

ADDITIONAL INVESTMENT PROVISIONS FOR BRAZIL, PARAGUAY,  
URUGUAY AND SINGAPORE<sup>1</sup>

ARTICLE 9-A.1

Definitions

For the purposes of this Annex:

"covered investment" means with respect to a State Party, a commercial presence of the juridical persons or natural persons of another State Party within the territory of the first-mentioned State Party; "covered investment" also means such commercial presence's assets<sup>2</sup> that it owns or controls, directly or indirectly, or over which it exerts a significant degree of influence. These assets include:

- (a) shares, stocks and other forms of equity instruments of that commercial presence and those held in another commercial presence within the territory of the first-mentioned State Party;

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<sup>1</sup> The rights and obligations of this Annex shall not apply to Argentina. Except as otherwise provided in this Annex:  
(a) this Annex applies only to Brazil, Paraguay and Uruguay, on the one part, and Singapore on the other part;  
(b) treatment accorded under the Articles in this Annex shall apply only: (i) as regards Singapore, to the covered investments of juridical persons or natural persons of Brazil, Paraguay and Uruguay in Singapore; and (ii) as regards Brazil, Paraguay and Uruguay, to the covered investments of juridical persons or natural persons of Singapore in the respective territories of Brazil, Paraguay and Uruguay; and  
(c) "another State Party" means (i) for Singapore: Brazil, Paraguay or Uruguay; and (ii) for Brazil, Paraguay and Uruguay: Singapore.

<sup>2</sup> For greater certainty, the assets of such commercial presence are covered under this Annex only to the extent that they have the characteristics of an investment, including the commitment of capital, the objective of establishing a lasting interest, the expectation of gain or profit and the assumption of risk.

- (b) debt instruments or securities held in another commercial presence within the territory of the first-mentioned State Party;
- (c) licences, authorisations, permits, concessions or similar rights conferred in accordance with the laws and regulations of a State Party;<sup>3</sup>
- (d) loans to another commercial presence within the territory of the first-mentioned State Party;
- (e) intellectual property rights as defined or referenced to in the TRIPS Agreement;  
and
- (f) movable or immovable property and related rights.

but do not include:

- (i) an order or judgment issued as a result of a lawsuit or an administrative process;
- (ii) sovereign debt, regardless of original maturity, of a State Party or state-enterprise debt;
- (iii) portfolio investments, i.e. those that do not allow that commercial presence to exert a significant degree of influence in the management of another commercial presence within the territory of the first-mentioned State Party; and

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<sup>3</sup> Whether a type of licence, authorization, permit or similar instrument (including a concession, to the extent that it is of the same nature as this type of instrument) has the characteristics of an investment depends on factors such as the nature and scope of the rights of the holder, pursuant to the laws and regulations of the State Party conferring such licence, authorization, permit or similar instrument. Licences, authorizations, permits or similar instruments that lack the characteristics of an investment include those that do not give rise to protected rights under the laws and regulations of the State Party conferring such licence, authorization, permit or similar instrument.

- (iv) claims to money that arise solely from commercial contracts for the sale of goods or services, or the extension of credit in connection with such commercial contracts, or any other claims to money that do not involve the kind of interests set out in subparagraphs (a) to (f) above.

## ARTICLE 9-A.2

### Scope and coverage

In addition to Article 9.2 (Scope and coverage) of Chapter 9 (Investment):

1. Article 9-A.3 (Treatment of Investments), Article 9-A.5 (Direct Expropriation) and Article 9-A.6 (Compensation for Losses) apply to measures by a State Party affecting covered investments in all sectors, including services sectors under the scope of Chapter 10 (Trade in Services).<sup>4</sup>
2. Article 9-A.4 (Most-Favoured-Nation Treatment) applies to measures by a State Party affecting covered investments in all sectors, with the exception of services sectors under the scope of Chapter 10 (Trade in Services).<sup>5</sup>

## ARTICLE 9-A.3

### Treatment of Investments<sup>6</sup>

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<sup>4</sup> It is understood that services excluded from the scope of Chapter 10 (Trade in Services) under paragraph 3 of Article 10.1 (Scope and Coverage) of Chapter 10 (Trade in Services) shall not fall within the scope of this Chapter.

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

<sup>6</sup> This Article shall not apply to Paraguay. The treatment under this Article shall not be accorded to covered investments of juridical persons or natural persons of Paraguay. For the purposes of this Article, "another State Party" means (a) for Singapore: Brazil or Uruguay; and (b) for Brazil and Uruguay: Singapore.

Based on the applicable rules and customs of international law as recognised by each of the State Parties and their respective laws and regulations, no State Party shall subject covered investments of another State Party to measures which constitute:

- (a) manifestly abusive treatment, such as coercion, duress and harassment; or
- (b) discrimination in matters of law enforcement, including the provision of physical security.

