

**WTO STRUCTURED DISCUSSIONS ON INVESTMENT FACILITATION FOR DEVELOPMENT**

CONSOLIDATED DOCUMENT BY THE COORDINATOR

"EASTER TEXT"

*Revision*

1. This revised version concerns the updates made to the 'Consolidated Document' ('Easter Text') circulated to all Members on 12 April 2021,<sup>1</sup> based on the discussions held by participating Members during the open-ended meetings held after that date.<sup>2</sup> The 'Easter Text' and this first revision have been prepared under the responsibility of the Coordinator with the aim of facilitating negotiations among participating Members towards an Agreement on Investment Facilitation for Development. They are based on the text proposals and contributions submitted by Members to date, as well as text contributions by small/discussion groups, that have been discussed at plenary meetings.
2. This revised document updates Sections II on 'Transparency of investment measures' (provisions 5, 6, 7, 9 and 10); III on 'Streamlining and speeding up administrative procedures' (provisions 13, 14, 15 and 20); IV on 'Focal points, domestic regulatory coherence and cross-border cooperation' (provisions 21, 22 and 23); and, VI on 'Sustainable investment' (provision 30<sup>3</sup>). In addition, this document includes, in 'plain text', a definition of 'measure' in Section I on 'Scope and general principles' (provision 2 *BIS*).<sup>4</sup> Square brackets have been used in the document to indicate alternative formulations within a provision, when needed.
3. This revision of the 'Easter Text' does not change the 'text boxes', except for those provisions that have been moved to 'plain text' as mentioned above and for the addition, in the respective box, of new text proposals and contributions submitted by Members, including small/discussions groups, after the circulation of the 'Easter Text'.<sup>5</sup> In addition, placeholders have been inserted in lieu of those elements contained in proposals which may be addressed in a 'Future Work Programme' to be decided.<sup>6</sup>

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<sup>1</sup> Pursuant to the work plan endorsed by participating Members for the negotiations over the period January - July 2021.

<sup>2</sup> Open-ended meetings of the Structured Discussions were held on 19 and 23 April 2021; 30 April 2021; 11-12 May 2021; 31 May and 1 June 2021; 15-16 June 2021; 2 July 2021; and, 12-13 July 2021.

<sup>3</sup> As a result of this update, a footnote was added to provision 32.6 in Section VII on 'Institutional Arrangements and final provisions' (provision 32 on 'WTO Committee on Investment Facilitation').

<sup>4</sup> The definition of 'measure' in Section I (provision 2 *BIS*) is based on the text contribution submitted by the 'Discussion Group on Scope', circulated to all Members on 9 July 2021 and discussed at the plenary meeting held on 12-13 July 2021.

<sup>5</sup> That is the proposal by the European Union (EU) on a Most-Favoured Nation (MFN) Treatment provision (INF/IFD/RD/75); the proposal by Japan on transfers and payments (INF/IFD/RD/76); the joint proposal by the EU and Switzerland on measures against corruption (INF/IFD/RD/78); the proposal by Cambodia on measures against corruption (INF/IFD/RD/79); the joint proposals by Dominica and Grenada on home state obligations, special and differential treatment, and technical assistance and capacity building (INF/IFD/RD/80); as well as the text contributions submitted by the 'Discussion Group on Scope', respectively, for the first paragraph on 'Scope' of Section I on 'Scope and General Principles' (which was circulated to all Members on 14 June 2021 and discussed at the plenary meeting held on 15-16 June 2021) and for the definition of 'investment activities' (which was circulated to all Members on 9 July 2021 and discussed at the plenary meeting held on 12-13 July 2021).

<sup>6</sup> Those possible elements are 'Risk management techniques and the Silence is consent principle' and 'Business obstacle alert mechanism', which were included respectively in 'text boxes' in Sections III and IV of the 'Easter Text'. Participating Members discussed on a possible 'Future Work Programme' at the meeting held on 31 May and 1 June 2021.

4. This revision does not change the nature of the 'Easter Text', which is to bring together in one 'single text' the two working documents used for the discussions (namely the 'Revised draft text' and the 'Informal consolidated text') in order for participants to further visualize the contours of the future Agreement. The text that does not appear in boxes highlights areas of common ground among participating Members with the aim of facilitating further convergence among them. Instead, the 'text boxes' aim to help focus participating Members' attention on those issues that require further work in the coming months.

5. This document has been prepared on a without prejudice basis. Text outside the boxes that is not in square brackets does not indicate agreement to, or conclusion of the text. In addition, it is understood that specific provisions may need to be revisited in light of the negotiations on other sections or provisions of the future Agreement.

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## PREAMBLE

Members,

Recognizing the importance of investment in the promotion of sustainable development, economic growth, poverty reduction, job creation, expansion of productive capacity and trade;

[Recognizing the importance of investment in the promotion of sustainable development, economic growth, poverty reduction, job creation, expansion and diversification of productive capacity and trade;

Wishing to establish a multilateral framework of principles and rules on investment facilitation with a view to improving the domestic investment environment and stimulating sustainable investment flows for development;]<sup>BRA</sup>

[Recognizing the role of investment facilitation measures in the promotion of sustainable development, economic growth, technology transfer, poverty reduction, job creation and human development;]<sup>MAR</sup>

Desiring to facilitate the increasing participation of developing countries in investment flows including, *inter alia*, through the strengthening of their domestic investment environment and its efficiency;]<sup>Also BRA</sup>

[Recognizing that investment facilitation will encourage the creation of sustainable and inclusive investments that will contribute to the development of the economies of Members, particularly developing and least developed countries;]<sup>MAR</sup>

[Desiring that the establishment of a multilateral framework of principles and rules on investment facilitation may contribute to enhance cooperation, information sharing, the exchange of best practices, interaction with relevant stakeholders, and dispute prevention;]<sup>BRA</sup>

Recognizing the impact that the regulatory environment may have on trade and investment between the Members, and aiming to provide investors, especially small and medium-sized enterprises, with a transparent and predictable regulatory environment, as well as with efficient procedures;

[Recognizing the impact that the regulatory environment may have on trade and investment between the Members, and aiming to provide investors, especially small and medium-sized enterprises, with a more transparent, efficient, and predictable regulatory environment for facilitating cross-border investment;]<sup>BRA</sup>

Recognizing the right of Members to regulate in the public interest and to introduce new regulations within their territories so as to achieve legitimate public policy objectives;]<sup>Also BRA</sup>

[Convinced that investments in the territory of one of the Members must be made in accordance with the laws and regulations in force in the territory of that Member.]<sup>MAR</sup>

Considering the particular needs of developing and especially least developed country Members and desiring to enhance assistance and support for capacity building in this area;

[Considering the particular needs of developing and especially least developed country Members and affirming the commitment to provide assistance and support for capacity building in this area;]<sup>BRA</sup>

[Considering the particular needs of developing and especially least developed country Members and recognizing the importance of facilitating assistance and support for capacity building which these Members need for formulating and implementing measures necessary for facilitating investment in accordance with this framework;]<sup>JPN</sup>



[Recognizing the differences between the level of development and the size of their economies;]  
MAR

Aiming to increase investment, including investment in and by micro, small and medium enterprises;

[Aiming to increase investment for development, including investment in and by micro, small and medium enterprises;] BRA

Recognizing that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, and reaffirming their commitment to promoting the development of foreign direct investment in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations; Also BRA

[Acknowledging the importance of good corporate governance and corporate social responsibility for sustainable development, and affirming their aim to encourage enterprises to observe and adhere to internationally recognized guidelines and principles in this respect, such as the UN Global Compact] [Recognizing the importance of voluntary corporate social responsibility principles and standards for investors];

[Affirming the importance of good corporate governance and voluntary corporate social responsibility principles and standards for investors for sustainable development;] BRA

Affirming their commitment to prevent and combat corruption in international trade and investment and to promote the principles of transparency and good public governance; Also BRA

[Emphasizing the importance of responsible business conduct, promotion of the principles of transparency and combating corruption;] MAR

[Recognizing that Members may be engaged in different international commitments regarding investment protection and Investor-State Dispute Settlement under Free Trade Agreements or Bilateral Investment Treaties, this framework has been built with the aim to constitute a complete set of rules for investment facilitation measures undertaken by Members, and not to grant market access, rights of establishment nor to create an obligation to grant any treatment to investors or alter existing obligations under IIAs signed by the Members.] MEX

[Reaffirming that this Agreement has been built with the aim to constitute a complete set of rules for investment facilitation measures undertaken by Members. Accordingly, it does not confer, create, or modify existing commitments and obligations under any other IIAs, nor serve as a means to interpret any rules under any other IIAs or as basis of a claim under an investor-state dispute settlement procedure. This Agreement, including the "treatment" provided herein, shall not be interpreted or applied so as to take into account any provisions included in other IIAs.]  
TPKM

Reaffirming the importance of the 2030 Agenda for Sustainable Development of the United Nations; Also BRA

[Confirming the importance of foreign direct investment for economic growth and the achievement of the United Nations 2030 Sustainable Development Goals;] MAR

(...)

Hereby agree as follows:]

## SECTION I: SCOPE AND GENERAL PRINCIPLES

### 1 OBJECTIVES

["Objectives"]

1. Members recognise the importance of foreign direct investment for the sustainable development of their economies and the achievement of the goals defined under the 2030 Agenda for Sustainable Development of the United Nations.

2. The purpose of this Agreement is to create a better investment environment and hereby lay down the necessary arrangements for the facilitation of foreign direct investment for development.]<sup>BRA</sup>

["Objectives"]

1. Members recognise the importance of foreign direct investment for the development of their economies and the achievement of the goals defined under the 2030 Agenda for Sustainable Development of the United Nations.

2. Members affirm their commitment to create a better investment climate between them and hereby lay down the necessary arrangements for the facilitation of foreign direct investment.]<sup>EU</sup>

[Objectives

1. The purpose of this framework is to increase the flow of foreign direct investment between Members through the facilitation and simplification of procedures affecting investment in the territory of each of the Members, and to lay down the necessary arrangements to achieve this objective.

2. The purpose of this framework is also to promote international cooperation with a view to facilitating investment and helping developing and least developed countries to attract foreign investment.

3. The objectives of this framework must be achieved without prejudice to Members' rights to regulate in the public interest.]<sup>MAR</sup>

[Objective

1. The purpose of this Framework is to ensure [the] facilitation of procedures to increase the direct investment flows between the Members through creating a better environment for doing business in the territory of each Member.]<sup>TUR</sup>

## 2 SCOPE

2.1 This Agreement applies to measures adopted or maintained by a Member [affecting/relating to/governing] investment activities from investors of another Member.<sup>7</sup>

[3.1. This framework applies to facilitating measures affecting foreign direct investment post establishment in a Member's territory in accordance with its laws and regulations in force, its economic development policies and its foreign investment regime. Facilitation measures concern the management, conduct, operation, and sale or other disposition of investments.]<sup>MAR</sup>

1.2. This framework shall not apply to:

- a. government procurement;
- b. public concessions and the conditions thereby established, provided that the framework applies to investments made as a result of concessions. In case of inconsistencies between this framework and the terms of the concession, the latter shall prevail; and
- c. market access and right to establish.

