

CHAPTER 9

INVESTMENT PROMOTION AND COOPERATION

Article 9.1 Objectives

1. The objective of this Chapter is to enhance foreign direct investment (“FDI”) as a means for fostering economic growth, capital intensity, capacity building and innovation, as well as generating employment opportunities.
2. The Parties seek to deepen their economic relationship through mutually beneficial cooperation, contributing to economic growth, development and prosperity, grounded in the principles of good faith, mutual benefit and the Parties’ right to regulate.
3. To fulfil the objectives of this Chapter, New Zealand shall aim to increase foreign direct investment into India from investors of New Zealand in accordance with Article 9.2 (Investment Promotion).

Article 9.2 Investment Promotion

New Zealand shall promote FDI¹ from investors of New Zealand into India with the aim to increase such investment by US Dollars 20 billion within 15 years of the date of entry into force of this Agreement.²

Article 9.3 Investment Cooperation

1. The Parties recognise the importance of enhancing both the quantity and quality of FDI, including through joint initiatives for research and innovation, technology flows, technical and skill development,

¹ Investments routed from outside New Zealand shall be taken into account if shown that the investments are made by investors of New Zealand. Investments routed through New Zealand by investors of non-Parties either not established in New Zealand, or established in New Zealand but without substantial business activities in New Zealand, shall not be considered as investments from New Zealand.

² The Parties recognise that India’s economic development over the last two decades was accompanied by a sustained increase of nominal FDI into India, reflecting a confidence of foreign investors in the potential of the Indian economy. Based on this observation, and on estimated nominal GDP growth rate of India over the next 15 years, in line with the past growth rates, New Zealand aims to strengthen its FDI footprint in India, leveraging a full implementation of this Agreement by the Parties.

exchange of knowledge and capacity building, towards achieving economic growth and development.

2. Cooperation between the Parties in this respect may include:
 - (a) conducting information exchanges between the Parties to identify investment opportunities of mutual interest with the aim of enhancing FDI, technological advancement, skill development, and growth;
 - (b) developing strategies and programs to promote investment, R&D collaboration, technology cooperation, and skill development, focusing on high-value-added sectors linked to regional and global value chains, including but not limited to renewable energy, digital services, and infrastructure;
 - (c) developing mechanisms for joint investments and ventures between enterprises, including with SMEs and seeking to incorporate programs for capacity-building and the exchange of technological know-how into these ventures;
 - (d) facilitating public-private dialogues for the identification of investment opportunities in, and matchmaking of investors between, the Parties;
 - (e) facilitating continued skill development, vocational education and training, including for SMEs, including to support the adoption of new technologies and best practices;
 - (f) encouraging technological partnerships and joint ventures, with an emphasis on technology adoption, and workforce upskilling; and
 - (g) facilitating partnerships among centres of excellence, government agencies and expert institutes in fields of mutual interest and leveraging such partnerships to further industrial competitiveness and capabilities, technological advancements, skill-development, exchange of technological know-how, and inclusive development.
3. The Parties may cooperate pursuant to paragraph 2 through activities such as:
 - (a) regular missions in areas of mutual interest with high-ranking delegations;
 - (b) promoting cooperation with relevant government agencies to expand opportunities for business and industry
 - (c) annual high-level meetings, virtual or in-person, with the participation of the private sector; to discuss, *inter alia*, opportunities for enhancing investment, technological

advancement, knowledge exchange, and skill development, in sectors of mutual interest, including renewable energy, digital services and other technology-driven sectors;

- (d) regular investment promotion events, including at various international fora with participation of the private sector and industry bodies from both Parties, aimed at meeting the objectives of this Chapter;
- (e) sector-specific business roundtables; thematic expert exchanges and workshops; and promotional events in India and in New Zealand to identify opportunities of investment, promote stakeholder collaboration, knowledge and technology flows, joint initiatives for research and development, and exchange of skills and vocational training practices in areas of mutual interest;
- (f) support for investment promotion agencies and other industry bodies and associations in setting up representations and engagement in each Party's market;
- (g) support for vocational education and training projects, especially in sectors where skill gaps are prominent; and
- (h) other activities as mutually agreed by the Parties.

Article 9.4 Investment Desks

1. To the extent practicable, each Party shall establish an Investment Desk to support³ the activities referred to in Article 9.3 (Investment Cooperation).
2. In view of promotion activities for investment into India, India shall establish a dedicated Investment Desk to assist⁴ investors from New Zealand seeking to invest, investing or having invested, in particular with any problems that may arise. For India, such a desk would also account for India's commitments under paragraph 1.

³ For greater certainty, such support does not include any amendments or exceptions pertaining to any laws, regulations, procedure, administrative decision, practice or requirement of either Party.

⁴ For greater certainty, "assist" does not include any amendments or exceptions pertaining to any laws, regulations, procedure, administrative decision, practice or requirement of India.

