non-conforming aspects of measures adopted or maintained in accordance with Article 7 (Reservations) of Chapter 7 (Cross-Border Trade in Services) and Article 11 (Reservations) of Chapter 8 (Investment).

## Article 3. Transparency

1. Each Party shall promptly publish, or otherwise promptly make publicly available where publication is not practicable, all relevant measures of general application which pertain to or affect the operation of this Chapter.

2. Each Party shall respond promptly to any request by the other Party for specific information on any of its measures of general application within the meaning of paragraph 1.

## Article 4. Customs Duties

1. Neither Party shall impose customs duties on electronic transmissions, including content transmitted electronically, between a person of a Party and a person of the other Party.

2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

## Article 5. Non-discriminatory Treatment of Digital Products

1. Neither Party shall accord less favourable treatment to a digital product created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of the other Party, or to a digital product of which the author, performer, producer, developer or owner is a person of the other Party, than it accords to other like digital products.

2. Paragraph 1 shall not apply to the extent of any inconsistency with the rights and obligations in the TRIPS Agreement or with Chapter 13 (Intellectual Property).

3. The Parties understand that this Article does not apply to subsidies or grants provided by a Party including government-supported loans, guarantees and insurance.

4. This Article shall not apply to broadcasting.

## Article 6. Domestic Electronic Transactions Framework

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 or the United Nations Convention on the Use of Electronic Communications in International Contracts, done at New York, November 23, 2005.

2. Each Party shall endeavour to:

(a) avoid any unnecessary regulatory burden on electronic transactions; and

(b) facilitate input by interested persons in the development of its legal framework for electronic transactions.

## Article 7. Electronic Authentication and Electronic Signatures

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2 Neither Party shall adopt or maintain measures for electronic authentication that would:

(a) prohibit the other Party to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or

(b) prevent the other Party to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their transaction complies with any legal requirements with respect to authentication.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law.

4. The Parties shall encourage the use of interoperable electronic authentication.

## Article 8. Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities, when they engage in electronic commerce.

2. For the purposes of this Article, fraudulent and deceptive commercial activities refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example, a practice of:

(a) making a misrepresentation of material fact, including an implied factual misrepresentation, that causes significant detriment to the economic interests of a misled consumer;

(b) failing to deliver products or provide services to a consumer after the consumer is charged; or

(c) charging or debiting a consumer's financial, telephone or other accounts without authorisation.

3. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.

4. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the cooperation sought includes cooperation with respect to online commercial activities.

## Article 9. Personal Information Protection

1. The Parties recognise the economic and social benefits of protecting the personal information of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce. In the development of its legal framework for the protection of personal information, each Party should take into account principles and guidelines of relevant international bodies.(6)

3. Each Party shall endeavour to adopt non-discriminatory practices in protecting users of electronic commerce from personal information protection violations occurring within its jurisdiction.

4. Each Party should publish information on the personal information protections it provides to users of electronic commerce, including how: (a) an individual can pursue remedies; and

(b) business can comply with any legal requirements.

5. Recognising that the Parties may take different legal approaches to protecting personal information, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such

mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

(6) For greater certainty, a Party may comply with the obligation in this paragraph by adopting or maintaining measures such as comprehensive privacy, personal information or personal data protection laws, sector-specific laws covering privacy, or laws that provide for the enforcement of voluntary undertakings by enterprises relating to privacy.

## Article 10. Paperless Trading

1. Each Party shall make publicly available, which may include through a process prescribed by that Party, electronic versions of all existing publicly available versionsof trade administration documents.

2. Each Party shall accept electronic versions of its trade administration documents as the legal equivalent of paper documents except where:

(a) there is a domestic or international legal requirement to the contrary; or

(b) doing so would reduce the effectiveness of the trade administration process.

3. The Parties shall cooperate bilaterally and in international fora to enhance the acceptance of electronic versions of trade administration documents.

## Article 11. Exceptions

This Chapter shall be subject to Article 16 (General Exceptions) of Chapter 7 (Cross-Border Trade in Services) and Article 19 (General Exceptions) of Chapter 8 (Investment), and to Article 2 (Security Exceptions) of Chapter 17 (Final Provisions).

## Article 12. Principles on Access to and Use of the Internet for Electronic Commerce

Subject to applicable policies, laws and regulations, the Parties recognise the benefits of consumers in their territories having the ability to:

(a) access and use services and applications of a consumer's choice available on the Internet, subject to reasonable network management; (7)

(b) connect the end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network; and

(c) access information on the network management practices of a consumer's Internet access service supplier.

(7) The Parties recognise that an Internet access service supplier that offers its subscribers certain content on an exclusive basis would not be acting contrary to this principle.

## Article 13. 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. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when 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.

## Article 14. Internet Interconnection Charge Sharing

The Parties recognise that a supplier seeking international Internet connection should be able to negotiate with suppliers of the other Party on a commercial basis. These negotiations may include negotiations regarding compensation for the establishment, operation and maintenance of facilities of the respective suppliers.

## Article 15. 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.

## Article 16. Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require a supplier of unsolicited commercial electronic messages to facilitate the ability of a recipient to prevent ongoing reception of those messages;

(b) require the consent, as specified according to the laws and regulations of each Party, of a recipient to receive commercial electronic messages; or

(c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against a supplier of unsolicited commercial electronic messages that does not comply with the measures adopted or maintained pursuant to paragraph 1. 3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

## Article 17. Cooperation

Recognising the global nature of electronic commerce, the Parties shall endeavour to:

(a) work together to assist small and medium-sized enterprises (8) to overcome obstacles to its use;

(b) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:

(i) personal information protection;

(ii) online consumer protection, including means for consumer redress and building consumer confidence;

(iii) unsolicited commercial electronic messages;

(iv) security in electronic communications;

(v) authentication; and

(vi) e-government;

(c) exchange information and share views on consumer access to products and services offered online between the Parties;

(d) participate actively in regional and multilateral fora to promote the development of electronic commerce; and

(e) encourage development by the private sector of methods of self- regulation that foster electronic commerce, including codes of conduct, model contracts, guidelines and enforcement mechanisms.

(8) Including a micro-sized enterprise.

### Article 18. Cooperation on Cybersecurity Matters

The Parties recognise the importance of:

(a) building the capabilities of their national entities responsible for computer security incident response; and

(b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious code that affect the electronic networks of the Parties.

### Article 19. Source Code

1. Neither Party shall require the transfer of, or access to, source code of softwareowned by a person of the other Party, as a condition for the import, distribution, sale or use of such software, or of products containing such software, in its territory.

2. For the purposes of this Article, software subject to paragraph 1 is limited to mass-market software or products containing such software and does not include software used for critical infrastructure.

3. Nothing in this Article shall preclude:

(a) the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts; or

(b) a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement.

4. This Article shall not be construed to affect requirements that relate to patent applications or granted patents, including any orders made by a judicial authority in relation to patent disputes, subject to safeguards against unauthorised disclosure under the law or practice of a Party.

## Chapter 15. Education Cooperation

### Article 1. Scope and Purpose

The purpose of this Chapter is to foster closer people-to-people links and mutual understanding between Australia and Singapore and to enhance the role played by education in enhancing the bilateral trade and investment relationship through promoting mutual cooperation in education.

### Article 2. Fields of Cooperation

Both Parties shall encourage and facilitate, as appropriate, exchanges in the following fields:

(a) quality assurance processes;

(b) on-line and distance education at all levels;

(c) primary and secondary education systems;

(d) higher education;

(e) technical education and vocational training;

(f) industry collaboration for technical and vocational training; and

(g) teacher training and development.

### Article 3. Facilitation of Cooperation

Both Parties shall encourage and facilitate, as appropriate, the development of contacts and cooperation between their respective government agencies, educational institutions, organisations, and other entities and the conclusion of arrangements between such bodies to cooperate in the above fields. These may be achieved through:

(a) joint planning and implementation of programs and projects, and joint coordination of targeted activities in agreed fields;

(b) development of collaborative training, joint research and development, technology transfer and joint ventures between appropriate authorities and institutions;

(c) development of programs which can be jointly delivered by institutions;

(d) exchange of teaching staff, administrators, researchers and students;

(e) academic credit transfer and mutual recognition of academic and vocational qualifications, between recognised institutions of higher learning;

(f) cooperation in areas of interest in technical and vocational education;

(g) exchange of teaching and curriculum materials, teaching aids, and demonstration materials as well as the organisation of relevant specialised exhibitions and seminars;

(h) exchange of information on:

(i) study opportunities in Australia and Singapore;

(ii) education systems and standards; and

(iii) research projects, symposia and other academic events;

(i) cooperative research in emerging education issues;

(j) collaboration on the development of quality assured innovative resources to support learning and assessment, and the professional development of teachers and trainers in training and vocational education; and

(k) other forms of cooperation as may be mutually determined.

### Article 4. Student Mobility and Scholarship Arrangements

1. Both Parties shall foster the mobility of students.

2. A Party shall, subject to any qualification requirements for professional practice in its territory, allow its scholarships for overseas studies to be tenable at universities in the territory of the other Party.

3. Both Parties shall encourage their government scholarship nominees to consider the other Party as one of the countries for their overseas study.

### Article 5. Costs

1. Cooperation under this Chapter shall be subject to the availability of funds.

2. The cooperative activities under this Chapter shall be funded as mutually determined

## Chapter 16. Dispute Settlement

### Article 1. Scope and Coverage

1. Unless otherwise agreed by the Parties elsewhere in this Agreement, the provisions of this Chapter shall apply with respect to the avoidance or settlement of disputes between the Parties concerning their rights and obligations under this Agreement.

2. The rules and procedures set out in this Chapter may be waived, varied or modified by mutual agreement.

3. Findings and recommendations of an arbitral tribunal cannot add to or diminish the rights and obligations of the Parties under this Agreement.

4. The provisions of this Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by regional or local governments or authorities within the territory of a Party. When an arbitral tribunal has ruled that a provision of this Agreement has not been observed, the responsible Party shall take such reasonable measures as may be available to it to ensure its observance. The provisions of this Chapter relating to compensation and suspension of benefits

apply in cases where it has not been possible to secure such observance.

5. Arbitral tribunals shall clarify the provisions of this Agreement in accordance with customary rules of interpretation of public international law.

## Article 2. Consultations

1. Each Party shall accord adequate opportunity for consultations regarding any representations made by the other Party with respect to any matter affecting the implementation, interpretation or application of this Agreement. Any differences shall, as far as possible, be settled by consultation between the Parties.

2. Any Party which considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded, as a result of the failure of the other Party to carry out its obligations under this Agreement, may, with a view to achieving satisfactory settlement of the matter, make representations or proposals to the other Party, which shall give due consideration to the representations or proposals made to it.

3. If a request for consultation is made, the Party to which the request is made shall reply to the request within 7 days after the date of its receipt and shall enter into consultations within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.

4. The Parties shall make every effort to reach a mutually satisfactory resolution of any matter through consultations. To this end, the Parties shall:

(a) provide sufficient information to enable a full examination of how the measure might affect the operation of the Agreement; and

(b) treat as confidential any information exchanged in the consultations which the other Party has designated as confidential.

## Article 3. Good Offices, Conciliation or Mediation

1. The Parties may at any time agree to good offices, conciliation or mediation. They may begin at any time and be terminated by either Party at any time.

2. If the Parties agree, procedures for good offices, conciliation or mediation may continue while the dispute proceeds for resolution before an arbitral tribunal appointed under Article 4 (Appointment of Arbitral Tribunals).

## Article 4. Appointment of Arbitral Tribunals

If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the Party which made the request for consultations may make a written request to the other Party to appoint an arbitral tribunal under this Article. The request shall include a statement of the claim and the grounds on which it is based.

## Article 5. Composition of Arbitral Tribunals

1. The arbitral tribunal referred to in Article 4 (Appointment of Arbitral Tribunals) shall consist of three members. Each Party shall appoint an arbitrator within 30 days of the receipt of the request under Article 4, and the two arbitrators appointed shall, within 30 days of the appointment of the second of them, designate by common agreement the third arbitrator.

2. The Parties shall, within 7 days of the designation of the third arbitrator, approve or disapprove the appointment of that arbitrator, who shall, if approved, chair the tribunal.

3. If the third arbitrator has not been designated within 30 days of the appointment of the second arbitrator, or one of the Parties disapproves the appointment of the third arbitrator, the Ministers in charge of trade negotiations of the Parties shall consult directly in order to jointly appoint the chair of the arbitral tribunal within a further period of 30 days.

4. If an arbitrator appointed under this Article resigns or becomes 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.

5. Any person appointed as a member or chair of the arbitral tribunal shall not be a national of either Party and shall have

expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability, sound judgement and independence. Additionally, the chair shall not have his or her usual place of residence in the territory of, nor be employed by, either Party.

## Article 6. Functions of Arbitral Tribunals

1. The function of an arbitral tribunal is to make an objective assessment of the dispute before it, including an examination of the facts of the case and the applicability of and conformity with this Agreement. Where the arbitral tribunal concludes that a measure is inconsistent with a provision of this Agreement, it shall recommend that a Party bring the measure into conformity with that provision.

2. The findings and recommendations of the arbitral tribunal shall be set out in a report released to the Parties. An arbitral tribunal may make its findings and recommendations upon the default of a Party.

3. An arbitral tribunal shall take its decisions by consensus; provided that where an arbitral tribunal is unable to reach consensus it may take its decisions by majority vote.

4, The arbitral tribunal shall, in consultation with the Parties and apart from the matters set out in Article 7 (Proceedings of Arbitral Tribunals), regulate its own procedures in relation to the rights of Parties to be heard and its deliberations.

## Article 7. Proceedings of Arbitral Tribunals

1. An arbitral tribunal shall meet in closed session. The Parties shall be present at the meetings only when invited by the arbitral tribunal to appear before it.

2. The deliberations of an arbitral tribunal and the documents submitted to it shall be kept confidential. Nothing in this Article shall preclude a Party from disclosing statements of its own positions or its submissions to the public; provided that a Party shall treat as confidential information submitted by the other Party to the arbitral tribunal which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitral tribunal, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.

3. Before the first substantive meeting of the arbitral tribunal with the Parties, the Parties shall transmit to the arbitral tribunal written submissions in which they present the facts of their case and their arguments.

4. At its first substantive meeting with the Parties, the arbitral tribunal shall ask the Party which has brought the complaint to present its submission. Subsequently, and still at the same meeting, the Party against which the complaint has been brought shall be asked to present its submission.

5. Formal rebuttals shall be made at a second substantive meeting of the arbitral tribunal. The Party complained against shall have the right to present its submission first, and shall be followed by the complaining Party. The Parties shall submit, prior to the meeting, written rebuttals to the arbitral tribunal.

6. The arbitral tribunal may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing.

7. The Parties shall make available to the arbitral tribunal a written version of their oral statements.

8. In the interests of full transparency, the presentations, rebuttals and statements referred to in paragraphs 4 to 6 shall be made in the presence of the Parties. Moreover, each Party's written submissions, including any comments on the report, written versions of oral statements and responses to questions put by the arbitral tribunal, shall be made available to the other Party. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

9. The arbitral tribunal shall have the right, in consultation with the Parties, to seek information and technical advice from any individual or body which it deems appropriate, and shall make any such information and technical advice available to the Parties. A Party shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

10. The report of the arbitral tribunal shall be drafted without the presence of the Parties in the light of the information provided and the statements made. The arbitral tribunal shall accord adequate opportunity to the Parties to review the entirety of its draft report prior to its finalisation and shall include a discussion of any comments by the Parties in its final

report.