[c. market access and right to establish, including a decision by a competent authority of a Member on whether or not to admit and approve a foreign direct investment application.]<sup>BRA</sup>

[c. "market access, including a decision by [a competent authority of a Member] on whether or not to approve or admit a foreign investment application."]<sup>JPN</sup>

[3. Nothing in this Framework shall be construed to confer any rights for market access and establishment.]<sup>TUR</sup>

[1.2 This framework shall not apply to:

- a. government procurement;
- b. public concessions and the conditions thereby established, provided that the framework applies to investment made as a result of concessions. In case of inconsistencies between this framework and the terms of the concession, the latter shall prevail; and
- c. subsidies or grants provided by a Member, including government-supported loans, guarantees, and insurance.]<sup>CHN</sup>

[3.3. This framework shall also not apply to:

- a. government procurement;
- b. Member's subsidies (grants, loans, insurance and guarantees) granted exclusively by that Member to its own investors in national development activities and programmes;
- c. portfolio investment;
- d. taxation measures;
- e. investments made with funds or assets linked to activities of illicit origin.]<sup>MAR</sup>

<sup>7</sup> Text contribution submitted by the 'Discussion Group on Scope', which was circulated to all Members on 14 June 2021 and discussed at the plenary meeting of the Structured Discussions held on 15-16 June 2021.



1.3. This framework shall not cover:

- a. investment protection rules; and,
- b. investor-state dispute settlement.

[3.2. This framework shall not affect the provisions of international investment agreements that Members have concluded or will conclude in the future. Thus, this framework shall not apply to the following:

- a. protection of investors or investments;
- b. treatment of investors or investments; or
- c. any dispute settlement proceeding.]<sup>MAR</sup>

[1.4. For greater certainty, this framework does not create new or modify existing commitments relating to the liberalization of investment, nor does it create new or modify existing rules on the protection of investment or investor-state dispute settlement.]<sup>CHN</sup>

[4. For greater certainty, this agreement does not create new or modify existing commitments relating to the liberalization of investments, nor does it create new or modify existing rules on the protection of international investments or investor-state dispute settlement.]<sup>EU</sup>

2.4. A Member's obligations under this Agreement shall apply to measures adopted or maintained by:

- a. its central, regional or local governments and authorities; and
- b. non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

2.5. In fulfilling its obligations and commitments under this Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

## 2 BIS DEFINITIONS<sup>8</sup>

For purposes of this Agreement:

- a. "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action [, or any other form].

b. "investment activities" means the establishment, acquisition, expansion, operation, management, maintenance, [use,] and sale or other disposal of an investment.<sup>9</sup>

[d. "Investment activities" refers to operation, management, maintenance, use, enjoyment and sale or other disposal of investments.]<sup>MAR</sup>

[...]

<sup>8</sup> Based on the text contribution submitted by the 'Discussion Group on Scope' on the definitions of "measure", which was circulated to all Members on 8 July 2021 and discussed at the plenary meeting of the Structured Discussions held on 12-13 July 2021.

<sup>9</sup> Based on the text contribution submitted by the 'Discussion Group on Scope' on the definition of "investment activities", which was circulated to all Members on 8 July 2021 and discussed at the plenary meeting of the Structured Discussions held on 12-13 July 2021.

[Specific exclusions of specific sectors or activities: TBD]

[4. This Framework is without prejudice to the terms, limitations, conditions and qualifications set out in each Party's Schedule of Specific Commitments and List of MFN Exemptions under the GATS for investment activities in services sectors and the List of Reservations of each Member specified in Annex XX of this Framework for investment activities in non-services sectors.]<sup>TUR</sup>

[Possible working definition[s]:]

[Foreign direct investment (FDI): for the purpose of this framework, ownership of 10 per cent of the ordinary shares or voting stock is considered as the criterion for determining the existence of a direct investment relationship.]

[Investment: for purposes of this framework, the word investment means "FDI" as defined above.]

[Investor: means a natural person or a [juridical person]<sup>10</sup> of a Member, that attempts to make, is making, or has made an FDI in the territory of another Member.]

[Authorization: TBD]

**[foreign public official]** means an individual holding a legislative, executive, administrative or judicial office of a foreign country, at any level of government, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that person's seniority; and an individual exercising a public function for a foreign country, at any level of government, including for a public agency or public enterprise;

**official of a public international organization** means an international civil servant or an individual who is authorised by a public international organisation to act on its behalf; and

**public official** means an individual:

- a. holding a legislative, executive, administrative, or judicial office of a Member, whether appointed or elected, permanent or temporary, paid or unpaid, and irrespective of that person's seniority;
- b. who performs a public function for a Member, including for a public agency or public enterprise, or provides a public service, as defined under that Member's law and as applied in the pertinent area of that Member's law; or
- c. defined as a public official under a Member's law.]<sup>CAN</sup>

["the term "investment" means every kind of asset owned or controlled, directly or indirectly, by an investor, including:

- i. an enterprise and a branch of an enterprise;
- ii. shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
- iii. bonds, debentures, loans and other forms of debt, including rights derived therefrom;
- iv. rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
- v. claims to money and to any performance under contract having a financial value;
- vi. intellectual property rights, including copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;

<sup>10</sup> See as a reference the definition of "juridical person" in Article XXVIII(l) of GATS.

vii. rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations, and permits, including those for the exploration and exploitation of natural resources; and

viii. any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

An investment includes the amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investment."

"the term "investor of a Member" means:

- i. a natural person having the nationality of that Member in accordance with its applicable laws and regulations; or
- ii. an enterprise of that Member,

that seeks to make, is making or has made an investment in the other Member;"

[3.6. Investment facilitation refers to measures taken by a Member to:

- a. make investment related policies transparent, effective and predictable by publishing investment related measures and establishing enquiry points; and
- b. facilitate the day-to-day exercise of investors' activities by simplifying administrative procedures and reducing bureaucratic barriers and delays in order to secure their investments.

3.7 a. "Authorization" means the administrative act by which an authority of a Member approves an investment activity while laying down the conditions for its exercise or its realization that an investor from another Member must meet in order to legally carry out its investment activity in that Member.

b. "Enterprise" refers to any legal person duly constituted or organized under a Member's laws and regulations, for profit, having its registered office, its central administration or principal place of business in the territory of that Member and whether owned or controlled by the State or its nationals, including any corporation, partnership, sole proprietorship, joint venture, organization or enterprise.

c. "Enterprise of a Member" means any corporation more than 50% of whose capital is directly or indirectly owned, exclusively or jointly, by the public bodies of a State.]<sup>MAR</sup>

#### [DEFINITIONS

5. For the purposes of this Framework;

- a. "authorization" means the permission to pursue investment activities, resulting from a procedure an investor must adhere to in order to demonstrate compliance with the necessary requirements;
- b. "applicant" means an investor of a Member who applied for an authorization in the territory of another Member;
- c. "enterprise" means any juridical person or any other entity duly constituted or organised under the applicable laws and regulations, whether or not for profit, and whether private

or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organisation or company;

- d. "enterprise of a Member" means...
- e. "investment" means an enterprise, a branch of an enterprise or a representative office;
- f. "investor of a Member" means a natural person of a Member or an enterprise of a Member that seeks to make, is making or has made investments in the territory of another Member;
- g. ...
- h. "natural person of a Member" means a natural person who under the law of that Member is a national of that Member.]<sup>TUR</sup>

### 3 RELATION TO INTERNATIONAL INVESTMENT AGREEMENTS

3.1. International Investment Agreements shall not serve as a means to interpret or apply this Agreement.

3.2. This Agreement shall not serve as a means to interpret any provision of an International Investment Agreement of a Member, and shall not be used as the basis for a claim or in any way by a claimant under the procedures for the resolution of investment disputes between investors and states provided for in an International Investment Agreement of a Member.<sup>11</sup>

### 4 MOST-FAVoured NATION TREATMENT

2.1 With respect to any measure covered by this framework, each Member shall accord immediately and unconditionally to investments and investors of any other Member treatment no less favourable than that it accords to like investments and investors of any other country.

[2.1 Each [Member] [Party] shall accord immediately and unconditionally to investors of another [Member] [Party] and their investments treatment no less favourable than that it accords, in like situations, to investors of any other country and their investments, with respect to the application of provisions set out in this agreement in its territory.]<sup>EU</sup>

[3.8. With respect to any measure covered by this framework, each Member shall accord to investments and investors of any other Member treatment no less favourable than that it accords to like investments and investors of any other Member country.]<sup>MAR</sup>

2.2 The provisions of this framework shall not be so construed as to prevent any Member from conferring or according advantages to investors of any other Member and their investments in the context of a free trade area, a customs union, a common market or an economic union.

[2.2 The provisions of this framework shall not be construed so as to prevent any Member from conferring or according advantages to investors of any other Member and their investments in the context of a free trade area, a customs union, a common market or other forms of economic integration.]<sup>BRA</sup>

[2.2 Paragraph 2.1 shall not be construed as obliging a [Member] [Party] to extend to investors of another [Member] [Party] or their investments the benefit of any treatment resulting from:

- (a) measures providing for recognition, including the recognition of the standards or criteria for the authorisation, licencing, or certification of a natural person or

<sup>11</sup> For greater certainty, provisions included in this Agreement do not in themselves constitute "treatment" within the meaning of relevant provisions of International Investment Agreements.



enterprise to carry out an economic activity, or the recognition of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.

- (b) any bilateral, regional or multilateral agreement which includes commitments to abolish substantially all barriers to investment among the parties or requires the approximation of legislation of the parties in one or more economic sectors.

2.3 For greater certainty, provisions included in other international agreements concluded by a Member do not in themselves constitute "treatment" as referred to in paragraph 1 and thus cannot be taken into account when assessing a breach of this Agreement.]<sup>EU</sup>

[3.9. The provisions of this framework shall not be construed to prevent a Member from conferring or according advantages to investors of any other Member and their investments under a bilateral investment facilitation agreement, a free trade area, a customs union, a common market, an economic union or an economic and monetary union.]<sup>MAR</sup>

[The provisions of this framework shall not be construed so as to prevent any Member from conferring or according advantages to investors of any other Member and their investments in the context of an investment agreement, whether it is a separate agreement or included as an investment chapter in a free trade area or a customs union provided under GATT Article XXIV or the Enabling Clause, or an economic integration under GATS Article V.]<sup>TPKM</sup>

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**SECTION II: TRANSPARENCY OF INVESTMENT MEASURES****5 PUBLICATION AND AVAILABILITY OF MEASURES AND INFORMATION**

5.1. Each Member shall promptly publish<sup>12</sup> or otherwise make publicly available and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures<sup>13</sup> of general application [with respect to matters falling within the scope of this Agreement] in such a manner as to enable investors, other interested persons and other Members to become acquainted with them. Each Member shall publish, at the latest by the time of their entry into force, international agreements affecting investment to which it is a signatory party.

