

1.

**RCEP DRAFT INVESTMENT TEXT**

Provisions	Remarks
<b>Article XX SCOPE</b>	
<p>1. This Chapter applies/shall apply to measures adopted or maintained by a Party relating to:</p>	<p><a href="#">Drafting note: items without brackets are common to all RPCs</a></p>
<p>(a) investors of another Party;</p> <p>(b) covered investments; and</p> <p>(c) <b>[AU/JP/KR/NZ: with respect to Articles (Performance Requirements)] [JP/KR/NZ: and] [KR/NZ: (Investment and Environment)] [JP: Investment and Environmental, Health and other Regulatory Objectives] [AU/JP/KR/NZ: , all investments in the territory of the Party.]</b></p>	
<p><b>[AU/CH/JP/KR: 2. A Party's obligations under] this Chapter/Section A [shall apply to/means] measures [adopted or maintained] by:</b></p> <p>(a) the central, <b>[AU/JP/KR: regional, or local governments and authorities] [CH: provincial and sub-provincial levels of government][AU/CH/JP: of that/a Party]; and</b></p> <p>(b) <b>[AU/CH/JP: [to] any] [AU/JP: person, including a state enterprise or any other body, when it exercises any governmental authority] [CH/KR: non-governmental body/ies [in the exercise of powers/when it exercises governmental authority] delegated [AU/JP: to it] by central, [regional/provincial or sub-provincial levels of] [AU/JP/KR: , or local] governments [AU/JP/KR: or authorities] [AU/CH<sup>1</sup>/ JP<sup>2</sup>: of that Party.]</b></p> <p><i>FN: <sup>1</sup>For greater certainty, "government authority" refers to the effective power to regulate, control, or supervise individuals, or otherwise restrain their conduct, through the exercise of lawful authority which would normally be vested in the government. Delegation of governmental authority shall be effected by laws, regulations, or a government order or directive expressly transferring to the person, or authorizing the exercise by the person of, governmental authority.</i></p>	<p><a href="#">WGI 10: For some RPCs, the 'measures [adopted/maintained] by' are in the Scope article while for some, it is in the definition of measures. RPCs to consider placement.</a></p>

<p><b>FN:</b><sup>2</sup> For greater certainty, governmental authority is delegated, including through a legislative grant, or a government order, directive or other action transferring, or authorizing the exercise of, governmental authority.</p>	
<p><b>[A/AU/IN:</b> 3. This Chapter shall not apply to:</p> <p><b>[IN:</b> i. any measure by a State government or a local government of a Party;]</p> <p><b>[A/AU:</b> (a) <b>[IN:</b> ii) government procurement <b>[IN:</b> by a Party];</p> <p><b>[A/AU:</b> (b) <b>[IN:</b> iii] subsidies or grants provided by a Party <b>[AU:</b> , including government-supported loans, guarantees, and insurance; and]</p> <p><b>[IN:</b> iv. financial assistance or measures taken by the Host State in favour of its investors and their investments in pursuit of legitimate public purpose including the protection of health, safety, the environment;]</p> <p><b>[A:</b> (d)] <b>[AU:</b> (c)] <b>[IN:</b> (v)] services supplied in the exercise of governmental authority by the relevant body or authority of a Party.] <b>[A/IN:</b> For the purposes of this Chapter/Agreement, a service supplied in the exercise of governmental authority means any service, which [A, I: is] <b>[AU:</b> not] supplied <b>[A:</b> neither] <b>[I:</b> not] on a commercial basis <b>[A, I:</b> nor] <b>[Au:</b> or] in competition with one or more service suppliers; and]</p> <p><b>[A:</b> (e) any taxation measure.]</p> <p><i>Drafting Note: ASEAN reserves the right to include exceptions to taxation measures at any point in the negotiations.</i></p> <p><b>[I:</b> vi. any law or measure regarding taxation including measures taken to enforce taxation obligations, except under Article 15 (Transfers). For greater certainty, it is clarified that where a Party, in which the investment is made, decides that conduct alleged to be a breach of its obligations under this Agreement is a subject matter of taxation, such decision of that Party, whether before or after the commencement of arbitration proceedings shall be non-justiciable and it shall not be open to any arbitration tribunal to review such decision.</p> <p>vii. the issuance of compulsory licenses granted in relation</p>	<p><b>WGI 10:</b> <a href="#">Some RPCs have concerns on In's broad carve-out under the sub-para (i) and asked In to reconsider. JP asked some RPCs to reconsider the broad carve-out of GP under the Scope Article and to consider carving-out in the NCMs instead.</a></p>