11. The arbitral tribunal shall release to the Parties its final report on the dispute referred to it within 60 days of its formation. When the arbitral tribunal considers that it cannot release its final report within 60 days, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. The final report of the arbitral tribunal shall become a public document within 10 days after its release to the Parties.

## Article 8. Suspension and Termination of Proceedings

1. Where the Parties agree, the arbitral tribunal may suspend its work at any time for a period not exceeding 12 months from the date of such agreement. If the work of the arbitral tribunal has been suspended for more than 12 months, the authority for establishment of the tribunal shall lapse unless the Parties agree otherwise.

2. The Parties may agree to terminate the proceedings of an arbitral tribunal established under this Agreement, in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal makes its decision, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

## Article 9. Implementation

1. The Party concerned shall comply with the arbitral tribunal's recommendations within a reasonable period of time. The reasonable period of time shall be mutually determined by the Parties or, where the Parties fail to agree on the reasonable period of time within 45 days of the release of the arbitral tribunal's report, either Party may refer the matter to the tribunal, which shall determine the reasonable period of time following consultation with the Parties.

2. Where there is disagreement as to the existence or consistency with this Agreement of measures taken within the reasonable period of time to comply with the recommendations of the arbitral tribunal, such dispute shall be decided through recourse to the dispute settlement procedures in this Chapter, including wherever possible by resort to the original arbitral tribunal. The arbitral tribunal shall provide its report to the Parties within 60 days after the date of the referral of the matter to it. When the arbitral tribunal considers that it cannot provide its report within this timeframe, it shall inform the Parties in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

## Article 10. Compensation and Suspension of Benefits

1. If the Party concemed fails to bring the measure found to be inconsistent with the Agreement into compliance with the recommendations of the arbitral tribunal under Article 9.2 within 20 days of the report of that arbitral tribunal being provided to the Parties, that Party shall, if so requested, enter into negotiations with the complaining Party with a view to reaching a mutually satisfactory agreement on any necessary compensatory adjustment.

2. If no mutually satisfactory agreement on compensation has been reached within 20 days after the request of the complaining Party to enter into negotiations on compensatory adjustment, the complaining Party may request the original arbitral tribunal to determine the appropriate level of any suspension of benefits conferred on the other Party under this Agreement. Where the original arbitral tribunal cannot hear the matter for any reason, a new tribunal shall be appointed under Article 4 (Appointment of Arbitral Tribunals).

3. Any suspension of benefits shall be restricted to benefits accruing to the other Party under this Agreement.

4. In considering what benefits to suspend under Article 10.2:

(a) the Party having invoked the dispute settlement procedures should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the arbitral tribunal has found to be inconsistent with this Agreement or to have caused nullification or impairment; and

(b) the Party having invoked the dispute settlement procedures may suspend benefits in other sectors if it considers that it is not practicable or effective to suspend benefits in the same sector.

5. The suspension of benefits shall be temporary and shall only be applied until such time as the measure found to be inconsistent with this Agreement has been removed, or the Party that must implement the arbitral tribunal's recommendations has done so, or a mutually satisfactory solution is reached.

## Article 11. Expenses

Each Party shall bear the costs of its appointed arbitrator and its own expenses and legal costs. The costs of the Chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.

# Chapter 17. Final Provisions

## Article 1. Regional and Local Government

Each Party is fully responsible for the observance of all provisions in this Agreement, and, except as otherwise provided for in this Agreement, shall take such reasonable measures (1) as may be available to it to ensure that they are observed by the regional and local governments and authorities within its territory, and in respect of trade in services and investment covered by Chapter 7 (Cross-Border Trade in Services) and Chapter 8 (Investment) of this Agreement, that they are observed by non- governmental bodies (in the exercise of powers delegated by central, regional or local government or authorities) within its territory.

(1) For the purposes of this Chapter, "measure" includes any law, regulation, procedure, requirement or practice.

## 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 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.

## Article 3. Taxation Measures

1. For the purposes of this Article:

"tax convention" means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

"taxation measures" do not include a "customs duty" as defined in Article 2(e) (General Definitions) of Chapter 1 (Objectives and General Definitions).

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

3. This Agreement shall only grant rights or impose obligations with respect to taxation measures where corresponding rights or obligations are also granted or imposed under Article II of GATT 1994 and, with respect to services, including financial services and services supplied by a covered investment, Articles I, XVII and XIV(d) of GATS, mutatis mutandis (2).

4. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention in force between the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and such tax convention, the latter shall prevail to the extent of the inconsistency. The competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

(2) The Parties understand that this paragraph must be interpreted by reference to the footnote to Article XIV(d) of GATS as if the Article were not restricted to direct taxes.

## Article 4. 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 for current account transactions in the event of serious balance of payments and external financial difficulties or threats thereof.

2. 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 threats thereof; or

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

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

(a) not be inconsistent with Articles 4 (National Treatment) and 5 (Most- Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services), Articles 4 (National Treatment) and 5 (Most-Favoured- Nation Treatment) of Chapter 8 (Investment), or Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment) of Chapter 9 (Financial Services); (3)

(b) be consistent with the Articles of Agreement of the International Monetary Fund;

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

(d) not exceed those necessary to deal with the circumstances described in paragraph 1 or 2;

(e) be temporary and be phased out progressively as the situations specified in paragraph 1 or 2 improve, and shall not exceed 18 months in duration; however, in exceptional circumstances, a Party may extend such measure for additional periods of one year, by notifying the other Party in writing within 30 days of the extension. If the other Party advises, in writing, within 30 days of receiving the notification, that it does not agree that the extended measure is designed and applied to satisfy subparagraphs (c), (d) and (h), the Party imposing the measure shall commence consultations with the other Party within 90 days of receiving the notification from the other Party, and endeavour to modify the measure to bring it into conformity with subparagraphs (c), (d) and (h), taking into account the views of the other Party;

(f) not be inconsistent with Article 13 (Expropriation and Nationalisation) of Chapter 8 (Investment); (4)

(g) in the case of restrictions on capital outflows, not interfere with an investor's ability to earn a market rate of return in the territory of the restricting Party on any restricted assets;(5) and

(h) not be used to avoid necessary macroeconomic adjustment.

4. Measures referred to in paragraphs 1 and 2 shall not apply to payments or transfers relating to foreign direct investment. (6)

5. A Party shall endeavour to provide that any measures adopted or maintained under paragraph 1 or 2 be price-based, and if such measures are not price-based, the Party shall explain the rationale for using quantitative restrictions when it notifies the other Party of the measure.

6. In the case of trade in goods, Article XII of GATT 1994 and the Understanding on the Balance of Payments Provisions of the GATT 1994 are incorporated into and made part of this Agreement, mutatis mutandis. Any measures adopted or maintained under this paragraph shall not impair the relative benefits accorded to the other Party under this Agreement as compared to the treatment of a non-Party.

7. A Party adopting or maintaining measures under paragraph 1, 2 or 6 shall:

(a) notify, in writing, the other Party of the measures, including any changes therein, along with the rationale for their imposition, within 30 days of their adoption;

(b) present, as soon as possible, either a time schedule or the conditions necessary for their removal;

(c) promptly publish the measures; and

(d) promptly commence consultations with the other Party in order to review the measures adopted or maintained by it.

(i) In the case of capital movements, promptly respond to a request for consultations from the other Party in relation to the measures adopted by it, provided that such consultations are not otherwise taking place outside of this Agreement.

(ii) In the case of current account restrictions, if consultations in relation to the measures adopted by it are not taking place under the framework of the WTO Agreement, a Party, if requested, shall promptly commence consultations with the other Party.

(3) Without prejudice to the general interpretation of Articles 4 (National Treatment) and 5 (Most- Favoured-Nation Treatment) of Chapter 7

(Cross-Border Trade in Services), Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) of Chapter 8 (Investment), and Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment) of Chapter 9 (Financial Services), the fact that a measure adopted or maintained pursuant to paragraph 1 or 2 differentiates between investors on the basis of residency does not necessarily mean that the measure is inconsistent with Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services), Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) of Chapter 8 (Investment), and Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment) of Chapter 9 (Financial Services).

(4) For greater certainty, measures referred to in paragraph 1 or 2 may be non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives as referred to in subparagraph 3(b) of Annex 8-A (Expropriation) to Chapter 8 (Investment).

(5) The term ‘Restricted assets" in this subparagraph refers only to assets invested in the territory of the restricting Party by an investor of the other Party that are restricted from being transferred out of the territory of the restricting Party.

(6) For the purposes of this Article, "foreign direct investment" means a type of investment by an investor of a Party in the territory of the other Party, through which the investor exercises ownership or control over, or a significant degree of influence on the management of, an enterprise or other direct investment, and tends to be undertaken in order to establish a lasting relationship. For example, ownership of at least 10 per cent of the voting power of an enterprise over a period of at least 12 months generally would be considered foreign direct investment. For the purposes of this Chapter, "enterprise" means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation.

## Article 5. General Exceptions

1. For the purposes of Chapter 3 (Rules of Origin) and Chapter 5 (Technical Regulations and Sanitary and Phytosanitary Measures), Article XX of GATT 1994 and its interpretative notes are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. The Parties understand that the measures referred to in Article XX(b) of GATT 1994 include environmental measures necessary to protect human, animal or plant life or health, and that Article XX(g) of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources.

## Article 6. Contact Point

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of a Party, the contact point of the requested Party shall identify the office or official responsible for the matter and assist in facilitating communication with the requesting Party.

## Article 7. Review

In addition to the provisions for consultations elsewhere in this Agreement, Ministers in charge of trade negotiations of the Parties shall meet within a year of the date of entry into force of this Agreement and then biennially or otherwise as appropriate to review this Agreement.

## Article 8. Association with the Agreement

This Agreement is open to accession or association by any State or separate customs territory, on terms to be agreed between the Parties.

## Article 9. Relation to other Agreements

Unless otherwise provided in this Agreement, in the event of any inconsistency between this Agreement and any other agreement to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution in accordance with customary rules of public international law. (7)

(7) For the purposes of application of this Agreement, the Parties agree that the fact that an agreement provides more favourable treatment of goods, services, investments or persons than that provided for under this Agreement does not mean that there is an inconsistency within the meaning of this Article. For the purposes of this Chapter, "person" means a natural person or an enterprise.

## Article 10. Annexes

The Annexes in this Agreement shall form an integral part of this Agreement.

## Article 11. Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall enter into force on such date or dates as may be agreed between the Parties.

## Article 12. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entryinto force of this Agreement.

2. Either Party may terminate this Agreement by giving the other Party six months' advance notice in writing.

## ANNEX 4-I. Reservations to chapter 7 (cross-border trade in services) and chapter 8 (investment)

EXPLANATORY NOTES

1. The Schedule of a Party to this Annex sets out, pursuant to Article 7 (Reservations) of Chapter 7 (Cross-Border Trade in Services) and Article 11 (Reservations) of Chapter 8 (Investment), a Party's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 3 (Market Access) of Chapter 7 (Cross-Border Trade in Services);

(b) Article 4 (National Treatment) of Chapter 7 (Cross-Border Trade in Services) or Article 4 (National Treatment) of Chapter 8 (Investment);

(c) Article 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross- Border Trade in Services) or Article 5 (Most-Favoured-Nation Treatment) of Chapter 8 (Investment);

(d) Article 6 (Local Presence) of Chapter 7 (Cross-Border Trade in Services);

(e) Article 7 (Prohibition of Performance Requirements) of Chapter 8 (Investment); or

(f) Article 8 (Senior Management and Boards of Directors) of Chapter 8 (investment).

2. Each Schedule entry sets out the following elements:

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

(b) Sub-Sector, where referenced, refers to the specific sector in which the teservation is made;

(c) Industry Classification, where referenced, refers to the activity covered by the non-conforming measure according to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(d) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 7.1 (Reservations) of Chapter 7 (Cross-Border Trade in Services) and Article 11.1 (Reservations) of Chapter 8 (Investment), do not apply to the listed measure(s) as indicated in the Description element of that entry;

(e) Level of Government indicates the level of government maintaining the listed measures;

(f) Source of Measure identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(g) Description sets out the non-conforming aspects of the measure to which the entry applies. However, in the interpretation of an entry, all elements of the entry shall be considered.

3. Articles 4 (National Treatment) and 6 (Local Presence) of Chapter 7 (Cross- Border Trade in Services) are separate disciplines and a measure that is only inconsistent with Article 6 (Local Presence) of Chapter 7 (Cross-Border Trade in Services) need not be reserved against Article 4 (National Treatment) of Chapter 7 (Cross-Border Trade in Services). For greater certainty, requirements that must be met in order to establish a particular form of enterprise, such as a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation are not breaches of the local presence obligation unless they are imposed as a condition for the cross-border supply of a service.

4. Article 1 (Definitions) of Chapter 7 (Cross-Border Trade in Services) and Article 1 (Definitions) of Chapter 8 (Investment) shall apply to this Annex.

## ANNEX 4-I(A). Australia's reservations to chapter 7 (cross-border trade in services) and chapter 8 (investment)

INTRODUCTORY NOTES

1. Australia reserves the right to maintain and to add to this Schedule any non- conforming measure at the regional level of government that existed at 1 January 2005, but was not listed in this Schedule at the date of entry into force of this Agreement against the following obligations:

(a) Article 4 (National Treatment) of Chapter 7 (Cross-Border Trade in Services) or Article 4(National Treatment) of Chapter 8 (Investment);

(b) Article 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross-Border Trade in Services) or Article 5 (Most-Favoured-Nation Treatment) of Chapter 8 (Investment);

(c) Article 6 (Local Presence) of Chapter 7 (Cross-Border Trade in Services);

(d) Article 7 (Prohibition of Performance Requirements) of Chapter 8 (Investment); or

(e) Article 8 (Senior Management and Boards of Directors) of Chapter 8 (Investment).

### 1.

Sector: All sectors

Obligations Concerned: National Treatment (Investment) Senior Management and Boards of Directors

Level of Government: Central

Source of Measure: Australia's foreign investment framework, which comprises Australia's Foreign Investment Policy, the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA); Foreign Acquisitions and Takeovers Regulations 2015 (Cth); Foreign Acquisitions Fees Imposition Act 2015 (Cth); Foreign Acquisitions Fees Imposition Regulation 2015 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements

Description: Investment

1. The following investments (1) require notification and approval from the Australian Government:

(a) proposed investments by foreign persons (2) in existing (3) Australian businesses, or prescribed corporations, (4) the value of

whose assets exceeds $A252 million* in the following sectors:

(i) the telecommunications sector;

(ii) the transport sector, including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia;

(iii) the supply of training or human resources, or the manufacture or supply of military goods, equipment or technology, to the Australian or other defence forces;

(iv) the manufacture or supply of goods, equipment or technologies able to be used for a military purpose;

(v) the development, manufacture or supply of, or provision of services relating to, encryption and security technologies and communication systems; and

(vi) the extraction of (or rights to extract) uranium or plutonium, or the operation of nuclear facilities;

(b) proposed investments by foreign persons in existing Australian businesses, or prescribed corporations, in all other sectors, excluding financial sector companies,(5) the value of whose total assets exceeds $A1,094 million*;

(c) proposed direct investments by foreign government investors, irrespective of size;

(d) proposed investments by foreign persons of five per cent or more in the media sector, regardless of the value of the investment;

(e) proposed acquisitions by foreign persons of developed non-residential commercial real estate where the property is valued at more than $A1,094 million*,

Notified investments may be refused, subject to interim orders, and/or approved subject to compliance with certain conditions. Investments referred to above for which no notification is received may be subject to orders under the FATA.