5.2. Each Member shall, to the extent practicable, endeavour to allow reasonable time between publication of the text of a law or regulation referred to in paragraph 5.1 and the date on which investors must comply with the law or regulation.

5.3. In publishing a new law or regulation referred to in paragraph 5.1, or changes thereto, or in advance of such publication, to the extent practicable and in a manner consistent with its legal system for adopting measures, a Member shall endeavour to explain the purpose and rationale of the law or regulation.

5.4. Each Member shall make available via electronic means information of importance to investors, and keep the information updated, as appropriate. Such information includes:

- a. laws and regulations specifically addressing foreign direct investment, where they exist;
- b. information on which sectors are open, restricted or prohibited to foreign direct investment;
- c. where practicable, information on the practical steps relevant to invest in its territory. This information should cover, *inter alia*, the requirements and procedures, where they exist, related to:
  - i. company establishment and business registration;
  - ii. connecting to essential infrastructure;
  - iii. acquisition and registering of property;
  - iv. construction permits;
  - v. capital transfers and payments;
  - vi. the payment of taxes;
  - vii. public incentives available to investors; and
  - viii. resolving insolvency;
- d. contact information of relevant competent authorities.

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<sup>12</sup> For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website.

<sup>13</sup> For purposes of paragraph 5.1 of this Agreement, the term "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.

## **6 INFORMATION TO BE MADE PUBLICLY AVAILABLE IF AN AUTHORIZATION IS REQUIRED FOR AN INVESTMENT**

6.1. If a Member requires authorization for an investment in its territory, the Member shall promptly publish or otherwise make publicly available in writing, to the extent practicable via electronic means, and keep updated, the information necessary to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. Such information shall include, *inter alia*, where it exists:

- a. the requirements including the relevant technical regulations and standards applicable to the respective investment;
- b. the relevant forms;
- c. procedures;
- d. indicative timeframes for processing of an application;
- e. authorization fees;
- f. opportunities for public involvement, such as through hearings or comments;
- g. procedures for appeal or review of decisions concerning applications;
- h. procedures for monitoring or enforcing compliance with the terms and conditions of authorizations; and
- i. contact information of the relevant competent authorities.

6.2. To the extent practicable, the information in paragraph 6.1 should be made available in one of the official languages of the WTO.

## **7 SINGLE INFORMATION PORTAL**

7.1. To the extent practicable, each Member is encouraged to make available measures and information referred to in paragraphs 5.1, 5.4 and 6.1 through a single information portal, which includes making available the relevant web links to electronic publications.

7.2. Members shall endeavour to ensure that the single information portal is kept updated.

7.3. Each Member should include in the single information portal the contact information of the focal points or appropriate mechanisms referred to in paragraph 21.1.

7.4. Each Member is encouraged to publish on the single information portal the measures and information referred to in paragraphs 5.4 and 6.1 in one of the official languages of the WTO.

## **8 NO FEES IMPOSED FOR ACCESS TO INFORMATION**

8.1. No fee shall be imposed on any investor or person seeking to invest in a Member's territory for access to the measures or information provided under this section.

## **9 PUBLICATION IN ADVANCE AND OPPORTUNITY TO COMMENT ON PROPOSED MEASURES**

9.1. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member<sup>14</sup> shall publish in advance:

- a. its laws and regulations of general application, or changes thereto, it proposes to adopt in relation to matters falling within the scope of this Agreement; or
- b. documents that provide sufficient details about such a possible new law or regulation to allow investors, other interested persons and other Members to assess whether and how their interests might be significantly affected.

9.2. To the extent practicable and in a manner consistent with its legal system for adopting measures each Member is encouraged to apply paragraph 9.1 to procedures and administrative rulings of general application it proposes to adopt in relation to matters falling within the scope of this Agreement.

9.3. To the extent practicable and in a manner consistent with its legal system for adopting measures each Member shall provide investors, other interested persons and other Members a reasonable opportunity to comment on such proposed measures or documents published under paragraph 9.1 or 9.2 and shall consider the comments received.<sup>15</sup>

## **10 NOTIFICATION TO THE WTO**

10.1. Each Member shall promptly notify the Committee on Investment Facilitation established under paragraph 32.1 of:

- a. the introduction of any new, or any significant changes to existing, laws or regulations of general application referred to in paragraph 5.1;
- b. the official place(s) where the measures in paragraphs 5.1 and 6.1 have been published;
- c. the website(s) referred to in paragraphs 5.4, 6.1 and 7.1;
- d. the contact information of the relevant competent authorities referred to in paragraphs 5.4(d) and 6.1(i), and of the focal points or appropriate mechanisms referred to in paragraph 21.1.

## **11 DISCLOSURE OF CONFIDENTIAL INFORMATION**

*[Note: The specific placement of this provision TBD]*

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

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<sup>14</sup> Paragraphs 9.1 to 9.3 recognize that Members have different systems to consult interested persons and other Members on certain measures before their adoption, and that the alternatives set out in paragraph 9.1 reflect different legal systems.

<sup>15</sup> This provision does not place any obligation on the final decision of a Member that adopts or maintains any measure for authorisation for an investment. The submission of comments does not oblige the relevant competent authorities to accept them in whole or in part.



### SECTION III: STREAMLINING AND SPEEDING UP ADMINISTRATIVE PROCEDURES

#### 12 REASONABLE, OBJECTIVE AND IMPARTIAL ADMINISTRATION OF MEASURES

12.1. Each Member shall ensure that all measures of general application within the scope of this Agreement are administered in a reasonable, objective and impartial manner.

#### 13 GENERAL PRINCIPLES FOR AUTHORIZATION PROCEDURES

13.1. Each Member shall ensure that authorization procedures it adopts or maintains do not unduly complicate or delay the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.

13.2. If a Member adopts or maintains measures relating to the authorization for an investment, the Member shall ensure that:

- a. such measures are based on objective and transparent criteria;<sup>16</sup>
- b. the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, where such requirements exist; and
- c. the procedures do not in themselves unjustifiably prevent the fulfilment of requirements.

13.3. The assessment by a Member's relevant competent authorities of an application for authorization shall be made on the basis of criteria set out in a measure in accordance with its legal system.<sup>17</sup>

#### 14 AUTHORIZATION PROCEDURES

14.1. If a Member requires authorization for an investment, it shall ensure that its competent authorities:

##### Application periods

- a. to the extent practicable permit submission of an application at any time throughout the year.<sup>18</sup> If a specific time period exists for applying for an authorization, the Member shall ensure that the competent authorities allow a reasonable period for the submission of an application;

##### Acceptance of authenticated copies<sup>19</sup>

- b. accept copies of documents that are authenticated in accordance with the Member's laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorization process; and
- c. Where a competent authority of a Member already holds the original of a document or authenticated copies as provided for in (b), any other competent authority of that Member

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<sup>16</sup> Such criteria may include, *inter alia*, competence and the ability to [perform an economic activity], including to do so in a manner consistent with a Member's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion. For greater certainty, this provision shall not be construed as creating additional market access rights and obligations of Members.

<sup>17</sup> For greater certainty, the assessment of a single application based upon the assessment-specific criteria referred to in paragraph 13.3, or the conclusion reached by the competent authorities regarding a single application, is not subject to the WTO Dispute Settlement Understanding.

<sup>18</sup> Competent authorities are not required to start considering applications outside of their official working hours and working days.

<sup>19</sup> Also addressed in paragraph 17.1 on "Submission of applications online, use of electronic forms, documents and copies".

shall accept a paper or electronic copy, where applicable, from the authority holding the original or the authenticated copy.

### Processing of applications

- d. to the extent practicable, provide an indicative timeframe for processing of an application;
- e. at the request of the applicant, provide without undue delay information concerning the status of the application;
- f. to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Member's laws and regulations;
- g. if they consider an application complete for processing under the Member's laws and regulations<sup>20</sup>, within a reasonable period of time after the submission of the application, ensure that:
  - i. the processing of the application is completed; and
  - ii. the applicant is informed of the decision concerning the application<sup>21</sup>, to the extent possible in writing;<sup>22</sup>

### Treatment of incomplete applications

- h. if they consider an application incomplete for processing under the Member's laws and regulations, within a reasonable period of time [after the submission of the application], to the extent practicable:
  - i. inform the applicant that the application is incomplete;
  - ii. [either upon their own initiative or] upon request of the applicant, identify the additional information required to complete the application, or otherwise provide guidance on why the application is considered incomplete; and
  - iii. provide the applicant with the opportunity<sup>23</sup> to provide the additional information that is required to complete the application;

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that they so inform the applicant within a reasonable period of time [after the rejection decision]; and

### Rejection of applications

- i. if an application is rejected, to the extent practicable, either upon their own initiative or upon request of the applicant, inform the applicant [in writing] of the reasons for rejection and, if applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application<sup>24</sup> solely on the basis of a previously rejected application.

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<sup>20</sup> Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".

<sup>21</sup> Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application.

<sup>22</sup> "In writing" may include in electronic form.

<sup>23</sup> Such opportunity does not require a competent authority to provide extensions of deadlines.

<sup>24</sup> Competent authorities may require that the content of such an application has been revised.

14.2. The competent authorities of a Member shall ensure that authorization, once granted, enters into effect without undue delay, subject to applicable terms and conditions.<sup>25</sup>

#### **[Risk Management Techniques and 'Silence is consent' Principle]**

*Note: These two elements (included in text proposals by a Member) may be included in a 'Future Work Programme' to be decided.*

### **15 MULTIPLE APPLICATIONS**

15.1. Each Member shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorization. If an investment is within the jurisdiction of multiple competent authorities, multiple applications for authorization may be required. In such cases, to the extent practicable and in accordance with its legal system, each Member is encouraged to utilize a single-entry point for the applications. [Members may use the single information portal referred to in paragraph 7.1 under Section II for that purpose.]

### **16 AUTHORIZATION FEES**

16.1. Each Member shall ensure that the authorization fees<sup>26</sup> charged by its competent authorities, where they exist, are reasonable, transparent, based on authority set out in a measure, and do not in themselves restrict the [establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory].

16.2. Each Member shall accord an adequate time period between the publication of new or amended authorization fees and their entry into force, except in urgent circumstances. Such fees shall not be applied until information on them has been published.

#### **16 BIS AUTHORIZATION FEES – FINANCIAL SERVICES**

16.3. Each Member shall ensure that its competent authorities, with respect to authorization fees they charge regarding financial services, provide an applicant with a schedule of fees or information on how fee amounts are determined. Members shall not use such fees as a means of avoiding the Member's commitments or obligations under this Agreement.

