



## WTO STRUCTURED DISCUSSIONS ON INVESTMENT FACILITATION FOR DEVELOPMENT

### CONSOLIDATED DOCUMENT BY THE CO-COORDINATORS

#### "EASTER TEXT"

##### *Revision*

1. The 'Easter Text' is aimed at facilitating negotiations among participating Members on an Agreement on Investment Facilitation for Development. It consolidates the successive updates made to the 'Consolidated Document' ('Easter Text') since the first version circulated to all WTO Members on 12 April 2021. Like the previous version of the 'Easter Text', this revision has been prepared under the responsibility of the co-Coordicators. It is based on text proposals and contributions submitted by Members and text contributions by the facilitator of the Discussion Group on 'Scope' that have been discussed at previous meetings.

2. This ninth revision reflects the substantial progress made in the negotiations since the previous version of the 'Easter Text' circulated on 31 October 2022. It concerns mainly the inclusion, in the main part of the text ('plain text'), of the following provisions (landing zones) discussed at the meetings held on 1-3 November 2022:<sup>1</sup>

i) the definition of 'authorization' under provision 2 *BIS* 'Definitions' in Section I on 'Scope and General Principles';

ii) two provisions on 'Home State Measures' inserted respectively under provision 5 on 'Publication and Availability of Measures and Information' in Section II on 'Transparency of Investment Measures', and under provision 32 on 'WTO Committee on Investment Facilitation' in Section VII on 'Institutional Arrangements and Final Provisions';

iii) a provision on 'Supplier Development Programmes' under Section IV *BIS*; and

iv) a provision on the relationship between the future IFD Agreement and other WTO Agreements in provision 36 'Final provisions' in Section VII on 'Institutional Arrangements and Final Provisions'.

3. This version follows the same methodology and principles as previous revisions of the 'Easter Text'. The principle that 'nothing is agreed until everything is agreed' applies. The 'plain text' that is not in square brackets does not indicate agreement to, or conclusion of, the text and only highlights areas of common ground among participating Members with the aim of facilitating further convergence among them. Instead, the 'text boxes' including the proposals by Members, contained in the Annex to this document, highlight those issues that require further work or discussion. Finally, as in previous versions, those provisions or sections that appear in 'text boxes' in the Annex are

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<sup>1</sup> See Report by the co-Coordicators on the consultations in different configurations held on 1-2 November 2022 and the open-ended Plenary held on 3 November (document INF/IFD/RD/118, Annex II, dated 8 November 2022). This revision also includes a proposal on an 'Entry and Temporary Stay of Natural Persons' provision (submitted by Australia, Canada, Japan and the United Kingdom) under Section II of the Annex. In addition, the following proposals have been removed from the Annex of this ninth revision: para. 2.8 under provision 34 on 'Financial Exceptions' (submitted by China), as well as sub-paragraph e) under provision 2 on 'Scope' regarding 'other possible exclusions' (submitted by Morocco).

indicated by placeholders in light blue colour in the corresponding provisions or sections of the main text. Where appropriate, the placeholders have been adjusted to reflect the revised text proposals.

4. This document has been prepared on a without prejudice basis and does not change the structure, nor nature/objective of the 'Easter Text', which is to facilitate negotiations on the basis of one 'single text', allowing participants to further visualize the contours of the future Agreement. 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 complementary relationship between investment and trade and their key role to advance development in the global economy;

*Recognizing* the importance of investment in the promotion of sustainable development, economic growth, poverty reduction, job creation, technology transfer, the expansion and diversification of productive capacity and trade, as well as for the achievement of the United Nations 2030 Sustainable Development Goals;

*Desiring* to increase the participation of developing countries in investment flows including, *inter alia*, through a more transparent and efficient investment environment;

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

*Wishing* to establish multilateral rules and disciplines on investment facilitation to enhance the transparency, efficiency and predictability of the investment regulatory environment;

*Affirming* the importance of responsible business conduct and combating corruption for promoting sustainable investment;

*Recognizing* the particular needs of developing and especially least-developed country Members and the importance to support them in implementing this Agreement through enhanced technical assistance and capacity building;