Separate or additional requirements may apply to measures subject to other Annex I reservations and to sectors, sub-sectors or activities subject to Annex II.

2. The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control (6) of an existing financial sector company, may be refused, or be subject to certain conditions. (7)

(1) Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA). "Investments" means activities covered by Part II of FATA or, where applicable, ministerial statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

(2) For the purposes of this entry, a "foreign person" means: (a) a natural person not ordinarily resident in Australia; (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest; (c) a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest; (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or (e) the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

(3) For the purposes of this entry, "existing" means in existence at the time the investment is proposed or made.

(4) For the purposes of this entry, "prescribed corporation" means: (a) a trading corporation; (b) a financial corporation; (c) a corporation incorporated in a Territory under the law in force in that Territory relating to companies; (d) a foreign corporation that, on its last accounting date, held assets the sum of the values of which exceeded $A252 million (for item (a) of the entry) or $A1,094 million (for item (b) of the entry), being assets consisting of all or any of the following: (i) land situated in Australia (including legal and equitable interests in such land); (ii) mineral rights; (iii) shares in a corporation incorporated in Australia; (e) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of the Australian corporation or Australian corporations exceeded $A252 million (for item (a) of the entry) or $A1094 million (for item (b) of the entry); (f) a corporation that was, on its last accounting date, a holding corporation of a foreign corporation referred to in paragraph (d) or (e) of this footnote; (g) a foreign corporation that, on its last accounting date, held assets of a kind or kinds referred to in paragraph (d) of this footnote, where the sum of the values on that date of those assets was not less than one-half of the sum of the values on that date of the assets of the

foreign corporation and of all the subsidiaries of that corporation; or (h) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of that Australian corporation or those Australian corporations was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation.

* This is the figure as at 1 January 2015. To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year.

(5) A "financial sector company" means, as defined in section 3 of the Financial Sector (Shareholdings) Act 1998 (Cth): (a) an authorised deposit-taking institution; (b) an authorised insurance company; or (c) a holding company of a company covered by paragraph (a) or (b) of this footnote.

(6) "Unacceptable shareholding situation" and "practical control" as defined in the Financial Sector (Shareholdings) Act 1998 (Cth).

(7) Ministerial statements on foreign investment policy including the Treasurer's Press Release No. 28 of 9 April 1997.

## 2.

Sector: All Obligations Concerned: Local Presence

Level of Government: Regional

Source of Measure: Consumer Affairs and Fair Trading Act (NT) Consumer Affairs and Fair Trading (Trading Stamps) Regulations (NT)

Description: Cross-Border Trade in Services

A promoter of a third party trading scheme (8) must maintain an office in Australia.

(8) "Third party trading scheme" means a scheme or arrangement under which the acquisition of goods or services by a consumer from a supplier is a condition, which gives rise, or apparently gives rise, to an entitlement to a benefit from a third party in the form of goods or services or some discount, concession or advantage in connection with the acquisition of goods or services.

## 3.

Sector: Professional Services

Obligations Concerned: Local Presence

Level of Government: Central Source of Measure: Patents Act 1990 (Cth)

Patent Regulations (Cth) Description: Cross-Border Trade in Services

In order to register to practise in Australia, patent attorneys must be ordinarily resident in Australia. (9)

(9) For the purposes of this entry, a person is taken to be "ordinarily resident" in Australia if: (a) the person has his or her home in Australia; or (b) Australia is the country of his or her permanent abode even though he or she is temporarily absent from Australia. However, the person is taken not to be ordinarily resident in Australia if he or she resides in Australia for a special or temporary purpose only.

## 4.

Sector: Professional Services

Obligations Concerned: Local Presence

Level of Government: Central and Regional

Source of Measure: Corporations Act 2001 (Cth) Co-operative Housing and Starr-Bowkett Societies Act 1998 (NSW) Estate Agents Act 1980 (Vic)

Description: Cross-Border Trade in Services

Commonwealth

A person who is not ordinarily resident in Australia may be refused registration as a company auditor or liquidator. At least one partner in a firm providing auditing services must be a registered company auditor who is ordinarily resident in Australia.

New South Wales

A person must be ordinarily resident in New South Wales in order to be an auditor of specified kinds of societies and associations.

Victoria

A firm of auditors cannot audit an estate agent's accounts unless at least one member of the firm of auditors is an Australian resident.

## 5.

Sector: Professional Services

Obligations Concerned: Local Presence

Level of Government: Regional

Source of Measure: Architects Act (NT)

Description: Cross-Border Trade in Services

To qualify for registration as an architectural partnership or company, the partnership/company must have a place of business or be carrying on business within the Northern Territory.

## 6.

Sector: Professional Services

Obligations Concerned: National Treatment (Cross-Border Trade in Services) Most-Favoured Nation Treatment (Cross-Border Trade in Services)

Level of Government: Central

Source of Measure: Migration Act 1958 (Cth)

Description: Cross-Border Trade in Services

To practise as a migration agent in Australia a person must be an Australian citizen or permanent resident or a citizen of New Zealand with a special category visa.

## 7.

Sector: Professional Services

Obligations Concerned: Local Presence

Level of Government: Central

Source of Measure: Customs Act 1901 (Cth) Cross-Border Trade in Services

Description: To act as a customs broker in Australia, service providers must provide the service in and from Australia.

## 8.

Sector: Research and Development Services

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment)

Level of Government: Regional

Source of Measure: Biodiversity Act 2004 (Qld)

Description: Cross-Border Trade in Services and Investment

Benefit sharing agreements require sublicences for use of samples or derivatives to conduct biodiscovery research and commercialisation to be offered first to Queensland-based entities, then to Australian-based entities, and then to overseas-based entities. Any entity with a benefit sharing agreement must obtain consent before granting a sublicence to an overseas-based entity.

## 9.

Sector: Real Estate and Distribution Services

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Local Presence

Level of Government: Regional

Source of Measure: Community Land Management Act 1989 (NSW) Strata Schemes Management Act 1996 (NSW) Property, Stock and Business Agents Act 2002 (NSW) Agents Licensing Act (NT) Agents Act 2003 (ACT) Property Agents and Motor Dealers Act 2000 (Qld) Estate Agents Act 1980 (Vic) Conveyancers Act 2006 (Vic) Real Estate and Business Agents Act 1978 (WA) Real Estate and Business Agents (General) Regulations 1979 (WA) Settlement Agents Act 1981 (WA) Settlement Agents Regulations 1982 (WA)

Description: Cross-Border Trade in Services and Investment

New South Wales

A person cannot be appointed as an agent (for a proprietor of a development lot, neighbourhood lot or strata lot) if they are not an Australian resident. A person cannot be appointed as an agent (for an owner of a lot, for dealings with the owner's corporation) if they are not an Australian resident. To be licensed as a property, stock, business, strata managing or community managing agent in NSW, licensees must have a registered office in New South Wales.

Northern Territory

A licensed agent (10) must maintain an office in Australia at or from which the conduct of business under the licence is to occur.

Australian Capital Territory

An estate agent must have their principal place of business in the Australian Capital Territory.

Queensland

In order to obtain a licence to operate in Queensland as a real estate agent, auctioneer, motor dealer or commercial agent, a person must have a business address in Queensland.

Victoria

A person cannot be licensed as an estate agent unless they have a registered office in Victoria and they must maintain a principal office in Victoria. An agent's representative must have a registered address in Victoria to which documents can be sent.

A person cannot be licensed as a conveyancer or carry on a conveyancing business in Victoria unless they maintain a principal place of business in Victoria.

Western Australia

A person seeking to carry on business as a real estate or business agent in Western Australia must establish and maintain a registered office in the State. A person seeking to carry on business as a settlement agent (conveyancer) in Western Australia must ordinarily reside in the State. A licensed settlement agent must establish and maintain a registered office in

the State.

(10) A "licensed agent" includes a real estate agent, business agent or conveyancing agent.

## 10.

Sector: Fishing and Pearling

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Local Presence Senior Management and Boards of Directors

Level of Government: Central and Regional

Source of Measure: Fisheries Management Act 1991 (Cth) Foreign Fishing Licenses Levy Act 1991 (Cth) Fisheries Management Act 1994 (NSW) Fisheries Act 1995 (Vic) Fish Resources Management Act 1994 (WA) Pearling Act 1990 (WA) Ministerial Policy Guideline No 17 of August 2001 (WA)

Description: Cross-Border Trade in Services and Investment

Commonwealth

Foreign fishing vessels (11) seeking to undertake fishing activity, including any activity in support of or in preparation for any fishing activity or the processing, carrying or transhipment of fish, in the Australian Fishing Zone must be authorised.

Where foreign fishing vessels are authorised they may be subject to a levy. (12)

(11) For the purposes of this entry, a "foreign fishing vessel" is one that does not meet the definition of an Australian boat under the Fisheries Management Act 1991 (Cth), that is, an Australian-flagged boat (not owned by a foreign resident) or a boat owned by an Australian resident or corporation and built, and whose operations are based, in Australia.

(12) The levy charged will be in accordance with the Foreign Fishing Licences Levy Act 1991 (Cth) or any amendments thereto.

New South Wales

A foreign person or a foreign-owned body is not permitted to hold shares in a share management fishery.

Victoria

In Victoria, a fishery access licence or aquaculture licence can only be issued to:

(a) an individual who is an Australian resident;

(b) a single corporation that has a registered office in Australia; or

(c) a co-operative that has a registered office in a jurisdiction that administers the Co- operatives National Law (currently New South Wales, Victoria, South Australia, the Northern Territory and Tasmania).

Western Australia

Only an individual who is an Australian citizen or permanent resident may be a licensee within the Western Australian pearling industry.

In the case of corporations, partnerships or trusts holding licenses, these must be Australian owned and/or controlled (at least 51 per cent of the issued share capital, partnership interest or trust property must be owned by Australians; the chairman, majority of the board of directors and all the company officers must be Australians and must be nominated by, and represent, Australian interests).

## 11.

Sector: Mining and Related Services

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements

Level of Government: Regional

Source of Measure: Mount Isa Mines Limited Agreement Act 1985 (Qld)

Description: Cross-Border Trade in Services and Investment

The operator of Mount Isa Mines shall, so far as is reasonably and economically practicable:

(a) use the services of professional consultants resident and available within Queensland;

(b) use labour available within Queensland;

(c) when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies ensure that Queensland suppliers, manufacturers, and contractors are given reasonable opportunity to tender or quote; and

(d) give proper consideration and where possible preference to Queensland suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere.

## 12.

Sector: Other Business Services

Obligations Concerned: Local Presence

Level of Government: Regional

Source of Measure: Prostitution Regulation Act (NT)

Description: Cross-Border Trade in Services

To be eligible for the grant of an operator's licence or a manager's licence in respect of an escort agency business, an individual must be resident in the Northern Territory.

For a body corporate to be granted an operator's licence, its officers must also meet the residency requirement.

## 13.

Sector: Telecommunications

Obligations Concerned: National Treatment (Investment) Senior Management and Boards of Directors

Level of Government: Central

Source of Measure: Telstra Corporation Act 1991 (Cth)

Description: Investment Aggregate foreign equity is restricted to no more than 35 per cent of shares of Telstra. Individual or associated group foreign investment is restricted to no more than 5 per cent of shares. The Chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.

## 14.

Sector: Distribution Services

Obligations Concerned: Local Presence

Level of Government: Regional

Source of Measure: Firearms Act (NT)

Description: Cross-Border Trade in Services

Grant of a firearms licence (13) requires residency in the Northern Territory. Licences and permits expire three months after the holder ceases to reside permanently in the Northern Territory.

(13) Firearms licences include but are not limited to firearms dealer licence, armourer's licence, firearms museum licence, firearms collector's licence, firearms employee licence, and paintball operator's licence.

## 15.

Sector: Distribution Services

Obligations Concerned: Local Presence

Level of Government: Regional

Source of Measure: Liquor Act (NT) and policy and practice Kava Management Act (NT) Tobacco Control Act (NT) and policy and practice

Description: Cross-Border Trade in Services

The Northern Territory Licensing Commission may require a liquor licensee where the licensee is an individual, or at least one of the licensees where the licence is held by a partnership, or the licence nominee where the licence is held by a corporation, to ordinarily reside within the general locality of the premises to which the licence relates.

The holder of a tobacco retail licence may only sell tobacco products from the premises specified in the licence.

A tobacco retail licence in relation to liquor licensed premises may only be granted to the liquor licensee of those premises.

An applicant for a retail licence for kava must ordinarily reside or carry on business in the relevant licence area in the Northern Territory.

## 16.

Sector: Distribution Services

Obligations Concerned: Prohibition of Performance Requirements

Level of Government: Regional

Source of Measure: Wine Industry Act 1994 (Qld)

Description: Investment

In order to obtain a wine merchant's licence to sell wine, the business conducted by a person under the licence must contribute to the Queensland wine industry in a substantial way. In order to obtain a wine producer's licence to sell wine, a person must be selling wine made from fruit grown by the person on the premises to which the licence relates, or selling wine made by the person on the premises to which the licence relates.

## 17.

Sector: Health Services

Obligations Concerned: National Treatment (Investment) Senior Management and Boards of Directors

Level of Government: Central

Source of Measure: Commonwealth Serum Laboratories Act 1961 (Cth)

Description: Investment

The votes attached to significant foreign shareholdings (14) may not be counted in respect of the appointment, replacement or removal of more than one-third of the directors of Commonwealth Serum Laboratories (CSL) who hold office at a particular time. The head office, principal facilities used by CSL and any CSL subsidiaries used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must remain in Australia. Two-thirds

of the directors of the board of CSL and the chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

(14) For the purposes of this entry, "significant foreign shareholding" means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least five per cent of the voting shares in CSL.

## 18.

Sector: Recreational, Cultural and Sporting Services

Obligations Concerned: Local Presence

Level of Government: Regional

Source of Measure: Nature Conservation Act 1992 (Qld) Nature Conservation (Wildlife Management) Regulation 2006 (Qld) Nature Conservation (Administration) Regulation 2006 (Qid)

Description: Cross-Border Trade in Services

The Chief Executive of the Queensland Department of Environment and Heritage Protection may grant a wildlife authority (15), other than a wildlife movement permit, to a corporation only if the corporation has an office in the State.

The Chief Executive may approve a person to be an authorised cultivator or propagator for protected plants only if:

(a) in the case of a natural person, the person is a resident of the State; or

(b) if the person is a corporation, the corporation has premises in the State at which the plants are to be cultivated or propagated.

An individual or corporation is only taken to be a "person aggrieved" by a decision, failure to make a decision or conduct under the Act if the individual is an Australian citizen or ordinarily resident in Australia or, if a corporation, established in Australia.

(15) This term is defined in Schedule 7 of the Nature Conservation (Administration) Regulation 2006 (Qld).

## 19.

Sector: Transport

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Local Presence

Level of Government: Central

Source of Measure: Shipping Registration Act 1981 (Cth) Shipping Registration Regulations 1981 (Cth)

Description: Cross-Border Trade in Services and Investment

For a ship to be registered on the Australian Shipping Register it must be majority Australian-owned or on demise charter to Australian-based operators. In the case of small craft, a ship must be wholly owned by or solely operated by Australian residents, Australian nationals or both.