### **17 USE OF ICT/E-GOVERNMENT<sup>27</sup>**

#### **Submission of applications online, use of electronic forms, documents and copies**

17.1. If a Member requires authorization for an investment, its competent authorities, taking into account their competing priorities and resource constraints, shall endeavour to accept electronic submission of applications, including in electronic format.<sup>28</sup>

#### **Online payment of authorization fees**

17.2. Each Member shall, to the extent practicable, allow the electronic payment of authorization fees collected by relevant competent authorities.

### **18 INDEPENDENCE OF COMPETENT AUTHORITIES**

18.1. If a Member adopts or maintains a measure relating to the authorization for an investment, the Member shall ensure that the competent authority reaches and administers its decisions in a

<sup>25</sup> Competent authorities are not responsible for delays due to reasons outside their competence.

<sup>26</sup> Authorization fees do not include fees for the use of natural resources, royalties, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

<sup>27</sup> Including electronic submission of applications, documents and copies, and use of electronic forms.

<sup>28</sup> This provision applies also to the acceptance of copies in lieu of original documents.

manner independent from any enterprise carrying out the economic activity for which authorization is required.<sup>29</sup>

## **19 APPEAL OR REVIEW**

19.1. Each Member shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting investment. Such tribunals [or procedures] shall be impartial and independent of the authority entrusted with the administrative decision concerned and they shall not have any substantial interest in the outcome of the matter. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.

19.2. The provisions of paragraph 19.1 shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

19.3. Each Member shall ensure that the parties in paragraph 19.1 are provided with the right to:

- a. a reasonable opportunity to support or defend their respective positions and submit all relevant information [; and
- b. decision based on the evidence and submissions of record or, where required by its law, the record compiled by the administrative authority].

19.4. The decision in paragraph 19.3 shall, subject to appeal or further review as provided for in each Member's law, be implemented by the authority entrusted with administrative enforcement.

## **20 PERIODIC REVIEW**

20.1. Each Member is encouraged to review, at intervals it deems appropriate, its [measures of general application within the scope of this Agreement] to determine whether any of such measures it has implemented should be modified, streamlined, expanded or repealed so as to make the Member's investment facilitation regime more effective in achieving its policy objectives and in addressing the specific needs of micro, small and medium enterprises (MSMEs).

20.2. Each Member is encouraged to periodically review its authorization fees with a view to reducing their number and diversity.

20.3. Members are encouraged to consider stakeholder feedback and make use of relevant international performance indicators such as the World Bank's ease of doing business index. Members are invited to share with the Committee on Investment Facilitation established under paragraph 32.1 their experiences in carrying out periodic reviews and policy recommendations resulting thereof.

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<sup>29</sup> For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.



**[SECTION III BIS: FACILITATION OF THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES]<sup>30</sup>**

1.1 This Section applies to measures affecting the entry and temporary stay of business persons of a Member engaging or seeking to engage in the conduct of investment activities in another Member.

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

1.3 Nothing in this Section shall prevent a Member from applying measures to regulate the entry of business persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of business 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 Member under this Agreement.<sup>31</sup>

1.4 Members recognize the importance of temporary movement of business persons to facilitate investment activities and ensure that all measures of general application covered by this Section are administered in a reasonable, objective and impartial manner.

1.5 Each Member shall promptly publish, online where possible, information on requirements for entry and temporary stay under this Section, including explanatory materials, relevant forms and documents, that will enable interested persons of the other Members to become acquainted with those requirements.

1.6 The information referred to in paragraph 1.5 shall include, where applicable, the following information, *inter alia*:

- a. categories of visas and work permits or any similar type of authorization regarding entry and temporary stay;
- b. documentation and evidence required and conditions to be met;
- c. method of filing and options on where to file, such as consular offices or online;
- d. processing time;
- e. application fees;
- f. period of validity of the visas and work permits;
- g. conditions for extensions or renewal;
- h. reference to relevant immigration laws of general application;
- i. review and/or appeal procedures, where these exist; and
- j. [respective requirements referred to in paragraph 1.17 of this Section.]<sup>TUR</sup>

1.7 Members shall, in accordance with their domestic laws and regulations, ensure documents required for applications for the granting of entry and temporary stay to be relevant and commensurate with the purpose for which they are collected.

1.8 Each Member shall expeditiously process completed applications concerning entry and temporary stay under this Section, including extension application thereof.

1.9 At the request of an applicant, the Member that has received a completed application shall inform the applicant of the status of the application. This information shall normally be provided free of charge.

<sup>30</sup> Joint proposal by China and Turkey (INF/IFD/RD/65), which replaces the previous proposals on this element submitted by each Member, respectively, in documents (INF/IFD/RD/48) and (INF/IFD/RD/49).

<sup>31</sup> The sole fact of requiring a visa for business persons shall not be regarded as nullifying or impairing benefits under the terms of this Agreement.

1.10 In case of an incomplete application, Members shall inform the applicant of the information required to complete the application and provide opportunity to the applicant to correct deficiencies within a reasonable period of time.

1.11 If a Member requires additional information from an applicant in order to process the application for temporary stay, the authority shall promptly notify the applicant without undue delay and provide the applicant with the opportunity to supply that additional information within a reasonable period of time.

1.12 After a decision has been taken, the Member concerned shall promptly notify the applicant of the outcome of its application.

1.13 If an application is approved, the notification shall include, if applicable, the period of stay and any other terms and conditions.

1.14 Applicants shall be given an opportunity to apply for renewal or extension of authorisation for temporary stay. Each Member shall ensure that the procedures for application for the renewal or extension of authorisation for temporary stay are pre-established and clearly specified.

1.15 Each Member shall ensure application fees in respect of entry and temporary stay under this Section are reasonable, or in the principle of reciprocity.

1.16 Members shall endeavour to accept and process applications in electronic format.

1.17 [When a Member decides to grant entry and temporary stay to a business person of another Member, and when the respective requirements are fulfilled, the granting Member shall issue multiple entry visas in case the applicant requests that type of visa.]<sup>TUR</sup>

1.18 For the purpose of this Section, **business person** of a Member means:

- a. a natural person who has the nationality of a Member; or
- b. a permanent resident of a Member that, prior to the date of entry into force of this Agreement, has made a notification consistent with Article XXVIII(k)(ii)(2) of GATS that that Member accords substantially the same treatment to its permanent residents as it does to its nationals,

[who is in a supervisory or executive capacity at a senior level, or involves essential skills, and is responsible for setting up, developing or administering an investment for which a substantial amount of capital has been or will be invested.

Central, regional or local governments and authorities of a Member are encouraged to formulate specific eligibility criteria for business persons for investment purposes. Such criteria shall, to the extent possible, include business persons for investment purposes and their spouses and children.]<sup>CHN</sup>

[who is an employee of an investor of a Member transferred temporarily<sup>32</sup> to an investment in another Member or representative of an investment of a Member who enters the territory of another Member temporarily for the purpose of setting up an investment. Subject to each Member's legislation, the categories of business persons may include short-term business visitors, managers, executives, specialists and other employees of the investor.]<sup>TUR</sup> <sup>CHN, TUR</sup>

<sup>32</sup> "Temporarily" means "for a limited time" which is defined in accordance with the domestic legislation of the host Member.

**[SECTION III *BIS* ON FACILITATION OF MOVEMENT OF BUSINESS PERSONS FOR INVESTMENT PURPOSES]<sup>33</sup>**

- 6.1. This Section applies to measures affecting the entry and temporary stay of business persons of a Member engaging in the conduct of investment activities in another Member.
- 6.2. This Section shall not apply to measures affecting business persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent or temporary basis.
- 6.3. Nothing in this Section shall prevent a Member from applying measures to regulate the entry of business persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of business persons across its borders, provided that such measures are in the public interest and non discriminatory.
- 6.4. Each Member shall provide the necessary facilities and permissions for entry, exit, stay and work of natural persons of another Member who have a permanent or temporary relationship with the investment, such as administrators, experts and technicians, in accordance with the legislation in force in the Member country.
- 6.5. Members shall make available to business persons online information on the requirements and procedures for entry and temporary stay, including relevant forms and documents, and explanatory materials that will enable them to become acquainted with applicable requirements and procedures.
- 6.6. In case of an incomplete application, the Member shall inform the applicant without undue delay of the information required to complete the application.
- 6.7. Each Member shall process within a reasonable period of time complete applications for the grant of entry and temporary stay submitted by business persons of other Members covered by this Section and shall notify the applicant of the outcome of their applications, including the period of stay and any other terms and conditions.

<sup>33</sup> This revised proposal by Morocco (INF/IFD/RD/71) replaces the previous proposal contained in document INF/IFD/RD/64.

**[SECTION III TER: TRANSFERS AND PAYMENTS]<sup>34</sup>**

[Each Member shall ensure that the measures relating to transfers and payments, including when such a transfer and payment is made by a Member or its designated agency under an indemnity, guarantee or insurance contract pertaining to an investment, are based on objective and transparent criteria.]<sup>JPN</sup>

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<sup>34</sup> This revised proposal by Japan (INF/IFD/RD/76) replaces the previous proposal contained in document INF/IFD/RD/47.



## SECTION IV: FOCAL POINTS, DOMESTIC REGULATORY COHERENCE AND CROSS-BORDER COOPERATION

### 21 FOCAL POINTS

21.1. Each Member shall establish or maintain one or more focal points or appropriate mechanisms to:

- a. respond to enquiries from investors or persons seeking to invest<sup>35</sup> regarding the measures covered by this Agreement;<sup>36</sup> and,
- b. assist investors or persons seeking to invest in obtaining relevant information [on matters falling within the scope of this Agreement/measures covered by this Agreement] from competent authorities.

21.2. Members are encouraged not to require the payment of a fee for answering enquiries or assisting investors in obtaining relevant information.

21.3. Members may assign additional functions to the focal points or appropriate mechanisms established under paragraph 21.1 [such as to seek to resolve problems of investors or persons seeking to invest that may arise regarding measures covered by this Agreement or recommend measures to improve the investment environment.]

#### [Business Obstacle Alert Mechanism]

*Note: This element (included in a text proposal by a Member) may be included in a 'Future Work Programme' to be decided.*

### 22 DOMESTIC REGULATORY COHERENCE

22.1. When preparing major regulatory measures within the scope of this Agreement, each Member is encouraged to carry out, in accordance with its respective rules and procedures, an impact assessment<sup>37</sup> of such measures.

22.2. When conducting such impact assessments, the regulatory authority of the Member should offer reasonable opportunities for any interested person, on a non-discriminatory basis, to provide comments and take into consideration the potential impact of the proposed regulation on investors, including micro, small and medium enterprises (MSMEs).

22.3. Each Member should ensure that, in accordance with its legal system, its competent authorities responsible for procedures related to investments cooperate with one another and coordinate their activities in order to facilitate investment.

