

## CHAPTER 10

### INVESTMENT

#### Article 10.1: Definitions

For the purposes of this Chapter:

- (a) **covered investment** means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter, and which, where applicable, has been admitted<sup>1, 2</sup> by the host Party, subject to its relevant laws, regulations, and policies;<sup>3</sup>
- (b) **freely usable currency** means a freely usable currency as determined by the IMF under the IMF Articles of Agreement as may be amended;
- (c) **investment** means every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gains or profits, or the assumption of risk. Forms that an investment may take include:
  - (i) shares, stocks, and other forms of equity participation in a juridical person, including rights derived therefrom;

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<sup>1</sup> For Malaysia and Thailand, protection under this Chapter shall be accorded to covered investments which, where applicable, have been specifically approved in writing for protection by their respective competent authorities in accordance with their respective laws, regulations, and policies.

<sup>2</sup> For Cambodia, Indonesia, and Viet Nam, “has been admitted” means “has been specifically registered or approved in writing, as the case may be”.

<sup>3</sup> For the purposes of this definition, “policies” means those policies affecting an investment that are endorsed and announced by the government of a Party in a written form and made publicly available in a written form.

- (ii) bonds, debentures, loans,<sup>4</sup> and other debt instruments of a juridical person and rights derived therefrom;<sup>5</sup>
- (iii) rights under contracts, including turnkey, construction, management, production, or revenue-sharing contracts;
- (iv) intellectual property rights and goodwill, which are recognised pursuant to the laws and regulations of the host Party;
- (v) claims to money or to any contractual performance related to a business and having financial value;<sup>6</sup>
- (vi) rights conferred pursuant to the laws and regulations of the host Party or contracts, such as concessions, licences, authorisations, and permits, including those for the exploration and exploitation of natural resources; and
- (vii) movable and immovable property, and other property rights, such as leases, mortgages, liens, or pledges.<sup>7</sup>

The term “investment” does not include an order or judgment entered in a judicial or administrative action or an arbitral proceeding.

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<sup>4</sup> A loan issued by a Party to another Party is not an investment.

<sup>5</sup> Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

<sup>6</sup> For greater certainty, investment does not mean claims to money that arise solely from:

- (a) commercial contracts for the sale of goods or services; or
- (b) the extension of credit in connection with such commercial contracts.

<sup>7</sup> For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

For the purposes of the definition of investment in this subparagraph, returns that are invested shall be treated as an investment and any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment;

- (d) **investor of a non-Party** means, with respect to a Party, an investor that seeks to make,<sup>8</sup> is making, or has made an investment in the territory of that Party, that is not an investor of a Party;
- (e) **investor of a Party** means a natural person of a Party or a juridical person of a Party that seeks to make,<sup>9</sup> is making, or has made an investment in the territory of another Party;
- (f) **juridical person** means any entity constituted or organised under applicable law, whether or not for profit, and whether private or governmental, including any corporation, trust, partnership, joint venture, sole proprietorship, association or similar organisation, and a branch of a juridical person;<sup>10, 11, 12</sup>
- (g) **juridical person of a Party** means a juridical person constituted or organised under the law of that Party, and a

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<sup>8</sup> For greater certainty, the Parties understand that an investor “seeks to make” an investment when that investor has taken concrete action or actions to make an investment. Where a notification or approval process is required for making an investment, an investor that “seeks to make” an investment refers to an investor that has initiated such notification or approval process.

<sup>9</sup> For greater certainty, the Parties understand that an investor “seeks to make” an investment when that investor has taken concrete action or actions to make an investment. Where a notification or approval process is required for making an investment, an investor that “seeks to make” an investment refers to an investor that has initiated such notification or approval process.

<sup>10</sup> For greater certainty, a branch of a juridical person does not have any right to make any claim against any Party under this Agreement.

<sup>11</sup> For greater certainty, the inclusion of a “branch” in the definition of “juridical person” is without prejudice to a Party’s ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

<sup>12</sup> A branch of a legal entity of a non-Party shall not be considered as a juridical person of a Party.

branch located in the territory of that Party and carrying out business activities there;<sup>13, 14, 15</sup>

- (h) **measure by a Party** means any measure adopted or maintained by:
  - (i) central, regional, or local governments and authorities of that Party; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities of that Party; and
- (i) **natural person of a Party** means, for the purposes of subparagraph (e), a natural person who under the law of that Party:
  - (i) is a national or citizen of that Party; or
  - (ii) has the right of permanent residence in that Party, where both that Party and another Party recognise permanent residents and accord substantially the same treatment to their respective permanent residents as they accord to their respective nationals in respect of measures affecting investment.

## **Article 10.2: Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of another Party; and
  - (b) covered investments.

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<sup>13</sup> For greater certainty, a branch of a juridical person does not have any right to make any claim against any Party under this Agreement.

<sup>14</sup> For greater certainty, the inclusion of a “branch” in the definition of “juridical person of a Party” is without prejudice to a Party’s ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

<sup>15</sup> A branch of a legal entity of a non-Party shall not be considered as a juridical person of a Party.

2. This Chapter shall not apply to:
- (a) government procurement;
  - (b) subsidies or grants provided by a Party;
  - (c) services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this Chapter, “service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
  - (d) measures adopted or maintained by a Party to the extent that they are covered by Chapter 8 (Trade in Services); and
  - (e) measures adopted or maintained by a Party to the extent that they are covered by Chapter 9 (Temporary Movement of Natural Persons).

For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

3. Notwithstanding subparagraph 2(d), Article 10.5 (Treatment of Investment), Article 10.7 (Senior Management and Board of Directors),<sup>16</sup> Article 10.9 (Transfers), Article 10.11 (Compensation for Losses), Article 10.12 (Subrogation), and Article 10.13 (Expropriation) shall apply, *mutatis mutandis*, to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of any other Party within the meaning of Chapter 8 (Trade in Services), but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter.

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<sup>16</sup> Article 10.7 (Senior Management and Board of Directors) shall apply to measures affecting the supply of a service only for a Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures).

### **Article 10.3: National Treatment<sup>17</sup>**

1. Each Party shall accord to investors of another Party, and to covered investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a government other than at the central level, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that government to investors, and to the investments of investors, of the Party of which it forms a part.

### **Article 10.4: Most-Favoured-Nation Treatment<sup>18, 19</sup>**

1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

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<sup>17</sup> For greater certainty, whether the treatment is accorded in “like circumstances” under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

<sup>18</sup> This Article shall not apply to Cambodia, Lao PDR, Myanmar, and Viet Nam. The treatment under this Article shall not be accorded to investors of Cambodia, Lao PDR, Myanmar, and Viet Nam, and to covered investments of such investors.

<sup>19</sup> For greater certainty, whether the treatment is accorded in “like circumstances” under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

3. For greater certainty, the treatment referred to in paragraphs 1 and 2 does not encompass any international dispute resolution procedures or mechanisms under other existing or future international agreements.

#### **Article 10.5: Treatment of Investment<sup>20</sup>**

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security, in accordance with the customary international law minimum standard of treatment of aliens.
2. For greater certainty:
  - (a) fair and equitable treatment requires each Party not to deny justice in any legal or administrative proceedings;
  - (b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of the covered investment; and
  - (c) the concepts of fair and equitable treatment and full protection and security do not require treatment to be accorded to covered investments in addition to or beyond that which is required under the customary international law minimum standard of treatment of aliens, and do not create additional substantive rights.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

#### **Article 10.6: Prohibition of Performance Requirements**

1. No Party shall impose or enforce, as a condition for establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its

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<sup>20</sup> This Article shall be interpreted in accordance with Annex 10A (Customary International Law).

territory of an investor of any other Party, any of the following requirements:<sup>21</sup>

- (a) to export a given level or percentage of goods;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;
- (e) to restrict sales of goods in its territory that such investments produce by relating such sales to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;
- (g) to supply exclusively from the territory of the Party the goods that such investments produce to a specific regional market or to the world market; or
- (h) to adopt a given rate or amount of royalty under a licence contract, in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any future licence contract freely entered into between the investor and a person in its territory, provided that the requirement is imposed or enforced in a manner that constitutes direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party.<sup>22</sup> For greater certainty, this subparagraph does not apply when the licence contract is concluded between the investor and a Party.

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<sup>21</sup> For greater certainty, each Party may maintain existing measures or adopt new or more restrictive measures that do not conform with obligations under this Article, as set out in List A and List B of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

<sup>22</sup> For the purposes of this subparagraph, a “licence contract” means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.



Notwithstanding this Article, subparagraphs (f) and (h) shall not apply to Cambodia, Lao PDR, and Myanmar.

2. No Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of any other Party on compliance with any of the following requirements:
  - (a) to achieve a given level or percentage of domestic content;
  - (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
  - (c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor; or
  - (d) to restrict sales of goods in its territory that such investments produce by relating such sales to the volume or value of its exports or foreign exchange earnings.
  
3.
  - (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of any other Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
  
  - (b) Subparagraphs 1(f) and (h) shall not apply:
    - (i) if a Party authorises use of an intellectual property right in accordance with Article 31 or Article 31*bis* of the TRIPS Agreement,<sup>23</sup> or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

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<sup>23</sup> This includes any amendment to the TRIPS Agreement implementing paragraph 6 of the *Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2)* adopted at Doha on 14 November 2001.

- (ii) if the requirement is imposed or enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anti-competitive under the Party's competition laws and regulations.
  - (c) Subparagraph 1(h) shall not apply if the requirement is imposed or enforced by a tribunal or competent authority as equitable remuneration under the Party's copyright laws and regulations.
  - (d) Subparagraphs 1(a) through (c), 2(a), and 2(b) shall not apply to qualification requirements for goods with respect to export promotion and foreign aid programmes.
  - (e) Subparagraphs 2(a) and (b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
4. For greater certainty, paragraphs 1 and 2 shall not apply to any requirement other than those set out in those paragraphs.

#### **Article 10.7: Senior Management and Board of Directors**

1. No Party shall require that a juridical person of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of a juridical person of that Party that is a covered investment, be of a particular nationality or resident in the territory of that Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

#### **Article 10.8: Reservations and Non-Conforming Measures**

1. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.6 (Prohibition of Performance Requirements), and Article 10.7 (Senior Management and Board of Directors) shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
  - (i) the central level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment);
  - (ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment); or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); and
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure:
  - (i) for Cambodia, Indonesia, Lao PDR, Myanmar, and the Philippines, as it existed at the date of entry into force of this Agreement; and
  - (ii) for Australia, Brunei, China, Japan, Korea, Malaysia, New Zealand, Singapore, Thailand, and Viet Nam, as it existed immediately before the amendment,

with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.6 (Prohibition of Performance Requirements), and Article 10.7 (Senior Management and Board of Directors).

2. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.6 (Prohibition of Performance Requirements), and Article 10.7 (Senior Management and Board of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by that Party in List B of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

3. Notwithstanding subparagraph 1(c)(ii), for five years after the date of entry into force of this Agreement, Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.6 (Prohibition of Performance Requirements), and Article 10.7 (Senior Management and Board of Directors) shall not apply to an amendment to any non-conforming measure referred to in subparagraph 1(a) to the extent that the amendment does not decrease the conformity of the measure as it existed at the date of entry into force of this Agreement with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.6 (Prohibition of Performance Requirements), and Article 10.7 (Senior Management and Board of Directors).
4. No Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by List B of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authorities.
5. Article 10.3 (National Treatment) and Article 10.4 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, and any measure that is covered by an exception to, or derogation from, the obligations imposed by Article 11.7 (National Treatment), or imposed by Article 3 or 4 of the TRIPS Agreement.

#### **Article 10.9: Transfers**

1. Each Party shall allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
  - (a) contributions to capital, including the initial contribution;
  - (b) profits, capital gains, dividends, interest, royalty payments, technical assistance and technical and management fees, licence fees, and other current income accruing from the covered investment;
  - (c) proceeds from the sale or liquidation of all or any part of the covered investment;

- (d) payments made under a contract, including a loan agreement;
  - (e) payments made pursuant to Article 10.11 (Compensation for Losses) and Article 10.13 (Expropriation);
  - (f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration, or the agreement of the parties to the dispute; and
  - (g) earnings and other remuneration of personnel engaged from abroad in connection with the covered investment.
2. Each Party shall allow such transfers relating to a covered investment to be made in any freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:
- (a) bankruptcy, insolvency, or the protection of the rights of creditors including employees;
  - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
  - (c) criminal or penal offences and the recovery of the proceeds of crime;
  - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
  - (e) ensuring compliance with awards or orders or judgments in judicial or administrative proceedings;
  - (f) taxation;<sup>24</sup>

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<sup>24</sup> For greater certainty, this also includes the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes including any taxation measure that differentiates between persons based on their place of residence or incorporation.

- (g) social security, public retirement, superannuation, compulsory savings schemes, or other arrangements to provide pension or similar retirement benefits;
  - (h) severance entitlement of employees; and
  - (i) requirements to register and satisfy other formalities imposed by the central bank and other relevant authorities of that Party.
4. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the IMF under the IMF Articles of Agreement as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement as may be amended, provided that the Party shall not impose restrictions on any capital transactions inconsistently with the obligations under this Chapter regarding such transactions, except under Article 17.15 (Measures to Safeguard the Balance of Payments) or on request of the IMF.

#### **Article 10.10: Special Formalities and Disclosure of Information**

1. Nothing in Article 10.3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, including a requirement that covered investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by that Party to investors of another Party and covered investments pursuant to this Chapter.
2. Notwithstanding Article 10.3 (National Treatment) and Article 10.4 (Most-Favoured-Nation Treatment), a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect, to the extent possible, any confidential information which has been provided from any disclosure that would prejudice the legitimate commercial interests or the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws and regulations.

### **Article 10.11: Compensation for Losses**

Each Party shall accord to investors of another Party, and their covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife, or state of emergency, treatment no less favourable than that it accords, in like circumstances, to:

- (a) its own investors and their investments; and
- (b) investors of any other Party or non-Party, and their investments.

### **Article 10.12: Subrogation**

1. If a Party, or an agency designated by a Party, makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity that it has granted in respect of a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any right or claim in respect of such covered investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.
2. Where a Party or an agency designated by a Party has made a payment to an investor of that Party and has taken over any right or claim of the investor, that investor shall not pursue that right or claim against the other Party in whose territory the covered investment was made, unless that investor is authorised to act on behalf of the Party making the payment or the agency designated by that Party.
3. In the exercise of subrogated or transferred right or claim, a Party or an agency designated by a Party exercising such right or claim shall disclose the coverage of the claims arrangement with its investors to the relevant Party.

### **Article 10.13: Expropriation<sup>25</sup>**

1. No Party shall expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or

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<sup>25</sup> This Article shall be interpreted in accordance with Annex 10B (Expropriation).

nationalisation (hereinafter referred to as “expropriation” in this Chapter), except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) on payment of compensation in accordance with paragraphs 2 and 3; and
- (d) in accordance with due process of law.

2. The compensation referred to in subparagraph 1(c) shall:

- (a) be paid without delay;<sup>26</sup>
- (b) be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced,<sup>27</sup> or when the expropriation occurred, whichever is earlier (hereinafter referred to as the “date of expropriation” in this Chapter);<sup>28, 29, 30</sup>
- (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
- (d) be effectively realisable and freely transferable.

3. In the event of delay, the compensation shall include an appropriate interest in accordance with the expropriating Party’s laws, regulations, and policies provided that such laws,

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<sup>26</sup> The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

<sup>27</sup> For the Philippines, the time when the expropriation was publicly announced for the purpose of calculating the fair market value of the expropriated investment refers to the date of filing of the Petition for Expropriation.

<sup>28</sup> For Australia, Brunei Darussalam, Korea, Malaysia, New Zealand, and Singapore, the date of expropriation for the purpose of calculating the fair market value of the expropriated investment means the date immediately before the expropriation occurs.

<sup>29</sup> For Cambodia, Lao PDR, Myanmar, and Viet Nam, the date of expropriation for the purpose of calculating the fair market value of the expropriated investment means the date when the expropriation decision is issued by the competent authority.

<sup>30</sup> For Thailand, the date of expropriation for the purpose of calculating the fair market value of the expropriated investment means the date when the expropriation occurs.



regulations, and policies are applied on a non-discriminatory basis.

4. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 11 (Intellectual Property) and the TRIPS Agreement.<sup>31</sup>
5. Notwithstanding paragraphs 1 through 3, any measure of expropriation relating to land shall be as defined in the existing laws and regulations of the expropriating Party, and shall be, for the purposes of and on payment of compensation, in accordance with the aforesaid laws and regulations. Such compensation shall be subject to any subsequent amendments to the aforesaid laws and regulations relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

#### **Article 10.14: Denial of Benefits<sup>32</sup>**

1. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of that other Party and to investments of that investor if the juridical person:
  - (a) is owned or controlled by a person of a non-Party or of the denying Party; and
  - (b) has no substantial business activities in the territory of any Party other than the denying Party.
2. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of that other Party and to investments of that investor if persons of a non-Party own or control the juridical person and the denying Party adopts or

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<sup>31</sup> For greater certainty, the Parties recognise that, for the purposes of this Article, the “revocation” of intellectual property rights includes the cancellation or nullification of such rights, and the “limitation” of intellectual property rights includes exceptions to such rights.