*Recognizing* the importance of information sharing, the exchange of best practices and other means of international cooperation on investment facilitation, including with relevant international organizations;

*Recognizing* the importance of domestic coordination, regulatory coherence and enhancing relations with relevant stakeholders;

*Recognizing* the right of Members to regulate in the public interest within their territories so as to meet their policy objectives;

Hereby *agree* as follows:

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## SECTION I: SCOPE AND GENERAL PRINCIPLES

### 1 OBJECTIVES

1.1. The purpose of this Agreement is to improve the transparency of measures, streamline administrative procedures, and adopt other investment facilitation measures, as well as to promote international cooperation, as a means of facilitating the flow of [foreign direct] investment between Members, particularly to developing and least developed country Members, with the aim of fostering sustainable development.

### 2 SCOPE

2.1. With the aim of facilitating investments, this Agreement applies to measures adopted or maintained by a Member [affecting/relating to] investment activities from investors of another Member.

2.2. Nothing in this Agreement shall be construed to create new or modify existing commitments relating to market access,<sup>2</sup> nor to create new or modify existing rules on the protection of investments or investor-state dispute settlement.

2.3. 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.

2.4. 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.

2.5. This Agreement shall not apply to:

- a. government procurement; and
- b. subsidies or grants of a Member, which under that Member's laws and regulations are not available to an investor of another [country] [Member].

### [OTHER POSSIBLE EXCLUSIONS]

### 2 BIS DEFINITIONS

For the purposes of this Agreement:

- a. "investment activities" means the establishment, acquisition, expansion, operation, management, maintenance, and sale or other disposal of an investment.
- b. "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.
- c. "authorization" means the permission<sup>3</sup> by a competent authority<sup>4</sup> to pursue investment activities, resulting from a procedure an investor must adhere to in order to demonstrate

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<sup>2</sup> [For purposes of this Agreement, the term 'market access' includes the concept of 'right of establishment'.]

<sup>3</sup> For greater certainty, the legal system of a Member may prescribe that a permission be provided in a certain form, such as an administrative act.

<sup>4</sup> [For greater certainty] [For the purposes of this Agreement], "[Competent] authority" means a central, regional or local government [or authority] of a Member, or a non-governmental body in the exercise of powers delegated by a central, regional or local government [or authority] of a Member.

compliance with the necessary requirements [in accordance with laws and regulations of the Member];

## [OTHER DEFINITIONS]

### 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>5</sup>

### 4 MOST-FAVoured NATION TREATMENT

4.1. Each Party shall accord to investors of another [Member] [Party] and their investments treatment no less favourable than that it accords, in like circumstances, to investors of any other Member and their investments, in applying the provisions set out in this Agreement in its territory.<sup>6</sup>

4.2. Paragraph 4.1 shall not be construed as requiring a Party to extend to investors of another [Member] [Party] or their investments the advantage of any treatment resulting from:

- a) an International Investment Agreement, whether it is:
  - i) a separate agreement; or
  - ii) investment-related chapters in an agreement forming a free trade area or a customs union pursuant to Article XXIV of the GATT 1994 or the Enabling Clause, or an economic integration agreement pursuant to Article V of GATS;
- b) other relevant provisions<sup>7</sup> in an agreement forming a free trade area or a customs union pursuant to Article XXIV of the GATT 1994 or the Enabling Clause, or an economic integration agreement pursuant to Article V of GATS; or
- c) measures providing for recognition, including the recognition of the standards or criteria for the authorization, licensing, or certification of a natural person or 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.

4.3. For greater certainty, provisions included in other international agreements concluded by a Party do not in themselves constitute "treatment" as referred to in paragraph 4.1 and thus cannot be taken into account when assessing a breach of this Agreement.

4.4. For greater certainty, the treatment accorded by a Party under this article means, with respect to a government other than at the central level, treatment accorded, in like circumstances, by that government to investors, and to investments of investors, of any other Member.

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<sup>5</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.

