

### III SERVICES AND INVESTMENT

#### SECTION I - TRADE IN SERVICES

##### ARTICLE 19

##### *Coverage*

1. For the purposes of this Section, trade in services is defined as the supply of a service:
  - (a) from the territory of a Party into the territory of another Party;
  - (b) in the territory of a Party to the service consumer of another Party;
  - (c) by a service supplier of a Party, through commercial presence in the territory of another Party;
  - (d) by a service supplier of a Party, through presence of natural persons in the territory of another Party.
2. This Section applies to trade in all services sectors with the exception of:

- (a) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (CRS) services.

3. Maritime transport and financial services shall be governed by the provisions of Sections II and III, respectively, unless otherwise specified.

4. Nothing in this Section shall be construed to impose any obligation with respect to government procurement.

5. Subsidies related to trade in services shall not be covered under this Section. The Parties shall pay particular attention to any disciplines agreed under the negotiations mandated by Article XV of the GATS with a view to their incorporation into this Agreement.

6. This Section applies to measures taken by central, regional or local governments and authorities as well as by non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

## ARTICLE 20

### *Definitions*

For purposes of this Section:

“*commercial presence*” means:

- (i) as regards nationals, the right to set up and manage undertakings, which they effectively control. This shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of another Party;<sup>2</sup>
- (ii) as regards juridical persons, the right to take up and pursue the economic activities covered by this Section by means of the setting up and management of subsidiaries, branches or any other form of secondary establishment;<sup>3</sup>

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<sup>2</sup> The right to set up undertakings which they effectively control includes the right to acquire controlling stakes in a company of a Party

<sup>3</sup> The setting up of secondary establishments includes the right to acquire controlling stakes in a company of a Party.

*“EFTA State juridical person”* or *“Mexican juridical person”* means a juridical person set up in accordance with the laws of an EFTA State or of Mexico, respectively, and having its registered office, central administration, or principal place of business in the territory of an EFTA State or of Mexico, respectively;

Should the juridical person have only its registered office or central administration in the territory of an EFTA State or Mexico, respectively, it shall not be considered as an EFTA State or a Mexican juridical person, respectively, unless its operations possess a real and continuous link with the economy of an EFTA State or Mexico, respectively;

*“national”* means a natural person who is a national of one of the EFTA States or Mexico in accordance with their respective legislations;<sup>4</sup>

*“service supplier”* of a Party means any person of a Party that seeks to provide or provides a service;

*“subsidiary”* means a juridical person that is effectively controlled by another juridical person.

*“territory”* means the geographical area referred to in paragraph 1 of Article 2.

## ARTICLE 21

### *Market access*

In those sectors and modes of supply which shall be liberalised pursuant to the decision provided for in paragraph 3 of Article 24, no Party shall adopt or maintain:

- (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 the terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- (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 a requirement of an economic needs test;

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<sup>4</sup>

National includes a permanent resident if he or she is treated as a national in accordance with the legislation of such Party.

- (e) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; and
- (f) measures which require specific types of legal entities or joint ventures through which a service supplier of another Party may supply a service.

## ARTICLE 22

### *Most favoured nation treatment*

1. Subject to exceptions that may derive from harmonisation of regulations based on agreements concluded by a Party with a third country providing for mutual recognition in accordance with Article VII of the GATS, the EFTA States and Mexico shall accord to service suppliers of another Party treatment no less favourable than that they accord to like service suppliers of any other country.
2. Treatment granted under other agreements concluded by one of the Parties with a third country which have been notified under Article V of the GATS shall be excluded from this provision.
3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall afford adequate opportunity to the other Parties to negotiate the benefits granted therein.
4. The Parties agree to review the exclusion provided for in paragraph 2 with a view to its deletion not later than three years after the entry into force of this Agreement.

## ARTICLE 23

### *National treatment*

1. Each Party shall, in accordance with Article 24, grant to service suppliers of another Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like service suppliers.
2. A Party may meet the requirement of paragraph 1 by according to service suppliers of another Party, either formally identical treatment or formally different treatment to that it accords to its own like service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of service suppliers of a Party compared to like service suppliers of the other Party.

