

ANNEX V B

LIST OF EXCEPTIONS
IN THE AREA OF INVESTMENT
(Singapore)

Horizontal Exceptions

1. (a) Matter: Subsidies/Incentives for all sectors
- (b) Legal Source or Authority: Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 86), Income Tax Act (Cap. 134), Relevant Government Agencies
- (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
- (d) Description:

National Treatment

National treatment may not be accorded in the provision of the following:

- (A) subsidies/incentives or programmes to help develop local entrepreneurs and to assist local companies to expand and upgrade their operations;
- (B) subsidies/incentives pertaining to the supply of service.

Prohibition of Performance Requirements

- (i) Conditions that are inconsistent with subparagraphs (a) through (e) of paragraph 1 of Article 75 may be imposed for the receipt or continued receipt of any advantage in connection with an investment in the services sector in Singapore.
- (ii) For the avoidance of doubt, conditions or requirements that are not listed in Article 75 may be imposed for the receipt or continued receipt of any advantage in connection with an investment in Singapore.

2. (a) Matter: Company registration formalities for all sectors
- (b) Legal Source or Authority: Companies Act (Cap. 50)
- (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
- (d) Description: Compliance by foreign companies with the Companies Act in their establishment, and reporting and filing of accounts
- (i) Commercial presence, right of establishment and movement of legal persons are subject to compliance with the following provisions:
- (A) a foreigner who wishes to register a business firm must have a local manager who should be:
- (AA) a Singapore citizen;
- (BB) a Singapore permanent resident; or
- (CC) a Singapore employment pass holder.
- However, a foreigner who is a Singapore permanent resident or a Singapore employment pass holder can register a business without appointing a local manager;
- (B) at least one director of the company must be locally resident;
- (C) all branches of foreign companies registered in Singapore must have at least two locally resident agents. (To qualify as locally resident, a person should be either a Singapore citizen or a Singapore permanent resident or a Singapore employment pass holder).

- (ii) Establishment of a foreign company's branch is subject to the filing of necessary documents.
- 3.
- (a) Matter: Ownership of Residential Land/Property
 - (b) Legal Source or Authority: Residential Property Act (Cap. 274), Banking Act (Cap. 19), Finance Companies Act (Cap. 108), Monetary Authority of Singapore Act (Cap. 186)
 - (c) Relevant Obligation: National Treatment (Article 73)
 - (d) Description:
 - (i) Ownership of residential land:
non-citizens cannot own residential land.
 - (ii) Ownership of residential property:
 - (A) non-citizens are restricted from purchasing landed residential property and residential property in a building of less than 6 levels;
 - (B) non-citizens and non-Singapore permanent residents cannot own residential property under government public housing schemes.
 - (iii) Housing loans:
banks, finance companies and merchant banks are:

- (A) not allowed to extend Singapore Dollar (S\$) loans to non-Singapore citizens (excluding Singapore permanent residents) and non-Singapore companies for the purpose of purchasing residential properties in Singapore. A company is considered a Singapore company only if it is incorporated in Singapore and majority-owned by Singapore citizens. Any company which is incorporated outside Singapore is considered a non-Singapore company. A company incorporated in Singapore and majority-owned by non-Singapore citizens and/or Singapore permanent residents is considered a non-Singapore company;
- (B) allowed to grant Singapore permanent residents only one S\$ loan each for the purchase of a residential property in Singapore which must be for owner-occupation.

- 4. (a) Matter: Regulation on Singapore dollar transactions
- (b) Legal Source or Authority: Banking Act (Cap. 19), MAS Notice 757 to Banks, Securities Industry Act (Cap. 289), MAS Notice 1201 to Securities Dealers, Finance Companies Act (Cap. 108), MAS Notice 816 to Finance Companies, Insurance Act (Cap. 142), MAS Notice 109 to Insurers, Monetary Authority of Singapore Act (Cap. 186), MAS Notice 1105 to Merchant Banks
- (c) Relevant Obligation: National Treatment (Article 73)

(d) Description:

- (i) Where amounts exceed S\$5 million per entity,^(Note 1) banks^(Note 2) may extend S\$ credit facilities to non-residents for any purpose in Singapore or overseas, subject to the following conditions:

Note 1: For financial institutions seeking to obtain S\$ credit facilities, each subsidiary is considered a separate entity while the head office and all overseas branches are collectively regarded as one entity.