<sup>6</sup> (*For consideration at a later stage*): [This paragraph shall not be construed as creating any obligation for Members that have not accepted this Agreement. Nor shall it be construed as creating any right for those Members to refer matters arising from this Agreement to a dispute settlement proceeding under the Dispute Settlement Understanding.]

<sup>7</sup> [For greater certainty, the term "relevant provisions" refers to provisions that relate to the same subject matter or to the same category of subjects to which this Agreement applies.]

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

5.1. Each Member shall promptly publish<sup>8</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 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.

5.5. Members that adopt or maintain measures of general application to facilitate outward [foreign direct] investment, are encouraged to publish them or otherwise make them publicly available, including through electronic means.

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<sup>8</sup> For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website.



[Note: See Text Proposal on an 'Entry and Temporary Stay of Natural Persons' provision in the Annex, under Section II.]

## **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.

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## **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>9</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>10</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]*

11.1. 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>9</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>10</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.

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## 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 investment activities.

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>11</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>12</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>13</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>14</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 requires and holds original documents, any other competent authority of that Member shall accept an authenticated copy from the applicant or, where applicable, a copy from the authority holding the original.

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<sup>11</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.

<sup>12</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>13</sup> Competent authorities are not required to start considering applications outside of their official working hours and working days.

<sup>14</sup> Also addressed in paragraph 17.1 on "Submission of applications online, use of electronic forms, documents and copies".

### 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>15</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>16</sup>, to the extent possible in writing<sup>17</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>18</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>19</sup> solely on the basis of a previously rejected application.

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>20</sup>

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<sup>15</sup> Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".

<sup>16</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>17</sup> "In writing" may include in electronic form.

<sup>18</sup> Such opportunity does not require a competent authority to provide extensions of deadlines.

<sup>19</sup> Competent authorities may require that the content of such an application has been revised.

<sup>20</sup> Competent authorities are not responsible for delays due to reasons outside their competence.

## **[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>21</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 investment activities [of investors of another Member].

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>22</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>23</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 manner independent from any enterprise carrying out the economic activity for which authorization is required.<sup>24</sup>

<sup>21</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>22</sup> Including electronic submission of applications, documents and copies, and use of electronic forms.

<sup>23</sup> This provision applies also to the acceptance of copies in lieu of original documents.

<sup>24</sup> For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

## **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. a 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]. 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.

**[SECTION III BIS: TRANSPARENCY PROVISION TO FACILITATE THE ENTRY AND  
TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES /  
FACILITATION OF THE ENTRY AND TEMPORARY STAY OF  
BUSINESS PERSONS FOR INVESTMENT PURPOSES]**

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## **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>25</sup> regarding the measures covered by this Agreement<sup>26</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>27</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>28</sup> with the aim of making available to investors and persons seeking to invest information on possible relevant domestic suppliers, including MSMEs.<sup>29</sup>

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<sup>25</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>26</sup> Any information provided under this provision shall be without prejudice as to whether the measure is consistent with this Agreement.

<sup>27</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>28</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>29</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. On request, a Member shall, to the extent practicable, respond to questions from other Members on any measure covered by the Agreement. Members shall designate an enquiry point or use the focal points or appropriate mechanisms referred to in paragraph 21.1.

24.2. Members shall, to the extent practicable, encourage cooperation between their respective competent authorities with respect to any matter falling within the scope of this Agreement. Areas for cooperation may include:

- a. exchange of information and sharing of experiences regarding the implementation of this Agreement;
- b. exchange of information on domestic investors; and
- c. the promotion of facilitation agendas with a view to increasing investment for development, including investment in and by micro, small and medium enterprises (MSMEs).

24.3. Members are encouraged to inform the Committee on Investment Facilitation about cooperation activities undertaken under this provision.

#### **SECTION IV BIS: SUPPLIER-DEVELOPMENT PROGRAMMES**

1. Members are encouraged, where appropriate and in a manner consistent with their legal systems and their international trade and investment obligations, to implement programmes that strengthen the capabilities of local suppliers, especially MSMEs, to meet sourcing demands of investors of other Members.