Article 9.5 Contact Points

1. Each Party shall, within 60 days of the date of entry into force of this Agreement, designate an official contact point to address matters related to this Chapter. Each Party shall promptly notify the other Party of any change to its contact point.
2. The contact points shall endeavour to facilitate communication and coordination between the Parties regarding the implementation of this Chapter.

Article 9.6 Transparency⁵

Each Party shall aim to publish⁶, or otherwise make publicly available, to the extent practicable, the information⁷ necessary for investors to comply with the requirements and procedures for obtaining the authorisation, in such a manner as to enable investors to become acquainted with it.

Article 9.7 Committee on Investment Promotion and Cooperation

1. In order to pursue the objectives of this Chapter, the Parties hereby establish the Committee on Investment Promotion and Cooperation (“Investment Committee”), which shall be composed of representatives of each Party, and be co-chaired jointly by one representative of each Party.
2. The functions of the Investment Committee shall be to:
 - (a) assess, review and monitor, the implementation of this Chapter;
 - (b) undertake reviews of the progress made towards achievement of commitment as set out in Article 9.2 (Investment Promotion) and the implementation of the activities as set out in Article 9.3 (Investment Cooperation);
 - (c) provide a platform for the Parties to exchange information, review developments, discuss progress and identify additional

⁵ Chapter 16 (Transparency) or any other transparency related provision in this Agreement shall not apply to this Chapter.

⁶ For the purposes of this Chapter, “publish” means to include in an official publication, such as an official journal, or on an official website.

⁷ For greater certainty, nothing in this Article shall require a Party to disclose confidential or sensitive information.

opportunities of mutual interest for engagement pursuant to Article 9.3 (Investment Cooperation). The outcomes of the reviews may be placed in a Report on Investment Cooperation, identifying achievements, and mutually agreed proposals for the way forward;

- (d) seek to resolve any issues or differences pertaining to matters covered by this Chapter;
 - (e) by mutual agreement of the Parties, engage with the private sector and other stakeholders on exploring opportunities to pursue the objectives of this Chapter;
 - (f) make recommendations for amendments or modification of this Chapter, as required, by mutual agreement of the Parties;
 - (g) recommend a mechanism to discuss challenges faced by investors, discuss best practices and exchange information on a periodic basis, with the intent to find mutually agreeable resolution to such problems;
 - (h) report and make recommendations to the Joint Commission, as necessary; and
 - (i) consider any other issues regarding investment opportunities that are referred to it by the Joint Commission.
3. Within 120 days of its first meeting, the Investment Committee shall establish the Working Procedures to govern its functioning and procedures for realising the objectives of this Chapter.
 4. The Investment Committee shall meet within one year of the date of entry into force of this Agreement. Thereafter, the Investment Committee shall meet whenever necessary but normally once every two years. The Investment Committee shall meet either physically or through electronic videoconferencing, or other means.
 5. Each Party may request at any time, through a notice in writing to the other Party, that a special meeting of the Investment Committee be held. Such a meeting shall take place within 30 days of receipt of the request, unless the Parties agree otherwise.
 6. The Investment Committee may, by mutual agreement of the Parties, engage with the private sector, and other stakeholders, on exploring opportunities to pursue the objectives as set out in Article 9.1 (Objectives).
 7. The Investment Committee shall make decisions by consensus.
 8. In performing its duties, the Investment Committee may work with other committees and subsidiary bodies established under the Agreement.

9. All official communications related to this Chapter shall be undertaken in the English language.

Article 9.8 Consultations

Any differences concerning the fulfilment of the commitment set out in Article 9.2 (Investment Promotion) shall be resolved in accordance with Article 9.9 (Review, Reporting and Three-tier Government-to-Government Consultations).

Article 9.9 Review, Reporting and Three-tier Government-to-Government Consultations

1. The Parties agree to a three-tier government-to-government consultations procedure for resolution of differences raised in relation to the commitment set out in Article 9.2 (Investment Promotion).
2. The Investment Committee shall review progress towards the achievement of the objective to increase investment from New Zealand into India by US Dollars 20 billion (hereinafter “investment objective”) and the commitment undertaken by New Zealand as set out in Article 9.2 (Investment Promotion).
3. The first review by the Investment Committee shall be held no later than five years after the date of entry into force of this Agreement. The second review by the Investment Committee shall be held no later than 10 years after the date of entry into force of this Agreement. The final review by the Investment Committee shall take place 15 years after the date of entry into force of this Agreement. The Parties may mutually agree on a different timeline or additional reviews.
4. For each such review under paragraph 3, the Investment Committee shall review the progress towards achievement of the investment objective and the commitment undertaken by New Zealand as set out Article 9.2 (Investment Promotion) and record its findings in a report titled “Investment Report”, including recording any unforeseen circumstances which have had a material bearing on the progress.
5. In case of occurrence of any unforeseen circumstances including global pandemic, war, geopolitical disruptions, financial crisis or sustained economic underperformance, or other similar factors beyond New Zealand’s control which have had a material bearing on the progress to achieve the objective, the Parties may adjust the investment objective by mutual agreement of the Parties, accordingly through an amendment of Article 9.2 (Investment Promotion).