## ARTICLE 24

### *Trade liberalisation*

1. As provided for in paragraphs 2 to 4, the Parties shall liberalise trade in services between themselves, in conformity with Article V of the GATS.
2. From the entry into force of this Agreement, neither Party shall adopt new, or more, discriminatory measures as regards services or service suppliers of another Party, in comparison with the treatment accorded to its own like services or service suppliers.
3. No later than three years following the entry into force of this Agreement, the Joint Committee shall adopt a decision providing for the elimination of substantially all remaining discrimination between the Parties in the sectors and modes of supply covered by this Section. That decision shall contain:
  - (a) a list of commitments establishing the level of liberalisation which the Parties agree to grant each other at the end of a transitional period of ten years from the entry into force of this Agreement;
  - (b) a liberalisation calendar for each Party in order to reach, at the end of the ten-year transitional period, the level of liberalisation described in paragraph a).
4. Except as provided for in paragraph 2, Articles 21, 22 and 23 shall become applicable in accordance with the calendar and subject to any reservations stipulated in the Parties' lists of commitments provided for in paragraph 3.
5. The Joint Committee may amend the liberalisation calendar and the list of commitments established in accordance with paragraph 3, with a view to removing or adding exceptions.

## ARTICLE 25

### *Right to regulate*

1. Each Party may regulate, and introduce new regulations, on the supply of services within its territory in order to meet national policy objectives, in so far as regulations do not impair on any rights and obligations arising under this Agreement.
2. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

ARTICLE 26

*Mutual recognition*

1. In principle no later than three years following the entry into force of this Agreement, the Joint Committee shall establish the necessary steps for the negotiation of agreements providing for the mutual recognition of requirements, qualifications, licenses and other regulations, for the purpose of the fulfilment, in whole or in part, by service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of service suppliers and, in particular, professional services.

2. Any such agreement shall be in conformity with the relevant provisions of the WTO and, in particular, Article VII of the GATS.

SECTION II - MARITIME TRANSPORT

ARTICLE 27

*International maritime transport*

1. This Section applies to international maritime transport, including door-to-door and intermodal transport operations involving a sea-leg.

2. The definitions contained in Article 20 apply to this Section.<sup>5</sup>

3. In view of the existing levels of liberalisation between the Parties in international maritime transport:

(a) the Parties shall continue to effectively apply the principle of unrestricted access to the international maritime market and traffic on a commercial and non-discriminatory basis;

(b) each Party shall continue to grant to ships operated by service suppliers of another Party treatment no less favourable than that accorded to its own ships with regard to, inter alia, access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

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<sup>5</sup> Notwithstanding Article 20, shipping companies established outside the EFTA States or Mexico and controlled by nationals of an EFTA State or Mexico, respectively, shall also be beneficiaries of the provisions of this Chapter, if their vessels are registered in accordance with their respective legislation, in that EFTA State or in Mexico and carry the flag of an EFTA State or Mexico.

4. Each Party shall permit to service suppliers of another Party to have a commercial presence in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third country, whichever are the better, in conformity with the applicable legislation and regulations in each Party.

5. Paragraph 4 shall become applicable in accordance with the calendar and subject to any reservation stipulated in the Parties' list of commitments provided for in paragraph 3 of Article 24.

### SECTION III - FINANCIAL SERVICES

#### ARTICLE 28

##### *Definitions*

In accordance with the terms of the Annex on Financial Services to the GATS and the GATS Understanding on Commitments in Financial Services, for the purposes of this Section:

*“commercial presence”* means a juridical entity within a Party's territory that supplies financial services and includes wholly or partly owned subsidiaries, joint ventures, partnerships, branches, agencies, representative offices or other organisations through franchising operations.

*“financial service”* means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:

- A. Insurance and insurance-related services:
  - 1. direct insurance (including co-insurance):
    - (a) life;
    - (b) non-life;
  - 2. reinsurance and retrocession;
  - 3. insurance inter-mediation, such as brokerage and agency; and
  - 4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

- B. Banking and other financial services (excluding insurance):
1. acceptance of deposits and other repayable funds from the public;
  2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
  3. financial leasing;
  4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
  5. guarantees and commitments;
  6. 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, but not limited to, futures and options;
    - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
    - (e) transferable securities;
    - (f) other negotiable instruments and financial assets, including bullion;
  7. 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;
  8. money broking;
  9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;



11. provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

“*financial service supplier*” means any natural or juridical person of a Party authorised to supply financial services. The term “financial service supplier” does not include a public entity;

