

**APPENDIX 4**

**NEW CHAPTER 10 (INVESTMENT)**

## **CHAPTER 10 INVESTMENT**

### **Section A: Investment**

#### **ARTICLE 1 Scope of Application**

1. This Chapter applies to measures adopted or maintained by a Party relating to investors of the other Party and covered investments.<sup>1</sup>
2. A Party's obligations under Section A (Investment) shall apply:
  - (a) to all levels of government or authorities of that Party; and
  - (b) to any non-governmental body when it exercises any governmental authority delegated to it by the government or authorities of that Party.<sup>2</sup>
3. This Chapter shall not apply to:
  - (a) subsidies or grants provided by a Party, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments; and
  - (b) matters of taxation in the territory of either Party, except as set out in Article 19 (Taxation).
4. For greater certainty, this Chapter shall not bind a 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 Chapter.

#### **ARTICLE 2 Relation to Other Chapters**

1. This Chapter shall not apply to measures adopted or maintained by a Party that

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<sup>1</sup> Both Parties recognise the principle of not according discriminatory treatment to investors of the other Party and their covered investments, on the basis of their ownership.

<sup>2</sup> For greater certainty, governmental authority is delegated under the law of a Party, including through a legislative grant, and a government order, directive or other action transferring to the person, or authorising the exercise by the person of, governmental authority.

are covered by Chapter 8 (Trade in Services) or Chapter 9 (Movement of Natural Persons).

2. Notwithstanding paragraph 1, Article 5 (Minimum Standard of Treatment), Article 7 (Expropriation and Compensation), Article 8 (Compensation for Losses), Article 9 (Transfers), Article 11 (Subrogation), Article 12 (Denial of Benefits), and Section B (Investor-State Dispute Settlement) 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 the other Party, but only to the extent they relate to a covered investment.

### **ARTICLE 3 National Treatment<sup>3</sup>**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the 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 its own investors with respect to the management, conduct, operation, and sale or other disposition of investments.

### **ARTICLE 4 Most-Favoured-Nation Treatment<sup>4</sup>**

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

3. The provisions of this Article shall not be construed so as to oblige one Party to

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<sup>3</sup> For greater certainty, whether treatment is accorded in “like circumstances” under Article 3 (National Treatment) or Article 4 (Most-Favored-Nation Treatment) 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>4</sup> For the purposes of this Article, the term “non-Party” shall not include the following WTO Members within the meaning of the WTO Agreement: (1) Hong Kong, China; (2) Macao, China; and (3) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

extend to the investors of the other Party and covered investments any treatment, preference or privilege resulting from:

- (a) any preferential treatment accorded to investors and their covered investments under any bilateral, regional or international agreements, that were initialled, signed or have entered into force prior to the entry into force of this Chapter<sup>5</sup>;
- (b) any existing or future preferential treatment accorded to investors and their covered investment in any agreement or arrangement between or among ASEAN Member States; or
- (c) any bilateral or multilateral international agreements involving:
  - (i) for China: aviation, fisheries, and maritime and services auxiliary to maritime, including salvage; and
  - (ii) for Singapore: aviation, maritime and services auxiliary to maritime, port, land transport, and telecommunication matters.

4. For greater certainty, the treatment referred to in this Article does not encompass dispute resolution mechanisms or procedures, such as those included in Section B (Investor-State Dispute Settlement), that are provided for in international investment or trade agreements.

## **ARTICLE 5**

### **Minimum Standard of Treatment<sup>6</sup>**

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security in accordance with customary international law.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment and do not create substantive rights in addition to or beyond that which is required by that standard. The obligation in paragraph 1 to provide:

- (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with due process of law; and
- (b) “full protection and security” refers to the requirements on each Party to provide the level of police protection required under customary international law.

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<sup>5</sup> For greater certainty, “bilateral, regional or international agreements” includes any subsequent reviews or amendments to those agreements.

<sup>6</sup> Article 5 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 10-A (Customary International Law).

3. A determination that there has been a breach of another provision of this Chapter, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

## **ARTICLE 6**

### **Non-Conforming Measures**

1. For China, Article 3 (National Treatment) does not apply to:

- (a) any existing non-conforming measures maintained within its territory; or
- (b) the continuation or amendment of any non-conforming measure referred to in sub-paragraph (a).