### 23 DOMESTIC SUPPLIER DATABASES

23.1. Each Member is encouraged to promote the establishment of one, or more, domestic supplier database(s)<sup>38</sup> with the aim of making available to investors and persons seeking to invest information on possible relevant domestic suppliers, including MSMEs.<sup>39</sup>

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<sup>35</sup> The Member shall endeavour to respond to enquiries within a reasonable time-period set by each Member, which may vary depending on the nature or complexity of the request.

<sup>36</sup> Any information provided under this provision shall be without prejudice as to whether the measure is consistent with this Agreement

<sup>37</sup> The impact assessment aims to consider, among others, the social, economic and environmental impact of the intended regulatory measure, as well as appropriate alternatives to a given measure.

<sup>38</sup> For greater certainty, it is up to each Member to decide how to implement such domestic supplier database, including which entity, public or private (e.g. business association), would be in charge of the database.

<sup>39</sup> Such domestic supplier databases are for information purposes only and, therefore, Members shall not be liable in any form whatsoever for the content shared through these databases.

23.2. This database may exhibit, *inter alia*, the following features, where possible:

- a. be searchable by sector or industry, company, product or service, location, certifications, etc.;
- b. be available online;
- c. be available in one of the WTO official languages; and

23.3. Members shall endeavour to ensure that domestic supplier databases are kept updated.

#### **24 CROSS-BORDER CO-OPERATION ON INVESTMENT FACILITATION**

24.1. Members [shall] facilitate communication and cooperation between their respective competent authorities on matters covered by the Agreement. For that purpose, each Member [shall] designate [a contact point] [appropriate mechanisms].

24.2. On request, a Member shall, to the extent practicable, respond to questions from [other Members] [[the contact point] [appropriate mechanisms] of other Members referred to in paragraph 24.1] on any matter covered by the Agreement.

24.3. [When a Member provides confidential information to another Member, in accordance with this provision, the Member shall respect the level of protection of information provided by the submitting Member, according to the Members' laws and regulations on the matter.]

24.4. Areas for cooperation among competent authorities of Members may include:

- a. exchange of information and sharing of experiences regarding the implementation of this Agreement;
- b. [exchange of information with respect to investment opportunities, as well as information on domestic investors];
- c. [collection and compilation of data and statistics relating to investments];
- d. promotion of facilitation agendas with a view to increasing investment for development, including investment in and by micro, small and medium enterprises (MSMEs);
- e. [promote business partnerships and the creation of information networks that foster the development of MSMEs]; and
- f. any other issue covered by the Agreement.

24.5. Members [are encouraged to] [shall] inform the Committee on Investment Facilitation about cooperation activities undertaken under this provision.

**[SECTION IV BIS: HOME STATE OBLIGATIONS]**

- [1. Members recognize the important role of Home States in facilitating outward [foreign direct] investment which contributes to sustainable development.
2. Members are encouraged to adopt or maintain appropriate measures to facilitate outward [foreign direct] investment, including through:
  - a. legal frameworks;
  - b. investment guarantees;
  - c. investment insurance;
  - d. technical assistance;
  - e. investor support services, such as feasibility studies, business missions and matchmaking;
  - f. financial and fiscal measures, such as loans, equity, tax exemptions, tax deferral; and
  - g. the provision of information.
3. Members shall endeavour to publish or otherwise make publicly available, to the extent practicable via electronic means, their facilitation measures for outward [foreign direct] investment.
4. Subject to Article X (Disclosure of Confidential Information), Members shall endeavour to share information on the operations of investors from their territories, including with respect to their history of responsible business conduct and sustainable investing. In this regard, each Member shall endeavour, on request, and in a timely manner, to provide to another Member such information as is requested and available.
5. Members shall share experiences and information in the Committee on Investment Facilitation on policies, strategies and practices to facilitate outward investment for sustainable development.] <sup>DMA, GRD</sup>

## SECTION V: SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING AND LEAST-DEVELOPED COUNTRY MEMBERS

### 25 GENERAL PRINCIPLES

21.1 Members shall bear in mind the special difficulties experienced by developing and least-developed country Members in formulating and implementing measures covered by this framework, and in implementing obligations under this framework.

[13.1. Members shall take into consideration the special difficulties experienced by developing and least developed country Members in formulating and implementing measures covered by this framework, and in implementing obligations under it.] <sup>MAR</sup>

21.2. Assistance and support for capacity building should be provided to help developing and least-developed country Members implement the provisions of this framework, in accordance with their nature and scope.

[13.2. Technical assistance and support for capacity building should be provided to help developing and least developed country Members implement the provisions of this framework, in accordance with their nature and scope.] <sup>MAR</sup>

21.3. The extent and the timing of implementation of the provisions of this framework shall be related to the implementation capacities of developing and least-developed country Members. Where a developing or least-developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired. <sup>Also MAR</sup>

[1. Members shall assist developing and least-developed country Members in undertaking self-assessments to determine the categorization of measures for implementation of the agreement.

2. Developing countries which have self-assessed that they do not require flexibilities to implement the agreement, may opt out of Special and Differential Treatment.] <sup>DMA, GRD</sup>

21.4. Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial, administrative and institutional capabilities.

[13.4. Least developed country Members shall only be required to undertake commitments to the extent consistent with their individual development, financial, administrative and institutional capabilities.] <sup>MAR</sup>

21.5. The Committee on Investment Facilitation shall examine periodically the special and differential treatment, as laid down in this framework, granted to developing and least-developed country Members. <sup>Also MAR</sup>

21.6. The General Principles set out before shall be applied through the provisions set out in [this Section].

[The provisions contained in Sections I through IV and VI of this framework shall be implemented by developing and least-developed country Members in accordance with this Section.] <sup>JPN</sup>

### 26 IMPLEMENTATION

#### [CATEGORIES OF PROVISIONS] <sup>DMA, GRD</sup>

21.1 There are three categories of provisions: <sup>Also DMA, GRD</sup>



- a. Category A contains provisions that a developing country Member or a least-developed country Member designates for implementation upon entry into force of this framework, or in the case of a least-developed country Member within one year after entry into force, as provided in [Article XX].
- [a) Category A contains provisions that a developing or least-developed country Member designates for implementation within 18 months and two years respectively, following entry into force of the Agreement.]<sup>DMA, GRD</sup>
- b. Category B contains provisions that a developing country Member or a least-developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this framework, as provided in [Article XX].
- [b) Category B contains provisions that a developing country Member or a least-developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement.]<sup>DMA, GRD</sup>
- c. Category C contains provisions that a developing country Member or a least-developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this framework and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building, as provided for in [Article XX].
- [c) Category C contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building.]<sup>DMA, GRD</sup>

21.2 Each developing country and least-developed country Member shall self-designate, on an individual basis, the provisions it is including under each of the Categories A, B and C.

[2. Each developing country and least-developed country Member shall self-designate, on an individual basis, the provisions it is including under Category A, Category B and Category C. These self-designations shall be guided by the self-assessment of compliance levels and implementation needs of developing and least-developed country Members.

3. Members shall provide developing and least-developed country Members with support to conduct self-assessments of their compliance levels and implementation needs.]<sup>DMA, GRD</sup>

#### **[NOTIFICATION AND IMPLEMENTATION OF CATEGORY A]**

[1. Within 18 months following entry into force of the Agreement, developing country Members shall notify and implement their Category A commitments. Those commitments designated under Category A will thereby be made an integral part of this Agreement.

2. Within two years following entry into force of the Agreement, a least-developed country Member shall notify and implement their Category A commitments. Each least developed country Member's commitments designated under Category A will thereby be made an integral part of this Agreement.]<sup>DMA, GRD</sup>

#### **27 [NOTIFICATION OF DATES FOR IMPLEMENTATION OF CATEGORIES B AND C]**

**[NOTIFICATION OF DEFINITIVE DATES FOR IMPLEMENTATION OF CATEGORY B AND CATEGORY C]**

1. With respect to the provisions that a developing country Member has not designated in Category A, the Member may further delay implementation in accordance with the process set out in this Article.

**Developing Country Member Category B**

- a) Within 18 months following entry into force of the Agreement, each developing country Member shall notify the Committee of the provisions that it has designated in Category B and their corresponding indicative dates for implementation.<sup>40</sup>
- b) No later than two and half years following entry into force of the Agreement, each developing country Member shall notify the Committee of its definitive dates for implementation of the provisions it has designated in Category B. If a developing country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficient to notify its dates.

**Developing Country Member Category C**

- c) Within 18 months following entry into force of the Agreement, each developing country Member shall notify the Committee of the provisions that it has designated in Category C and their corresponding indicative dates for implementation. For transparency purposes, notifications submitted shall include information on the assistance and support for capacity building that the Member requires in order to implement.<sup>41</sup>
- d) Within two and half years following entry into force of the Agreement, developing country Members and relevant donor Members, taking into account any existing arrangements already in place and information submitted pursuant to subparagraph (c) above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.<sup>42</sup>
- e) The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing or concluded arrangements.
- f) Within 18 months from the date of the provision of the information stipulated in subparagraph (d), donor Members and respective developing country Members shall inform the Committee of the progress in the provision of assistance and support for capacity building. Each developing country Member shall, at the same time, notify its list of definitive dates for implementation.
2. With respect to those provisions that a least-developed country Member has not designated under Category A, least-developed country Members may further delay implementation in accordance with the process set forth in this Article.

**Least-Developed Country Member Category B**

- a) No later than three years following entry into force of this Agreement, a least-developed country Member shall notify the Committee of its Category B provisions and may notify their corresponding indicative dates for implementation of these provisions, taking into account maximum flexibilities for least-developed country Members.

<sup>40</sup> Notifications submitted may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency or entity responsible for implementation.

<sup>41</sup> Members may also include information on national investment facilitation implementation plans or projects, the domestic agency or entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.

<sup>42</sup> Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations.



- b) No later than two years after the notification date stipulated under subparagraph (a) above, each least-developed country Member shall notify the Committee to confirm designations of provisions and notify its definitive dates for implementation. If a least-developed country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficiently to notify its dates.