“*new financial service*” means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of another Party;

“*public entity*” means:

1. a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

## ARTICLE 29

### *Establishment of financial service suppliers*

1. Each Party shall allow the financial service suppliers of another Party to establish, including through the acquisition of existing enterprises, a commercial presence in its territory.
2. Each Party may require a financial service supplier of another Party to incorporate under its own law or impose terms and conditions on establishment that are consistent with the other provisions of this Section.
3. No Party may adopt new measures as regards to the establishment and operation of financial service suppliers of another Party, which are more discriminatory than those applied on the date of entry into force of this Agreement.

4. No Party shall maintain or adopt the following measures:
- (a) limitations on the number of financial service suppliers whether in the form of numerical quotas, monopolies, exclusive financial service suppliers or the requirements of an economic needs test;
  - (b) limitations on the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic test;
  - (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
  - (d) limitations on the total number of natural persons that may be employed in a particular financial service sector or that a financial service supplier 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 a requirement of an economic needs test; and
  - (e) limitations on the participation of foreign capital in the terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

#### ARTICLE 30

##### *Cross-border provision of financial services*

1. Each party shall allow the cross-border provision of financial services.
2. No Party may adopt new measures as regards the cross-border provision of financial services by financial service suppliers of another Party, which are more discriminatory as compared to those applied on the date of entry into force of this Agreement.
3. Without prejudice to other means of prudential regulation of the cross-border provision of financial services, a Party may require the registration of cross-border financial service suppliers of another Party.
4. Each Party shall permit persons located in its territory to purchase financial services from financial service suppliers of another Party located in the territory of that other Party. This obligation does not require a Party to permit such suppliers to do business or carry on commercial operations, or to solicit, market or advertise their activities in its territory. Each Party may define the meaning of “doing business”, “carry on commercial operations”, “solicit”, “market” and “advertise” for purposes of this obligation.

## ARTICLE 31

### *National treatment*

1. Each Party shall grant to financial service suppliers of the other Parties, including those already established in its territory on the date of entry into force of this Agreement, treatment no less favourable than that it accords to its own like financial service suppliers with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of commercial operations of financial service suppliers in its territory.
2. Where a Party permits the cross-border provision of a financial service it shall accord to the financial service suppliers of the other Party treatment no less favourable than that it accords to its own like financial service suppliers with respect to the provision of such a service.
3. A Party's treatment of financial service suppliers of another Party, whether different or identical to that accorded to its own like financial service suppliers, is consistent with paragraph 1 if the treatment affords equal competitive opportunities.
4. A Party's treatment affords equal competitive opportunities if it does not modify the conditions of competition in favour of its own financial service suppliers as compared to like financial service suppliers of any other Party.
5. Differences in market share, profitability or size do not in themselves establish a denial regarding equal competitive opportunities, but such differences may be used as evidence regarding whether a Party's treatment affords equal competitive opportunities.

## ARTICLE 32

### *Most favoured nation treatment*

1. Each Party shall accord to financial service suppliers of another Party treatment no less favourable than it accords to the like financial service suppliers of another Party or a non-Party.
2. Treatment granted under other agreements concluded by one of the Parties with a third country which have been notified under Article V of the GATS shall be excluded from this provision.
3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall afford adequate opportunity to the other Parties to negotiate the benefits granted therein.
4. The Parties agree to review the exclusion provided for in paragraph 2 with a view to its deletion not later than three years after the entry into force of this Agreement.

## ARTICLE 33

### *Key personnel*

1. No Party may require a financial service supplier of another Party to engage individuals of any particular nationality as senior managerial or other key personnel.
2. No Party may require that more than a simple majority of the board of directors of a financial service supplier of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

## ARTICLE 34

### *Commitments*

1. Nothing in this Section shall be construed to prevent a Party from applying:
  - (a) any existing measure inconsistent with Articles 29 to 33 which is listed in Annex VIII; or
  - (b) an amendment to any discriminatory measure referred to in Annex VIII in subparagraph (a) to the extent that the amendment does not increase the inconsistency of the measure with Article 29 to 33, as it existed immediately before the amendment.
2. The measures listed in Annex VIII as well as in paragraph 2 of Article 29 shall be reviewed by the Sub-Committee on Financial Services established under Article 40, with a view to proposing to the Joint Committee their modification, suspension or elimination.
3. No later than three years following the entry into force of this Agreement, the Joint Committee shall adopt a decision providing for the elimination of substantially all remaining discrimination. That decision shall contain a list of commitments establishing the level of liberalisation which the Parties agree to grant each other.