<p>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 the international obligations of Parties under the WTO Agreement.]</p>	
<p><u>[NZ Drafting Note:</u> <u>In the context of a formal chapter proposal, New Zealand would consider its position on, and the inclusion of provisions on, the relationship between government procurement and investment, particularly with reference to any broader government procurement outcomes within the FTA.]</u></p> <p>[Au, C, J, K, NZ: For greater certainty, the provisions of] [Au, C, I, J, K, NZ: this Chapter do/does not bind any/either/a Party in relation to any act or fact [I: or any measure that existed] [Au, C, J, K, NZ: that took place or any situation that ceased to exist] before the date of entry into force of this Agreement] [I: or subsequent modifications thereto.]</p>	
<p>[I: 2.1.3 Nothing in this Chapter shall be interpreted to restrict the rights of a Party to formulate, modify, amend, apply or revoke its laws, regulations and policies. Each Party retains the right to exercise discretion with respect to regulatory, compliance, investigatory, and prosecutorial matters, including discretion regarding allocation of resources and establishment of penalties.</p> <p>2.1.4 This Chapter shall not apply to claims arising out of events which occurred, or claims which have been raised prior to the entry into force of this Agreement.</p> <p>2.1.6 This Chapter does not impose any obligations on a Party other than that which are explicitly set forth herein. For avoidance of doubt, a Party retain its rights to supplement, modify or amend this Chapter and its operation at any time in accordance with Articles 30 (Consultations and Periodic Review).</p> <p>2.1.7 For the purpose of liberalisation and subject to Articles 6 and 19, this Chapter shall apply to the following sectors:</p> <p>i. manufacturing; ii. agriculture; iii. fishery; iv. forestry; and</p>	

v. mining and quarrying.]	
<p><b>[I:</b> This Chapter does not apply to] [A, I: measures adopted or maintained by a Party to the extent that they are covered by the RCEP Trade in Services Chapter.</p> <p>Notwithstanding <b>[A:</b> paragraph 2(e) of this Article] <b>[Article 2.2.1]</b> for the purpose of protection, Article XX (Treatment of Investment), Article XX (Expropriation and Compensation), Article XX (Compensation for Losses/in cases of Strife), Article XX (Subrogation), Article XX (Transfers), and XX (Investment Disputes Between a Party and an Investor)/(Settlement of Disputes between and Investor and a Party)] shall apply, <i>mutatis mutandis</i>, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of any other Party <b>[I:</b> pursuant to the RCEP Trade in Services Chapter] but only to the extent that they relate to a covered investment and an obligation <b>[A:</b> under this Chapter,] regardless of whether such a service sector is scheduled in a/the Parties'/Party's schedule of specific services commitments made under the RCEP Trade in Services Chapter.]<sup>3</sup></p> <p><i>[In: FN<sup>3</sup>: For greater certainty, paragraph 2.2.2. does not preclude a Party from applying Article 8 (Pre-establishment Denial of Benefits) and Article 18 (Post-establishment Denial of Benefits) to such service supplier in its territory.]</i></p>	<p><a href="#">WGI 10:</a> <a href="#">Other RPCs are considering a similar text and are still reviewing what protection elements and obligations should be covered.</a></p> <p><a href="#">Au, J, K have a separate article on Relation to other Chapters.</a></p>
<p><b>[I:</b> 2.3 Relation to other Agreements:</p> <p>2.3.1 Any inconsistency, or question regarding the relationship between this Chapter and another bilateral agreement between the Parties, or a regional/ multilateral agreement to which both Parties are members, shall be resolved in accordance with the Vienna Convention on the Law of Treaties.]</p>	<p><a href="#">WGI 10:</a> <a href="#">to consider placing under the General Provisions of the Agreement.</a></p>
<b>Article XX DEFINITIONS</b>	
For purposes of this Chapter:	
<b>[C, J, K: Centre</b> means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;]	WGI 9: To consider placing ISDS-related definitions in the ISDS Article
<b>[C, J, K: claimant</b> means an investor of a Party that is a	