2. For Singapore, Article 3 (National Treatment) shall not apply to:

- (a) any measure relating to the collection, purification, treatment, disposal and distribution of water, including waste water; and
- (b) any measure relating to real estate, including but not limited to the ownership, purchase, development, management, maintenance, use, enjoyment, sale or other disposal of real estate.

3. Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment) shall not apply to any measure covered by an exception to, or derogation from, the obligations under Articles 3 or 4 of the *Agreement on Trade-related Aspects of Intellectual Property Rights* in Annex 1C of the WTO Agreement (TRIPS Agreement), as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

4. Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment) do not apply to government procurement.

5. The Parties will endeavour to progressively remove the non-conforming measures.

## **ARTICLE 7**

### **Expropriation and Compensation<sup>7</sup>**

1. No Party may expropriate or nationalise a covered investment either directly or

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<sup>7</sup> Article 7 (Expropriation and Compensation) shall be interpreted in accordance with Annexes 10-A (Customary International Law) and 10-B (Expropriation).

indirectly through measures equivalent to expropriation or nationalisation (“expropriation”), except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) on payment of compensation in accordance with this Article; and
- (d) in accordance with applicable legal procedure of that Party and due process of law.

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

- (a) be paid without delay;
- (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“the date of expropriation”);
- (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
- (d) be fully realisable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c), converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:

- (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
- (b) interest at a commercially reasonable rate, for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

6. Notwithstanding paragraphs 1 and 2, any measure of expropriation by a Party relating to land, which shall be as defined in its applicable domestic legislation, shall be for a purpose and upon payment of compensation at market value in accordance with the aforesaid legislation.

**ARTICLE 8**  
**Compensation for Losses**

1. Each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss.

**ARTICLE 9**  
**Transfers**

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory.<sup>8</sup> Such transfers include:

(a) contributions to capital;<sup>9</sup>

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 7 (Expropriation and Compensation) and Article 8 (Compensation for Losses);

(f) payments arising out of a dispute; and

(g) net earnings and remuneration of a natural person of the other Party who

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<sup>8</sup> For greater certainty, the transfers referred to in this Article shall comply with relevant formalities stipulated by the laws and regulations, if any, of a Party relating to exchange administration.

<sup>9</sup> For greater certainty, contributions to capital include the initial contribution.

is employed and allowed to work in connection with a covered investment in its territory.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent 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;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) criminal or administrative violations;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
- (f) social security, public retirement or compulsory savings schemes.

5. For greater certainty, the transfers referred to in this Article shall comply with relevant formalities stipulated by the laws and regulations, if any, of a Party relating to exchange administration, insofar as such laws and regulations are not to be used as a means of avoiding a Party's obligations under this Chapter.

6. Nothing in this Chapter shall affect the rights and obligations of the members of the *International Monetary Fund* under the *Articles of Agreement of the International Monetary Fund*, including the use of exchange actions which are in conformity with the *Articles of Agreement of the International Monetary Fund*, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 10 (Measures to Safeguard the Balance of Payments) or at the request of the *International Monetary Fund*.

## **ARTICLE 10**

### **Measures to Safeguard the Balance of Payments**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining restrictions on payments or transfers relating to capital movements:



(a) in the event of serious balance of payments or external financial difficulties or threats thereof; or

(b) where, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. The restrictions referred to in paragraph 1 shall:

(a) not exceed a period of eighteen (18) months; however, if extremely exceptional circumstances arise such that a Party seeks to extend such restrictions, the Party will coordinate in advance with the other Party concerning the implementation of any proposed extension;

(b) be consistent with the *Articles of the Agreement of the International Monetary Fund*;

(c) not exceed those necessary to deal with the circumstances described in paragraph 1;

(d) avoid unnecessary damage to the commercial, economic and financial interests of the Parties;

(e) be temporary and phased out progressively as the situation described in paragraph 1 improves;

(f) promptly be notified to the other Party; and

(g) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party.