## ARTICLE 35

### *Right to regulate*

1. Each Party may regulate, and introduce new regulations, on the supply of financial services within their territory in order to meet national policy objectives, in so far as regulations do not impair on any rights and obligations arising under this Agreement.
2. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

## ARTICLE 36

### *Prudential carve-out*

1. Nothing in this Section shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:
  - (a) the protection of investors, depositors, policy-holders, policy-claimants, persons to whom a fiduciary duty is owed by a financial service supplier, or any similar financial market participants; or
  - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial service suppliers; or
  - (c) ensuring the integrity and stability of a Party's financial system.
2. These measures shall not be more burdensome than necessary to achieve their aim, and shall not discriminate against financial service suppliers of another Party in comparison to its own like financial service suppliers.
3. Nothing in this Section shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

## ARTICLE 37

### *Effective and transparent regulation*

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:
  - (a) by means of an official publication; or
  - (b) in other written or electronic form.
2. Each Party's appropriate financial authorities shall make available to interested persons its requirements for completing applications relating to the supply of financial services.
3. On the request of an applicant, the appropriate financial authorities shall inform the applicant of the status of its application. If such authorities require additional information from the applicant, they shall notify the applicant without undue delay.

4. Each Party shall make its best endeavours to ensure that the Basle Committee's "Core Principles for Effective Banking Supervision", the standards and principles of the International Association of Insurance Supervisors and the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation" are implemented and applied in its territory.

#### ARTICLE 38

##### *New financial services*

Each Party shall permit a financial service supplier of another Party to provide any new financial service of a type similar to those services that the Party permits its own financial service suppliers to provide under its domestic law in like circumstances. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

#### ARTICLE 39

##### *Data processing*

1. Each Party shall permit a financial service supplier of another Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.

2. As far as the transfer of personal data is concerned, each Party shall adopt adequate safeguards to the protection of privacy and fundamental rights, and freedom of individuals. To that end, the Parties agree to co-operate in order to improve the level of protection, in accordance with standards adopted by relevant international organisations.

3. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Agreement.

#### ARTICLE 40

##### *Sub-Committee on financial services*

1. A Sub-Committee on Financial Services is hereby established. The Sub-Committee shall comprise representatives of the Parties. The principal representative of each Party shall be an official of the Party's authorities responsible for financial services set out in Annex IX.

2. The functions of the Sub-Committee are set out at Annex X to this Agreement.

ARTICLE 41

*Consultations*

1. A Party may request consultations with another Party regarding any matter arising under this Section. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Sub-Committee on Financial Services at its annual meeting.

2. Consultations under this Article shall include officials of the authorities specified in Annex IX.

3. Nothing in this Article shall be construed to require financial authorities participating in consultations to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

4. Where a competent authority of a Party requires information for supervisory purposes concerning a financial service supplier in another Party's territory, it may approach the competent authorities in the other Party's territory to seek the information.

ARTICLE 42

*Dispute settlement*

Arbitrators appointed in accordance with Chapter VIII for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute, as well as expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

ARTICLE 43

*Specific exceptions*

1. Nothing in Sections I, II and III of this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out on a commercial basis.

2. Nothing in this Section applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. Nothing in this Section shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

## SECTION IV - GENERAL EXCEPTIONS

### ARTICLE 44

#### *Exceptions*

1 The provisions of Sections I, II and III are subject to the exceptions contained in this Article.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in Sections I, II and III shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order and public security;
- (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 Sections I, II and III including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (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;
  - (iii) safety.
- (d) inconsistent with Articles 22 and 32 provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance on double taxation in any other international agreement or arrangement by which a Party is bound, or domestic fiscal legislation;<sup>6</sup>
- (e) aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of the agreements to avoid double taxation or other tax arrangements, or domestic fiscal legislation;

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<sup>6</sup> The provision is without prejudice to rights and obligations arising under any double taxation agreements between the Parties.