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

### **25 GENERAL PRINCIPLES**

25.1. Members should acknowledge the special difficulties experienced by developing and particularly least-developed country Members in implementing the provisions of this Agreement.

25.2. Assistance and support for capacity building<sup>30</sup> should be provided to help developing and least-developed country Members implement the provisions of this Agreement, in accordance with their nature and scope.<sup>31</sup>

25.3. The extent and the timing of implementation of the provisions of this Agreement 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.

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

25.5. These General Principles shall be applied through the provisions set out in this Section.

### **26 CATEGORIES OF PROVISIONS, NOTIFICATION AND IMPLEMENTATION**

#### **Categories of Provisions**

26.1 There are three categories of provisions:

- 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]<sup>TFA</sup> [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 Agreement.
- 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.

26.2 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.]<sup>DMA, GRD</sup>

[26.3 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>

<sup>30</sup> For the purposes of this Agreement, "assistance and support for capacity building" may take the form of technical, financial, or any other mutually agreed form of assistance provided.

<sup>31</sup> [Assistance [should] [shall] also be provided to those countries in undertaking self-assessments to determine the categorization of provisions for implementation of this Agreement.]

## Notification and Implementation of Category A

26.4. [Upon entry into force of this Agreement, each developing country Member shall implement its Category A commitments.] <sup>TFA</sup> [Within 18 months following entry into force of the Agreement, developing country Members shall notify and implement their Category A commitments.] <sup>DMA, GRD</sup> Those commitments designated under Category A will thereby be made an integral part of this Agreement.

26.5 [A least-developed country Member may notify the Committee of the provisions it has designated in Category A for up to one year after entry into force of this Agreement.] <sup>TFA</sup> [Within two years following entry into force of the Agreement, a least-developed country Member shall notify and implement their Category A commitments.] <sup>DMA, GRD</sup> Each least-developed country Member's commitments designated under Category A will thereby be made an integral part of this Agreement.

## Notification of Dates for Implementation of Categories B And C

26.6 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 provision.

### Developing Country Member Category B

- a) [Upon] <sup>TFA</sup> [Within 18 months following] <sup>DMA, GRD</sup> entry into force of this 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>32</sup>
- b) No later than [one year] <sup>TFA</sup> [two and half years] <sup>DMA, GRD</sup> following entry into force of this 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) [Upon] <sup>TFA</sup> [Within 18 months following] <sup>DMA, GRD</sup> entry into force of this 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>33</sup>
- d) [Within one year] <sup>TFA</sup> [Within two and half years] <sup>DMA, GRD</sup> following entry into force of this Agreement, developing country Members and relevant donor Members, taking into account any existing arrangements already in place [, notifications pursuant to paragraph 29.1] <sup>TFA</sup> 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>34</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.

<sup>32</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>33</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>34</sup> Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations [consistent with sub-paragraph 28.3] <sup>TFA</sup>.

- 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.

26.7 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 provision.

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

- a) No later than [one]<sup>TFA</sup> [three]<sup>DMA, GRD</sup> 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.
- 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, [one]<sup>TFA</sup> [three]<sup>DMA, GRD</sup> 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.<sup>[35]</sup>
- 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.

26.8 Developing country Members and least-developed country Members experiencing difficulties in submitting definitive dates for implementation within the deadlines set out in paragraphs 26.7 and 26.8 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

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<sup>35</sup> [Members may also include information on national trade 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>TFA</sup>

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.

26.9 Three months before the deadline stipulated in subparagraphs 26.7(b) or (f), or in the case of a least-developed country Member, subparagraphs 26.8(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 26.9, or in the case of a developing country Member subparagraph 26.7(b), or in the case of a least-developed country Member subparagraph 26.8(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 26.7(b) or (f), or in the case of a least-developed country Member, subparagraphs 26.8(b) or (f), or extended by paragraph 26.9.

26.10 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 26.7, 26.8, or 26.9, 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 26.10, thereby making these annexes an integral part of this Agreement.

## **27 OTHER SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS**

### **Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C**

#### **27.1**

(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 [established under subparagraphs 26.7(b) and (f), or in the case of a least-developed country Member subparagraphs 26.8(b) and (f)]<sup>TFA</sup> 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.