For a trading ship to be registered on the International Shipping Register it must be wholly or majority Australian-owned, on demise charter to Australian-based operators or operated solely by Australian residents, Australian nationals or both. The master or chief mate, and chief engineer or first engineer of the ship must be an Australian national or Australian resident.

A ship on demise charter to an Australian-based operator is a ship on demise charter to:

(a) an Australian national or Australian nationals; or

(b) in circumstances where there are two or more persons who include an Australian national, where the Australian national is in a position to control the exercise of the rights and powers of the charterers under the charter party.

For the purposes of this entry, an Australian national is an Australian citizen who is ordinarily resident in Australia; ot a body

corporate that has its principal place of business in Australia.

## 20.

Sector: Transport services

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Local Presence

Level of Government: Central

Source of Measure: Competition and Consumer Act 2010 (Cth)

Description: Cross-Border Trade in Services and Investment

Every ocean carrier who provides international liner cargo shipping services to or from Australia must, at all times, be represented by a natural person who is resident in Australia.

Only a person (16) affected by a registered conference agreement or by a registered non-conference ocean carrier with substantial market power may apply to the Australian Competition and Consumer Commission to examine whether conference members, and non- conference operators with substantial market power, are hindering other shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent that is reasonable. For greater certainty, matters which are relevant to the determination of "reasonable" include Australia's national interest and the interests of Australian shippers.

(16) For the purposes of this entry, sections 10.48 and 10.58 of Part X of the Competition and Consumer Act 2010 (Cth) list the categories of persons to whom this entry will apply.

## 21.

Sector: Transport

Obligations Concerned: National Treatment (Investment) Senior Management and Boards of Directors

Level of Government: Central

Source of Measure: Air Navigation Act 1920 (Cth) Ministerial Statement

Description: Investment

Total foreign ownership of Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent.

Furthermore, it is required that:

(a) at least two-thirds of the Board members must be Australian citizens;

(b) the Chairperson of the Board must be an Australian citizen;

(c) the airline's head office must be in Australia; and

(d) the airline's operational base must be in Australia.

## 22.

Sector: Transport

Obligations Concerned: National Treatment (Investment) Senior Management and Boards of Directors

Level of Government: Central

Source of Measure: Qantas Sale Act 1992 (Cth)

Description: Investment

Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent. In addition:

(a) the head office of Qantas must always be located in Australia;

(b) the majority of Qantas' operational facilities must be located in Australia;

(c) at all times, at least two thirds of the directors of Qantas must be Australian citizens;

(d) at a meeting of the board of directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and

(e) Qantas is prohibited from taking any action to become incorporated outside Australia.

### 23.

Sector: Transport Services

Obligations Concerned: Local Presence National Treatment (Cross-Border Trade in Services and Investment)

Level of Government: Regional

Source of Measure: Commercial Passenger (Road Transport) Act (NT) Road Transport (Public passenger Services) Regulations 2002 (ACT) Taxi Act 1994 (WA) Transport Coordination Act 1996 (WA)

Description: Cross-Border Trade in Services and Investment

Northern Territory

A taxi licence will be cancelled where the holder, being an individual, has not been ordinarily resident in the Northern Territory for more than six months or, being a body corporate, has ceased for more than six months to have its principal place of business in the Northern Territory.

Australian Capital Territory

An application for accreditation to run a public transport services must be made by an Australian citizen or permanent resident of Australia.

Western Australia

To hold a Government Lease taxi plate, the plate holder must be an Australian citizen or a permanent resident.

## ANNEX 4-I(B). Singapore's reservations to chapter 7 (cross-border trade in services) and chapter 8 (investment)

### 1.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Investment)

Level of Government: Central

Measures: This is an administrative policy of the Government of Singapore and is inscribed in the Memorandum and Articles of Association of PSA Corporation.

Description: Investment

The aggregate of foreign shareholdings in PSA Corporation or its successor body is subject to a 49 per cent limit.

The "aggregate of foreign shareholdings" is defined as the total number of shares owned by:

(a) any individual who is not a Singapore citizen;

(b) any corporation which is not more than 50 per cent owned by Singapore citizens or by the Singapore Government; or

(c) any other enterprise which is not owned or controlled by the Singapore Government.

## 2.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Investment)

Level of Government: Central

Measures: This is an administrative policy of the Government of Singapore and is inscribed in the Memorandum and Articles of Association of the relevant enterprises below.

Description: Investment

All individual investors, apart from the Singapore government, will be subject to the following equity ownership limits in the enterprises, or its successor bodies, as listed below:

(a) Singapore Technologies Engineering — 15 per cent;

(b) PSA Corporation — 5 per cent; and

(c) Singapore Airlines — 5 per cent.

For the purposes of this entry, ownership of equity by an investor in these enterprises or its successor bodies includes both direct and indirect ownership of equity.

## 3.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: Local Presence

Level of Government: Central

Measures: Business Registration Act, Cap. 32 Business Registration Regulations

Description: Cross-Border Trade in Services

Where a person required to be registered under the Business Registration Act, Cap. 32, 2001 Rev Ed, is, or, in the case of any corporation, the directors are, or the secretary of the corporation is, not ordinarily resident in Singapore, a local manager (1) must be appointed.

(1) Persons who qualify to be appointed in such a capacity are primarily Singapore nationals and EntrePass holders (all with local addresses).

## 4.

Sector: Business Services

Sub-Sector: Leasing or rental services concerning private cars, goods transport vehicles and other land transport equipment without operator

Industry Classification: CPC 83101, 83102, 83105 Leasing or rental services concerning private cars, goods transport vehicles and other land transport equipment without operator

Obligations Concerned: National Treatment (Cross-Border Trade in Services) Market Access

Level of Government: Central

Measures: Road Traffic Act, Cap. 276, 2004 Rev Ed

Description: Cross-Border Trade in Services The cross-border rental of private cars, goods transport vehicles and other land transport equipment without operator by Singapore residents with the intent to use the vehicles in Singapore is prohibited.

## 5.

Sector: Business Services

Sub-Sector: Patent agent services

Industry Classification: -

Obligations Concerned: Local Presence

Measures: Patents Act, Cap. 221, 2005 Rev Ed

Description: Cross-Border Trade in Services

Only service suppliers registered with the Intellectual Property Office of Singapore (IPOS) or its successor body and resident in Singapore shall be allowed to carry on a business, practise or act as a patent agent in Singapore.

Only service suppliers which have at least one Singapore- registered patent agent resident in Singapore either as a director or partner, shall be allowed to carry on a business, practise or act as a patent agent in Singapore.

## 6.

Sector: Business Services

Sub-Sector: Placement and supply services of personnel

Industry Classification: -

Obligations Concerned: Local Presence

Level of Government: Central

Measures: Employment Agencies Act, Cap. 92

Description: Cross-Border Trade in Services

Only service suppliers with local presence shall be allowed to set up employment agencies and place foreign workers in Singapore.

## 7.

Sector: Business Services

Sub-Sector: Private investigation services Unarmed guard services

Industry Classification: CPC 87301 Investigation Services CPC 87302 Security Consultation Services CPC 87305 Guard Services (only applies to unarmed security guard services)

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Market Access Local Presence

Level of Government: Central

Measures: Private Security Industry Act, Cap. 250A, 2008 Rev Ed Investment and Cross-Border Trade in Services

Description: Foreigners are permitted to set up security agencies to provide unarmed guards for hire but must register a company with local participation. At least two of the directors must be a Singapore national.

Foreigners, except Malaysians, shall not be allowed to work as guards, but can be involved in the administration of the

company.

The foreign directors shall produce a certificate of no criminal conviction from their country of origin or a statutory declaration before a Singapore commissioner of oaths, to the effect that they have never been convicted in any court of law for any criminal offence.

## 8.

Sector: Community, Personal and Social Services

Sub-Sector: Services furnished by co-operative societies

Industry Classification: CPC 959 Services furnished by membership organizations n.e.c (only applies to co-operative society services)

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Senior Management and Boards of Directors Local Presence

Level of Government: Central

Existing Measures: Co-operative Societies Act, Cap. 62, 2009 Rev Ed Co-operative Societies Rules 2009

Description: Investment and Cross-Border Trade in Services

Only service suppliers with a local presence can be registered under the Co-operative Societies Act. Registration allows a co-operative society to be exempt from taxation measures applicable to other enterprises. Instead, co-operative societies are required to make a two- tier contribution of their surplus to the Central Co-operative Fund (CCF) and CCF/Singapore Labour Foundation respectively as the society may opt.

As a general rule, only Singapore citizens are allowed to hold office or be a member of the management committee of a co-operative society. Foreigners may be allowed to hold office or be a member of the management committee of a co-operative society, with the approval of the Registrar of Co-operative Societies.

A person who is not a Singapore citizen can form and join a co- operative society if he or she is resident in Singapore.

## 9.

Sector: Education Services

Sub-Sector: Higher education services in relation to the training of doctors

Industry Classification: CPC 92390 Other Higher Education Services (Only applies to Higher Education Services in relation to the training of doctors)

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Market Access

Level of Government: Central

Measures: Medical Registration Act, Part V, Specialist Accreditation Board, Sections 2, 3, 34 and 35 Private Education Act, Cap. 247A, 2011 Rev Ed

Description: Investment and Cross-Border Trade in Services

Only local tertiary institutions which are established pursuant to an Act of Parliament, or as designated by the Ministry of Education shall be allowed to operate undergraduate or graduate programmes for the training of doctors in Singapore.

Currently, only the National University of Singapore and the Nanyang Technological University are allowed to operate undergraduate or graduate programmes for the training of doctors in Singapore.

## 10.

Sector: Health and Social Services

Sub-Sector: Medical services Pharmacy services Deliveries and related services, nursing services, physiotherapeutic and para-medical services and allied health services Optometrists and opticians

Industry Classification:

Obligations Concerned: Local Presence

Level of Government: Central

Measures: Medical Registration Act, Cap. 174 Pharmacists Registration Act, Cap. 230 Medicines Act, Cap. 176, Medicines (Registration of Pharmacies) Regulations, Cap. 176, Regulation 4 Nurses and Midwives Act, Cap. 209 Allied Health Professions Act, Act 1 of 2011 Optometrists and Opticians Act, Cap. 213A

Description: Cross-Border Trade in Services

Only persons who are resident in Singapore are allowed to provide the following services: medical services, pharmacy services, deliveries and related services, nursing services, physiotherapeutic and para-medical services and allied health services and optometry and opticianry services.

## 11.

Sector: Import, export and trading services

Sub-Sector:

Industry Classification:

Obligations Concerned: Local Presence

Level of Government: Central

Measures: Regulation of Imports and Exports Act, Cap. 272A Regulation of Imports and Exports Regulations

Description: Cross-Border Trade in Services

Only services suppliers with local presence shall be allowed to apply for import/export permits, certificates of origin or other trade documents from the relevant authorities.

## 12.

Sector: Postal Services

Sub-Sector: -

Industry Classification: -

Obligations Concerned: Market Access Local Presence

Level of Government: Central

Measures: Postal Services Act, Cap. 237A

Description: Cross-Border Trade in Services

For the provision of basic letter services, all service suppliers must be incorporated as companies under the Companies Act, Cap. 50, 2006 Rev Ed.

## 13.

Sector: Telecommunications Services

Sub-Sector: Telecommunications services

Industry Classification:

Obligations Concerned: Market Access Local Presence

Level of Government: Central

Measures: Info-communications Development Authority of Singapore Act, Cap. 137A Telecommunications Act, Cap. 323

Description: Cross-Border Trade in Services

1. Facilities-based operators and service-based operators must be locally incorporated under the Companies Act, Cap. 50, 2006 Rev Ed.

"Facilities-based operators" are operators who deploy any form of telecommunication networks, systems and facilities, outside of their own property boundaries, to offer telecommunication services to third parties, which may include other licensed telecommunication operators, business customers, or the general public.

"Services-based operators" are operators who lease telecommunication network elements (such as transmission capacity and switching services) from any Facilities-Based Operator (FBO) licensed by the IDA so as to provide their own telecommunication services, or to resell the telecommunication services of FBOs to third parties.

2. The number of licences granted will be limited only by resource constraints, such as the availability of radio frequency spectrum. In view of spectrum constraints, parties interested in deploying networks based on wireless technology may be licensed to use radio frequency spectrum via a tender or auction process.

## 14.

Sector: Telecommunications Services

Sub-Sector: Telecommunications services Domain name allocation policies in Internet country code top level domains (ccTLDs) corresponding to Singapore territories (sg)

Industry Classification:

Obligations concerned: Market Access Local Presence

Level of Government: Central

Measures: Info-communications Development Authority of Singapore Act, Cap. 137A Telecommunications Act, Cap. 323. The Internet Corporation for Assigned Names and Numbers (ICANN), which recognises the ultimate authority of sovereign Governments over ccTLDs corresponding to their territories.

Description: Cross-Border Trade in Services

A registrar must be a company incorporated or a foreign company registered under the Companies Act, Cap. 50, 2006 Rev Ed.

## 15.

Sector: Power Supply

Sub-Sector:

Industry Classification:

Obligations Concerned: Market Access

Level of Government: Central

Measures: Electricity Act, Cap. 89A, 2002 Rev Ed, Sections 6(1) and 9(1) Cross-Border Trade in Services

Description: Power producers shall not be allowed to sell power directly to consumers and shall only sell power through the Singapore electricity wholesale market operators licensed by the Energy Market Authority.

The amount of power supplied cumulatively by power producers located outside of Singapore to Singapore's wholesale power market shall not exceed 600 MW.

## 16.

Sector: Power Supply

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Market Access

Level of Government: Central

Measures: Electricity Act, Cap. 89A, 2002 Rev Ed, Sections 6(1) and 9(1)

Description: Investment and Cross-Border Trade in Services

Only a Market Support Service Licensee shall be allowed to supply electricity to:

(a) all household consumers of electricity; and

(b) non-household consumers of electricity whose average monthly consumption is below 4,000 kWh.

## 17.

Sector: Power Transmission and Distribution

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Market Access

Level of Government: Central

Measures: Electricity Act, Cap. 89A, 2002 Rev Ed, Sections 6(1) and 9(1)

Description: Investment and Cross-Border Trade in Services

Only a Transmission Licensee shall be the owner and operator of the electricity transmission and distribution network in Singapore.

## 18.

Sector: Tourism and Travel Related Services

Sub-Sector: Food or beverage serving services in eating facilities run by the government Food or beverage catering services

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Market Access

Level of Government: Central

Measures: Environmental Public Health Act, Cap. 95, 2002 Rev Ed

Description: Investment and Cross-Border Trade in Services

Only a Singapore national can apply for a licence to operate a stall in government-run markets or hawker centres, in their personal capacity.

To supply food or beverage catering services in Singapore, a foreign service supplier must incorporate as a limited company

in Singapore, and apply for the food establishment licence in the name of the limited company.

## 19.

Sector: Sewage and Refuse Disposal, Sanitation and other Environmental Protection Services

Sub-Sector: Waste management, including collection, disposal, and treatment of hazardous waste

Industry Classification: -

Obligations Concerned: Market Access Local Presence

Level of Government: Central

Measures: Environmental Public Health Act, Cap. 95

Description: Cross-Border Trade in Services

Foreign service suppliers must be locally incorporated in Singapore.