#### **Least-Developed Country Member Category C**

- c) For transparency purposes and to facilitate arrangements with donors, three years following entry into force of this Agreement, each least-developed country Member shall notify the Committee of the provisions it has designated in Category C, taking into account maximum flexibilities for least-developed country Members.
- d) One year after the date stipulated in subparagraph (c) above, least-developed country Members shall notify information on assistance and support for capacity building that the Member requires in order to implement.
- e) No later than two years after the notification under subparagraph (d) above, least-developed country Members and relevant donor Members, taking into account information submitted pursuant to subparagraph (d) above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C. The participating least-developed country Member shall promptly inform the Committee of such arrangements. The least-developed country Member shall, at the same time, notify indicative dates for implementation of corresponding Category C commitments covered by the assistance and support arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.
- f) No later than 18 months from the date of the provision of the information stipulated in subparagraph (e), relevant donor Members and respective least-developed country Members shall inform the Committee of the progress in the provision of assistance and support for capacity building. Each least-developed country Member shall, at the same time, notify the Committee of its list of definitive dates for implementation.
3. Developing country Members and least-developed country Members experiencing difficulties in submitting definitive dates for implementation within the deadlines set out in paragraphs 1 and 2 because of the lack of donor support or lack of progress in the provision of assistance and support for capacity building should notify the Committee as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee shall, as appropriate, take action to address the difficulties including, where necessary, by extending the deadlines for the Member concerned to notify its definitive dates.
4. Three months before the deadline stipulated in subparagraphs 1(b) or (f), or in the case of a least-developed country Member, subparagraphs 2(b) or (f), the Secretariat shall remind a Member if that Member has not notified a definitive date for implementation of provisions that it has designated in Category B or C. If the Member does not invoke paragraph 3, or in the case of a developing country Member subparagraph 1(b), or in the case of a least-developed country Member subparagraph 2(b), to extend the deadline and still does not notify a definitive date for implementation, the Member shall implement the provisions within one year after the deadline stipulated in subparagraphs 1(b) or (f), or in the case of a least-developed country Member, subparagraphs 2(b) or (f), or extended by paragraph 3.
5. No later than 60 days after the dates for notification of definitive dates for implementation of Category B and Category C provisions in accordance with paragraphs 1, 2, or 3, the Committee shall take note of the annexes containing each Member's definitive dates for implementation of Category B and Category C provisions, including any dates set under paragraph 4, thereby making these annexes an integral part of this Agreement.] <sup>DMA, GRD</sup>

**[EARLY WARNING MECHANISM: EXTENSION OF IMPLEMENTATION DATES FOR PROVISIONS IN CATEGORIES B AND C]**

- [1.
  - a) A developing country Member or least-developed country Member that considers itself to be experiencing difficulty in implementing a provision that it has designated in Category B or Category C by the definitive date shall notify the Committee. Developing country Members shall notify the Committee no later than 120 days before the expiration of the implementation date. Least-developed country Members shall notify the Committee no later than 90 days before such date.
  - b) The notification to the Committee shall indicate the new date by which the developing country Member or least-developed country Member expects to be able to implement the provision concerned. The notification shall also indicate the reasons for the expected delay in implementation. Such reasons may include the need for assistance and support for capacity building not earlier anticipated or additional assistance and support to help build capacity.
2. Where a developing country Member's request for additional time for implementation does not exceed 18 months or a least-developed country Member's request for additional time does not exceed 3 years, the requesting Member is entitled to such additional time without any further action by the Committee.
3. Where a developing country or least-developed country Member considers that it requires a first extension longer than that provided for in paragraph 2 or a second or any subsequent extension, it shall submit to the Committee a request for an extension containing the information described in subparagraph 1(b) no later than 120 days in respect of a developing country Member and 90 days in respect of a least-developed country Member before the expiration of the original definitive implementation date or that date as subsequently extended.
4. The Committee shall give supportive consideration to granting requests for extension taking into account the specific circumstances of the Member submitting the request. These circumstances may include difficulties and delays in obtaining assistance and support for capacity building.] <sup>DMA, GRD</sup>

**[EXPERT GROUP TO SUPPORT IMPLEMENTATION OF CATEGORY B AND CATEGORY C]**

- [1. If a developing country Member or a least-developed country Member, having fulfilled the procedures set forth in paragraphs 1 to 3 of Article [x] above, and where an extension requested has not been granted or where the developing country Member or least-developed country Member otherwise experiences unforeseen circumstances that prevent an extension being granted under Article [x], self-assesses that its capacity to implement a provision under Category C continues to be lacking, that Member shall notify the Committee of its inability to implement the relevant provision.
2. The Committee shall establish an Expert Group immediately, and in any case no later than 60 days after the Committee receives the notification from the relevant developing country Member or least-developed country Member. The Expert Group will examine the issue and make a recommendation to the Committee within 120 days of its composition.
3. The Expert Group shall be composed of five independent persons that are highly qualified in the fields of investment facilitation and assistance and support for capacity building. The composition of the Expert Group shall ensure balance between nationals from developing and developed country Members. Where a least-developed country Member is involved, the Expert Group shall include at least one national from a least-developed country Member. If the Committee cannot agree on the composition of the Expert Group within 20 days of its establishment, the Director-General, in consultation with the chair of the Committee, shall determine the composition of the Expert Group in accordance with the terms of this paragraph.



4. The Expert Group shall consider the Member's self-assessment of lack of capacity and shall make a recommendation to the Committee. When considering the Expert Group's recommendation concerning a least-developed country Member, the Committee shall, as appropriate, take action that will facilitate the acquisition of sustainable implementation capacity.
5. The Member shall not be subject to proceedings under the Dispute Settlement Understanding on this issue from the time the developing country Member notifies the Committee of its inability to implement the relevant provision until the first meeting of the Committee after it receives the recommendation of the Expert Group. At that meeting, the Committee shall consider the recommendation of the Expert Group. For a least-developed country Member, the proceedings under the Dispute Settlement Understanding shall not apply to the respective provision from the date of notification to the Committee of its inability to implement the provision until the Committee makes a decision on the issue, or within 24 months after the date of the first Committee meeting set out above, whichever is earlier.
6. Where a least-developed country Member loses its ability to implement a Category C commitment, it may inform the Committee and follow the procedures set out in this Article.]  
DMA, GRD

#### [SHIFTING BETWEEN CATEGORIES B AND C]

- [1. Developing country Members and least-developed country Members which have notified provisions under Categories B and C, may shift provisions between such categories through the submission of a notification to the Committee. Where a Member proposes to shift a provision from Category B to Category C, the Member shall provide information on the assistance and support required to build capacity.
2. In the event that additional time is required to implement a provision shifted from Category B to Category C, the Member may:
  - a) use the provisions of Article [x]: Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C, including the opportunity for an automatic extension; or
  - b) request an examination by the Committee of the Member's request for extra time to implement the provision and, if necessary, for assistance and support for capacity building, including the possibility of a review and recommendation by the Expert Group under Article [x]: Expert Group to Support Implementation of Category B and Category C; or
  - c) in the case of a least-developed country Member, any new implementation date of more than four years after the original date notified under Category B shall require approval by the Committee. In addition, a least-developed country Member shall continue to have recourse to Article [x]: Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C. It is understood that assistance and support for capacity building is required for a least-developed country Member so shifting.]<sup>DMA, GRD</sup>

#### 28 [GRACE PERIOD FOR THE APPLICATION OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES]

1. For a period of five years after entry into force of this Agreement, the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a developing country Member concerning any provision that the Member has designated in Category A.
2. For a period of six years after entry into force of this Agreement, the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not

- apply to the settlement of disputes against a least-developed country Member concerning any provision that the Member has designated in Category A.
3. For a period of eight years after implementation of a provision under Category B or C by a least-developed country Member, the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against that least-developed country Member concerning that provision.
  4. Notwithstanding the grace period for the application of the Understanding on Rules and Procedures Governing the Settlement of Disputes, before making a request for consultations pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes, and at all stages of dispute settlement procedures with regard to a measure of a least-developed country Member, a Member shall give particular consideration to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under the Understanding on Rules and Procedures Governing the Settlement of Disputes involving least-developed country Members.
  5. Each Member shall, upon request, during the grace period allowed under this Article, provide adequate opportunity to other Members for discussion with respect to any issue relating to the implementation of this Agreement.] <sup>DMA, GRD</sup>

## 29 TECHNICAL ASSISTANCE AND CAPACITY BUILDING

### [TECHNICAL ASSISTANCE AND CAPACITY BUILDING ON INVESTMENT FACILITATION FOR DEVELOPMENT] <sup>BRA</sup>

#### [PROVISION OF ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING] <sup>DMA, GRD</sup>

25.1. Developed country Members, and to the extent possible, developing country Members in a position to do so, agree to provide assistance and support for capacity building to developing country Members and in particular to least-developed country Members, upon request and on mutually agreed terms and conditions. Such activities shall seek to complement and build on existing frameworks or arrangements between the Members concerned.

[25.1 Developed country Members and developing country Members in a position to do so, shall, to the extent possible, provide technical assistance and support for capacity building<sup>43</sup> to developing country Members and in particular to least-developed country Members, upon request and on mutually agreed terms and conditions. Such activities shall seek to complement and build on existing frameworks or arrangements between the Members concerned.] <sup>BRA</sup>

[1. Donor Members agree to facilitate the provision of assistance and support for capacity building to developing country and least-developed country Members on mutually agreed terms either bilaterally or through the appropriate international organizations. The objective is to assist developing country and least-developed country Members to implement the provisions of the relevant sections of this Agreement.] <sup>DMA, GRD</sup>

[25.1.1. Donor Members agree to facilitate the provision of assistance and support for capacity building to developing country and least-developed country Members on mutually agreed terms either bilaterally or through the appropriate international organizations. The objective is to assist developing country and least-developed country Members to implement the provisions of Sections I through IV and VI of this framework.] <sup>JPN</sup>

[13.7. To the extent possible, developed countries and developing country Members agree to provide assistance and support for capacity building to developing countries and, in particular least developed countries, upon request and on mutually agreed terms and conditions. The

<sup>43</sup> The technical assistance and support for capacity building can be provided either bilaterally or multilaterally, through the appropriate international organizations.



objective is to assist developing and least developed country Members to implement the provisions of this framework.

13.8. Members shall endeavour to apply the principles set out in this framework, for the provision of assistance and support for capacity building in relation to the implementation of this framework.]<sup>MAR</sup>

[25.2 Technical assistance shall be aimed at building and strengthening the capacities, including of regional and local governments, needed to fully implement the obligations and commitments covered by this Agreement. Where a developing or least-developed country Member continues to lack the necessary sustainable capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired.

25.3 With a view to strengthening the domestic investment environment and its efficiency, technical assistance should also be aimed at building capacity for the preparation of regulatory feasibility studies for potential investment projects, including environmental and social impact assessments and regulatory and administrative requirements, of developing and least-developed country Members.

25.4 Members shall endeavor to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this framework:

- a. take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;
- b. ensure that ongoing investment facilitation reform activities of the private sector are factored into assistance activities;
- c. promote internal coordination between their investment and development officials, both in capitals and in Geneva, in the implementation of this Agreement and technical assistance;
- d. promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance; and
- e. encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities.]<sup>BRA</sup>

[2. Given the special needs of least-developed country Members, targeted assistance and support shall be provided to the least-developed country Members so as to help them build sustainable capacity to implement their commitments. Through the relevant development cooperation mechanisms and consistent with the principles of technical assistance and support for capacity building as referred to in paragraph 3, development partners shall provide assistance and support for capacity building in this area in a way that does not compromise existing development priorities.