27.2 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.

27.3 Where a developing country or least-developed country Member considers that it requires a first extension longer than that provided for in paragraph 27.2 or a second or any subsequent extension, it shall submit to the Committee a request for an extension containing the information described in subparagraph 27.1(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.

27.4 The Committee shall give [sympathetic]<sup>TFA</sup> [supportive]<sup>DMA, GRD</sup> 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.

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### **Expert Group to Support Implementation of Category B and Category C**

27.5 If a developing country Member or a least-developed country Member, having fulfilled the procedures set forth in paragraphs 26.7 or 26.8 and in paragraph 27.1 to 27.4 ('Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C'), 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 paragraphs 27.1 to 27.4, 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.

27.6 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.

27.7 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.

27.8 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.

27.9 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.

27.10 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 sub-paragraphs 27.5 to 27.10.

### **Shifting between Categories B and C**

27.11 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.

27.12 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 sub-paragraphs 27.1 to 27.4 ('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 sub-paragraphs 27.5 to 27.10 ('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 sub-paragraphs 27.1 to 27.4 ('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.

### **Grace Period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes**

27.13 For a period of [two] <sup>TFA</sup> [five] <sup>DMA, GRD</sup> years after entry into force of this Agreement, the provisions of [Articles XXII and XXIII of GATT 1994 as elaborated and applied by] <sup>TFA</sup> 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.

27.14 For a period of six years after entry into force of this Agreement, the provisions of [Articles XXII and XXIII of GATT 1994 as elaborated and applied by] <sup>TFA</sup> 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.

27.15 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 [Articles XXII and XXIII of GATT 1994 as elaborated and applied by] <sup>TFA</sup> 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.

27.16 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.

27.17 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.

## **28 PROVISION OF ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING**

28.1. Donor Members<sup>36</sup> agree to facilitate the provision of technical assistance and support for Members on mutually agreed terms, either bilaterally or through the appropriate international organizations.<sup>37</sup> The objective is to assist developing country and least-developed country Members to implement the provisions of Sections II through IV and VI of this Agreement.

28.2. Given the special needs of least-developed country Members, targeted assistance and support [[shall] [should] be] [are to 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 [28.3], development partners shall endeavour to

<sup>36</sup> Donor Members include developed country Members, and developing country Members in a position to provide technical assistance and support for capacity building.

<sup>37</sup> Such activities shall seek to complement and build on existing frameworks or arrangements between the Members concerned.

provide assistance and support for capacity building in this area in a way that does not compromise existing development priorities.

28.3. Members shall endeavour to 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;
  - ii. for least-developed country Members, the Enhanced Integrated Framework should be a part of this coordination process; and
  - iii. 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.

28.4. 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 29; and
- e) review the operation of paragraph [28.2].

[28.5. Technical assistance may include<sup>38</sup>:

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<sup>38</sup> [Members understand that technical assistance and capacity building include also other activities and priorities as agreed by beneficiary and donor Members.]

- a) building expertise in relevant authorities to strengthen their capacities to maximize positive impacts of investment;
- b) building capacity for the preparation of feasibility studies for investment projects, including environmental and social impact assessments and regulatory and administrative requirements; and
- c) [capacity building and] assistance to developing and least-developed country Members to better understand [and implement] the requirements of the Agreement and to meet their notification deadlines.]

## **29 INFORMATION ON ASSISTANCE AND SUPPORT FOR CAPACITY BUILDING TO BE SUBMITTED TO THE COMMITTEE**

29.1. 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 the relevant sections 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 and support for capacity building that was disbursed in the preceding 12 months and, where available, that is committed in the next 12 months<sup>39</sup>:

- 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.

29.2. 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 Sections II through IV and VI 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.

29.3. 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.

29.4. Members may provide the information referred to in paragraphs 29.2 and 29.3 through internet references and shall update the information as necessary. The Secretariat shall make all such information publicly available.

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<sup>39</sup> The information provided will reflect the demand driven nature of the provision of assistance and support for capacity building.