#### ARTICLE 9-A.4

##### Most-Favoured-Nation Treatment<sup>7</sup>

1. A State Party shall accord to covered investments of juridical persons or natural persons of another State Party, treatment no less favourable than that it accords, in like circumstances, to investments in its territory of juridical persons or natural persons of a non-State Party with respect to the constitution, acquisition, maintenance<sup>8</sup>, expansion, and sale or other disposition of investments.
2. For greater certainty, paragraph 1 shall not be construed as granting to such juridical persons or natural persons of another State Party options or procedures for the settlement of disputes.
3. For greater certainty, whether treatment is accorded in "like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between juridical persons, natural persons or investments on the basis of legitimate public welfare objectives.

#### ARTICLE 9-A.5

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<sup>7</sup> This Article shall not apply to Uruguay and Paraguay. The treatment under this Article shall not be accorded to covered investments of juridical persons or natural persons of Uruguay and Paraguay. For the purposes of this Article, "another State Party" means (a) for Singapore; Brazil; and (b) for Brazil: Singapore.

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

## Direct Expropriation<sup>9</sup>

1. A State Party shall not expropriate a covered investment of a juridical person or natural person of another State Party, except:
  - (a) for a public purpose;
  - (b) in a non-discriminatory manner;
  - (c) in accordance with due process of law; and
  - (d) on payment of adequate and effective compensation, according to the laws and regulations of the expropriating State Party and paragraphs 2 to 3.
2. The compensation shall:
  - (a) be paid without undue delay in convertible currency at the market rate of the exchange prevailing at the time of transfer;
  - (b) be equivalent to the fair market value of the expropriated asset, immediately before the expropriating measure has taken place ("expropriation date");
  - (c) not reflect any change in the market value due to the knowledge of the intention to expropriate, before the expropriation date; and
  - (d) be completely payable and transferable, in accordance with Article 9.10 (Payments and Transfers) of Chapter 9 (Investment).

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<sup>9</sup> This Article shall not apply to Paraguay in respect of covered investments in services sectors. The protection under this Article shall not be accorded to covered investments of juridical persons or natural persons of Paraguay in respect of investments in services sectors. For the purposes of this Article, "another State Party" means (a) for Singapore: Brazil, Paraguay or Uruguay; and (b) for Brazil, Paraguay and Uruguay: Singapore.

3. The compensation to be paid shall not be inferior to the fair market value on the expropriation date, plus interests at a rate determined according to market criteria accrued since the expropriation date until the date of payment, according to the laws and regulations of the expropriating State Party.
4. For greater certainty, this Article only provides for direct expropriation, where a covered investment is nationalized or otherwise directly expropriated through formal transfer of title or ownership rights, and does not cover indirect expropriation.
5. Juridical persons or natural persons of a State Party whose covered investment is affected by the expropriation carried out by another State Party shall have the right to review of their case, including the valuation of its covered investment and the payment of compensation in accordance with this Article, by a judicial authority or another competent authority of the latter State Party.
6. This Article shall not apply to the issuance of compulsory licenses in compliance with the provisions of the TRIPS Agreement.
7. For Singapore, notwithstanding paragraphs 1, 2, 3 and 5, any measure of expropriation relating to land, which shall be as defined in its existing laws and regulations 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 laws and regulations.

#### ARTICLE 9-A.6

#### Compensation for Losses<sup>10</sup>

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<sup>10</sup> This Article shall not apply to Paraguay in respect of covered investments in services sectors. The protection under this Article shall not be accorded to covered investments of juridical persons or natural persons of Paraguay in services sectors. For the purposes of this Article, "another State Party" means (a) for Singapore: Brazil, Paraguay or Uruguay; and (b) for Brazil, Paraguay and Uruguay: Singapore.

Juridical persons or natural persons of a State Party whose covered investments in the territory of another State Party suffers losses due to war or other armed conflict, revolution, state of emergency, insurrection, riot or any other similar events, shall enjoy, with regard to restitution, indemnity or other form of compensation, the same treatment that the latter State Party accords to its own juridical persons or natural persons or the treatment accorded to juridical persons or natural persons of a non-State Party. For greater certainty, Article 9.10 (Payments and Transfers) of Chapter 9 (Investment) shall apply to such compensation.

## ARTICLE 9-A.7

### Schedules of Non-Conforming Measures<sup>11</sup>

1. Article 9-A.4 (Most-Favoured-Nation Treatment) shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a State Party at:
    - (i) the central level of government as set out by that State Party in List A of its Schedule in Annex III (Schedule of Reservations and Non-Conforming Measures for Services and Investment);
    - (ii) a regional level of government; or
    - (iii) local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as

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<sup>11</sup> For greater certainty, this Article applies only to Brazil and Singapore. For the purposes of this Article, reference to "State Party" means Brazil or Singapore.

it existed at the date of entry into force of the Agreement with Article 9-A.4 (Most-Favoured-Nation Treatment).

2. Article 9-A.4 (Most-Favoured-Nation Treatment) shall not apply to any measure that a State Party adopts or maintains with respect to sectors, sub-sectors or activities set out in List B of its Schedule in Annex III (Schedule of Reservations and Non-Conforming Measures for Services and Investment).

3. Article 9-A.4 (Most-Favoured-Nation Treatment) shall not apply to any measure that is an exception to, or derogation from, a State Party's obligations under Chapter 15 (Intellectual Property Rights) and the TRIPS Agreement, as specifically provided for in that Agreement.