

APPENDIX 3

NEW CHAPTER 18 (INVESTMENT)

CHAPTER 18
INVESTMENT

Article 18.1: SCOPE

With the aim of promoting and facilitating foreign direct investment², this chapter applies to measures adopted or maintained by a Party relating to investment of investors of the other Party.

Article 18.2: PROMOTION OF INVESTMENT

1. Each party may, subject to its general policy in the field of foreign investment, encourage and promote in its territory investments by investors of the other party, and shall endeavor such investments in accordance with its applicable laws and regulations and the international commitments entered into between the Parties.

2. The general objectives of this Article are as follows:

- (a) to promote and enhance economic cooperation between the parties;
- (b) to monitor trade and investment relations, to identify opportunities for expanding investment, and to identify issues relevant to investment that may be appropriate for negotiation in a mutually agreed form;
- (c) upon request to share information on investment laws, regulations, policies;
- (d) to hold consultations on specific investment proposals of the Parties.

Article 18.3: PUBLICATION AND AVAILABILITY OF MEASURES AND INFORMATION

1. Each Party shall publish, or otherwise make publicly available its laws, regulations, procedures, administrative rulings and judicial decisions of general application, as well as international agreements that may affect with respect to matters falling within the

² For greater certainty, foreign direct investment will be understood in accordance with investment recipient Party's respective domestic law.

scope of this chapter in such a manner as to enable investors and, other interested persons of the other Party to become acquainted with them.

2. Where authorization³ for an investment is required, each Party shall, subject to its laws and regulations, publish or otherwise make available in writing, to the extent practicable via electronic means, and keep updated, the information necessary for investors to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. Such information may include, inter alia, where it exists:

- (a) the requirements including the relevant technical regulations and standards applicable to the investment;
- (b) the relevant forms;
- (c) procedures;
- (d) indicative timeframes for processing of an application;
- (e) authorization fees;
- (f) opportunities, to the extent practical, for public involvement;
- (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.

Article 18.4: REASONABLE, OBJECTIVE AND IMPARTIAL ADMINISTRATION OF MEASURES

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

³ Authorization means the permission issued by a competent authority to pursue investment activities, resulting from a procedure an investor must adhere to in order to demonstrate compliance with the necessary requirements.

Article 18.5: GENERAL PRINCIPLES FOR AUTHORIZATION PROCEDURES

1. Each Party shall endeavour to ensure that the authorization procedures⁴ it adopts or maintains do not unduly complicate or delay investment activities.
2. If a Party adopts or maintains measures relating to the authorization for an investment, the Party shall endeavour to ensure that:
 - (a) such measures are based on objective and transparent criteria;
 - (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 fulfillment of requirements.
3. The assessment by a Party'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 the Party's legal system.⁵

Article 18.6: APPEAL OR REVIEW

1. Each Party 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 activities. 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 authority entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
2. Paragraph 1 of Article 18.6 shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

⁴ For greater certainty, authorization procedures may include, to the extent practicable, application periods, acceptance of authenticated copies, processing of applications, treatment of incomplete applications, and rejection of applications.

⁵ For greater certainty, the assessment of a single application based upon the assessment-specific criteria referred to in paragraph 3 of Article 18.5, or the conclusion reached by the competent authorities regarding a single application, is not subject to the Dispute Settlement Understanding.

3. Each Party shall ensure that the parties in paragraph 1 of Article 18.6 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.

4. The decision referred to in subparagraph 3 (b) of Article 18.6 shall, subject to appeal or further review as provided for in each Party's law, be implemented by the authority entrusted with administrative enforcement.

Article 18.7: CHINA-GEORGIA BILATERAL INVESTMENT AGREEMENT

The Parties note the existence of and reaffirm the "Agreement between the Government of the People's Republic of China and the Government of the Republic of Georgia Concerning the Encouragement and Reciprocal Protection of Investment", (hereinafter referred to as "China-Georgia Bilateral Investment Agreement"), signed at Beijing, on 3 June 1993 and any subsequent amendments thereto.

Article 18.8: NON-APPLICATION OF DISPUTE SETTLEMENT

The Parties agree that nothing in this Chapter shall be subject to dispute settlement mechanism under this Agreement and China-Georgia Bilateral Investment Agreement. Any differences concerning the interpretation or the implementation of this Chapter shall be settled amicably through consultations between the parties.

Article 18.9: NON-APPLICATION OF OTHER INTERNATIONAL TREATIES

This Chapter shall not serve as a means to interpret any provision of an international investment agreement, including China-Georgia Bilateral Investment Agreement, 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, including China-Georgia Bilateral Investment Agreement.