- (f) distinguishing, in the application of the relevant provisions of their fiscal legislation, between taxpayers who are not in the same situation, in particular with regard to their place of residence, or with regard to the place where their capital is invested.<sup>7</sup>

3. The provisions of Sections I, II and III shall not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority, except when those activities may be carried out on a commercial basis.

4. Nothing in Sections I, II and III shall prevent a Party from applying its laws, regulations and requirements regarding entry and stay, work, labour conditions, and establishment of natural persons<sup>8</sup> provided that, in so doing, it does not apply them in a manner as to nullify or impair the benefits accruing to another Party under the terms of a specific provision of Sections I, II and III.

## SECTION V - INVESTMENT

### ARTICLE 45

#### *Definitions*

For the purpose of this Section, investment made in accordance with the laws and regulations of the Parties means direct investment, which is defined as investment for the purpose of establishing lasting economic relations with an undertaking such as, in particular, investments which give the possibility of exercising an effective influence on the management thereof.<sup>9</sup>

### ARTICLE 46

#### *Transfers*

1. The EFTA States and Mexico shall with respect to investments in their territories by investors of another Party guarantee the right of free transfer, into and out of their territories, including initial plus any additional capital, returns, payments under contract, royalties and fees, proceeds from the sale or liquidation of all or any part of an investment.

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<sup>7</sup> The provision is without prejudice to rights and obligations arising under any double taxation agreements between the Parties.

<sup>8</sup> In particular, a Party may require that natural persons must possess the necessary academic qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

<sup>9</sup> Direct Investment embraces operations carried out in the country concerned by non-residents and operations abroad by residents by means of: 1) creation or extension of a wholly-owned enterprise, subsidiary or branch, acquisition of full ownership of an existing enterprise; 2) participation in a new or existing enterprise; 3) a loan of five years or longer.

2. Transfers shall be made at the market rate of exchange prevailing on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures:

- (a) taken to protect the rights of creditors in case of bankruptcy, insolvency or other legal actions;
- (b) relating to or ensuring compliance with the laws and regulations:
  - (i) on the issuing, trading and dealing in securities, futures and derivatives,
  - (ii) concerning reports or records of transfers, or
- (c) in connection with criminal offences and orders or judgements in administrative and adjudicatory proceedings.

#### ARTICLE 47

##### *Investment promotion between the Parties*

The EFTA States and Mexico shall aim to promote an attractive and stable environment for reciprocal investment. Such promotion should take the form, in particular, of:

- (a) mechanisms for information about and identification and dissemination of investment legislation and opportunities;
- (b) development of a legal framework favourable to investment on both sides, particularly through the conclusion by the EFTA States and Mexico of bilateral agreements promoting and protecting investment and preventing double taxation;
- (c) development of uniform and simplified administrative procedures; and
- (d) development of mechanisms for joint investments, in particular with the small and medium enterprises of both Parties.

#### ARTICLE 48

##### *International commitments on investment*

1. The EFTA States and Mexico recall their international commitments with regard to investment, and especially, where applicable, the OECD Codes of Liberalisation and OECD National Treatment Instrument.

2. The provisions of this Agreement shall be without prejudice to the rights and obligations under any bilateral investment treaty concluded by the Parties to this Agreement.

#### ARTICLE 49

##### *Review clause*

With the objective of progressively liberalising investment, the EFTA States and Mexico affirm their commitment to review, not later than three years after the entry into force of this Agreement, the investment legal framework, the investment climate and the flow of investment between their territories, consistent with their commitments in international investment agreements.

### SECTION VI - BALANCE OF PAYMENTS DIFFICULTIES

#### ARTICLE 50

##### *Balance of payments difficulties*

1. Where an EFTA State or Mexico is in serious balance of payments difficulties, or under imminent threat thereof, the EFTA State concerned, or Mexico, as the case may be, may adopt restrictive measures with regard to transfers and payments relating to services and investment. Such measures shall be equitable, non-discriminatory, in good faith, of limited duration and may not go beyond what is necessary to remedy the balance of payments situation.

2. The EFTA State concerned, or Mexico, as the case may be, shall inform the other Party forthwith and present, as soon as possible, a timetable for their removal. Such measures shall be taken in accordance with other international obligations of the Party concerned, including those under the WTO Agreement and the Articles of the Agreement of the International Monetary Fund.