<sup>32</sup> A Party’s right to deny the benefits of this Chapter as provided for in this Article may be exercised at any time.

maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person or to its investments.

3. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of that other Party and to investments of that investor if persons of a non-Party own or control the juridical person and the denying Party does not maintain diplomatic relations with the non-Party.
4. Notwithstanding paragraph 1, Thailand may, under its applicable laws and regulations, deny the benefits of this Chapter relating to the admission, establishment, acquisition, and expansion of investments to an investor of another Party that is a juridical person of such Party and to investments of such an investor where Thailand establishes that the juridical person is owned or controlled by natural persons or juridical persons of a non-Party or of Thailand.
5. For the purposes of this Article, for Thailand, a juridical person is:
  - (a) “owned” by natural persons or juridical persons of a Party or of a non-Party if more than 50 per cent of the equity interest in it is beneficially owned by such persons; and
  - (b) “controlled” by natural persons or juridical persons of a Party or of a non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.
6. The Philippines may deny the benefits of this Chapter to investors of another Party and to investments of that investor where it establishes that such investor has made an investment in breach of the provisions of *Commonwealth Act No. 108*, entitled *An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges*, as amended by *Presidential Decree No. 715*, otherwise known as *The Anti-Dummy Law*, as may be amended.
7. A Party may deny the benefits of this Chapter to an investor of another Party or of a non-Party and to investments of that investor where such an investor has made an investment in breach of the provisions of the denying Party’s laws and regulations that implement the Financial Action Task Force Recommendations.

### **Article 10.15: Security Exceptions**

Notwithstanding Article 17.13 (Security Exceptions), nothing in this Chapter shall be construed to:

- (a) require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- (b) preclude a Party from applying measures that it considers necessary for:
  - (i) the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security; or
  - (ii) the protection of its own essential security interests.

### **Article 10.16: Promotion of Investment**

The Parties shall endeavour to promote and increase awareness of the region as an investment area including through:

- (a) encouraging investments among the Parties;
- (b) organising joint investment promotion activities between or among Parties;
- (c) promoting business matching events;
- (d) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations, and policies; and
- (e) conducting information exchanges on other issues of mutual concern relating to investment promotion.

### **Article 10.17: Facilitation of Investment**

1. Subject to its laws and regulations, each Party shall endeavour to facilitate investments among the Parties, including through:

- (a) creating the necessary environment for all forms of investment;

- (b) simplifying its procedures for investment applications and approvals;
  - (c) promoting the dissemination of investment information, including investment rules, laws, regulations, policies, and procedures; and
  - (d) establishing or maintaining contact points, one-stop investment centres, focal points, or other entities in the respective Party to provide assistance and advisory services to investors, including the facilitation of operating licences and permits.
2. Subject to its laws and regulations, a Party's activities under subparagraph 1(d) may include, to the extent possible, assisting investors of any other Party and covered investments to amicably resolve complaints or grievances with government bodies which have arisen during their investment activities by:
- (a) receiving and, where appropriate, considering referring or giving due consideration to complaints raised by investors relating to government activities impacting their covered investment; and
  - (b) providing assistance, to the extent possible, in resolving difficulties experienced by the investors in relation to their covered investments.
3. Subject to its laws and regulations, each Party may, to the extent possible, consider establishing mechanisms to make recommendations to its relevant government bodies addressing recurrent issues affecting investors of another Party.
4. The Parties shall endeavour to facilitate meetings between their respective competent authorities aimed at exchanging knowledge and approaches to better facilitate investment.
5. Nothing in this Article shall be subject to, or otherwise affect, any dispute resolution proceedings under this Agreement.

#### **Article 10.18: Work Programme**

1. The Parties shall, without prejudice to their respective positions, enter into discussions on:

- (a) the settlement of investment disputes between a Party and an investor of another Party; and
- (b) the application of Article 10.13 (Expropriation) to taxation measures that constitute expropriation,

no later than two years after the date of entry into force of this Agreement, the outcomes of which are subject to agreement by all Parties.

2. The Parties shall conclude the discussions referred to in paragraph 1 within three years from the date of commencement of the discussions.