party to an investment dispute with the other Party;]	
<p><b>covered investment</b> means, with respect to a Party, an investment in [its] [the] territory of an investor of another Party, [I: which is] in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, [A, C, I: and has been admitted, according to its laws, regulations [A, I: and national policies,] [I: at that time.] [A: and where applicable, specifically approved in writing<sup>1</sup> by its competent authority;]</p> <p><i>FN: <sup>1</sup>For the purpose of protection, the procedures relating to specific approval in writing shall be in Annex 1 (Approval in Writing).</i></p>	<p>WGI 10:  <a href="#">Au proposed to use the AANZFTA text of "subject to its laws..."</a></p>
[C, J, K: <b>disputing parties</b> means the claimant and the respondent;]	
[C, J, K: <b>disputing party</b> means either the claimant or the respondent;]	
<p>[A: <b>Juridical person</b>] [Au, C, I, J, K, NZ: <b>Enterprise</b>] means any [I: legal] entity [A: duly] constituted [A, Au, C, J, K, NZ: or] [A: otherwise] organised [I: and operated in compliance with the] [A, Au, C, J, K, NZ: under applicable] law [A, I: of a Party] [Au, J, K: and,] whether [Au, C, J, K, NZ: or not] for profit [A: or otherwise], and whether privately [A: -owned] [A, Au, C, J, K, NZ: or governmentally-owned] [Au, C, J, K, NZ: or controlled], including any [I: company,] corporation [A, Au, C, J, K, NZ: , trust,] [I: limited <a href="#">liability</a>] partnership, [I: or a] joint venture, [A, Au, C, J, K, NZ: sole proprietorship,] association or similar organisation [Au, C, J, K, NZ: , and a branch of an enterprise]</p> <p>[I: a branch of any such entity established in the territory of a Party in accordance with its law and carrying out business activities there.]</p> <p>[I: <b>Juridical person</b>: For the purposes of this definition, a "juridical person" means:</p> <ul style="list-style-type: none"> <li>- a legal entity that is constituted, organised and operated under the law of that Party and that has substantial business activities in the territory of that Party; or</li> <li>- a legal entity that is constituted, organised and operated</li> </ul>	<p>WGI 10:  <a href="#">In to reconsider "legal", "under applicable", "trust", "limited liability", sole proprietorship</a></p> <p><a href="#">ASEAN to reconsider "duly"</a></p>

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<p>under the laws of that Party and that is directly or indirectly owned or controlled by a natural person of that Party or by a legal entity mentioned under sub-clause (a) herein;]</p>	
<p><b>[Au, C, J, K, NZ: enterprise of a Party</b> means an enterprise constituted or organised under the law of a Party <b>[C, J, K, NZ: and a branch] [Au, C, J, K: located in the territory of a Party] and [Au, C, J, K: carrying out] business [Au, C, J, K: activities there [J:<sup>3</sup>];</b></p> <p><i>FN: <sup>3</sup>For greater certainty, the inclusion of a “branch” in the definitions of “enterprise” and “enterprise of a Party” is without prejudice to a Party’s ability to treat a branch under its laws as an entity that has no independent legal existence and is not separately organized.</i></p>	
<p><b>[C: “existing”</b> means in effect on the date of entry into force of this Agreement.]</p>	<p><a href="#">WGI 10:</a> <a href="#">Some RPCs propose to refer this to WGLII.</a> <a href="#">WGI to discuss further.</a></p>
<p><b>[A, Au, C, J, K, NZ: freely usable currency</b> means <b>[A: a]</b> freely usable currency as determined by the International Monetary Fund (IMF) under its Articles of Agreement <b>[A, NZ: and [any] amendments thereto];]</b></p>	
<p><b>[I: Host State:</b> ‘Host State’ means the Party where the investment is located.</p> <p><b>Home State:</b> ‘Home State’ means the Party of which the Investor is a national or a juridical person.]</p>	
<p><b>[K: ICSID</b> means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;]</p>	
<p><b>[C, J, K: ICSID Additional Facility Rules</b> means the <i>Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;</i>]</p>	
<p><b>[C, J, K: ICSID Convention</b> means the <i>Convention on the Settlement of Investment Disputes between States and Nationals of other States</i>, done at Washington, March 18, 1965;]</p>	
<p><b>[K: Investment authorization</b> means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of any other Party]<sup>4 5</sup></p>	

<p><b>FN:</b> <sup>4</sup> For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.</p> <p><b>FN:</b> <sup>5</sup> The Parties recognize that, as of the date of signature of this Agreement, neither Party has a foreign investment authority that grants investment authorizations.</p>	
<p><b>Investment</b> means [I: means an enterprise constituted, organised and operated in good faith by an investor in accordance with the law of a Party in whose territory the investment is made, taken together with the assets of the enterprise] [A, Au, C, J, K, NZ: every kind of asset that an investor owns or controls,] [Au, C, J, K, NZ: directly or indirectly,] [A: and] [A, Au, C, J, K, NZ: that] has the characteristics of an investment, [Au, J, K, NZ: including] such [Au, J, K, NZ: characteristics as] the commitment of capital or other resources, [I: certain duration,] the expectation of gain/s or profit/s, or the assumption of risk [C: <sup>6</sup>] [A: , and shall include but is not limited to:] [I: and a significance for the development of the Host State. An enterprise may possess the following assets:] [Au, C, J, K, NZ: Forms that an investment may take include] [NZ: but are not limited to, the following]:</p> <p><b>FN</b> <sup>6</sup> For great certainty, donation does not constitute an investment.</p>	<p><a href="#">WGI 10: Au to provide more information on "directly and indirectly":</a>  <a href="#">WGI to discuss further:</a></p>
<p>[Au, C, J, K, NZ: (a) an enterprise;]</p>	
<p>(ii) shares, stocks, [A: bonds and debentures] and/or [A: any] other forms of [Au, C, I, J, K, NZ: equity] [I: instruments of the] [A, Au, C, J, K, NZ: participation in a] juridical person/an enterprise [A, NZ: and rights derived therefrom;]</p> <p>[Au, C, J, K: (c) bonds, [NZ: including government issued bonds,] debentures, other [Au, C, J, K: debt instruments] [NZ: forms of debt], [Au, C, J, K: and] loans<sup>7 9 10</sup> [NZ: and rights derived there from<sup>11</sup>;] [C: (including loans to, or debt securities issued by a Party)<sup>8</sup>;]</p> <p><b>FN:</b> <sup>7 8 9 10 11</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, [C, J, NZ: 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. [Au: Loans issued by one Party to another Party are not investments.]</p> <p>[I: ii. a debt instrument or security of another enterprise;</p>	<p><a href="#">WGI 10: AU informed that their proposed structure is to separate equities from loans.</a>  <a href="#">ASEAN to consider. If bonds include government issued bonds, NZ may consider dropping reference to "government issued".</a></p>

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<p>iii. a loan to another enterprise</p> <p>- where the enterprise is an affiliate of the investor, or</p> <p>- where the original maturity of the loan is at least three years; ]</p>	
<p><b>[Au, C, J, K: (d) futures, options, and other derivatives;]</b></p>	
<p>(d) <b>[A, NZ: rights under contracts, including]</b> turnkey, construction, management, production <b>[Au, C, J, K: concession,]</b> <b>[A, NZ: or]</b> revenue-sharing <b>[Au, C, J, K: and other similar]</b> contracts;]</p>	
<p><b>[I: Copyrights, know-how and]</b> intellectual property rights <b>[A: which are recognised pursuant to the laws and regulations of each Party]</b> <b>[A, NZ: and goodwill]</b> <b>[I: such as patents, trademarks, industrial designs and trade names, to the extent they are recognized under the law of the Host State; and]</b></p>	<p><u>WGI 10:</u>  <a href="#">In will revert on whether "copyrights, know-how" is included in IPR</a></p>
<p><b>[A, NZ: (iv) claims to money or to any contractual performance related to a business and having [NZ: economic] [A: financial] value<sup>12 13</sup>;</b></p> <p><i>FN<sup>12 13</sup> For greater certainty, investment does not mean claims to money that arise solely from:</i></p> <p><i>i. commercial contracts for sale of goods or services; or</i></p> <p><i>ii. the extension of credit in connection with such commercial contracts.</i></p> <p><a href="#">[K: For purposes of this Agreement, a claim to payment that arises solely from the commercial sale of goods and services is not an investment, unless it is a loan that has the characteristics of an investment.]</a></p> <p><a href="#">[I: iv. claims to money that arise solely from commercial contracts for the sale of goods or services by a national or enterprise in the Host State to an enterprise in the territory of another Party; ]</a></p>	<p><u>WGI 10:</u>  <a href="#">AFPs to consider the footnote.</a>  <a href="#">KR and In has a similar exception.</a></p>
<p><b>[A, I: [A: (vi) business concessions required to conduct economic activity and having financial value] [I: rights] conferred [A: by law or under a] contract [I: s such as those to] [A: , including any concession to search for,] cultivate, extract or exploit natural resources.] [I: in accordance with the law of the Host State, or]</b></p>	

