

CHAPTER 10

ESTABLISHMENT

Article 1

Definitions

For the purposes of this Chapter:

- (a) **commercial presence** means any type of business establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person, or
 - (ii) the creation or maintenance of a branch or a representative office,within the Area of a Party for the purpose of performing an economic activity;
- (b) **juridical person** means any legal entity duly constituted or otherwise organised under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (c) **juridical person of the other Party** means a juridical person constituted or otherwise organised under the applicable law of that Party and engaged in substantive business operations in either Party;

Article 2

Scope and Coverage⁷

1. This Chapter shall apply to commercial presence in all sectors with the exception of services sectors covered by Chapter 8 (Trade in Services).⁸

2. This Chapter shall be without prejudice to the interpretation or application of other international agreements relating to investment to which Hong Kong, China and Georgia are parties.⁹ For greater certainty, in case of conflict, the bilateral agreement concerning promotion and protection of investment to be entered into between the Parties shall prevail.

Article 3

National Treatment

Each Party shall, subject to Article 4 (Reservations) and the reservations set out in Annex 10-1 (Schedules of Reservations), accord to juridical and natural persons of the other Party and to the commercial presence of such persons, treatment no less favourable than that it accords, in like circumstances, to its own juridical and natural persons and to the commercial presence of such persons.

Article 4

Reservations

1. Article 3 (National Treatment) shall not apply to:

⁷ It is understood that nothing in this Chapter shall be construed to impose any obligation with respect to investment protection matters, such as protection against expropriation, full protection and security and other investment protection matters.

⁸ It is understood that services specifically exempted from the scope of Chapter 8 (Trade in Services) do not fall under the scope of this Chapter.

⁹ It is understood that any dispute settlement mechanism in an investment protection agreement to which Hong Kong, China and Georgia are parties is not applicable to alleged breaches of this Chapter.

- (a) any reservation of a Party as set out in Annex 10-1 (Schedules of Reservations);
- (b) an amendment to a reservation referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the reservation with Article 3 (National Treatment); and
- (c) any new reservation adopted by a Party, and incorporated into Annex 10-1 (Schedules of Reservations) which does not affect the overall level of commitments of that Party under this Agreement;

to the extent that such reservations are inconsistent with Article 3 (National Treatment).

2. A Party may, at any time, either upon request of the other Party or unilaterally, remove, in whole or in part, reservations set out in Annex 10-1 (Schedules of Reservations) by written notification to the other Party.

3. A Party may, at any time, incorporate a new reservation into Annex 10-1 (Schedules of Reservations) in accordance with subparagraph 1(c) by written notification to the other Party. On receiving such written notification, the other Party may request consultations regarding the reservation. At the written request of a Party, the Party incorporating the new reservation shall enter into consultations with the requesting Party within 30 days after the date of receipt of the request.

Article 5

Key Personnel

1. Each Party shall, subject to its laws and regulations,

endeavour to grant natural persons of the other Party who have established or seek to establish commercial presence in that Party, and key personnel employed by natural or juridical persons of the other Party, temporary entry and stay in its Area in order to engage in activities connected with commercial presence.

2. Each Party shall, subject to its laws and regulations, endeavour to permit natural or juridical persons of the other Party, and their commercial presence, to employ, in connection with commercial presence, any key personnel of the natural or juridical person's choice regardless of nationality and citizenship provided that such key personnel has been permitted to enter, stay and work in its Area and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.

Article 6

Right to Regulate

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure consistent with this Chapter that is in the public interest, such as measures to meet health, safety or environmental concerns and reasonable measures for prudential purposes.

2. A Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, measures provided in paragraph 1 as an encouragement for the establishment, acquisition, expansion or retention in its Area of the commercial presence of a juridical or natural person of the other Party.

Article 7

Transparency

1. Each Party shall promptly publish, make publicly available or provide upon the request of the other Party, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which may affect the commercial presence of juridical and natural persons of the other Party in the Area of the former Party.

2. Nothing in this Chapter shall require a Party to furnish or allow access to any confidential or proprietary information, including information concerning the commercial presence of a particular juridical or natural person, which is designated as confidential under its internal legislation or the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of such juridical or natural person.

Article 8

Payments and Transfers

1. Except in the circumstances envisaged in Article 6 (Measures to Safeguard the Balance-of-Payments) of Chapter 17 (General Provisions and Exceptions), a Party shall not apply restrictions on current payments and capital movements relating to commercial presence activities in non-services sectors.

2. Nothing in this Chapter shall affect the rights and obligations that apply to the Parties under the Articles of *Agreement of the International Monetary Fund* ("IMF"), including the use of exchange actions which are in conformity with the Articles of *Agreement of the IMF*, provided that a Party shall not impose restrictions on any capital transactions inconsistent with its obligations under this Chapter, except

under Article 6 (Measures to Safeguard the Balance of Payments) of Chapter 17 (General Provisions and Exceptions), or at the request of the IMF.

Article 9

Review

This Chapter shall be subject to periodic review within the framework of the FTA Joint Commission regarding the possibility of further developing the Parties' commitments.

LIST OF ANNEX TO CHAPTER 10 (ESTABLISHMENT)

ANNEX 10-1

SCHEDULES OF RESERVATIONS