The public waste collectors (PWCs) rendering services to domestic and trade premises are appointed by public competitive tender. The number of PWCs is limited by the number of geographical sectors in Singapore. For industrial and commercial waste, the market is opened to any licensed general waste collectors (GWCs).

## 20.

Sector: Trade Services

Sub-Sector: Distribution and Sale of Hazardous Substances

Industry Classification: -

Obligations Concerned: Local Presence

Level of Government: Central

Measures: Environmental Protection and Management Act, Cap. 94A, 2002 Rev Ed, Section 22

Description: Cross-Border Trade in Services

Only service suppliers with a local presence shall be allowed to distribute and sell hazardous substances as defined in the Environmental Protection and Management Act. Singapore reserves the right and flexibility to modify or increase the list of hazardous substances as defined or listed in the Environmental Protection and Management Act.

## 21.

Sector: Trade Services

Sub-Sector: Distribution services Retailing services Wholesale trade services

Industry Classification:

Obligations Concerned: Local Presence

Level of Government: Central

Measures: Medicines Act, Cap. 176, 1985 Rev Ed Health Products Act, Cap. 122D, 2008 Rev Ed

Description: Cross-Border Trade in Services

Only service suppliers with a local presence shall be allowed to supply wholesale, retail and distribution services for medical and health-related products and materials as defined under the Medicines Act and Health Products Act, intended for purposes such as treating, alleviating, preventing or diagnosing any medical condition, disease or injury, as well as any other such items that may have an impact on the health and well-being of the human body.

Such products and materials include but are not limited to drugs and pharmaceuticals, traditional medicines, health supplements, diagnostic test kits, medical devices, cosmetics, tobacco products, radioactive materials and irradiating apparatuses.

Singapore reserves the right and flexibility to modify or increase the list of medical and health-related products and materials as defined ot listed in the Medicines Act and Health Products Act.

## 22.

Sector: Transport Services

Sub-Sector: Air Transport Services - Ground Handling Services (including but not limited to cargo handling services)

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Market Access

Level of Government: Central

Measures: Civil Aviation Authority of Singapore Act, Cap. 41, 1985 Rev Ed

Description: Investment and Cross-Border Trade in Services

Only Singapore Airport Terminal Services (SATS) and Changi International Airport Services (CIAS) and/or their respective successor bodies shall be allowed to provide ground handling services, including but not limited to cargo handling services at airports.

## 23.

Sector: Transport Services

Sub-Sector: Air transport services Passengers transportation by air Freight transportation by air

Industry Classification: CPC 731 Passenger Transportation by Air CPC 732 Freight Transportation by Air

Obligations Concerned: National Treatment (Investment) Most-Favoured-Nation Treatment (Investment) Senior Management and Boards of Directors

Level of Government: Central

Measures: Air Navigation (Licensing of Air Services) Regulations, Cap. 6, Regulation 2

Description: Investment

Service suppliers providing air transport services (for both passenger and freight) as a Singapore designated airline shall have to comply with the "effective control' and/or "substantial ownership" requirements of Singapore's bilateral and multilateral air services agreements.

Compliance with the requirements of these agreements may require these service suppliers to comply with conditions on effective control and limits on the foreign ownership as stipulated in Singapore's bilateral and multilateral air services agreements.

## 24.

Sector: Transport Services

Sub-Sector: Maritime transport services Cargo handling services Pilotage Services Supply of desalinated water to ships berthed at Singapore ports or in Singapore territorial waters

Industry Classification: CPC 741 Cargo Handling Services CPC 74520 Pilotage and Berthing Services (only applies to Pilotage Services) CPC 74590 Other Supporting Services for Water Transport

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Market Access

Level of Government: Central

Measures: Maritime and Port Authority of Singapore Act, Cap. 170A, 1997 Rev Ed, Section 81

Description: Investment and Cross-Border Trade in Services

Only PSA Corporation Ltd and Jurong Port Pte Ltd or their respective successor bodies shall be allowed to provide cargo handling services.

Only PSA Marine Pte Ltd or its successor body shall be allowed to provide pilotage services and supply desalinated water to ships berthed at Singapore ports or in Singapore territorial waters.

## 25.

Sector: Transport Services

Sub-Sector: Maritime transport services

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Market Access

Level of Government: Central

Measures: Maritime and Port Authority of Singapore Act, Cap. 170A, 1997 Rev Ed, Section 81

Description: Investment and Cross-Border Trade in Services

Only local service suppliers shall be allowed to operate and manage cruise and ferry terminals.

Local service suppliers are either Singapore citizens or legal persons which are more than 50 per cent owned by Singapore citizens.

## 26.

Sector: Transportation and Distribution of Manufactured Gas and Natural Gas

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Market Access

Level of Government: Central

Measures: Gas Act, Cap. 116A, 2002 Rev Ed

Description: Investment and Cross-Border Trade in Services

Only the holder of a gas transporter licence shall be allowed to transport and distribute manufactured and natural gas.

Only one gas transport licence has been issued given the size of the Singapore market.

## 27.

Sector: Manufacturing and Services Incidental to Manufacturing

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements

Level of Government: Central

Measures: Control of Manufacture Act, Cap. 57, 2004 Rev Ed

Description: Investment and Cross-Border Trade in Services

The manufacture of the following products, and services incidental to the manufacture of these products, in Singapore, may be subject to certain restrictions:

(a) beer and stout;

(b) cigars;

(c) drawn steel products;

(d) chewing gum, bubble gum, dental chewing gum or any like substance (not being a medicinal product within the meaning of the Medicines Act, Cap. 176, or a substance in respect of which an order under section 54 of the Act has been made);

(e) cigarettes; and

(f) matches.

## 28.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment)

Level of Government: Central

Measures: Banking Act, Cap. 19, MAS Notice 757 Monetary Authority of Singapore Act, Cap. 186, MAS Notice 1105 Finance Companies Act, Cap. 108, MAS Notice 816 Insurance Act, Cap. 142, MAS Notice 109 Securities and Futures Act, Cap. 289, MAS Notice SFA 04-N04

Description: Investment and Cross-Border Trade in Services

A non-resident financial institution may in certain circumstances be unable to borrow in Singapore dollars more than $$5 million from a resident financial institution owing to the following restrictions placed on financial institutions' lending of the Singapore dollar to non-resident financial institutions.

A financial institution shall not extend to any non-resident financial institution Singapore dollar credit facilities exceeding S$5 million per non-resident financial institution:

(a) where the Singapore dollar proceeds are to be used outside of Singapore, unless:

(i) such proceeds are swapped or converted into foreign currency upon draw-down or before remittance abroad; or

(ii) such proceeds are for the purpose of preventing settlement failures where the financial institution extends a temporary Singapore dollar overdraft to any vostro account of any non- resident financial institution, and the financial institution takes reasonable efforts to ensure that the overdraft is covered within two business days; and

(b) where there is reason to believe that the Singapore dollar proceeds may be used for Singapore dollar currency speculation, regardless of whether the Singapore dollar proceeds are to be used in Singapore or outside of Singapore.

A financial institution shall not arrange Singapore dollar equity or bond issues for any non-resident financial institution where the Singapore dollar proceeds are to be used outside Singapore, unless the proceeds are swapped or converted into foreign currency upon draw-down or before remittance abroad.

"Non-residents financial institution" means any financial institution which is not a resident as defined in the relevant notice.

## 29.

Sector: Business Services

Sub-Sector: Credit bureau services

Industry Classification:

Obligations Concerned: Market Access Local Presence

Level of Government: Central

Measures: Administrative measure pursuant to the Monetary Authority of Singapore Act, Cap. 186

Description: Cross-Border Trade in Services

Singapore reserves the right to limit the number of suppliers of credit bureau services where information provided by the supplier of credit bureau services is obtained from financial institutions in Singapore. The supplier must be established in Singapore.

## 30.

Sector: Business Services

Sub-Sector: Legal Services

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Market Access Local Presence

Level of Government: Central

Measures: Legal Profession Act, Cap. 161

Description: Investment and Cross Border Trade in Services

Australian law practices shall apply for licensing as foreign law practices (as defined under Singapore law) for their practice of Australian law, international law and/or third country law with offices in Singapore, and upon obtaining such licence, they can employ:

(i) qualified foreign lawyers (as defined under Singapore law) of any nationality to practise Australian law, international law and/or third country law;

(ii) Singapore lawyers (as defined under Singapore law) to ptactise only Australian law, international law and/or third country law but not Singapore law; and

(iii) non-legally trained local staff in their Singapore offices.

Australian lawyers shall apply for registration as foreign lawyers for their practice of Australian law, international law and/or third country law with physical presence in Singapore in order to work in foreign law practices (either from Australia or any other jurisdiction) in Singapore.

Australian lawyers who are registered as foreign lawyers for the practice of Australian law, international law and/or third country law with local presence in Singapore and are working in foreign law practices (either from Australia or any other jurisdiction) in Singapore shall be allowed to participate in international commercial arbitration proceedings in Singapore by:

(i) representing any party in arbitration proceedings; and

(ii) engaging in the giving of advice, preparation of documents or any other assistance in relation to or arising out of arbitration proceedings except for the right of audience in Singapore court proceedings.

Australian law practices may provide legal services in relation to Singapore law through a Joint Law Venture or Formal Law Alliance with a Singapore law practice, only to the extent allowed by the laws, tules, and regulations concerning Joint Law Ventures and Formal Law Alliances, and subject to the conditions and requirements relating to Joint Law Ventures and Formal Law Alliances. However, Singapore undertakes to waive and modify the following statutory conditions governing Joint Law Ventures and Formal Law Alliances for any Australian law practice which is licensed as a foreign law practice in Singapore:

In relation to Rule 51(2)(b) and Rule 54(1)(b) of the Legal Profession (Law Practice Entities) Rules 2015:

(i) the minimum number of Australian lawyers resident in Singapore which the Australian law practice is required to maintain in a Joint Law Venture or a Formal Law Alliance shall be reduced from 5 to 3;

(ii) the minimum relevant legal expertise and experience in the permitted areas of legal practice required of the 3 Australian lawyers referred to in subparagraph (i) shall be considered on an aggregate basis of 15 years for all 3 Australian lawyers, rather than on the basis of 5 years for each Australian lawyer; and

In relation to Rule 5(1)(g) of the Legal Profession (Regulated Individuals) Rules 2015:

(iii) the minimum relevant legal expertise and experience in the permitted areas of legal practice required for Australian lawyers working in a Joint Law Venture who wish to apply to practise Singapore law under the Legal Profession Act shall be maintained at 3 years.

## ANNEX 4-II. Reservations to chapter 7 (cross-border trade in services) and chapter 8

## (investment)

EXPLANATORY NOTES

1. The Schedule of a Party to this Annex sets out, pursuant to Article 7 (Reservations) of Chapter 7 (Cross-Border Trade in Services) and Article 11 (Reservations) of Chapter 8 (Investment), the specific sectors, subsectors or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 3 (Market Access) of Chapter 7 (Cross-Border Trade in Services);

(b) Article 4 (National Treatment) of Chapter 7 (Cross-Border Trade in Services) or Article 4(National Treatment) of Chapter 8 (Investment);

(c) Article 5 (Most-Favoured-Nation Treatment) of Chapter 7 (Cross- Border Trade in Services) or Article 5 (Most-Favoured-Nation Treatment) of Chapter 8 (Investment);

(d) Article 6 (Local Presence) of Chapter 7 (Cross-Border Trade in Services);

(e) Article 7 (Prohibition of Performance Requirements) of Chapter 8 (Investment); or

(F) Article 8 (Senior Management and Boards of Directors) of Chapter 8 (investment).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector in which the entry is taken;

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

(c) Industry Classification, where referenced, refers to the activity covered by the non-conforming measure, according to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(d) Obligations concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 7.2 (Reservations) of Chapter 7 (Cross-Border Trade in Services) and Article 11.2 (Reservations) of Chapter 8 (Investment), do not apply to the sectors, subsectors or activities listed in the entry;

(e) Description sets out the scope or nature of the sectors, sub-sectors or activities covered by the entry to which the reservation applies; and

(f) 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 7.2 (Reservations) of Chapter 7 (Cross-Border Trade in Services) and Article 11.2 (Reservations) of Chapter 8 (Investment), 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. Article 1 (Definitions) of Chapter 7 (Cross-Border Trade in Services) and Article 1 (Definitions) of Chapter 8 (Investment) shall apply to this Annex.

## ANNEX II-A. Australia's reservations to chapter 7 (cross-border trade in services) and chapter 8 (investment)

INTRODUCTORY NOTES

1. For the avoidance of doubt, in relation to education services, nothing in Chapter 7 (Cross-Border Trade in Services) or Chapter 8 (Investment) shall interfere with:

(a) the ability of individual education and training institutions to maintain autonomy in admissions policies (including in relation to considerations of equal opportunity for students and recognition of credits and degrees), in setting tuition rates and in the development of curricula or course content;

(b) non-discriminatory accreditation and quality assurance procedures for education and training institutions and their programmes, including the standards that must be met;

(c) government funding, subsidies or grants, such as land grants, preferential tax treatment and other public benefits,

provided to education and training institutions; or

(d) the need for education and training institutions to comply with non- discriminatory requirements related to the establishment and operation of a facility in a particular jurisdiction.

2. For greater certainty, where Australia has more than one entry in its Schedule to Annex I 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

Obligations Concerned: Market Access Cross-Border Trade in Services

Description: Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, subject to the provisions of Chapter 11 (Movement of Business Persons), that is not inconsistent with Australia's obligations under Article XVI of GATS.

Existing Measures:

## 2.

Sector: All

Obligations Concerned: Market Access National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Local Presence

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure according preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the service sector.

Australia reserves the right to adopt or maintain any measure with respect to investment 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.

Legislation and ministerial statements at all levels of government including Australia's foreign investment policy, and the Native Title Act (Cth).

Existing Measures:

## 3.

Sector: All

Obligations Concerned: Market Access

Description: Cross-Border Trade in Services Australia reserves the right to adopt or maintain any measure at the regional level of government that is not inconsistent with Australia's obligations under Article XVI of GATS. For the purposes of this entry, Australia's Schedule of Specific Commitments is modified as set out in Appendix A. For the purposes of this entry, the reference to Australia's commitments under Article XVI of GATS includes commitments made under that Article after the date of entry into force of this Agreement.

Existing Measures:

## 4.

Sector: All

Obligations Concerned: National Treatment (Investment) Prohibition of Performance Requirements

Description: Investment

Australia reserves the right to adopt or maintain any measure with respect to proposals by foreign persons (1) and foreign government investors to invest in Australian urban land (2) (including interests that arise via leases, financing and profit sharing arrangements, and the acquisition of interests in urban land corporations and trusts), other than developed non-residential commercial real estate.

Existing Measures: Australia's foreign investment framework, which comprises Australia's Foreign Investment Policy, the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA); Foreign Acquisitions and Takeovers Regulations 2015 (Cth); Foreign Acquisitions Fees Imposition Act 2015 (Cth); Foreign Acquisitions Fees Imposition Regulation 2015 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements

(1) For the purposes of this entry, a "foreign person" means: (a) a natural person not ordinarily resident in Australia; (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest; (c) a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest; (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or (e) the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

(2) For the purposes of this entry, the term "Australian urban land" means land that is situated in Australia that is not land used wholly and exclusively for carrying on a business of primary production and, for greater certainty, a mining or production tenement is Australian urban land.

