

CHAPTER 20

CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS AND TEMPORARY SAFEGUARD MEASURES¹

Article 20.1

Objective and scope

The objective of this Chapter is to enable the free movement of capital and payments related to transactions liberalised under this Agreement.

Article 20.2

Current Account

Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency and in accordance with the provisions of the Articles of the Agreement of the International Monetary Fund, as applicable, any payments and transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

Article 20.3

Capital Movements

Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital, for the purpose of liberalisation of investment and other transactions as provided for in Chapter 10 [Investment Liberalisation], Chapter 11 [Cross-border trade in services], and Chapter 18 [Financial Services].

Article 20.4

Application of laws and regulations relating to capital movements, payments or transfers

The provisions of Articles 20.1 and 20.2 of this Chapter shall not be construed as preventing a Party from applying its laws and regulations relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading or dealing in financial instruments such as securities, futures or derivatives;
- (c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

¹ For greater certainty, this Chapter is subject to Annex ... (Transfers – Chile)

- (d) criminal or penal offenses, deceptive or fraudulent practices;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
- (f) social security, public retirement or compulsory savings schemes.

2. The laws and regulations referred to in paragraph 1 shall be applied in an equitable and non-discriminatory manner, and not in a way that would constitute a disguised restriction on capital movements, payments or transfers.

Article 20.5

Temporary safeguard measures

In exceptional circumstances of serious difficulties for the operation of the European Union's economic and monetary union, or threat thereof, the European Union may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months. Those measures shall be limited to the extent that is strictly necessary.

Article 20.6

Restrictions in case of balance of payments and external financial difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers².

2. The measures referred to in paragraph 1 shall:

- (a) be consistent with the Articles of the Agreement of the International Monetary Fund, as applicable;
- (b) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (c) be temporary and shall be phased out progressively as the situation specified in paragraph 1 improves;
- (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (e) be non-discriminatory compared to third countries in like situations.

3. In the case of trade in goods, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. These measures shall be in accordance with the General Agreement on Trade and Tariffs (GATT) and the Understanding on the Balance of Payments provisions of the GATT 1994.

² For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

4. In the case of trade in services, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. These measures shall be in accordance with Article XII of the General Agreement on Trade in Services (GATS).

5. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 of this Article shall promptly notify them to the other Party.

6. If restrictions are adopted or maintained under this Article, the Parties shall promptly hold consultations in the [EU: Committee on Trade in Services and Investment – to be adapted] unless consultations are held in other fora, to which both Parties are members. The consultations shall assess the balance-of-payments or external financial difficulty that led to the respective measures, taking into account, *inter alia*, such factors as:

- (a) the nature and extent of the difficulties;
- (b) the external economic and trading environment; and
- (c) alternative corrective measures which may be available.

7. The consultations pursuant to paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 to 2. All relevant findings of statistical or factual nature presented by the IMF, where available, shall be accepted and conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

ANNEX X

TRANSFERS-CHILE

1. Notwithstanding Chapter 20 [Capital Movements, Payments and Transfers and Temporary Safeguard Measures], Chile reserves the right of the Central Bank of Chile (*Banco Central de Chile*) to maintain or adopt measures in conformity with Law 18.840, Constitutional Organic Law of the Central Bank of Chile (*Ley 18.840, Ley Orgánica Constitucional del Banco Central de Chile*), Decreto con Fuerza de Ley N°3 de 1997, Ley General de Bancos (*General Banking Act*) and Ley de Mercado de Valores N°18.045 (*Securities Market Law*), in order to ensure currency stability and the normal operation of domestic and foreign payments. Such measures include, *inter alia*, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement (*encaje*).

2. Notwithstanding paragraph 1, the reserve requirement that the Central Bank of Chile can apply pursuant to Article 49 N°2 of Law 18.840, shall not exceed 30 percent of the amount transferred and shall not be imposed for a period which exceeds two years.