29.5. The Committee shall invite relevant international and regional organizations (such as the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the Organisation for Economic Co-operation and Development (OECD), the International Trade Centre (ITC), the United Nations Regional Commissions and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 29.1, 29.2, and 29.4.

29.6. The WTO may collaborate with other international organizations such as those referred to in paragraph 29.5 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 economic objectives. Such collaboration should aim to enhance coordination in order to maximize the benefits of this Agreement.

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## 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>40</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.

*[Note: See also text proposal in the Annex, under Section VI.]*

### 31 MEASURES AGAINST CORRUPTION

31.1. In accordance with its legal system and internationally agreed standards and commitments that it has adhered to or that it supports<sup>41</sup>, each Member shall ensure that measures are taken to prevent and fight corruption [and money laundering] with respect to matters falling within the scope of this Agreement.

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

31.3. Members agree to exchange information and best practices on issues covered by paragraphs 31.1 and 31.2, including with a view to identifying measures or areas of cooperation to prevent and fight corruption in matters affecting investment, in the Committee on Investment Facilitation.

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<sup>40</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>41</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.

**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>42</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 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.]

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

32.9. 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.

32.10. [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.]

32.11. Members that adopt or maintain measures of general application to facilitate outward [foreign direct] investment, are encouraged to share experiences and information in the Committee.

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<sup>42</sup> [This provision includes maintaining close contact with relevant international organizations in the field of responsible business conduct.]

### **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>43</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.

### **[POSSIBLE ANTI-CIRCUMVENTION CLAUSE]**

### **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 of the WTO (hereinafter referred to as "the Dispute Settlement Understanding").

35.2. The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement.

35.3. Members are encouraged to consider resorting to good offices, conciliation and mediation provided in Article 5 and arbitration provided in Article 25 of the Dispute Settlement Understanding to facilitate the solution of their disputes.

35.4. Members shall not have recourse to dispute settlement under this Article for matters arising under Article 30 on "Responsible business conduct" and Article 31 on "Measures against corruption".

### **36 FINAL PROVISIONS**

36.2 Nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Marrakesh Agreement Establishing the World Trade Organization [other than this Agreement].

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<sup>43</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.

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## SECTION I: SCOPE AND GENERAL PRINCIPLES

### 2 SCOPE

#### [OTHER POSSIBLE EXCLUSIONS]

[3.3. This framework shall also not apply to:

- a. ...;
- b. ...;
- c. portfolio investment;
- d. taxation measures.]<sup>MAR</sup>

### 2 BIS DEFINITIONS

#### [OTHER DEFINITIONS]

["Investor of another Member" means:

- a) a natural person having the nationality of that Member in accordance with its laws and regulations;
- b) a natural person who has the right of permanent residence in that Member [, where such Member does not have nationals or has made a notification pursuant to Article XXVIII(k)(ii) of the GATS,]; or
- c) a juridical person [with substantive business operations in the territory] of that Member;

that is engaging in investment activities in the territory of another Member.

"Juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association.]<sup>44</sup>

[5. For the purposes of this Framework;]

[b. "applicant" means an investor of a Member who applied for an authorization in the territory of another Member;]<sup>TUR</sup>

[3.7 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>

<sup>44</sup> 'Text contribution' submitted by the facilitator of the Discussion Group on Scope based on the discussions held by the Group, circulated to all Members on 18 January 2022 and discussed at the plenary negotiating meeting held on 26-27 January 2022.

[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... ;] <sup>TUR</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;
- 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." ] <sup>JPN</sup>

[e. "investment" means an enterprise, a branch of an enterprise or a representative office;] <sup>TUR</sup>

## SECTION II: TRANSPARENCY OF INVESTMENT MEASURES

### ARTICLE XX: INFORMATION TO BE MADE PUBLICLY AVAILABLE ON THE ENTRY AND TEMPORARY STAY OF NATURAL PERSONS

[1. Except as set out in paragraph 3 of this Article, this Agreement shall not apply to measures by a Member relating to the entry of natural persons into, or temporary stay in, its territory.