## 5.

Sector: All

Obligations Concerned: National Treatment (Investment) Prohibition of Performance Requirements Most-Favoured-Nation Treatment (Investment) Senior Management and Board of Directors

Description: Investment

Australia reserves the right to adopt or maintain any measure to allow the screening of proposals, by foreign persons (3), to invest 15 million (4) Australian dollars or more in Australian agricultural land and 55 million (5) Australian dollars or more in Australian agribusinesses.

Existing Measures: Australia's foreign investment framework, which comprises Australia's Foreign Investment Policy, the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA); Foreign Acquisitions and Takeovers Regulations 2015 (Cth); Foreign Acquisitions Fees Imposition Act 2015 (Cth); Foreign Acquisitions Fees Imposition Regulation 2015 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements

(3) For the purposes of this entry, a "foreign person" means: (a) a natural person not ordinarily resident in Australia; (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest; (c) a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest; (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or (e) the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

(4) For greater certainty, this refers to the total, cumulative value of agricultural land in Australia in which a foreign person has invested or intends to invest.

(5) For greater certainty, this refers to the total, cumulative value of agribusinesses in Australia in which a foreign person has invested or intends to invest.

## 6.

Sector: All

Obligations Concerned: Market Access National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors

Description:

Cross-Border Trade in Services and Investment

At the central level of government, Australia reserves the right to limit the initial transfer or disposal of government owned entities or assets, or a portion or percentage of the initial transfer, to Australian persons. For greater certainty, if Australia transfers or disposes of a government owned entity or asset in multiple phases, this right shall apply separately to each phase.

At the remaining levels of government, 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 date of entry into force of this Agreement; and

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

For the purposes of this entry, any measure adopted after the date of entry into force of this Agreement in relation to subparagraph (a) or (b) shall be deemed an existing non-conforming measure subject to Article 11.1 (Reservations) of Chapter 8 (Investment) and Article 7.1 (Reservations) of Chapter 7 (Cross-Border Trade in Services).

Existing Measures:

## 7.

Sector: All

Obligations Concerned: Market Access National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Local Presence Senior Management and Boards of Directors Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure (6) with respect to the provision of public law enforcement and correctional services, and the following services (7) to the extent that they are social services established for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, child care, public utilities (8) and public transport.

Existing Measures:

(6) 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.

(7) 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.

(8) With respect to the central level of government, applies only with respect to Article 3 (Market Access) of Chapter 7 (Cross-Border Trade in Services).

## 8.

Sector: Recreational, Cultural and Sporting Services (other than audio-visual services)

Obligations Concerned: Market Access National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Local Presence Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Senior Management and Board of Directors

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to the creative arts, (9) (10) Indigenous traditional cultural expressions and other cultural heritage. (11)

Existing Measures:

(9) For the purposes of this entry, "creative arts" means: the performing arts (including live theatre, dance and music); visual arts and craft; literature (other than literary works transmitted electronically); and hybrid art works, including those which use new technologies to transcend discrete art form divisions. For live performances of the "creative arts", as defined, this entry does not extend beyond subsidies and grants for investment in Australian cultural activity.

(10) Notwithstanding this, such measures shall be implemented in a manner that is consistent with Australia's commitments under Article XVI and Article XVII of GATS, as applicable.

(11) For the purposes of this entry, "cultural heritage" means: 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.

## 9.

Sector: Broadcasting and Audio-visual Services Advertising Services Live Performance (12)

Obligations Concerned: Market Access National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Local Presence (13) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) (14)

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure (15) with respect to:

(a) Transmission quotas for local content on free-to-air commercial television broadcasting services.

(b) Non-discriminatory expenditure requirements for Australian production on subscription television broadcasting services.

(c) Transmission quotas for local content on free-to-air radio broadcasting services.

(d) Other audio-visual services transmitted electronically, in order to make Australian audio-visual content reasonably available to Australian consumers. (16)

(e) Spectrum management and licensing of broadcasting services. (17)

(f) Subsidies or grants for investment in Australian cultural activity.

This entry does not apply to foreign investment restrictions in the broadcasting and audio-visual services sector.

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) Broadcasting Services (Australian Content) Standard 2005 Children's Television Standards 2009 Television Program Standard 23 — Australian Content in Advertising Commercial Radio Codes of Practice and Guidelines Community Broadcasting Codes of Practice

(12) Applies only in respect of subparagraph (f).

(13) Applies only in respect of subparagraph (e) and in respect of the licensing of services covered by subparagraph (d).

(14) Applies only to the treatment as local content of New Zealand programmes or productions.

(15) For greater certainty, this includes the right to adopt or maintain measures under subparagraphs (a) through (f) with respect to the services supplied by the Australian Broadcasting Corporation and the Special Broadcasting Service Corporation.

(16) Any such measure will be implemented in a manner that is consistent with Australia's commitments under Article XVI and Article XVII of GATS.

(17) In respect of subparagraph (e), Australia's reservation applies only in respect of Article 3 (Market Access) and Article 6 (Local Presence) of Chapter 7 (Cross-Border Trade in Services).

## 10.

Sector: Broadcasting and Audio-visual Services

Obligations Concerned: Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition on Performance Requirements

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain, under the International Co-production Program, preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under these co- production arrangements, confers national treatment on works covered by these arrangements.

Existing Measures: International Co-production Program

## 11.

Sector: Distribution Services

Obligations Concerned: Market Access

Description: Cross-Border Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to wholesale and retail trade services of tobacco products, alcoholic beverages or firearms.

Existing Measures:

## 12.

Sector: Education services

Obligations Concerned: Cross-Border Trade in Services and Investment Market Access National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Local Presence Senior Management and Boards of Directors Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)

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

Existing Measures:

## 13.

Sector: Gambling and Betting

Obligations Concerned: Market Access National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Local Presence Senior Management and Boards of Directors

Description: Cross-Border Trade in Services and Investment

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).

## 14.

Sector: Maritime Transport

Obligations Concerned: Market Access National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Local Presence Senior Management and Boards of Directors

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to maintain or adopt any measure with respect to maritime cabotage services and offshore transport services.

For the purposes of this reservation, 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.

Existing Measures:Customs Act 1901 (Cth) Fair Work Act 2009 (Cth) Seafarers' Compensation and Rehabilitation Act 1992 (Cth) Occupational Health and Safety (Maritime Industry) Act 1993 (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)

## 15.

Sector: Transport

Obligations Concerned: National Treatment (Investment) Senior Management and Boards of Directors

Description: Investment

Australia reserves the right to maintain or adopt 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)

## 16.

Sector: All

Obligations Concerned: Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)

Description: Cross-Border Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the service suppliers or investors of non-Parties under any bilateral or multilateral international agreement in force on, or signed prior to, the date of entry into force of this Agreement. (18)

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the service suppliers or investors of non-Parties 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:

(18) 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. For the avoidance of doubt, this includes measures adopted or maintained under any

existing or future protocol to the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) done at Canberra on March 28, 1983.

## APPENDIX A.

For the following sectors, Australia's commitments under Article XVI of GATS as set out in Australia's Schedule of Specific Commitments under the GATS (GATS/SC/6, GATS/SC/6/Suppl.1, GATS/SC/6/Suppl.1/Rev.1, GATS/SC/6/Supp1.2, GATS/SC/6/Supp13 and GATS/SC/6/Supp14) are improved as described below.

| **Sector/subsector** | **Market Access Improvement** |
|---|---|
| **BUSINESS SERVICES** | |
| **Professional Services** | |
| **Legal services (19)** | |
| Legal advisory and representational services in domestic law (host-country law) | Replace existing commitments with no limitations for modes 1-3. Mode 4 is unbound except as indicated in the horizontal section. |
| Legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services. | Replace existing commitments with no limitations for modes 1 and 2, mode 3 is limited as follows: In South Australia, natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers. Mode 4 is unbound except as indicated in the horizontal section. |
| **Research and Development Services** | |
| Research and Development (R and D) services on natural sciences and engineering (CPC 851) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Interdisciplinary research and development (R&D) services (CPC 853) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| **Other Business Services** | |
| Landscape architectural services (CPC 86742) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |

(19) For the purposes of this entry: "legal advisory services" – includes provision of advice to and consultation with clients in matters, including transactions, relationships and disputes, involving the application or interpretation of law; participation with or on behalf of clients in negotiations and other dealings with third parties in such matters; and preparation of documents governed in whole or in part by law, and the verification of documents of any kind for purposes of and in accordance with the requirements of law. Does not include advice, consultation and documentation services performed by service suppliers entrusted with public functions, such as notary services, or services provided by patent or trade mark attorneys. "legal representational services" – includes preparation of documents intended to be submitted to courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation of law; and appearance before courts, administrative agencies, and other duly constituted official tribunals in matters involving the application and

interpretation of the specified body of law. (Note: The inclusion of representational services before administrative agencies and other duly constituted official tribunals within the context of legal services does not necessarily mean that a licensed lawyer must supply such services in all cases. The precise scope of services subject to licensing requirements is subject to the discretion of the relevant regulatory authority.) Does not include documentation services performed by service suppliers entrusted with public functions, such as notary services, or services provided by patent or trade mark attorneys. "legal arbitration, conciliation and mediation services" – preparation of documents to be submitted to, preparation for and appearance before, an arbitrator, conciliator or mediator in any dispute involving the application and interpretation of law. Does not include arbitration, conciliation and mediation services in disputes for which the law has no bearing which fall under services incidental to management consulting. As a sub-category, international legal arbitration, conciliation and mediation services refer to the same services when the dispute involves parties from two or more countries. "domestic law (host country law)" – the law of Australia. "foreign law" – the law of the territories of WTO Members and other countries other than the law of Australia. "international law" – includes law established by international treaties and conventions, as well as customary law. For the purposes of these definitions: "arbitration" is taken to mean a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination. "mediation" is taken to mean a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. "conciliation" is taken to mean a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement.

| **Sector/subsector** | **Market Access Improvement** |
|---|---|
| Technical testing and analysis services (CPC 8676) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Site preparation work for mining (CPC 5115) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Services incidental to manufacturing (CPC 884 and 885, except for 88442). | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| **Related scientific and technical consulting services (CPC 8675)** | |
| - Geological, geophysical and other scientific prospecting services (CPC 86751) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as |

| | |
|---|---|
| | indicated in the horizontal section. |
| - Subsurface surveying services (CPC 86752) | Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section, for the whole sector. |
| - Map-making services (CPC 86754) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633 and 8861- 8866). | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Packaging services (CPC 8760) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Specialty design services (CPC 87907) | Replace existing commitments on Interior Design with no limitations for modes 1-3, mode 4 is unbound as indicated in the horizontal section. |
| **COMMUNICATION SERVICES** | |
| This covers the following sub-sectors from the Services Sectoral Classification List (W/120) and related CPC numbers 7521,7522,7523, 7529** (a) Voice telephone services (b) Packet-switched data transmission services (c) Circuit-switched data transmission services (d) Telex services (e) Telegraph services (f) Facsimile services (g) Private leased circuit services (o) Other: Digital cellular services Paging services Personal communications services Trunked radio system services Mobile data services Services covered by the Broadcasting Services Act 1992 (Cth) are excluded from the basic telecommunications sector. | Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| | |

| | |
|---|---|
| **CONSTRUCTION AND RELATED ENGINEERING SERVICES** | |
| **Other** | |
| Other general construction work for civil engineering (CPC 511, 515 and 518) | Insert new commitments with no limitations for modes 2 and 3, mode 1 unbound*, mode 4 is unbound except as indicated in the horizontal section. |
| **DISTRIBUTION SERVICES** | |
| Commission agents' services (CPC 62111, 62112**, 62113-62118) Includes services by commission agents, commodity brokers, auctioneers and other wholesalers who trade on behalf of others, of food products, and non-alcoholic beverages. Excludes tobacco, alcoholic beverages, and firearms. | |
| Wholesale trade services (CPC 6221**, 6222**, 6223 - 6228**) Wholesale trade services of agricultural raw materials and live animals. Excludes wholesale trade services of unmanufactured tobacco, tobacco products, alcoholic beverages and firearms. | Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Retailing services (CPC 631**, 63211**, 63212, 6322, 6323, 6324, 6325, 6329**, 61112, 6113, 6121) Australia's commitments in relation to these services extend to cover the following services not listed in relevant CPC classifications: inventory management of goods, assembling, sorting and grading of goods, breaking bulk, re-distribution and delivery services for retailing. Does not cover dispensing of pharmaceuticals, retailing services of alcoholic beverages, tobacco products and firearms. | Replace existing commitments with no limitations for modes 2 and 3, mode 1 unbound except for mail order, mode 4 is unbound except as indicated in the horizontal section. |
| **ENVIRONMENTAL SERVICES** (20) (21) | |
| Wastewater management (CPC 9401) This covers removal, treatment and disposal of household, commercial and industrial sewage and other waste waters including tank emptying and cleaning, monitoring, removal and treatment of solid wastes. | Replace existing commitments on "Sewage services" with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Waste management (CPC 9402, 9403) This covers hazardous and non-hazardous waste collection, treatment and disposal (including incineration, composting and landfill); sweeping and snow removal, and other sanitation | Replace existing commitments on "Refuse disposal services" and "Sanitation and similar services" with no |

| | |
|---|---|
| services | limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Protection of ambient air and climate (CPC 9404) This covers services at power stations or industrial complexes to remove air pollutants; monitoring of mobile emissions and implementation of control systems or reduction programmes. | Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Remediation and clean-up of soil and water (CPC 9406**) (22) This covers cleaning-up systems in situ or mobile, emergency response, clean-up and longer term abatement of spills and natural disasters; and rehabilitation programmes (e.g. recovery of mining sits) including monitoring. | Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Noise and vibration abatement (CPC 9405) This covers monitoring programmes, and installation of noise reduction systems and screens. | Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Protection of biodiversity and landscape (CPC 9406**)(23) This covers ecology and habitat protection and promotion of forests and promoting sustainable forestry. | Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Other environmental and ancillary services (CPC 9409) This covers other environment protection services, including services related to environmental impact assessment. | Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |

(20) Australia's commitments on environmental services exclude the provision of water for human use, including water collection, purification and distribution through mains.

(21) The classification scheme adopted on environmental services is largely based upon the scheme proposed by the European Communities (EC) in 2000 (see pages 6-7 of the EC paper "GATS 2000: Environmental Services", S/CSS/W/38), but see especially footnote 22 above.

(22) This commitment and Australia's commitment on protection of biodiversity and landscape combine to cover the entirety of CPC 9406

services.