6. Should the investment objective not be achieved by the final review, and India considers that New Zealand has not fulfilled its commitment set out in Article 9.2 (Investment Promotion), India may request consultations by the Investment Committee. The Investment Committee shall be convened within 30 days of receipt of India's written request for such consultations.
7. The scope of the consultations shall be limited to determining whether New Zealand has fulfilled its commitment as set out in Article 9.2 (Investment Promotion), and where applicable, to finding a mutually agreed solution between the Parties.
8. The Investment Committee shall endeavour to settle issues within 60 days from convening of the Investment Committee, with due consideration to the final report. This period may be extended by no more than six months by mutual agreement of the Parties.
9. If the Investment Committee determines that the commitment set out in Article 9.2 (Investment Promotion) has not been fulfilled, the Investment Committee shall make recommendations to the Joint Commission.
10. If after the 8-month period from the request of consultations by India, the matter remains unresolved, then the Investment Committee shall refer the matter to the Joint Commission for consultations, with its recommendations.
11. The Joint Commission shall begin consultations upon the receipt of the referral from the Investment Committee under paragraph 9 or paragraph 10, with a view to reaching a mutually agreed solution. If the Joint Commission cannot resolve the matter within six months of the date of receipt of the reference from the Investment Committee, the same shall be referred to the representatives of New Zealand and India at the level of Ministers. Such representatives shall be identified in writing.
12. Such representatives of New Zealand and India shall begin consultations within 30 days of the receipt of the referral from the Joint Commission. The representatives of the Parties shall take no more than six months from the receipt of the referral from the Joint Commission, to arrive at a mutually agreed solution to the matter raised by the requesting Party. If the matter is not fully resolved within six months from the date of receipt of the referral from the Joint Commission, New Zealand may request a grace period of an additional three years. The request shall state the grounds and may outline possible actions from New Zealand towards the achievement of the investment objective set out in Article 9.2 (Investment Promotion). India may consider granting such request with due consideration to the reports of the Investment Committee, and the recommendations of the Joint Commission as well as discussions held by representatives of the Parties at the level of Ministers.

13. Nothing in this Chapter shall require the Parties to disclose any information that they consider confidential. The Parties shall treat as confidential any information designated as such by the Party providing the information.

Article 9.10
Remedial Measures

1. If no mutually agreed solution subsequent to consultations under paragraphs 6 through 12 of Article 9.9 (Review, Reporting and Three-tier Government-to-Government Consultations) has been found, and the grace period, if granted by India, has elapsed, and India determines that New Zealand has not fulfilled its commitment set out in Article 9.2 (Investment Promotion), India may, notwithstanding any other provision under this Agreement, undertake proportionate remedial measures to rebalance the concessions provided to New Zealand by India pursuant to Annex 2A (Schedules of Tariff Commitments).
2. India shall, no later than 30 days before the date on which the remedial measures are due to take effect, notify New Zealand of the remedial measures it intends to take, the grounds for such remedial measures and when they will commence.
3. The Parties agree that the remedial measures are intended to be temporary and shall be terminated once the investment objective set out in Article 9.2 (Investment Promotion) has been achieved.
4. New Zealand may request consultations under the Joint Commission if the remedial measures have continued beyond five years. Such a request shall include the New Zealand's grounds for the request for modification or termination of remedial measures.
5. The Joint Commission shall begin consultations within 30 days of the receipt of the request from New Zealand pursuant to paragraph 4. The Joint Commission will assess the grounds for modification or termination in New Zealand's request, and accordingly, aim to facilitate a mutually agreed solution between the Parties. If the Joint Commission cannot resolve the matter within six months, the same shall be referred to the representatives of New Zealand and India at the level of Ministers.
6. Upon receipt of reference from the Joint Commission pursuant to paragraph 5, the representatives of the Parties at the level of Ministers, will aim to facilitate a mutually agreed solution. If the representatives cannot resolve the matter within six months, the remedial measures will be deemed to be continued until the next such review pursuant to paragraph 7.

7. If the Joint Commission or the representatives at the level of Ministers recommend modification or termination of the remedial measures under paragraphs 5 through 6, the measures necessary to modify or terminate shall be taken within an agreed time period. Unless such remedial measures are terminated, the Joint Commission shall thereafter examine the continuation or modification of the remedial measures every three years following the same procedure, until the remedial measures have ceased to apply.

Article 9.11
Non-Application of Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter.