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### The investment protection chapter of the EU-Singapore Free Trade Agreement: A model for the post-Brexit UK IIAs

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## ISSUE FOCUS

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# The Investment Protection Chapter of the EU-Singapore Free Trade Agreement: A Model for the Post-Brexit UK IIAs

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Siraj Shaik Aziz\*

*The impending British exit (Brexit) from the European Union has placed the UK's investment policy at a crossroads. A post-Brexit UK will now have to reorganise its investment relationships with its economic partners through bespoke UK IIAs. This exercise will have to accommodate the shifting zeitgeist concerning the balance of investors' rights and the right to regulate IIAs that is expected. This paper examines the continued relevance of the recently minted Investment Protection Chapter in the EU-Singapore Free Trade Agreement, acknowledged by Britain's power brokers, as a persuasive model for the UK to emulate for this purpose. This is notwithstanding the uncertainties that now surround the implementation and efficacy of the Agreement in light of Brexit and a pending decision from the Court of Justice of the European Union. Such emulation would ultimately make for a better Investor-State Dispute Settlement System in the UK IIAs by providing a much needed update to its old investment treaty architecture.*

### Keywords

EUSFTA, Investment Chapter, Brexit, ISDS, Right to Regulate, Code of Conduct, Roster of Arbitrator.

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## I. Introduction

The European Union-Singapore Free Trade Agreement (“EUSFTA”) is poised to be a landmark agreement in the Southeast Asian region. Negotiations for the EUSFTA began in 2009 and the agreement was finalized in 2014. Initially, the EUSFTA was expected to enter into force by the end of 2015, but it is now postponed to 2018 or 2019, further subject to the domestic administrative procedures on both sides.<sup>1</sup> This is due to the European Commission’s decision to request for a CJEU opinion on its competencies about the EUSFTA. This is further complicated by the impending departure of the UK, to which three quarters of Singaporean investment in the EU goes, from the EU following a referendum on June 23, 2016.<sup>2</sup> This has generated considerable uncertainty about the UK’s future relationship with Singapore in relation to investment protection as the Investment Protection Chapter of the EUSFTA was meant to be a replacement of the existing bilateral investment treaty between the two countries, namely, the Agreement on Promotion and Protection of Investment on July 22, 1975 (hereinafter UK-Singapore BIT). Brexit has thus underscored the EUSFTA’s role as both a possible model for an independent UK to emulate, and an event possibly impacting on the implementation and efficacy of the EUSFTA.<sup>3</sup>

Whatever the fate of the EUSFTA would be, three things are evident. First, Prime Minister Theresa May’s government has indicated its post-Brexit direction of focusing on Commonwealth countries as an alternative to Britain losing access to the European Single Market after leaving the EU.<sup>4</sup> Secondly, there is a clear impetus for the UK to update its international economic law architecture with a new series of international investment agreements (“IIAs”). Those terms would better comport with the evolved expectations on an investment treaty regime by host States, home

<sup>1</sup> Singapore Ministry of Trade and Industry, Press Release, Dec. 2014, available at <https://www.mti.gov.sg/MTIInsights/SiteAssets/Pages/EUSFTA/5%20things%20you%20should%20know%20about%20the%20EUSFTA.pdf> (last visited on Apr. 21, 2017).

<sup>2</sup> At this referendum, 52 percent of the UK voters voted in favour of leaving the European Union. See *Britain votes ‘Out’ to exit the European Union*, CHANNEL NEWSASIA (Singapore), June 24, 2016, available at <http://www.channelnewsasia.com/news/world/live-updates-britain/2899680.html> (last visited on Apr. 21, 2017).

<sup>3</sup> Tang See Kit, *Brexit and the EU-Singapore FTA: Further delays or a slow-death?*, CHANNEL NEWSASIA (Singapore), July 5, 2016, available at <http://www.channelnewsasia.com/news/business/singapore/brexit-and-the-eu/2929208.html> (last visited on Apr. 21, 2017).

<sup>4</sup> P. Sunwalkar, *Spurred by Brexit, UK pushes for trade with India and the Commonwealth*, HINDUSTAN TIMES, Mar. 8, 2017, available at <http://www.hindustantimes.com/india-news/spurred-by-brexit-uk-pushes-for-trade-with-india-and-the-commonwealth/story-Stx8oMH0gwXSF5AEIJUVN.html> (last visited on Apr. 21, 2017).