(23) This commitment and Australia's commitment on remediation and clean-up of soil and water combine to cover the entirety of CPC 9406 services.

| Sector/subsector | Market Access Improvement |
|---|---|
| **TOURISM AND TRAVEL RELATED SERVICES** | |
| Travel agencies and tour operators services (CPC 7471) | Replace existing commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| **TRANSPORT SERVICES** | |
| **Air Transport services** | |
| Aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance (CPC 8868**) This covers establishments mainly engaged in periodic maintenance and repair (routine and emergency) of airframes (including wings, doors, control surfaces) avionics, engines and engine components, hydraulics, pressurisation and electrical systems and landing gear. Includes painting, other fuselage surface treatments and repair of flight-deck (and other) transparencies. Further includes rotary and glider aircraft. | Replace existing commitment on “Maintenance and repair of aircraft” with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| This commitment confirms, without extending, the application to air transport services of the following: (a) Travel agencies and tour operator services (CPC 7471), (b) Market research and public opinion polling services (CPC 864), (c) Advertising services (CPC 87110, 87120**, 87190), Covers services by advertising agencies in creating and placing advertising in periodicals, newspapers, radio and television for clients; outdoor advertising, media representation ie. sale of time and space for various media; distribution and delivery of advertising material or samples. Does not include production or broadcast/screening of advertisements for radio, television or cinema. (d) Distribution: Commission agents’ services (CPC 62113-62118); Wholesale trade services (CPC 6223- 6228); Retailing services (as described in this Appendix); and Franchising (CPC 8929). Excludes unmanufactured tobacco, tobacco products, alcoholic beverages and firearms. | Insert new commitments with no limitations on mode 1\| except that Retailing services (CPC 631**, 63211**, 63212, 61112, 6113, 6121, 6322, 6323, 6324, 6325, 6329**) are unbound except for mail order, no limitations on modes 2 and 3. Mode 4 is unbound except as indicated in the horizontal section. |
| **Rail Transportation services** | |
| | Insert new commitments with no limitations for modes 1 and 2. Mode 3 is limited as follows: (a) Below track: Most rail-track networks in Australia are government owned although much is |

| | |
|---|---|
| Freight transportation (CPC 7112); Pushing and towing services (CPC 7113); and Supporting services for rail transport services (CPC 743). | leased to private operators. There are no restrictions on the right to establish new networks but access to public land may not be guaranteed. (b) Above track (rail transport services (such as trains) that operate over the rail-track infrastructure): none except that access to rail infrastructure is allocated under pro- competitive principles for safety, efficiency and the long term interests of users. Mode 4 is unbound except as indicated in the horizontal section. |
| **Road transportation services** Freight transportation (CPC 7123) | |
| - Transportation of frozen or refrigerated goods (CPC 71231) | Insert new commitments with no limitations for mode 1. |
| - Transportation of bulk liquids or gases (CPC 71232 ) | Insert new commitments with no limitations for mode 1. |
| - Transportation of containerized freight (CPC 71233) | Insert new commitments with no limitations for mode 1. |
| - Transportation of furniture (CPC 71234) | Insert new commitments with no limitations for mode 1. |
| - Mail transportation (CPC 71235) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| - Freight transportation by man- or animal- drawn vehicles (CPC 71236) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| - Transportation of other freight (CPC 71239) | Insert new commitments with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |
| Rental of commercial vehicles with operator (CPC 7124) | Insert new commitments with no limitations on modes 1-3, mode 4 is unbound except as indicated in the horizontal section |
| **Services auxiliary to all modes of transport** | |
| Storage and warehouse services (CPC 742 excluding maritime) Australia's commitment in relation to these services extends to cover the following services in addition to those listed in CPC 742; distribution centre services and materials handling and equipment services such as container | Replace existing commitments with no limitations for modes 2 and 3, mode 1 is unbound*, mode 4 is unbound except as indicated in the horizontal section. |

| | |
|---|---|
| station and depot services (excluding maritime). | |
| Freight transport agency services (CPC 748 excluding maritime) Australia's commitment in relation to these services extends to cover the following services in addition to those listed in CPC 748: customs agency services and load scheduling services (excluding maritime). | Replace existing commitments on "freight forwarding" with no limitations for modes 1- 3, mode 4 is unbound except as indicated in the horizontal section. |
| Other supporting and auxiliary transport services (CPC 749 excluding maritime) Australia's commitment in relation to these services extends to cover the following services in addition to those listed under CPC 749: container leasing and rental services (excluding maritime). | Replace existing commitments on "pre-shipment inspections" with no limitations for modes 1-3, mode 4 is unbound except as indicated in the horizontal section. |

* Unbound due to lack of technical feasibility.

** Indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.

## ANNEX 4-II(B). Singapore's reservations to chapter 7 (cross-border trade in services) and chapter 8 (investment)

### 1.

Sector: All

Sub-Sector: -

Industry Classification: -

Obligations Concerned: National Treatment (Cross-Border Trade in Services) Market Access

Description: Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons.

Existing Measures: -

### 2.

Sector: All

Sub-Sector: -

Industry Classification: -

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure in relation to the divestment of the administrator and operator of airports.

Existing Measures: -

### 3.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to maintain or adopt any measure affecting the supply of the following services:

(a) social services;

(b) social security;

(c) public training;

(d) ambulance services; and

(e) health services by government-owned or controlled healthcare institutions, such as hospitals and polyclinics, including investments in these institutions, hospitals and polyclinics.

Existing Measures:

## 4.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to maintain or adopt any measure affecting:

(a) the full or partial devolvement to the private sector of services provided in the exercise of governmental authority;

(b) the divestment of its equity interests in, and/or the assets of, an enterprise that is wholly owned by the Singapore government; and

(c) the divestment of its equity interests in, and/or the assets of, an enterprise that is partially owned by the Singapore government.

However, the right referred to in the preceding paragraph shall, in respect of measures affecting:

(i) subparagraph (a) (to the extent that the devolvement is accompanied by a divestment), and

(ii) subparagraphs (b) and (c),

pertain only to the initial divestment and Singapore does not reserve this right with respect to subsequent divestments of such divested equity interests and/or assets divestment. (1)

Existing Measures: -

(1) For greater certainty, any transfer of equity interests and/or assets to an enterprise that is wholly owned by the Singapore government, whether for consideration or not, shall not be considered to be a

## 5.

Sector: Administration and Operation of National Electronic Systems

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services Singapore reserves the right to adopt or maintain any measure relating to or affecting the collection and administration of proprietary information by national electronic systems.

Existing Measures:

## 6.

Sector: Arms and Explosives

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the arms and explosives sector.

Existing Measures: Arms and Explosives Act, Cap. 13, 2003 Rev Ed

## 7.

Sector: Broadcasting Services

Broadcasting is defined as the transmission of signs or signals via any technology for the reception and/or display of aural and/or visual programme signals by all or part of the domestic public.

Sub-Sector: Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Board of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting broadcasting services receivable by Singapore's domestic audience or originating from Singapore, including but not limited to:

(a) transmission quotas for content on television broadcasting services in Singapore;

(b) non-discriminatory expenditure requirements for Singapore production on television broadcasting services;

(c) transmission quotas for content on radio in Singapore;

(d) spectrum management and licensing of broadcasting services; or

(e) subsidies or grants for investment involving Singapore subjects, persons and services.

This entry does not apply to:

(i) the sole activity of transmitting licensed broadcasting services to a final consumer;

(ii) the production, distribution and public display of motion pictures, video recordings and sound recordings. Commitments in the production, distribution and public display of motion pictures, video recordings and sound recordings shall not

include all the broadcasting and audio-visual services and materials that are broadcasting-related. Examples of services that are reserved include: free-to-air broadcasting, cable and pay television; and

(iii) value-added network (VAN) services such as electronic- mail, voice-mail, online information and data-base retrieval, electronic data interchange, and online information and/or data processing.

Existing Measures: -

## 8.

Sector: Business Services

Sub-Sector: Patent agent services

Industry Classification: -

Obligations Concerned: National Treatment (Cross-Border Trade in Services)

Description: Cross-Border Trade in Services Singapore reserves the right to adopt or maintain any measure affecting the recognition of educational and professional qualifications for purposes such as admission, registration and qualification for patent agents.

Existing Measures: Patents Act, Cap. 221, 2005 Rev Ed

## 9.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting real estate. This includes, but is not limited to, measures affecting the ownership, sale, purchase, development and management of real estate.

This entry does not apply to real estate consultancy services, real estate agency services, real estate auction services, real estate valuation services, and renting or leasing services involving owned or leased non-residential property.

Existing Measures: Residential Property Act, Cap. 274, 2009 Rev Ed State Lands Act, Cap. 314, 1996 Rev Ed Housing and Development Act, Cap. 129, 2004 Rev Ed Jurong Town Corporation Act, Cap. 150, 1998 Rev Ed Executive Condominium Housing Scheme Act, Cap. 99A, 1997 Rev Ed Planning Act, Cap 232

## 10.

Sector: Business Services

Sub-Sector: Scientific and technical consulting services

Industry Classification: CPC 8675 Engineering related scientific and technical consulting services

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of the following services:

(a) geological, geophysical and other scientific prospecting services (CPC 86751);

(b) subsurface surveying services (CPC 86752); (c) surface surveying services (CPC 86753); and

(d) map making services (CPC 86754).

Existing Measures:

## 11.

Sector: Business Services

Sub-Sector: Armed escort services and armoured car services Armed guard services

Industry Classification: CPC 87305 Guard Services

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the provision of armed escort, armoured car and armed guard services.

Existing Measures: Part IX of the Police Force Act, Cap. 235, 2006 Rev Ed

## 12.

Sector: Business Services

Sub-Sector: Betting and gambling services

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of betting and gambling services.

Existing Measures: Betting Act, Cap. 21, 2011 Rev Ed Common Gaming Houses Act, Cap. 49, 1985 Rev Ed Private Lotteries Act, Cap. 250

## 13.

Sector: Business Services

Sub-Sector: Legal Services

Industry Classification:

Obligations concerned: Market Access National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure in relation to the licensing of law practices and registration of representative offices, and the registration, admission and qualification of persons who are seeking to supply or are supplying legal services, including the recognition of educational and professional qualifications for the purposes of such registration, admission, and qualification subject to the specific commitments undertaken by Singapore in Singapore's entry for legal services in Singapore's Schedule to Annex 4-I ("NCM 30") and in Part 1 of sub-section (1) of Annex 4-H.

Existing Measures: Legal Profession Act, Cap. 161

## 14.

Sector: Community, Personal and Social Services

Sub-Sector: Services furnished by trade unions

Industry Classification: CPC 952 Services furnished by trade unions

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting services provided by trade unions.

Existing Measures: Trade Unions Act, Cap. 333, 2004 Rev Ed

## 15.

Sector: All

Sub-Sector: -

Industry Classification: -

Obligations Concerned: National Treatment (Investment) Senior Management and Boards of Directors

Description: Investment

Singapore reserves the right to adopt or maintain any measure in relation to the retention of a controlling interest by the Singapore Government in Singapore Technologies Engineering (the Company) or its successor body, including but not limited to controls over the appointment and termination of members of the Board of Directors, divestment of equity and dissolution of the Company.

Existing Measures: -

## 16.

Sector: Distribution, Publishing and Printing of Newspapers

"Newspaper" means any publication containing news, intelligence, reports of occurrences, or any remarks, observations or comments, in relation to such news, intelligence, reports of occurrences, or to any other matter of public interest, printed in any language and published for sale or free distribution at regular intervals or otherwise, but does not include any publication published by or for the Government.

Sub-Sector:

Industry Classification:

Obligations Concerned:National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the distribution, publishing and printing of newspapers, including but not limited to, shareholding limits and management control.

Existing Measures: Newspaper and Printing Presses Act, Cap. 206, 2002 Rev Ed

## 17.

Sector: Trade Services

Sub-Sector: Distribution services Commission agents' services Wholesale trade services Retailing services Franchising

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of any products subject to import or export prohibition or non-automatic import or export licensing.

Singapore reserves the right to modify or increase the list of products stipulated in the laws, regulations and other measures governing Singapore's import or export prohibition or non-automatic import or export licensing regime.

Existing Measures:

## 18.

Sector: Educational Services

Sub-Sector: Primary education services Secondary education services

Industry Classification: CPC 921 Primary Education Services CPC 92210 General Secondary Education Services CPC 92220 Higher Secondary Education Services (only applies to Junior colleges and pre-university centres under the Singapore educational system)

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of primary, general secondary and higher secondary (only applies to junior colleges and pre-university centres under the Singapore educational system) education services for Singapore citizens, including Sports Education Services.

For greater certainty, this reservation does not apply to the supply of education services to non-Singapore citizens.

Existing Measures: Education Act, Cap. 87, 1985 Rev Ed Administrative Guidelines Private Education Act, Cap. 247A, 2011 Rev Ed

## 19.

Sector: Health and Social Services

Sub-Sector: Medical services Pharmacy services Deliveries and related services, nursing services, physiotherapeutic and para-medical services, and allied health services Optometrists and opticians

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services) Market Access

Description: Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any limit on the number of service suppliers providing, including but not limited to, the following services: medical services, pharmacy services, deliveries and related services, nursing services, physiotherapeutic and para-medical services, allied health services, and optometry and opticianry services.

Singapore reserves the right to adopt or maintain any measure with respect to the regulation of service suppliers providing, including but not limited to, the following services: medical services, pharmacy services, deliveries and related services, nursing services, physiotherapeutic and para-medical services, allied health services, and optometry and opticianry services.

Existing Measures: Allied Health Professions Act 2011

## 20.

Sector: Sewage and Refuse Disposal, Sanitation and other Environmental Protection Services

Sub-Sector: Waste water management, including but not limited to collection, disposal and treatment of solid waste and waste water

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services Singapore reserves the right to adopt or maintain any measure affecting waste water management, including but not limited to the collection, treatment and disposal of waste water.

Existing Measures: Code of Practice on Sewerage and Sanitary Works Sewerage and Drainage Act, Cap. 294, 2001 Rev Ed

## 21.

Sector: Postal Services

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services:

Singapore reserves the right to adopt or maintain any measure relating to a Public Postal Licensee.

Existing Measures:

## 22.

Sector: Telecommunications Services

Sub-Sector: Telecommunications services

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure that accords treatment to persons of the other Party equivalent to any measure adopted or maintained by that other Party limiting ownership by persons of Singapore enterprises engaged in the provision of public mobile and wireless communications in the territory of that other Party, including:

(a) Public Radiocommunication Services (Public Radiocommunication Services refer to Maritime and Aeronautical radiocommunication services);

(b) Public Cellular Mobile Telephone Service (PCMTS);

(c) Public Radio Paging Services (PRPS);

(d) Public Trunked Radio Services (PTRS);

(e) Public Mobile Data Services (PMDS);

(f) Public Mobile Broadband Multimedia Services; and

(g) Public Fixed-Wireless Broadband Multimedia Services.

Existing Measures:

## 23.

Sector: Trade Services

Sub-Sector: Supply of potable water for human consumption

Industry Classification: CPC 18000 Natural Water The sectors listed above apply only insofar as they relate to the supply of potable water

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of potable water.

For greater certainty, this entry does not affect the supply of bottled water.

Existing Measures: Public Utilities Act, Cap. 261, 2002 Rev Ed

## 24.

Sector: Transport Services

Sub-Sector: Air transport services

Industry Classification: -

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Senior Management and Boards of Directors Market Access Local Presence Prohibition of Performance Requirements

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to maintain or adopt any measure affecting the investment in, and/or the supply of, air navigation services; air traffic control services; licensing of air traffic controllers; airspace management; air traffic flow information; air traffic and flight information; navigation services; aeronautical information, aerodrome rescue and fire fighting services; ground operations, terminal operations, flight information management, apron control services, security of aerodromes and commercial activities, and the real estate management of airports and heliports.

Existing Measures:

## 25.

Sector: Transport Services

Sub-Sector: Air Transport Services

Industry Classification: -

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Market Access Prohibition of Performance Requirements

Description: Investment and Cross-Border Trade in Services Singapore reserves the right to adopt or maintain any measure affecting, including but not limited to, the building, ownership, operation and management of airports and heliports in Singapore.

Existing Measures: -

## 26.

Sector : Transport Services

Sub-Sector: Land transport services — Passenger transport services, including but not limited to passenger transportation services by railway, urban and suburban regular transportation services, taxi services; bus and rail station services and ticketing services related to passenger transport services

Passenger Transport Services are services which are used by and accessible to members of the public for the purposes of transporting themselves within Singapore or between Singapore and Malaysia.