## **ARTICLE 11**

### **Subrogation**

1. If a Party, or any agency, institution, statutory body or corporation designated by the Party (“designated agency”), makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party, in whose territory the covered investment was made, shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter, including any rights under Section B (Investor-State Dispute Settlement), with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing such rights to the extent of the subrogation. 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 designated agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the designated agency of

the Party making the payment, pursue those rights and claims against the other Party.

## **ARTICLE 12**

### **Denial of Benefits<sup>10</sup>**

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of that investor, if a non-Party or persons of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

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

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to investments of that investor, if the enterprise has no substantial business activities in the territory of the other Party and a non-Party, or persons of a non-Party or the denying Party, own or control the enterprise.

## **ARTICLE 13**

### **Transparency**

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Chapter are promptly published or otherwise made publicly available in such a manner as to enable interested persons or the other Party to become acquainted with them. Each Party shall endeavour to publish international investment treaties in force, pertaining to or affecting investors or investment activities.

2. For purposes of this Article, “administrative ruling of general application” means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

(a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular covered investment or investor of the other Party in a specific case; or

(b) a ruling that adjudicates with respect to a particular act or practice.

3. To the extent possible, each Party should:

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<sup>10</sup> For greater certainty, a Party may deny benefits of this Chapter under this Article, including access to dispute settlement under Section B (Investor-State Dispute Settlement), at any appropriate time.

- (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
- (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

#### **ARTICLE 14 General Exceptions**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party or its investors where like conditions prevail, or a disguised restriction on investments of investors of the other Party in the territory of a Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

- (a) necessary to protect public morals or to maintain public order<sup>11</sup>;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on a contract;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;
- (d) imposed for the protection of national treasures of artistic, historic or archaeological value; or
- (e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

#### **ARTICLE 15 Security Exceptions**

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<sup>11</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

Nothing in this Chapter shall be construed:

- (a) to 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) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

#### **ARTICLE 16**

#### **Special Formalities and Information Requirements**

1. Nothing in Article 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, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such confidential information from any disclosure that would prejudice 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 law.

#### **ARTICLE 17**

#### **Protection of Confidential Information**

Nothing in this Chapter shall be construed to require a Party to furnish or allow access to confidential information, the disclosure of which it considers would be contrary to its law, or which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

#### **ARTICLE 18**

#### **Prudential Measures**

1. Notwithstanding any other provision of this Chapter, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity and stability of

the financial system.<sup>12</sup> If these measures do not conform with the provisions of this Chapter to which this exception applies, they shall not be used as a means of avoiding the Party's commitments or obligations under those provisions.

2. Nothing in this Chapter applies to non-discriminatory measures of general application taken by any public entity, as defined in sub-paragraph 5(c) of the *Annex on Financial Services* of the GATS, in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 9 (Transfers).

3. Where a claimant submits a claim to arbitration under Section B (Investor-State Dispute Settlement) and the respondent invokes paragraphs 1 or 2 as a defence, the following provisions shall apply:

(a) The respondent shall, either within one hundred and twenty (120) days of the date the claim is submitted to arbitration under Section B (Investor-State Dispute Settlement) or no later than a date the tribunal constituted under Section B (Investor-State Dispute Settlement) fixes, submit in writing to the competent financial authorities of the non-disputing Party a request for a joint determination by the competent financial authorities of both Parties on the issue of whether and to what extent paragraphs 1 or 2 is a valid defence to the claim. The respondent shall promptly provide the tribunal, if constituted, a copy of the request.

(b) The competent financial authorities of both Parties shall attempt in good faith to make a joint determination as described in sub-paragraph (a). Any such determination shall be transmitted promptly to the disputing parties and, if constituted, the tribunal under Section B (Investor-State Dispute Settlement). The determination shall be binding on the tribunal constituted under Section B (Investor-State Dispute Settlement).

(c) If the competent financial authorities of both Parties referred to in sub-paragraphs (a) and (b) have not made a joint determination within one hundred and twenty (120) days of the date of receipt of the respondent's written request for a joint determination under sub-paragraph (a), the respondent or the non-disputing Party may submit its claim to arbitration in accordance with Chapter 12 (Dispute Settlement) for a tribunal constituted under Chapter 12 (Dispute Settlement) to consider whether and to what extent paragraphs 1 or 2 is a valid defence to the claim. The final report of a tribunal constituted under Chapter 12 (Dispute Settlement) shall be binding on the tribunal constituted under Section B (Investor-State Dispute Settlement), and any decision or award issued by the tribunal constituted under Section B (Investor-State Dispute Settlement) must be consistent with the final report. The tribunal constituted under Chapter 12 (Dispute Settlement) shall transmit its final report to both Parties and to the tribunal constituted under Section B (Investor-State Dispute Settlement).

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<sup>12</sup> It is understood that the term "prudential reasons" also includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions, as well as the maintenance of the safety and financial and operational integrity of payment and clearing systems.

(d) If the respondent or the non-disputing Party has not submitted its claim to arbitration in accordance with Chapter 12 (Dispute Settlement) within thirty (30) days after the expiration of the one hundred and twenty (120) days period referred to in sub-paragraph (c), the tribunal constituted under Section B (Investor-State Dispute Settlement) may proceed with respect to the claim.

(i) The tribunal constituted under Section B (Investor-State Dispute Settlement) shall draw no inference regarding the application of paragraphs 1 and 2 from the fact that the competent financial authorities have not made a determination as described in paragraphs 3(a), (b) and (c).

(ii) The non-disputing Party may make oral and written submissions to the tribunal constituted under Section B (Investor-State Dispute Settlement) regarding the issue of whether and to what extent paragraphs 1 or 2 is a valid defence to the claim. Unless it makes such a submission, the non-disputing Party shall be presumed, for the purposes of the arbitration, to take a position on paragraphs 1 and 2 that it is not inconsistent with that of the respondent.

4. The expertise or experience of any candidate with respect to financial services law or practice shall be taken into account in the appointment of arbitrators to the tribunals as referred to in paragraph 3.

## **ARTICLE 19**

### **Taxation**

1. Article 7 (Expropriation and Compensation) shall apply to taxation measures. An investor seeking to invoke Article 7 (Expropriation and Compensation) with respect to a taxation measure, may only submit its claim to arbitration under Section B (Investor-State Dispute Settlement) if:

(a) the claimant has first referred in writing to the competent taxation authorities of both Parties, at the time that it delivers its request of consultation under Article 25 (Consultations), the issue of whether that taxation measure involves an expropriation; and

(b) within one hundred and eighty (180) days after the date of such referral, the competent taxation authorities of both Parties do not agree to consider the issue, or having agreed to consider it, fail to agree that the taxation measure is not an expropriation.

2. For the purposes of this Article, “competent taxation authorities” means:

(a) in the case of the People’s Republic of China, the Ministry of Finance and State Administration of Taxation or an authorised representative of the Ministry of Finance and State Administration of Taxation; and

(b) in the case of the Republic of Singapore, the Ministry of Finance;

or their successors.

3. Nothing in this Chapter shall affect the rights and obligations of a Party under any tax convention. In the event of any inconsistency between this Chapter and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Chapter and that convention.

## **ARTICLE 20**

### **Promotion of Investment**

The Parties shall cooperate in promoting and increasing awareness through, amongst others:

- (a) increasing investments between the Parties;
- (b) organising investment promotion activities;
- (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 and facilitation.

## **ARTICLE 21**

### **Facilitation of Investment**

Subject to their laws and regulations, the Parties shall cooperate to facilitate investment between the Parties through, amongst others:

- (a) creating the necessary environment for all forms of investment;
- (b) simplifying procedures for investment applications and approvals;
- (c) promoting dissemination of investment information, including investment laws, regulations, policies and procedures; and
- (d) establishing or maintaining either contact points, one-stop investment centres or similar mechanisms in the respective host Parties to provide assistance and advisory services to the business sectors including facilitation of operating licences and permits.

## ARTICLE 22

### Work Programme for Subsequent Negotiations on Investment

1. The Parties agree to conduct subsequent negotiations on investment, addressing investment liberalisation based on a negative listing approach covering all kinds of investment including the supply of services through commercial presence.
2. Unless the Parties agree otherwise, such negotiations on investment shall include, but not be limited to the provisions on National Treatment, Most-Favoured-Nation Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors, Non-Conforming Measures and associated schedules of reservations, and Investor-State Dispute Settlement.
3. The Parties shall endeavour to commence the subsequent negotiations no later than one (1) year after the date of entry into force of this Chapter, and endeavour to conclude the negotiations within two (2) years from the date of the commencement of the negotiations.