3. Members shall apply the following principles for providing assistance and support for capacity building with regard to the implementation of this Agreement:

- (a) take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;
- (b) include, where relevant and appropriate, activities to address regional and subregional challenges and promote regional and sub-regional integration;
- (c) ensure that ongoing investment facilitation reform activities of the private sector are factored into assistance activities;

- (d) promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end:
  - i. coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors and among bilateral and multilateral donors should aim to avoid overlap and duplication in assistance programs and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions; and
  - ii. Members should also promote internal coordination between their investment, trade and development officials, both in capitals and in Geneva, in the implementation of this Agreement and technical assistance.
- (e) encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities; and
- (f) encourage developing country Members to provide capacity building to other developing and least-developed country Members and consider supporting such activities, where possible.]<sup>DMA, GRD</sup>

[25.1.2. Through the relevant development cooperation mechanisms and consistent with the principles of technical assistance and support for capacity building as referred to in paragraph 25.1.3, development partners shall endeavour to provide assistance and support for capacity building in this area in a way that does not compromise existing development priorities.

25.1.3. Members shall endeavour to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this framework:

- a. take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;
- b. include, where relevant and appropriate, activities to address regional and sub-regional challenges and promote regional and sub-regional integration;
- c. ensure that ongoing investment facilitation reform activities of the private sector are factored into assistance activities;
- d. promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance;
- e. encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities; and
- f. encourage developing country Members to provide capacity building to other developing and least-developed country Members and consider supporting such activities, where possible.]<sup>JPN</sup>

[4. The Committee shall hold at least one dedicated session per year to:

- a) discuss any problems regarding implementation of provisions or sub-parts of provisions of this Agreement;
- b) review progress in the provision of assistance and support for capacity building to support the implementation of the Agreement, including any developing or least



- developed country Members not receiving adequate assistance and support for capacity building;
- c) share experiences and information on ongoing assistance and support for capacity building and implementation programs, including challenges and successes;
  - d) review donor notifications as set forth in Article [x]; and
  - e) review the operation of paragraph 2.
5. Technical assistance shall be aimed at, *inter alia*:
- a) Building expertise in Investment Promotion Agencies (IPAs) or relevant agencies for investment project proposal development and project appraisal, and for the development of pipelines of directly investable projects;
  - b) Developing expertise in IPAs or relevant agencies for the promotion of sustainable development-focused investments;
  - c) Building capacity in IPAs to provide post-investment or aftercare services including for the expansion of existing operations;
  - d) Strengthening capacities to maximize positive impacts of investment;
  - e) Assisting developing and least developed country Members to better understand the requirements of the Agreement;
  - f) Assisting developing and least developed country Members to meet their notification deadlines; and
  - g) Facilitating contact and dialogue between developing and least developed country Members and donors.]<sup>DMA, GRD</sup>

**[INFORMATION ON ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING TO BE SUBMITTED TO THE COMMITTEE]**

25.2. Each Member shall establish and notify to the WTO a contact point on matters relating to the coordination of cooperation on technical assistance and capacity building matters.

25.3. A Member may make a request for cooperation on technical assistance and capacity building matters related to this framework to another Member or Members through the respective contact points.

[25.6 Donor Members assisting developing country Members and least-developed country Members shall establish and submit to the Committee:

a. contact points of their agencies responsible for providing assistance and support for capacity building related to the implementation of this Agreement including, where practicable, information on such contact points within the country or region where the assistance and support is to be provided; and

b. information on the process and mechanisms for requesting assistance and support for capacity building.

25.7 Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

25.8 Members may provide the information referred to in paragraphs 25.6 and 25.7 through internet references and shall update the information as necessary. The Secretariat shall make all such information publicly available.

25.9 To provide transparency to developing country Members and least-developed country Members on the provision of assistance and support for capacity building for implementation of this Agreement, each donor Member assisting developing country Members and least-developed country Members with the implementation of this Agreement shall submit to the Committee, at entry into force of this Agreement and annually thereafter, the following information on its assistance support for capacity building that was disbursed in the preceding 12 months and, where available, that is committed in the next 12 months:<sup>44</sup>

- a. description of the assistance and support for capacity building;
- b. the status and amount committed/disbursed;
- c. procedures for disbursement of the assistance and support;
- d. the beneficiary Member or, where necessary, the region; and
- e. the implementing agency in the Member providing assistance and support.]<sup>BRA</sup>

[1. To provide transparency to developing country Members and least-developed country Members on the provision of assistance and support for capacity building for implementation of Section [X], each donor Member assisting developing country Members and least-developed country Members with the implementation of this Agreement shall submit to the Committee, at entry into force of this Agreement and annually thereafter, the following information on its assistance and support for capacity building that was disbursed in the preceding 12 months and, where available, that is committed in the next 12 months:

- a) a description of the assistance and support for capacity building;
- b) the status and amount committed/disbursed;
- c) procedures for disbursement of the assistance and support;
- d) the beneficiary Member or, where necessary, the region; and
- e) the implementing agency in the Member providing assistance and support.

Developing country Members declaring themselves in a position to provide assistance and support for capacity building are encouraged to provide the information above.

2. Donor Members assisting developing country Members and least-developed country Members shall submit to the Committee:

- a) contact points of their agencies responsible for providing assistance and support for capacity building related to the implementation of Section [X] of this Agreement including, where practicable, information on such contact points within the country or region where the assistance and support is to be provided; and
- b) information on the process and mechanisms for requesting assistance and support for capacity building.

Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

<sup>44</sup> The information provided will reflect the demand driven nature of the provision of assistance and support for capacity building.

3. Developing country Members and least-developed country Members intending to avail themselves of investment facilitation-related assistance and support for capacity building shall submit to the Committee information on contact point(s) of the office(s) responsible for coordinating and prioritizing such assistance and support.
4. Members may provide the information referred to in paragraphs 2 and 3 through internet references and shall update the information as necessary. The Secretariat shall make all such information publicly available.
5. The Committee shall invite relevant international and regional organizations (such as the International Monetary Fund, the OECD, the United Nations Conference on Trade and Development, the United Nations Regional Commissions, the World Bank, or their subsidiary bodies, and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 1, 2, and 4.] <sup>DMA, GRD</sup>

#### **25.1 Cooperation with other international organizations**

25.4. The WTO may collaborate with other international organizations such as [...] to comprehensively study and evaluate the needs for investment facilitation of developing Members, especially the least-developed country Members, and at the request of these Members, provide assistance and support for capacity building programs that are commensurate with their development levels and macro-economic objectives. Such collaboration should aim to enhance coordination in order to maximize the benefits of the framework.

## SECTION VI: SUSTAINABLE INVESTMENT

### 30 RESPONSIBLE BUSINESS CONDUCT

30.1. Each Member shall encourage investors and enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their business practices and internal policies internationally recognized principles, standards and guidelines of responsible business conduct<sup>45</sup> that have been endorsed or are supported by that Member. These principles, standards and guidelines address areas such as labour, environment, gender equality, human rights, community relations and the rights of Indigenous peoples.

30.2. In accordance with its legal system, each Member should encourage investors or enterprises operating within its territory to undertake and maintain meaningful engagement and dialogue, in accordance with international responsible business conduct principles, standards and guidelines that have been endorsed or are supported by that Member, with Indigenous peoples, traditional communities and local communities.

30.3. Each Member recognises the importance of investors and enterprises implementing due diligence in order to identify and address adverse impacts, such as on the environment and labour conditions, in their operations, their supply chains and other business relationships.

30.4. Members agree to exchange information and best practices on issues covered by paragraphs 30.1 and 30.2, including on possible ways to facilitate the uptake by enterprises and investors of responsible business practices and reporting, in the Committee on Investment Facilitation.

### 31 MEASURES AGAINST CORRUPTION

27.1 In accordance with its legal system, each Member shall [adopt or maintain measures] [ensure that measures are taken] to prevent and fight corruption, money laundering and terrorism financing with regard to matters covered by this framework, and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

[In accordance with its laws and regulations, each Member shall ensure that measures are undertaken to prevent and combat corruption with regard to matters covered by this Agreement.<sup>46</sup>]<sup>CAM</sup>

[1. In accordance with its legal system and [in conformity with its obligations under] internationally agreed standards and commitments [that a Member has adhered to or are supported by that Member]<sup>47</sup>, each Member shall ensure that [legislative and other] measures are taken to prevent and fight corruption [and money laundering] with regard to matters covered by this agreement.

2. [Each Member recognises the importance of principles such as accountability, transparency and integrity with regard to the development of its anti-corruption policies, of taking measures affecting investment in a transparent manner and of avoiding conflicts of interest and corrupt practices.]

3. Members agree to exchange information and best practices on issues covered by paragraphs 1 and 2, including with a view to identifying measures or areas of cooperation to

<sup>45</sup> Principles, standards and guidelines of responsible business conduct are those referred to in international instruments such as the United Nations Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises and related due diligence guidance.

<sup>46</sup> In its proposal, Cambodia inserted a note to exclude this provision from Dispute Settlement (INF/IFD/RD/67), which is included in the 'text box' corresponding to provision 35 on 'Dispute Settlement'.

<sup>47</sup> Internationally agreed standards and commitments [may] include the United Nations Convention against Corruption, done at New York on 31 October 2003, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, with its Annex, done at Paris on 21 November 1997, or the Inter-American Convention Against Corruption, done at Caracas on 29 March 1996.



prevent and fight corruption in matters affecting investment, in the Committee on Investment Facilitation.]<sup>CHE, EU 48</sup>

[27.1. Each Member reaffirms the importance of transparent measures regarding investment and of avoiding conflicts of interest and corrupt practices, in accordance with applicable international instruments.

27.2. For the purposes of paragraph 27.1, each Member reaffirms its commitment to adopt or maintain measures, in conformity with its obligations under the United Nations Convention Against Corruption and in accordance with its laws and regulations, to prevent and fight corruption with regard to matters covered by this framework, and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.]<sup>JPN</sup>

[Footnote to be attached to the phrase 'matters covered by this Agreement': For greater certainty, measures which are subject to the exceptions in this framework are merely some obligations being exempted from the obligations of this framework. They are still matters covered by this framework.]<sup>TPKM</sup>

## **[27 Measures against corruption<sup>49</sup>**

### **27.1 Scope**

27.1.1. The scope of this Article is limited to measures to eliminate corruption with respect to any matter covered by this Agreement.

27.1.2. The Members recognise that the description of offences adopted or maintained in accordance with this Article, and of the applicable legal defences or legal principles controlling the lawfulness of conduct, is reserved to each Member's law, and that those offences shall be prosecuted and punished in accordance with each Member's law.

### **27.2 Measures to combat corruption**

27.2.1. In complying with this Agreement, each Member should take into account relevant internationally agreed instruments that have been acceded to by that Member, such as the *United Nations Convention against Corruption*, done at New York on October 31, 2003, the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, with its Annex, done at Paris on November 21, 1997, or the *Inter-American Convention Against Corruption*, done at Caracas on March 29, 1996. Nothing in this Agreement shall affect the rights and obligations of the Members under those instruments.