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<p>[Au, C, I, J, K: (g) licences, authorisations, permits, and/or similar] rights conferred [Au, C, J, K, NZ: pursuant to [Au, C, J, K: domestic] [I: in accordance with the] law<sup>14 15 17 18</sup> [I: of the Host State] [NZ: or contract such as concessions, licences, authorisations, and permits;] and</p> <p><i>FN: <sup>14 15 17 18</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 [C: also] depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among [A, C, K: the licences, authorisations, permits, and similar] [J: such] instrument[s] 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 [A, C, K: the licence, authorisation, permit, or similar] [J: such] instrument [s] has the characteristics of an investment.</i></p>	
<p>[Au, C, J, K, NZ: other tangible or intangible,] movable and/or immovable property, and related/other [A, Au, C, K, NZ: property] rights, [A, Au, C, J, K, NZ: such as] [Au, C, J, K, NZ: leases,] [A, Au, C, J, K, NZ: mortgages, liens, and/or pledges][K:<sup>21</sup>].</p> <p><i>FN <sup>21</sup>For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.</i></p>	
<p>[I: viii. any other interests of the enterprise which involve substantial economic activity and out of which the enterprise derives significant financial value;]</p>	
<p>[. [but] [The term] investment does not [mean] [include] an order or judgment [I: sought or] entered in [a] [I: any] judicial or administrative [A, Au, C, J, K, NZ: action] [Au, I: or arbitral proceeding.]</p>	<p>WGI 10:  <u>ASEAN can accept in principle.</u></p> <p><u>Other RPCs have similar text. Language and placement to be discussed further.</u></p> <p><u>In to consider "any".</u></p>
<p>[A: For the purpose of the definition of investment in this Article, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.]</p>	

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<p><b>[K:</b> For purposes of this Agreement, a claim to payment that arises solely from the commercial sale of goods and services is not an investment, unless it is a loan that has the characteristics of an investment.]</p>	<p><u>WGI 10:</u>  <a href="#">to be considered placement together with similar texts on "claims to money" above.</a></p>
<p><b>[I:</b> For greater clarity, investment does not include the following assets of an enterprise:</p> <ul style="list-style-type: none"> <li>i. portfolio investments of the enterprise or in another enterprise;</li> <li>ii. future, options and other derivatives;</li> <li>iii. debt securities issued by a government or government-owned or controlled enterprise, or loans to a government or government-owned or controlled enterprise;</li> <li>iv. claims to money that arise solely from commercial contracts for the sale of goods or services by a national or enterprise in the Host State to an enterprise in the territory of another Party;</li> <li>v. goodwill, brand value, market share or similar intangible rights;</li> <li>vi. claims to money that arise solely from the extension of credit in connection with any commercial transaction;</li> <li>vii. an order or judgment sought or entered in any judicial, administrative or arbitral proceeding;</li> <li>viii. any other claims to money that do not involve the kind of interests or operations set out in the definition of investment in this Agreement.]</li> </ul>	<p><a href="#">Sub para (iv) to be considered together with the footnote under "claims to money"</a></p> <p><a href="#">Sub para (vii) to be considered placed together with similar text above.</a></p>
<p><b>[C, J, K: investment agreement</b><sup>22 23 24</sup> between] [J: the central, regional or local government or authority of a Contracting Party and an investor of the other Contracting Party or its investment that is an enterprise in the Area of the former Contracting Party, on which the investor or the investment relies in</p>	

establishing or acquiring an investment.][C, K: a national authority<sup>25 26</sup> of a Party and a covered investment or an investor of any other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;

(b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;]

**FN:** <sup>22 23 24</sup> "Written agreement" refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article [C: 35[Governing Law](2)] [K: XX.X(Amendments of the Final Provisions Chapter)] For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

**FN:** <sup>25 26</sup> For purposes of this definition, national authority means [C: (a) for , [ ]; and (b) for the People's Republic of China, an agency of] an authority at the central [K: level] of government.