Note 2: The restrictions in paragraph 4 of this Annex describe the measures in MAS Notice 757 to Banks. Similar measures are set out in MAS Notice 1201 to Securities Dealers, MAS Notice 816 to Finance Companies, MAS Notice 109 to Insurers, and MAS Notice 1105 to Merchant Banks.

- (A) for S\$ investments in financial assets and real estate, banks are required to ensure that the S\$ credit facilities are withdrawn when the investments, or part thereof, are in any way converted into S\$ cash proceeds;
- (B) where the S\$ proceeds are to be used offshore, the proceeds should be swapped into foreign currency upon draw-down. In this instance, banks are not allowed to convert the S\$ proceeds into foreign currency via the spot or forward market. For S\$ equity listings and bond issues by non-residents wishing to tap S\$ markets to finance their activities offshore, non-residents are required to swap or convert the S\$ proceeds into foreign currency for use offshore;

(Notification is required for bond issues by residents as well as non-residents.)

- (ii) where the bond issuer is an unrated foreign entity, banks may place or sell the S\$ bonds to sophisticated investors^(Note) only;

Note: "Sophisticated investors" is as defined in the Companies Act (Cap. 50).

- (iii) banks should not extend S\$ credit facilities to non-residents for speculative activities in the S\$ currency market;
- (iv) banks may lend in any amount S\$-denominated securities to non-residents as long as it is fully collateralised with S\$ cash or other S\$ assets upon the extension of the S\$-denominated securities loan;
- (v) banks may transact with non-residents S\$ currency options as long as there is a requirement to hedge the S\$ exchange rate risks arising from trade with, or economic and financial activities in, Singapore. This is subject to the following conditions:
 - (A) the S\$ option should have cashflows matching the S\$/foreign currency flows if the option is exercised;
 - (B) the S\$ option offered must not be combined with a spot or any other transaction to constitute a S\$ credit facility that would not be permitted under MAS Notice 757;
 - (C) there must be documentary evidence of the non-resident's need to hedge its trade with, or its economic and financial activities in, Singapore.

(The above limitation shall not be construed as causing a delay in transfers as defined in Article 80.)

- 5. (a) Matter: Privatisation
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)

- (d) Description: National treatment and prohibition of performance requirements shall not apply to the privatisation or divestment of assets owned by the Government.

Sectoral Exceptions

- 6. (a) Sector: Investments in Services
 - (b) Legal Source or Authority: N/A
 - (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
 - (d) Description:
 - (i) National treatment and prohibition of performance requirements shall not apply to services sectors not scheduled in Chapter 7. Where a service sector is scheduled in Chapter 7, the provisions, terms, limitations, conditions and qualifications in Chapter 7 (including market access measures) shall apply to investments in that service sector under Chapter 8.
 - (ii) For the avoidance of doubt, the scheduled services in the telecommunications and financial sectors shall also be interpreted in accordance with Annexes IV A and IV B.
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- 7. (a) Sector: Printing and Publishing Sector
 - (b) Legal Source or Authority: Newspaper and Printing Presses Act (Cap. 206), Ministry of Information, Communications and the Arts
 - (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
 - (d) Description: National treatment and prohibition of performance requirements shall not apply to the printing and publishing sector.

8. (a) Sector: Arms and Explosives Sector
 - (b) Legal Source or Authority: Arms and Explosives Act (Cap. 13)
 - (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
 - (d) Description: National treatment and prohibition of performance requirements shall not apply to the arms and explosives sector.
9. (a) Sector: Manufacturing Sector
 - (b) Legal Source or Authority: Control of Manufacture Act (Cap. 57)
 - (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
 - (d) Description: Statutory licensing requirements and conditions that are inconsistent with Article 73 or sub-paragraphs (f) to (i) of paragraph 1 of Article 75 may be imposed in connection with the manufacture of the following:
 - (i) firecrackers;
 - (ii) drawn steel products;
 - (iii) pig iron and sponge iron;
 - (iv) rolled steel products;
 - (v) steel ingots, billets, blooms and slabs;
 - (vi) beer and stout;
 - (vii) CD, CD-ROM, VCD;
 - (viii) DVD, DVD-ROM;
 - (ix) chewing gum, bubble gum, dental chewing gum or any like substance;

- (x) cigarettes;
- (xi) matches;
- (xii) cigars;
- (xiii) refrigerators;
- (xiv) air-conditioners.

