

CHAPTER 9 ELECTRONIC COMMERCE

Article 9.1 Definitions

For purposes of this Chapter:

- (a) “**computing facilities**” means computer servers and storage devices for processing or storing information for commercial use, and does not include facilities used for the supply of public telecommunications services (“PTS”);
- (b) “**covered person**” means:
 - (a) an investment as defined in Article 10.1 (Definitions);
 - (b) an investor of a Party as defined in Article 10.1 (Definitions), but does not include an investor in a financial institution¹; or
 - (c) a service supplier of a Party as defined in Article 7.1 (Definitions),but does not include a “financial institution” or a “financial service supplier” as defined in Paragraph 8 (Definitions) of the Annex on Financial Services to Chapter 7 (Trade in Services).
- (c) “**broadcasting**” means the transmission of signs or signals via any technology for the reception and/or display of aural and/or visual programme signals by all or part of the public;
- (d) “**digital products**” means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, and transmitted electronically. For greater certainty, digital products do not include digitised representations of financial instruments, including money;
- (e) “**electronic authentication**” means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;
- (f) “**electronic transmission or transmitted electronically**” means transmissions made using any electromagnetic means, including by photonic means;
- (g) “**personal data**” means any data, including information, about an identified or

¹ For the purposes of this Chapter only, “**financial institution**” means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located.

identifiable natural person;

- (h) “**trade administration documents**” means forms a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

Article 9.2 **Scope and General Provisions**

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade by electronic means.
2. The Parties recognise the economic growth and opportunities provided by electronic commerce, and the importance of promoting consumer confidence in electronic commerce and of avoiding barriers to its use and development.
3. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of:
 - (a) Chapter 7 (Trade in Services), including:
 - (i) any applicable terms, limitations and conditions on market access; and
 - (ii) any applicable conditions and qualifications on national treatment,adopted or maintained in accordance with Article 7.6 (Schedule of Specific Commitments) and specified in the Schedules of Specific Commitments in Annex 7-A (Sri Lanka) and Annex 7-B (Singapore); and
 - (b) Chapter 10 (Investment), including the measures adopted or maintained in accordance with paragraph 8 Article 12.2 (Scope and Coverage) and set out in the Schedules in Annex 10-B (Sri Lanka) and Annex 10-C (Singapore) .
4. The obligations contained in Article 9.4 (Non-Discriminatory Treatment of Digital Products), Article 9.9 (Cross-Border Transfer of Information by Electronic Means) and Article 9.10 (Location of Computing Facilities) shall not apply to the following:
 - (a) in respect of Chapter 7 (Trade in Services):
 - (i) the terms, limitations and conditions on market access; and
 - (ii) the conditions and qualifications on national treatment,adopted or maintained in accordance with Article 7.6 (Schedule of Specific Commitments) and specified in the Schedules of Specific Commitments in Annex 7-A (Sri Lanka) and Annex 7-B (Singapore); and
 - (b) in respect of Chapter 10 (Investment), the measures adopted or maintained in

accordance with paragraph 8 of Article 12.2 (Scope and Coverage) and set out in the Schedules in Annex 10-B (Sri Lanka) and Annex 10-C (Singapore).

5. This Chapter shall not apply to:
 - (a) government procurement; or
 - (b) information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection.

Article 9.3 Customs Duties

1. Each Party shall maintain its practice of not imposing customs duties on electronic transmissions between the Parties, consistent with paragraph 3 of the WTO Ministerial Decision of 13 December 2017 in relation to the Work Programme on Electronic Commerce (WT/MIN(17)/W/6) as well as future WTO Ministerial Decisions which continue the non-imposition of custom duties on electronic transmissions.
2. Each Party reserves the right to adjust its practice referred to in paragraph 1 of this Article in accordance with any future WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

Article 9.4 Non-Discriminatory Treatment of Digital Products

1. No Party may accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of the other Party, or to digital products of which the author, performer, producer, developer or owner is a person of the other Party than it accords to other like digital products.²
2. The Parties understand that this Article does not apply to subsidies or grants provided by a Party including government-supported loans, guarantees and insurance.
3. This Article does not apply to any measure affecting broadcasting.

² For greater certainty, to the extent that a digital product of a non-Party is a “like digital product”, it will qualify as an “other like digital product” for the purposes of this paragraph.

Article 9.5
Domestic Electronic Transactions Framework

1. The Parties shall, to the extent possible, maintain domestic legal frameworks governing electronic transactions consistent with the principles of the *UN Convention on the Use of Electronic Communications in International Contracts* (New York, 2005) to which both Parties are party to.
2. The Parties shall endeavour to avoid any unnecessary regulatory burden on electronic transactions.

Article 9.6
Electronic Authentication and Electronic Signatures

1. Except where otherwise provided for in its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form as provided within the framework of the *UN Convention on the Use of Electronic Communications in International Contracts* (New York, 2005).
2. No Party may adopt or maintain measures for electronic authentication that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
 - (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication.
3. Notwithstanding paragraph 2 of this Article, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards prescribed, or be certified by an authority accredited, in accordance with the Party's laws and regulations.
4. The Parties shall encourage the use of interoperable electronic authentication.

Article 9.7
Personal Data Protection

1. The Parties recognise the economic and social benefits of protecting the personal data of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.
2. To this end, each Party shall adopt such domestic legal framework, that each Party may consider adequate, for the protection of the personal data of users of electronic commerce.

3. The Parties shall publish information on the personal data protections it provides to users of electronic commerce, including:
 - (a) how individuals can pursue remedies; and
 - (b) how business can comply with any legal requirements.

Article 9.8 Paperless Trading

The Parties shall endeavour to:

- (a) make trade administration documents available to the public in electronic form; and
- (b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

Article 9.9 Cross-Border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.
2. Each Party shall allow the cross-border transfer of information by electronic means, including personal information, when this activity is for the conduct of the business of a covered person.
3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 of this Article to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 9.10 Location of Computing Facilities

1. The Parties recognise that each Party may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.
2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.

3. Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 of this Article to achieve a legitimate public policy objective, provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Article 9.11 Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial activities when they engage in electronic commerce.
2. For the purposes of this Article, fraudulent and deceptive commercial refers to those fraudulent and deceptive commercial practices that cause actual harm to consumers, or that pose an imminent threat of such harm if not prevented, for example, a practice of:
 - (a) making a misrepresentation of material fact, including factual misrepresentation, that causes significant detriment to the economic interests of a misled consumer;
 - (b) failing to deliver products or provide services to a consumer after the consumer is charged; or
 - (c) charging or debiting a consumer's financial, telephone or other accounts without authorisation.
3. Each Party shall adopt or maintain consumer protection laws to proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities.
4. The Parties recognise the importance of co-operation between their respective national consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare. To this end, the Parties affirm that the co-operation sought includes cooperation with respect to online commercial activities.

Article 9.12 Co-operation

Recognising the global and inter-connected nature of electronic commerce, the Parties shall endeavour to:

- (a) work together to assist small and medium enterprises to overcome obstacles encountered in the use of electronic commerce;
- (b) explore collaborative efforts in the recognition of professional certifications in the ICT sector; and
- (c) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:
 - (i) personal information protection;
 - (ii) security in electronic communications;
 - (iii) authentication; and
 - (iv) e-Government.