## ARTICLE 23

### Transition Arrangement

1. Upon entry into force of this Chapter, the *Agreement Between the Government of the People's Republic of China and the Government of the Republic of Singapore on the Promotion and Protection of Investments*, signed on 21 November 1985, shall terminate.<sup>13</sup>
2. Notwithstanding paragraph 1, a claim may be submitted pursuant to relevant provisions of the *Agreement Between the Government of the People's Republic of China and the Government of the Republic of Singapore on the Promotion and Protection of Investments*, regarding any act or fact that took place or any situation that existed while the said Agreement was in force, and provided that no more than three (3) years have elapsed since the date of the entry into force of this Chapter.

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<sup>13</sup> For the avoidance of doubt, paragraph 3 of Article 16 of the *Agreement Between the Government of the People's Republic of China and the Government of the Republic of Singapore on the Promotion and Protection of Investments*, shall not be applicable upon entry into force of this Chapter.



## **Section B: Investor-State Dispute Settlement**

### **ARTICLE 24**

#### **Scope**

1. This Section shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former under Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (Minimum Standard of Treatment), Article 7 (Expropriation and Compensation), Article 8 (Compensation for Losses) and Article 9 (Transfers), which causes loss or damage to the investor or its investment.

2. This Section shall not apply to any dispute concerning any measure adopted or maintained or any treatment accorded to investors or investments by a Party in respect of tobacco or tobacco-related products<sup>14</sup>.

### **ARTICLE 25**

#### **Consultations**

1. In the event of an investment dispute, if the claimant intends to submit the dispute to arbitration, the claimant shall first deliver to the respondent a written request for consultation.<sup>15</sup> The request shall:

- (a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person which the claimant owns or controls directly or indirectly, specify the name, address, and place of incorporation of the enterprise;
- (b) for each claim, identify the provision of this Chapter alleged to have been breached and any other relevant provisions;
- (c) for each claim, identify the measures or events giving rise to the claim;
- (d) for each claim, indicate whether the claim is made by the claimant on its own behalf or on behalf of the enterprise;
- (e) for each claim, provide a brief summary of the legal and factual basis sufficient to present the problem clearly; and

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<sup>14</sup> For the purpose of this Chapter, “tobacco or tobacco-related products” means products under Chapter 24 (Tobacco and Manufactured Tobacco Substitutes) and tobacco-related products falling outside Chapter 24 (Tobacco and Manufactured Tobacco Substitutes) of the *Harmonized Commodity Description and Coding System* of the World Customs Organization.

<sup>15</sup> For greater certainty, the request for consultation shall be sent to the government body listed in Annex 10-C (Service of Documents on a Party).

(f) specify the relief sought, the approximate amount of damages claimed and its standard or basis for calculation.

2. After a request for consultations is made pursuant to this Section, the claimant and the respondent shall initially seek to resolve the dispute through consultations.

3. If the disputing parties reach a mutually agreed solution to a dispute or certain claims thereof formally raised under this Section, they shall abide by and comply with the mutually agreed solution reached under this Article without delay.

## **ARTICLE 26**

### **Submission of a Claim to Arbitration**

1. In the event that an investment dispute cannot be settled by consultations under Article 25 (Consultations) within one hundred and eighty (180) days after the date of receipt of the request for consultations,

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:

(i) that the respondent has breached an obligation under Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (Minimum Standard of Treatment), Article 7 (Expropriation and Compensation), Article 8 (Compensation for Losses) and Article 9 (Transfers); and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; or

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person which the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:

(i) that the respondent has breached an obligation under Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (Minimum Standard of Treatment), Article 7 (Expropriation and Compensation), Article 8 (Compensation for Losses) and Article 9 (Transfers); and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. (a) A claimant may not initiate or continue a claim under this Section, if another claim involving the same measure or measures alleged to constitute a breach under Article 24 (Scope) and arising from the same events or circumstances is initiated or continued pursuant to an agreement between the respondent and a non-Party by:

(i) a person of a non-Party that owns or controls, directly or indirectly, the claimant; or

(ii) a person of a non-Party that is owned or controlled, directly or indirectly, by the claimant.

(b) Notwithstanding paragraph 2(a), the claim may proceed if the respondent agrees that the claim may proceed, or if the claimant and the person of a non-Party agree to consolidate the claims under the respective agreements before a tribunal constituted under this Section.

3. A claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;

(c) under the UNCITRAL Arbitration Rules;<sup>16</sup>

(d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

(a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules, are received by the respondent; or

(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitration rules.

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<sup>16</sup> "UNCITRAL Arbitration Rules" means the *Arbitration Rules of the United Nations Commission on International Trade Law*, as adopted by the United Nations General Assembly on 15 December 1976, as revised in 2010. For greater certainty, the *UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration* shall not be applicable.

5. The arbitration rules applicable under paragraph 3 that are in effect on the date the claim or claims were submitted to arbitration under this Section shall govern the arbitration except to the extent modified by this Chapter.

6. A notice of arbitration shall:

(a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person which the claimant owns or controls directly or indirectly, specify the name, address, and place of incorporation of the enterprise;

(b) for each claim, identify the provision of this Chapter alleged to have been breached and any other relevant provisions;

(c) for each claim, identify the measure or event giving rise to the claim;

(d) for each claim, indicate whether the claim is made by the claimant on its own behalf or on behalf of the enterprise;

(e) for each claim, provide the legal and factual basis sufficient to present the problem clearly; and

(f) specify the relief sought, the approximate amount of damages claimed and its standard or basis for calculation.

7. The claimant shall provide with the notice of arbitration:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

## **ARTICLE 27**

### **Consent of Each Party to Arbitration**

1. Each Party consents to the submission of a claim to arbitration under this Section, provided that the claim is submitted in accordance with the provisions of this Chapter. Failure to meet any of the conditions and limitations provided for in Article 28 (Conditions and Limitations on Consent of Each Party) shall nullify that consent.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the New York Convention for an "agreement in writing".

## **ARTICLE 28**

### **Conditions and Limitations on Consent of Each Party**

1. No claim may be submitted to arbitration under this Section if more than three (3) years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under paragraph 1 of Article 26 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under paragraph 1(a) of Article 26 (Submission of a Claim to Arbitration) or the enterprise (for claims brought under paragraph 1(b) of Article 26 (Submission of a Claim to Arbitration)) has incurred loss or damage.
  
2. No claim may be submitted to arbitration under this Section unless:
  - (a) the claimant has complied with the rules and procedures set forth in Article 25 (Consultations) and 26 (Submission of a Claim to Arbitration);
  
  - (b) the claim has been included in the request for consultations submitted by the claimant in accordance with Article 25 (Consultations);
  
  - (c) the claimant consents in writing to arbitration in accordance with the procedures set out in this Chapter, and,
  
  - (d) the notice of arbitration is accompanied,
    - (i) for claims submitted to arbitration under paragraph 1(a) of Article 26 (Submission of a Claim to Arbitration), by the claimant's written waiver, and
  
    - (ii) for claims submitted to arbitration under paragraph 1(b) of Article 26 (Submission of a Claim to Arbitration), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure or event alleged to constitute a breach referred to in Article 26 (Submission of a Claim to Arbitration).

3. Notwithstanding paragraph 2(d), the claimant (for claims brought under paragraph 1(a) of Article 26 (Submission of a Claim to Arbitration), and the claimant or the enterprise (for claims brought under paragraph 1(b) of Article 26 (Submission of a Claim to Arbitration)) may initiate or continue an action before a judicial or administrative tribunal of the respondent, which seeks interim injunctive relief and does not involve the payment of monetary damages, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