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Market Access

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of passenger transport services.

Existing Measures: Rapid Transit Systems Act, Cap. 263A Land Transport Authority of Singapore Act, Cap. 158A, 1996 Rev Ed Public Transport Council Act, Cap. 259B, 2012 Rev Ed Road Traffic Act, Cap. 276, 2004 Rev Ed

## 27.

Sector: Transport Services

Sub-Sector: Land transport services — railway and road freight transportation Supporting services for railway and road transport services

Industry Classification: -

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of land transport services as set out above.

This reservation does not apply to:

(a) maintenance and repair services of motor vehicles (CPC 61120);

(b) maintenance and repair services of parts of motor vehicles (CPC 88**)(2); and

(c) parking services (CPC 74430). This reservation does not apply to the supply of a service: (a) in the territory of the other Party to a person of Singapore; and (b) in the territory of Singapore by a covered investment, in the following sectors: (i) freight transportation of refrigerated goods (CPC 71231) (ii) freight transportation of liquids or gases (CPC 71232) (iii) freight transportation of containerised freight (CPC 71233) (iv) freight transportation of furniture (CPC 71234)

Existing Measures: -

(2) In this Annex, '"**" indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.

## 28.

Sector: Transport Services

Sub-Sector: Maritime transport services — Towing and tug assistance; provisioning, fuelling and watering; garbage collection and ballast waste disposal; port captain's services; navigation aids; emergency repair facilities; anchorage; and other shore-based operational services essential to ship operations, including communications, water and electrical supplies.

Industry Classification: CPC 74510 Port and Waterway Operation Services CPC 74520 Pilotage and Berthing Services CPC 74530 Navigation Aid Services CPC 74590 Other Supporting Services for Water Transport

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of towing and tug assistance; provisioning, fuelling and watering; garbage collection and ballast waste disposal; port captain's services; navigation aids; emergency repair facilities; anchorage; and other shore-based operational services essential to ship operations, including communications, water and electrical supplies.

For greater certainty, no measures shall be applied which deny international maritime transport operators reasonable and non- discriminatory access to the above port services.

This entry does not apply to:

(a) international transport (freight and passengers) excluding cabotage transport (CPC 7211**, 7212**);

(b) international towage (CPC 7214**); (c) rental of vessels with crew (CPC 7213); and

(d) other supporting and auxiliary services (including catering) (CPC 749**),

Existing Measures: Maritime and Port Authority of Singapore Act, Cap. 170A, Section 41 (Part VIID)

## 29.

Sector: Transport Services

Sub-Sector: Transportation services via pipeline Transportation of goods via pipeline of goods such as chemical and petroleum products and petroleum, and other related products

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services) Most-Favoured-Nation Treatment (Cross-Border Trade in Services) Market Access Local Presence

Description: Cross-Border Trade in Services

Only service suppliers with a local presence shall be allowed to provide transportation services via pipeline of goods such as chemical and petroleum products and petroleum, and other related products.

Singapore reserves the right and flexibility to modify or increase the list of the chemical and petroleum products, and other related products that are subject to this entry.

Existing Measures: Administrative

## 30.

Sector: Trade Services

Sub-Sector: Wholesale trade services and retail trade services of alcoholic beverages and tobacco

Industry Classification: -

Obligations Concerned: Market Access Local Presence

Description: Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure affecting the supply of wholesale and retail trade services of tobacco products and alcoholic beverages.

Existing Measures: -

## 31.

Sector: Energy

Sub-Sector:

Industry Classification:

Obligations Concerned: National Treatment (Cross-Border Trade in Services and Investment) Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment) Prohibition of Performance Requirements Senior Management and Boards of Directors Market Access Local Presence

Description: Investment and Cross Border Trade in Services

Singapore reserves the right to adopt or maintain any measure in order to prohibit, manage or control the generation, use, distribution and retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so.

Existing Measures:

## 32.

Sector: All

Sub-Sector:

Industry Classification:

Obligations Concerned: Most-Favoured-Nation Treatment (Cross-Border Trade in Services and Investment)

Description: Investment and Cross-Border Trade in Services

Singapore reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Singapore reserves the right to adopt or maintain any measure that accords differential treatment to ASEAN member states under any ASEAN agreement open to participation by any ASEAN member state, in force or signed after the date of entry into force of this Agreement.

Singapore reserves the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation matters;

(b) maritime matters and services auxiliary to maritime matters;

(c) port matters;

(d) land transport matters; and

(e) telecommunication matters.

Existing Measures:

# Annex 7. Code of conduct for arbitrators appointed under chapter 8 (investment) and chapter 16 (dispute settlement)

**Definitions**

For the purposes of this Annex, unless otherwise specified:

"arbitrator" means a member of a tribunal appointed under Article 27 (Selection of Arbitrators) of Chapter 8 (Investment) or Article 5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement) .

"proceeding" means a tribunal proceeding under Chapter 8 (Investment) or Chapter 16 (Dispute Settlement).

**Responsibilities to the Process**

1. Every arbitrator 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. Former arbitrators shall comply with the obligations established in paragraphs 17, 18, 19 and 20.

**Disclosure Obligations**

2. Prior to confirmation of his or her selection as an arbitrator under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her 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.

3. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in paragraph 2 and shall disclose them by communicating them in writing to the Parties for their consideration. The obligation to disclose is a continuing duty, which requires an arbitrator to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

**Performance of Duties by Arbitrators**

4. An arbitrator shall comply with the provisions of Chapter 8 (Investment) and Chapter 16 (Dispute Settlement) and the applicable rules of procedure.

5. On selection, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

6. An arbitrator shall not deny other arbitrators the opportunity to participate in all aspects of the proceeding.

7. An arbitrator 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.

8. An arbitrator shall take all appropriate steps to ensure that any staff he or she may appoint, with the approval of the Parties, are aware of, and comply with paragraphs 1, 2, 3, 18, 19 and 20.

9. An arbitrator shall not engage in ex parte contacts concerning the proceeding.

10. An arbitrator shall not communicate matters concerning actual or potential violations of this Annex unless the communication is to both Parties or is necessary to ascertain whether an arbitrator has violated or may violate this Annex.

**Independence and Impartiality of Arbitrators**

11. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

12. An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a disputing party or non-disputing Party, or fear of criticism.

13. An arbitrator 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 arbitrator's duties.

14. An arbitrator shall not use his or her position on the tribunal to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator. An arbitrator shall make every effort to prevent or discourage others from representing themselves as being in such a position.

15. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the arbitrator's conduct or judgment.

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

**Duties in Certain Situations**

17. An arbitrator or former arbitrator shall avoid actions that may create the appearance that the arbitrator was biased in carrying out the arbitrator's duties or would benefit from the decision or ruling of the tribunal.

**Maintenance of Confidentiality**

18. An arbitrator or former arbitrator shall not at any time disclose or use any 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.

19. An arbitrator shall not disclose a tribunal ruling or parts thereof prior to its publication except in accordance with Chapter 8 (Investment) and Chapter 16 (Dispute Settlement).

20. An arbitrator or former arbitrator shall not at any time disclose the deliberations of a tribunal, or any arbitrator's view except as required by law.

**Additional procedures relating to disputes under Chapter 16 (Dispute Settlement):**

For the purposes of paragraphs 21, 22, 23 and 24;

"arbitrator" means a member of a tribunal appointed under Article 5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement); and

"proceeding" means a tribunal proceeding under Chapter 16 (Dispute Settlement).

21. If a Party considers that an arbitrator has violated the Code of Conduct, it shall notify the other Party and seek to reach agreement as to whether or not there has been a violation no later than 10 days after the notification.

22. If the Parties agree that an arbitrator has violated this Code of Conduct, they may remove the arbitrator, waive the violation, or request the arbitrator to take steps within a specified time period to cease or ameliorate the violation. If the Parties agree to waive the violation or determine that, after taking steps, the violation has ceased, the arbitrator may continue to serve on the tribunal.

23. If a selected arbitrator is removed pursuant to paragraph 22, the Parties shall select a replacement as expeditiously as possible in accordance with the selection procedure that was followed to select that arbitrator pursuant to Article 5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement).

24. Any time period applicable to a proceeding shall be suspended for a period beginning on the date an arbitrator dies, withdraws, is removed, is authorised to take steps to seek to cease or ameliorate a violation, or otherwise becomes unavailable, and ending on the date specified for taking steps to cease or ameliorate the violation, a replacement is selected, or the violation has ceased.

## Singapore's note

MFA/TPN NO. /2003

The Ministry of Foreign Affairs of the Republic of Singapore presents its compliments to the Australian High Commission in Singapore and has the honour to refer to the Singapore-Australia Free Trade Agreement ("the Agreement") done at ____on _____2003.

The Ministry notes that in the course of negotiations of the Agreement, both Parties to the Agreement reached the following understandings with respect to the various parts of the Agreement:

I. UNDERSTANDING

1. The Parties understand that nothing in the Agreement shall prevent a Party from taking any action it considers necessary to protect critical communications infrastructure from deliberate attempts intended to disable or degrade such infrastructure.

2. Taking note of Article 13 (Security Exceptions) of Chapter 2 (Trade in Goods), Article 14 (Exceptions) of Chapter 6 (Government Procurement), Article 19 (Security Exceptions) of Chapter 7 (Trade in Services) and Article 20 (Security Exceptions) of Chapter 8 (Investment), the Parties understand that nothing in each of these Chapters shall prevent a Party from taking any action it considers necessary to protect its essential security interests in a domestic emergency declared by a Party in accordance with its domestic laws.

3. In relation to Article 4 (National Treatment) of Chapter 7 (Trade and Services) and Article 3 (National Treatment) of Chapter 8 (Investment), the Parties understand that the application of these provisions to central and regional levels of governments shall be consistent with the approach they have adopted in scheduling their commitments pursuant to Article XVII of the WTO General Agreement on Trade in Services.

4. Notwithstanding Section (V) (Note to Singapore's Commitments for Financial Services) of Annex 4-III (Additional Commitments to Chapter 7 (Trade in Services) and Chapter 8 (Investment)), Singapore shall, at such time it lifts its numerical quota on Wholesale Bank licences under its Free Trade Agreement with the United States of America, do the same with respect to Australia, provided that the grant of Wholesale Bank licences would be subject to the relevant admission criteria.

5. With respect to Articles 19 (General Exceptions) and 20 (Security Exceptions) of Chapter 8 (Investment), Singapore agrees to offer immediately to Australia unilaterally and unconditionally any differences in the General Exceptions or Security

Exceptions provisions agreed in its Free Trade Agreement with the United States of America,

6. With respect to Article 16 (Industry Development) of Chapter 6 (Government Procurement), it is understood that:

(a) measures taken by a Party to assist its small and medium enterprises (SMEs) may include measures such as those listed in the Australian Commonwealth Procurement Guidelines in force as on the date of entry into force of the Agreement. To the extent possible, the Parties shall endeavour to ensure that such measutes are not applied for trade protectionist purposes; and

(b) a Party shall, wherever practicable, give reasonable notice to the other Party prior to adopting any new measure relating to SME participation in government procurement.

7. With respect to Singapore's reservation on Air Transport Services (ground handling services) in Annex 4-I(B) of the Chapter on Trade in Services, the Parties,

upon the conclusion of the on-going negotiations on a new Air Services Agreement between them, will discuss this reservation with a view to reducing the scope of the reservation, and to align the reservation with the outcome of the aforesaid negotiations. In this regard, any necessary amendment to the reservation will be made pursuant to Article 7 (Amendments) of Chapter 17 (Final Provisions).

8. With respect to section (III) (Waiver and Modifications of Statutory Conditions governing Joint Law Ventures and Formal Law Alliances in Singapore) of Annex 4-III (Additional Commitments to Chapter 7 (Trade in Services) and Chapter 8 (Investment)), Singapore agrees to extend to Australia treatment no less favourable than that granted to the United States under the US-Singapore Free Trade Agreement.

II. REVIEW OF AGREEMENT

9. At the first review of the Agreement provided under Article 3 (Review) of Chapter 17 (Final Provisions), the Parties shall:

(a) in the context of Chapter 8 (Investment), consider the inclusion of a provision relating to performance requirements using as a guide the illustrative list in the WTO Agreement on Trade-Related Investment Measures or similar provisions in other international investment agreements;

(b) in the context of the Chapter 8 (Investment), consider the incorporation of a provision relating to "taxation measures as expropriation" using the proposed clause set out in Appendix I and the footnote therein as the basis for future discussion;

(c) consider Singapore's request to incorporate in the Agreement commitments on non-discriminatory treatment of digital products, which Singapore understands to include software, and to consider Singapore's request for the application of such non-discriminatory treatment to the procurement practices of Australian entities covered by Chapter 6 (Government Procurement) for software created, produced or distributed by Singapore's suppliers;

(d) with respect to Chapter 10 (Telecommunications Services), either Party may initiate consultations in order to review the scope and operation of Article 9.8 within six months of the passage of any laws relating to the interconnection dispute resolution process in Australia with a view to negotiating appropriate amendments to this paragraph;

(e) with respect to paragraphs 2(a) and 2(b) in Part I (Singapore's Commitments) of Section (II) (Recognition of Law Degrees for Admission as Qualified Lawyers) of Annex 4-III (Additional Commitments to Chapter 7 (Trade in Services) and Chapter 8 (Investment)) relating to the Recognition of Law Degrees for Admission as qualified lawyers, consider Australia's request to include up to 2 additional Australian Universities into the First Schedule to the Legal Profession (Qualified Persons) Rules (S357/2001) and review the 30% criterion; and

(f) with respect to Article 16 (Industry Development) of Chapter 6 (Government Procurement), review the use of measures covered by this Article, in the light of the objectives of the Chapter, and consult on ways of addressing any concems raised by either Party.

10. In respect of Chapter 3 (Rules of Origin), Australia expects that a large proportion of Singapore's exports to Australia, that were dutiable prior to the date the Agreement enters into force, will become duty free over time. Where Singapore considers that this expectation has not been met, the Parties shall enter into consultations with a view to reviewing the provisions of Chapter 3 (Rules of Origin).

The Ministry has the honour to propose to the High Commission that this Note together with the High Commission's Note in reply shall constitute an understanding between Singapore and Australia as from the date the Agreement enters into force.

The Ministry of Foreign Affairs of the Republic of Singapore avails itself of this opportunity to renew to the Australian High Commission in Singapore the assurances of its highest consideration.

## APPENDIX I. Article xx* taxation measures as expropriation

1. Article 9 (Expropriation and Nationalisation) shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of Article 9 (Expropriation and Nationalisation).

2. Where paragraph 1 above applies, Article 14 (Settlement of Disputes between a Party and an Investor of the other Party) shall also apply in respect of taxation measures.

Footnote :

* With reference to Articles 9 (Expropriation and Nationalisation) and XX (Taxation Measures as Expropriation), in assessing whether a taxation measure constitutes expropriation, the following considerations are relevant:

(i) the imposition of taxes does not generally constitute expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment, does not in and of itself constitute expropriation;

(ii) taxation measures which are consistent with internationally recognised tax policies, principles and practices do not constitute expropriation. In particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not, generally, be considered to be expropriatory; and

(iii) taxation measures which are applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers, are less likely to constitute expropriation. A taxation measure should not constitute expropriation if, when the investment is made, it was already in force, and information about the measure was made public or otherwise made publicly available.