27.2.2. Each Member shall adopt or maintain legislative and other measures as may be necessary to establish as criminal offences under its law, in matters that affect international investment, when committed intentionally, by any person subject to its jurisdiction:

- a. the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties;
- b. the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties;

<sup>48</sup> This revised proposal by the EU and Switzerland (INF/IFD/RD/78) replaces the previous proposals on this element submitted by each Member, respectively, in documents (INF/IFD/RD/46) and (INF/IFD/RD/72).

<sup>49</sup> This revised proposal by Canada (INF/IFD/RD/67) replaces the previous proposal contained in document INF/IFD/RD/54. The definitions contained in the revised proposal by Canada have been inserted in Section I, under "[Possible working definition[s]:]", while the provision on 'Dispute Settlement' has been included under the relevant provision in Section VII of the 'Informal Consolidated Text'.

- c. the promise, offering or giving to a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage,<sup>50</sup> for the official or another person or entity, in order that the official act or refrain from acting in relation to the performance of or the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business; and
- d. the aiding or abetting, or conspiracy in the commission of any of the offences described in subparagraphs (a) through (c).

27.2.3. Each Member shall make the commission of an offence described in paragraph 27.2.2 or 27.2.6 liable to sanctions that take into account the gravity of that offence.

27.2.4. Each Member shall adopt or maintain measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences described in paragraph 27.2.2 or 27.2.6. In particular, each Member shall ensure that legal persons held liable for offences described in paragraph 27.2.2 or 27.2.6 are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, which include monetary sanctions.

27.2.5. A Member shall not allow a person subject to its jurisdiction to deduct from taxes expenses incurred in connection with the commission of an offence described in paragraph 27.2.2(a), (b), and (c).

27.2.6. In order to prevent corruption, each Member shall adopt or maintain measures as may be necessary, in accordance with its laws and regulations, regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences described in paragraph 27.2.2:

- a. the establishment of off-the-books accounts;
- b. the making of off-the-books or inadequately identified transactions;
- c. the recording of non-existent expenditure;
- d. the entry of liabilities with incorrect identification of their objects;
- e. the use of false documents; and
- f. the intentional destruction of bookkeeping documents earlier than foreseen by the law.

27.2.7. Each Member shall consider adopting or maintaining measures to protect, against any unjustified treatment, any person who, in good faith and on reasonable grounds, reports to the competent authorities any facts concerning offences described in paragraph 27.2.2 or 27.2.6

### **27.3 Promoting Integrity among Public Officials**

27.3.1. To fight corruption in matters that affect investment, each Member should promote, among other things, integrity, honesty and responsibility among its public officials.

27.3.2. Each Member shall endeavour to adopt or maintain codes or standards of conduct, in accordance with the fundamental principles of its legal system, for the correct, honourable and proper performance of public functions, and measures providing for disciplinary or other measures, if warranted, against public officials who violate the codes or standards established in accordance with this paragraph.

<sup>50</sup> For greater certainty, a Member may provide in its law that it is not an offence if the advantage was permitted or required by the written laws or regulations of a foreign public official's country, including case law. The Members confirm that they are not endorsing those written laws or regulations.

27.3.3. Each Member, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence described in paragraph 27.2.2 may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

27.3.4. Each Member shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matters that affect international investment. These measures may include rules with respect to the conduct of members of the judiciary.

#### **27.4 Application and Enforcement of Anticorruption Laws**

27.4.1. In accordance with the fundamental principles of its legal system, a Member shall not fail to effectively enforce its laws or other measures adopted or maintained to comply with paragraph 27.2.2 through a sustained or recurring course of action or inaction, after the date of entry into force of this Agreement for that Member, as an encouragement for investment.<sup>51</sup>

27.4.2. In accordance with the fundamental principles of its legal system, each Member retains the right for its law enforcement, prosecutorial and judicial authorities to exercise their discretion with respect to the enforcement of its anti-corruption laws. Each Member retains the right to take bona fide decisions with regard to the allocation of its resources.

#### **27.5 Participation of Private Sector and Society**

27.5.1. Each Member shall take appropriate measures, within its means and in accordance with fundamental principles of its legal system, to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption in matters affecting international investment, and to raise public awareness regarding the existence, causes and gravity of, and the threat posed by, corruption.

27.5.2. Each Member shall endeavour, in accordance with the fundamental principles of its legal system, to encourage investors, taking into account their structure and size, to:

- a. adopt or maintain sufficient internal auditing controls to assist in preventing and detecting offences described in paragraphs 27.2.2 and 27.2.6 in matters affecting international investment; and
- b. ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

27.5.3. Each Member shall take appropriate measures to ensure that its relevant anti-corruption bodies are known to the public and shall provide access to those bodies, if appropriate, for the reporting, including anonymously, of any facts concerning the offences described in paragraph 27.2.2.]<sup>CAN</sup>

<sup>51</sup> For greater certainty, the Members recognise that individual cases or specific discretionary decisions related to the enforcement of anti-corruption laws are subject to each Member's own domestic laws and legal procedures.



**SECTION VII: INSTITUTIONAL ARRANGEMENTS AND FINAL PROVISIONS****32 WTO COMMITTEE ON INVESTMENT FACILITATION**

32.1. A Committee on Investment Facilitation is hereby established.

32.2. The Committee shall be open for participation by all Members and shall elect its own Chairperson. The Committee shall meet as needed and envisaged by the relevant provisions of this Agreement, but no less than [once] [twice] a year, for the purpose of affording Members the opportunity to consult on any matters related to the implementation and operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The Committee shall establish its own rules of procedure.

32.3. The Committee may establish such subsidiary bodies as may be required. All such bodies shall report to the Committee.

32.4. The Committee shall develop procedures for the sharing by Members of information and experiences on investment facilitation, as well as the identification of best practices, as appropriate.

32.5. The Committee [shall] [may] prepare an annual report on investment facilitation measures undertaken to implement the Agreement [based on information notified by Members or otherwise authorized by them].

32.6. The Committee shall maintain close contact with other international organizations in the field of investment facilitation [such as UNCTAD, UNIDO, World Bank, the OECD and ITC],<sup>52</sup> with the objective of securing the best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:

- a. attend meetings of the Committee;
- b. discuss specific matters related to the implementation of this Agreement [; and
- c. propose cooperation and facilitation agendas].

32.7. [The Committee shall hold at least one dedicated session per year to:

- a. discuss any problems regarding implementation of provisions or sub-parts of provisions of this Agreement.
- b. review progress in the provision of assistance and support for capacity building to support the implementation of the Agreement, including any developing or least developed country Members not receiving adequate assistance and support for capacity building.
- c. share experiences and information on ongoing assistance and support for capacity building and implementation programs, including challenges and successes; and
- d. review donor notifications as set forth in Article [X] and [X].]

32.8. The Committee shall review the operation and implementation of this Agreement [four] [five] years from its entry into force, and periodically thereafter. [Recommendations arising from the review shall be presented to the General Council.] [The Committee shall report to the General Council periodically.]

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<sup>52</sup> [This provision includes maintaining close contact with relevant international organizations in the field of responsible business conduct.]



32.9. Members are encouraged to raise before the Committee questions relating to issues on the implementation and application of this Agreement.

32.10. The Committee shall encourage and facilitate ad hoc discussions among Members on specific issues under this Agreement with a view to reaching a mutually satisfactory solution promptly.

32.11. [The Committee shall explore and discuss the possibility of establishing an Investment Facilitation Facility to manage the contributions that Members may voluntarily provide to the WTO, [with the aim of assisting] [in furtherance of supplementary assistance to] developing Members, and especially the least-developed country Members, to implement the provisions of this Agreement.]

### 33 GENERAL AND SECURITY EXCEPTIONS

33.1. GATS Article XIV, GATS Article XIV bis, paragraph 1 (a), (b) and (c), 1994 GATT Article XX and 1994 GATT Article XXI<sup>53</sup> shall apply mutatis mutandis to the provisions of this Agreement.

### 34 FINANCIAL EXCEPTIONS

34.1. Nothing in this Agreement shall be construed to prevent any Member from adopting or maintaining measures for prudential reasons, including for:

- a. the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier; or to
- b. ensure the integrity and stability of the financial system.

[...]

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

2.8 Nothing in the framework applies to non-discriminatory measures of general application in pursuit of monetary and related credit policies or exchange rate policies.<sup>54]</sup> CHN

[...]

12.2. Nothing in the framework applies to non-discriminatory measures of general application in the pursuit of monetary and related credit policies or exchange rate policies.] MAR

### 35 DISPUTE SETTLEMENT

35.1. For any dispute concerning the interpretation and application of the provisions of this Agreement, Members shall only have recourse to the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) of the WTO.

[Article 31.1: The provisions of the Dispute Settlement Understanding (DSU) and those of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the DSU shall apply to consultations and the settlement of disputes under this framework, except for Articles XXIII:1(b) and (c) of the GATT 1994 and Article 26 of the DSU concerning non-violation complaint and those as otherwise specifically provided herein.]

<sup>53</sup> Waivers applicable to the GATT 1994 or any part thereof, granted according to Article IX:3 and Article IX:4 of the Marrakesh Agreement Establishing the World Trade Organization and any amendments thereto as of the date of entry into force of this Agreement, shall apply to the provisions of this Agreement.

<sup>54</sup> For greater certainty, measures of general application taken in pursuit of monetary and related credit policies or exchange rate policies do not include measures that expressly nullify or amend contractual provisions that specify the currency of denomination or the rate of exchange of currencies.

Article 31.2: Members are encouraged to consider resorting to good offices, conciliation and mediation provided in Article 5 and arbitration provided in Article 25 of the DSU to resolve their disputes in an amicable and swift manner. (...)]<sup>TPKM</sup>

[Note: Exclude Article 31 (Measures against corruption) from dispute settlement.]<sup>CAM</sup>

[1. Members shall not have recourse to the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) of the World Trade Organization for matters arising under Sub-section 27.4 (Application and Enforcement of Anticorruption Laws).]<sup>CAN</sup>

27.3 Article 35 (Dispute Settlement) shall apply to [Article 31 - Measures against corruption], except for matters arising from the application and enforcement of anti-corruption laws of Members.]<sup>TPKM</sup>

### 36 FINAL PROVISIONS

32.1 [Members shall implement this framework from the date of its entry into force. Developing country Members and least-developed country Members that choose to use the provisions of Section [V] shall implement this framework in accordance with that Section.]

32.2 [Nothing in this framework shall be construed as diminishing the rights and obligations of Members under the Marrakesh Agreement Establishing the WTO.]

[Notwithstanding the general interpretative note to Annex 1A to the Marrakesh Agreement Establishing the World Trade Organisation, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994 and GATS. In addition, nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Trade-Related Investment Measures.]<sup>EU</sup>

[Nothing in this framework shall be construed as diminishing the obligations of Members under the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"). In addition, nothing in this framework shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement.]<sup>JPN</sup>