## **ARTICLE 29**

### **Constitution of the Tribunal**

1. Unless the disputing parties agree otherwise, the tribunal shall comprise three (3) arbitrators, one (1) arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
3. If a tribunal has not been constituted within ninety (90) days after the date on which a claim is submitted to arbitration under this Section, the appointing authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.
4. Unless both disputing parties agree, the appointing authority shall not appoint a presiding arbitrator who is a national of either Party.
5. All arbitrators appointed pursuant to this Section shall have expertise or experience in public international law, international trade law or international investment rules. They shall be independent of, and not be affiliated with or take instructions from any organisation or the government of either Party.
6. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:
  - (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
  - (b) a claimant referred to in paragraph 1(a) of Article 26 (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and
  - (c) a claimant referred to in paragraph 1(b) of Article 26 (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

## **ARTICLE 30**

### **Conduct of the Arbitration**

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under paragraph 3 of Article 26 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. Notwithstanding paragraph 2, without written consent of the disputing parties, the tribunal shall have no authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 35 (Awards).

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) In deciding an objection under this paragraph, the tribunal shall assume to be true, the claimant's factual allegations in support of any claim in the notice of arbitration and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

(d) The respondent does not waive any objection as to competence, including any objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within forty-five (45) days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than one hundred and fifty (150) days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional thirty (30) days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed thirty (30) days.

6. When the tribunal decides a respondent's objection under paragraphs 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. For greater certainty, if a claimant submits a claim to arbitration under this Section, the claimant has the burden of proving all elements of its claim, consistent with general principles of law applicable to international arbitration.

8. Without prejudice to Article 11 (Subrogation), a respondent may not assert as a defence, counterclaim, right of set-off, or for any other reason that the claimant or the enterprise referred to in paragraph 1(b) of Article 26 (Submission of a Claim to Arbitration) has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an indemnity, guarantee or insurance contract.

## **ARTICLE 31**

### **Transparency of Arbitral Proceedings**

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party:

- (a) the request for consultations;
- (b) the notice of arbitration;
- (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 34 (Consolidation);
- (d) minutes or transcripts of hearings of the tribunal, where available; and
- (e) orders, awards, and decisions of the tribunal.

2. Subject to agreement by the disputing parties, the tribunal may conduct hearings open to the public and, in such case, shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information or otherwise subject to paragraph 3 in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 15 (Security Exceptions) or Article 17 (Protection of Confidential Information).

4. Any protected information that is submitted to the tribunal shall be protected



from disclosure in accordance with the following procedures:

- (a) neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with sub-paragraph (b);
- (b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal; and
- (c) a disputing party shall, within seven (7) days after it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be disclosed in accordance with paragraph 1.

## **ARTICLE 32**

### **Governing Law**

1. When a claim is submitted under Article 26 (Submission of a Claim to Arbitration), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.<sup>17</sup>
2. A joint decision of the Parties, declaring their interpretation of a provision of this Chapter shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision.

## **ARTICLE 33**

### **Expert Reports**

Without prejudice to the appointment of other kinds of experts where authorised by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

## **ARTICLE 34**

### **Consolidation**

Where two or more claims have been submitted separately to arbitration under this Section and the claims have a question of law or fact in common and arise out of the

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<sup>17</sup> For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent when it is relevant to the claim as a matter of fact.

same events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

## **ARTICLE 35**

### **Awards**

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:
  - (a) monetary damages and any applicable interest; and
  - (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.
2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.
3. For greater certainty, if an investor of a Party submits a claim to arbitration under paragraph 1(a) of Article 26 (Submission of a Claim to Arbitration), it may only recover for loss or damage that it has incurred in its capacity as an investor of a Party.
4. Subject to paragraph 1, where a claim is submitted to arbitration under paragraph 1(b) of Article 26 (Submission of a Claim to Arbitration):
  - (a) any award of restitution of property shall provide that restitution be made to the enterprise;
  - (b) any award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
  - (c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law in relation to the relief.
5. A tribunal shall not award punitive damages.
6. A disputing party shall not seek enforcement of a final award until:
  - (a) in the case of a final award made under the ICSID Convention:
    - (i) one hundred and twenty (120) days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
    - (ii) revision or annulment proceedings have been completed; and
  - (b) in the case of a final award made under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules or the rules selected pursuant to

paragraph 3(d) of Article 26 (Submission of a Claim to Arbitration):

(i) ninety (90) days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

7. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

8. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under this Article should be subject to that appellate mechanism.