ANNEX V C

INVESTOR-TO-STATE DISPUTE SETTLEMENT
SPECIAL ARBITRATION PROCEDURE

1. Any request to establish an arbitral tribunal pursuant to this Annex shall identify:

- (a) the name and address of the investor concerned;
- (b) the legal basis of the complaint including the provisions of Chapter 8 alleged to have been breached; and
- (c) the factual basis for the complaint.

2. The investor and the Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator each. If the Party fails to so appoint an arbitrator, the legal expert designated by that Party pursuant to paragraph 4 of Article 140 shall be appointed as an arbitrator. If the investor fails to so appoint an arbitrator, the legal expert designated by the Party of which the investor is a national pursuant to paragraph 4 of Article 140 shall be appointed as an arbitrator.

3. The investor and the Party shall agree on and designate a third arbitrator, who shall chair the arbitral tribunal. If they fail to agree on the third arbitrator, they shall separately prepare and exchange a list of five persons whom they can accept as the third arbitrator. The third arbitrator shall be chosen in the following manner:

- (a) if only one name is common to both lists, that person, if available, will be chosen as the third arbitrator;
- (b) if more than one name appears on both lists, the investor and the Party shall consult for the purpose of agreeing on the third arbitrator from such names;

- (c) if they are not able to reach agreement in accordance with sub-paragraph (b) above or if there is no name common to both lists, or the arbitrator agreed upon or chosen is not available and the investor and the Party cannot decide on a replacement for the arbitrator that is not available, then the two arbitrators appointed pursuant to paragraph 2 above shall agree on the third arbitrator; and
- (d) if the arbitrators are not able to reach agreement on the third arbitrator, the third arbitrator shall be chosen by random drawing in accordance with the procedure set out in the Appendix to this Annex.

4. The third arbitrator shall be appointed within 40 days after the date of appointment of the second arbitrator.

5. The third arbitrator shall not, unless the investor and the Party agree otherwise, be of the same nationality as the investor, nor be a national of the Party, nor have his or her usual place of residence in the territory of either of the Parties, nor be employed by either the investor or the Party, nor have dealt with the investment dispute in any capacity.

6. The arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

APPENDIX TO
ANNEX V C

PROCEDURE FOR SELECTION OF THIRD ARBITRATOR
FOR SPECIAL ARBITRATION PROCEDURE FOR
INVESTOR-TO-STATE DISPUTE SETTLEMENT

The following procedure applies for the random drawing for a third arbitrator, as provided for in Annex V C pertaining to Investor-to-State Dispute Settlement (hereinafter referred to in this Appendix as "Annex V C"):

- (a) for the purposes of this Appendix, the investor that is requesting the establishment of the arbitral tribunal pursuant to Article 82 is hereinafter referred to as the "investor" and the Party to the investment dispute is hereinafter referred to as the "Party";
- (b) unless the investor and the Party agree otherwise, the drawing takes place in the territory of the Party, in the presence of representatives of both the investor and the Party;
- (c) the Party prepares a container with ten sealed envelopes, each of which has, inside it, the name of one of the persons listed on the lists of the investor and the Party, prepared pursuant to paragraph 3 of Annex V C, such that there is exactly one envelope corresponding to each of these persons;
- (d) a representative of the investor shall remove, from the container, one envelope, randomly and without being able to discern the identity of the person to whom the envelope corresponds until after the envelope is unsealed and opened;
- (e) the person to whom that envelope corresponds shall be the third arbitrator for the purposes of Annex V C; and
- (f) after the drawing, the container, and the envelopes remaining therein, shall be made available for verification by representatives of the investor in the presence of representatives of the Party.