2. For greater certainty, this Agreement 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, nationality, residence or employment on a permanent basis.

3. To the extent practicable, each Member shall make publicly available online information on the requirements and procedures for entry and temporary stay of natural persons in its territory, including, where applicable, relevant forms, documents, fees, and explanatory materials that will enable interested persons of any other Member to become acquainted with applicable requirements and procedures.] <sup>AUS, CAN, JPN, GBR</sup>

**[SECTION III BIS: TRANSPARENCY PROVISION TO FACILITATE THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES / FACILITATION OF THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES]**

**TRANSPARENCY PROVISION TO FACILITATE THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES**

**Information to be made publicly available**

Each Member shall promptly publish or otherwise make publicly available, to the extent practicable via electronic means, information on the entry and temporary stay of business persons for investment purposes. Such information shall include, where applicable:

- a. conditions to be met and documentation required;
- b. categories of visas, permits or any similar type of authorization;
- c. relevant forms;
- d. explanatory material on requirements and procedures regarding the entry and temporary stay of business persons for investment purposes;
- e. method of filling an application, and options on where to file, such as consular offices or online;
- f. indicative timeframes for processing of an application;
- g. application fees;
- h. reference to relevant laws of general application; and
- i. available review and/or appeal procedures.<sup>45</sup>

**[FACILITATION OF THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES]**

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.
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.
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

<sup>45</sup> Text contribution submitted on the basis of the exchanges in the Discussion Group on 'Facilitation of the Entry and Temporary Stay of Business Persons for Investment Purposes', which was circulated to all Members on 21 September 2021 and discussed at the plenary meetings held on 23 September and 20-21 October 2021.



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>46</sup>

### **Information to be made publicly available<sup>47</sup>**

#### **Procedural Facilitation**

5. Members shall, in accordance with their domestic laws and regulations, ensure documents required for applications concerning the entry and temporary stay to be relevant and commensurate with the purpose for which they are collected.
6. Each Member shall expeditiously process completed applications concerning entry and temporary stay under this Section.
7. At the request of an applicant, the Member that has received a completed application shall inform the applicant of the status of the application.
8. 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.
9. After a decision has been taken, the Member concerned shall promptly notify the applicant of the outcome of its application, including the period of stay and any other terms and conditions.
10. Each Member shall ensure application fees in respect of entry and temporary stay under this Section are reasonable, or in the principle of reciprocity.
11. Members shall endeavour to accept and process applications in electronic format.] <sup>CHN, DJI, TUR, ZWE 48</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.

<sup>46</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.

<sup>47</sup> This second part, "Information to be made publicly available", reflects the text contribution submitted on the basis of the exchanges in the Discussion Group on 'Facilitation of the Entry and Temporary Stay of Business Persons for Investment Purposes', as included under 'TRANSPARENCY PROVISION TO FACILITATE THE ENTRY AND TEMPORARY STAY OF BUSINESS PERSONS FOR INVESTMENT PURPOSES' on page 32 of the 'Easter Text (Rev.8).

<sup>48</sup> Joint proposal by China, Djibouti, Türkiye and Zimbabwe (INF/IFD/RD/108). This joint proposal replaces a joint proposal by China and Türkiye (INF/IFD/RD/65).

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>MAR 49</sup>

## SECTION VI: SUSTAINABLE INVESTMENT

### 30 RESPONSIBLE BUSINESS CONDUCT<sup>50</sup>

[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>51</sup> that have been endorsed or are supported by that Member.

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 with regard to responsible business conduct 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.]<sup>CHN</sup>

### 34 FINANCIAL EXCEPTIONS

#### [POSSIBLE ANTI-CIRCUMVENTION CLAUSE]

[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.]<sup>CHN</sup>

[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.]<sup>MAR</sup>

<sup>49</sup> This revised proposal by Morocco (INF/IFD/RD/71) replaces the previous proposal contained in document INF/IFD/RD/64.

<sup>50</sup> This revised proposal by China (INF/IFD/RD/112) replaces the previous proposal contained in document INF/IFD/RD/92.

<sup>51</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.

### **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.]

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