## **ARTICLE 36**

### **Service of Documents**

Delivery of notice and other documents to a Party shall be made to the place named for that Party listed in Annex 10-C (Service of Documents on a Party).

## Section C: Definitions

For the purposes of this Chapter:

**“Centre”** means the International Centre for Settlement of Investment Disputes established by the ICSID Convention.

**“claimant”** means an investor of a Party that is a party to an investment dispute with the other Party. If that investor is a natural person, who is a permanent resident of a Party and a national of the other Party, that natural person may not submit a claim to arbitration against that latter Party.

**“covered investment”** means, with respect to a Party, an investment in its territory of an investor of the other Party, in existence as of the date of entry into force of this Chapter or established, acquired, or expanded thereafter and which, where applicable, has been admitted in accordance with relevant laws and regulations of the former Party.

**“disputing parties”** means the claimant and the respondent.

**“disputing party”** means either the claimant or the respondent.

**“enterprise”** means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization; and a branch of an enterprise.

**“enterprise of a Party”** means an enterprise constituted or organised under the law of a Party and a branch located in the territory of a Party and carrying out business activities there.

**“existing”** means in effect on the date of entry into force of this Chapter.

**“freely usable currency”** means “freely usable currency” as determined by the International Monetary Fund under its *Articles of Agreement*.

**“government procurement”** means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale.

**“ICSID Additional Facility Rules”** means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*.

**“ICSID Convention”** means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington, 18 March 1965.

**“investment”** means every asset that an investor owns or controls, directly or

indirectly, that has the following characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:<sup>18</sup>

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans (including loans to, or debt securities issued by a Party);<sup>19</sup>
- (d) futures, options and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licences, authorisations, permits, and similar rights conferred pursuant to domestic law;<sup>20</sup> and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.

**“investor of a non-Party”** means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of a Party.

**“investor of a Party”** means a Party, a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party.

**“measure”** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, or any other form.

**“national”** means:

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<sup>18</sup> The term “investment” does not include an order or judgment entered in a judicial or administrative action.

<sup>19</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>20</sup> Whether a particular type of licence, authorisation, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment also depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licences, authorisations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the licence, authorisation, permit, or similar instrument has the characteristics of an investment.

- (a) for the People's Republic of China, a natural person who is a national of the People's Republic of China as defined in the Nationality Law of the People's Republic of China; and
- (b) for the Republic of Singapore, a citizen of Singapore within the meaning of its Constitution and its domestic laws.

**“non-disputing Party”** means the Party that is not a party to an investment dispute.

**“person”** means a natural person or an enterprise.

**“person of a Party”** means a national or an enterprise of a Party.

**“protected information”** means confidential information or information that is privileged or otherwise protected from disclosure under a Party’s law.

**“respondent”** means the Party that is a party to an investment dispute.

**“Secretary-General”** means the Secretary-General of ICSID.

## **Annex 10-A Customary International Law**

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 5 (Minimum Standard of Treatment) and Annex 10-B (Expropriation) results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 5 (Minimum Standard of Treatment), the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

## **Annex 10-B Expropriation**

The Parties confirm their shared understanding that:

1. Article 7 (Expropriation and Compensation) is intended to reflect customary international law concerning the obligation of States with respect to expropriation.
2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
3. Article 7 (Expropriation and Compensation) addresses two scenarios. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.
4. The second situation addressed by Article 7 (Expropriation and Compensation) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
  - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
    - (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
    - (ii) the extent to which the government action interferes with distinct, reasonable, investment-backed expectations; and
    - (iii) the character and objective of the government action.
  - (b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public morals, public health, safety and the environment, do not constitute indirect expropriations.



**Annex 10-C**  
**Service of Documents on a Party**

**People's Republic of China**

Notices and other documents shall be served on the People's Republic of China by delivery to:

Department of Treaty and Law

Ministry of Commerce of the People's Republic of China

2 Dong Chang'an Avenue

Beijing, 100731

People's Republic of China

**Republic of Singapore**

Notices and other documents shall be served on the Republic of Singapore by delivery to:

Ministry of Trade and Industry

100 High Street #09-01

Singapore 179434

Republic of Singapore