



Negotiating Group on the Multilateral Agreement on Investment (MAI)

MULTILATERAL AGREEMENT ON INVESTMENT

CHECKLIST OF SUBSTANTIVE ISSUES

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GENERAL

1. **General Considerations**
2. **Objectives of the Agreement**

SCOPE AND APPLICATION OF THE AGREEMENT

1. **The territorial scope of application**
2. **The substantive scope of application**
 - Definition of investment
 - Definition of investor
3. **Extent of obligations**
 - Application to different levels of government

INVESTMENT LIBERALISATION

1. **Liberalisation obligations**
 - National Treatment
 - Non-discrimination/Most favoured nation (MFN)
 - Standstill
 - Transparency

* This list is intended as an aid to negotiators. It is neither exhaustive nor does it prejudge the structure or contents of a possible agreement

2. Rollback mechanism

Transitional reservations

Country/horizontal reviews

Further rounds of negotiations

3. Application to specific areas

Key personnel

Mandatory Performance Requirements

Privatisation

Monopolies/State enterprises

Investment Incentives

Technology (R&D programmes/consortia...)

Corporate Practices

4. General exceptions

Public order/National security

5. Reservations

Conditions for lodging reservations

[Lists of reservations to be annexed to the Agreement]

6. Temporary derogations

Conditions for lodging derogations

7. Regional economic integration arrangements

8. Taxation

INVESTMENT PROTECTION

1. General treatment of investor and investment

2. Intellectual property

3. Expropriation

Definition of an expropriation

Preconditions for an expropriation

Valuation of an expropriated asset

Judicial review

4. Compensation

Standards of compensation

Calculation method

Interest

Currency of payment and exchange rate

Unilateral modification of contracts

Provisions relating to domestic procedures

5. Transfer of funds

Right of transfer/temporary derogations

The object of transfer

The transfer period

Payment of interest

Applicable currency and exchange rate

6. Protection of rights arising from other agreements

7. Protection from strife

Types of losses covered

Treatment

8. Subrogation

9. Taxation

DISPUTE SETTLEMENT

1. Consultations and conciliation

2. Obligations arising from other agreements

3. State-to-state dispute settlement

Scope (pre/post establishment)

Forum and procedures

Remedies

Enforcement

Relationship to other existing Dispute Settlement mechanisms

4. INVESTOR-TO-STATE DISPUTE SETTLEMENT

Scope (pre/post establishment)

Consent to Arbitration

Institutional Forum

Choice of Forum (domestic/international arbitration)

Interim or injunctive relief

Conditions ("cooling-off" period, time limitations)

Remedies

Enforcement

Relationship to other existing dispute settlement mechanisms

5. **Relationship between state/state dispute settlement and investor/state dispute settlement (concurrent or alternative procedures)**
6. **Consolidation of claims**
7. **Subrogation**
8. **Taxation**

IMPLEMENTATION AND FOLLOW-UP

"Parties Group" : Role and responsibilities

ACCESSION OF NON-MEMBER COUNTRIES

Conditions for Accession

RELATIONSHIP TO INTERNATIONAL AGREEMENTS

1. OECD Liberalisation Codes

Capital Movements Code

Current Invisibles Code

2. OECD Declaration and Decisions on International Investment and Multinational Enterprises

National treatment instrument

Guidelines for Multinational Enterprises

Conflicting requirements

Investment Incentives and Disincentives

3. **Bilateral investment agreements**
4. **Bilateral taxation agreements**
5. **Regional investment agreements (e.g. NAFTA)**
6. **Sectoral agreements (Energy Charter Treaty)**
7. **WTO Agreements, in particular GATS and TRIMS**
8. **Any other agreements**

FINAL PROVISIONS

1. **Entry into Force**
2. **Ratification**
3. **Amendments/modification**
4. **Withdrawal**