<p>[I: “investor” means a natural person of a Party or a juridical person of a Party, other than a branch or representative office, that seeks to make, is making, or has made an investment in the territory of any other Party.]</p> <p>[Au, C, J, K, NZ: investor of a non-Party means, with respect to a Party, an investor that [Au, C, J, K, NZ: attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of [NZ: another] [Au, J: a] [C: any] [K: either] Party;]</p>	<p>WGI10:  <a href="#">In to consider definitions for “investor of a Party” and “non-Party” subject to inclusion of the term “juridical person”.</a></p>
<p>investor of a Party means a [Au, C, J, K, NZ: Party [,/or] a] [K: state enterprise thereof] [national/natural person of a Party] or [a juridical person/an enterprise] of a Party that [A: seeks] [Au, C, J, K, NZ: attempts to make [A, Au, NZ: <sup>28 29</sup>], is making, or has made an investment in the territory of another Party; [K: provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;] [Au: provided, however, that: (i) a natural person who is a citizen of 2 or more parties shall be deemed to be a national exclusively of the party of his or her dominant citizenship, and (ii) a natural person who is a citizen or a permanent resident shall be deemed to be exclusively the national of his citizenship]</p> <p>[A, Au, NZ: FN: <sup>28 29</sup> For greater certainty, the Parties understand that an investor that [NZ: . for the purposes of the definitions of “investor of a non-Party” and “Investor of a Party”] [A: “seeks] [Au, NZ: “attempts] to make” an investment [NZ: when that] [A: refers to an] investor [A: of another Party that] has taken [NZ: concrete action or actions] [A: active steps] to make an investment [NZ: such as channelling resources or capital in order to set up a business, or applying for permits and licences]. [A: Where a notification or approval process is required for making an investment, an investor that “seeks to make” an investment refers to an investor of another Party that has initiated such notification or approval process.]</p>	<p>Deleted: [seeks/  Deleted: ]  Deleted: [NZ:<sup>27</sup>  Deleted: /</p> <p>Deleted: FN: <sup>27</sup> For greater certainty, the Parties understand that an investor “attempts to make” an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or licenses.</p> <p>Formatted: Font:Bold, Font color: Black</p> <p>Deleted: ,</p>
<p>[I: “local government” includes:</p> <p>i. An urban local body, municipal corporation or village</p>	<p>WGI 10: In prefers to define, but can reconsider placement.</p>



China.}]	
<p><b>[A: natural person of a Party</b> means, for the purpose of subparagraph (d) of this Article, a natural person who under the law of that Party:</p> <p>(i) is a national or citizen of that Party; or</p> <p>(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.]</p> <p><b>[I: Natural person: ‘Natural person’</b> means a person possessing the nationality or citizenship of the Party in accordance with its laws, regulations and national policies. A natural person who is a dual national or citizen shall be deemed to be exclusively a national or citizen of the country of her or his dominant and effective nationality/citizenship, where she/he ordinarily or permanently resides.]</p> <p><b>[NZ: natural person of a Party</b> means a national or a permanent resident of a Party under its laws.]</p>	<p><a href="#">WGI 10:</a></p> <p><a href="#">From the definition “Investor of a Party”:</a></p> <p><a href="#">[Au: provided, however, that: (i) a natural person who is a citizen of 2 or more parties shall be deemed to be a national exclusively of the party of his or her dominant citizenship, and (ii) a natural person who is a citizen or a permanent resident shall be deemed to be exclusively the national of his citizenship].</a></p> <p><a href="#">In to consider the Au formulation regarding dual citizenship/PR.</a></p>
<p><b>[A: newer ASEAN Member States</b> means the Kingdom of Cambodia, the Lao People’s Democratic Republic, Republic of the Union of Myanmar and the Socialist Republic of Viet Nam;]</p>	<p><a href="#">WGI 10:</a></p> <p><a href="#">Submitted as a cross-cutting issue</a></p>
<p><b>[J, K: New York Convention</b> means the <i>United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards</i>, done at New York, June 10, 1958;]</p>	
<p><b>[C, J, K: non-disputing Party</b> means] [a/the] Party [J: that is not a party to an investment dispute] [C, K: of the claimant];</p>	
<p><b>[A, I: Parties</b> means the ASEAN Member States, Australia, China, India, Japan, Korea and New Zealand, collectively;]</p>	<p><a href="#">WGI 10:</a></p> <p><a href="#">Submitted as a cross-cutting issue</a></p>
<p><b>[A, I: Party</b> means an ASEAN Member State, Australia, China, India, Japan, Korea or New Zealand;]</p>	<p><a href="#">WGI 10:</a></p> <p><a href="#">Submitted as a cross-</a></p>

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	<a href="#">cutting issue</a>
[C: “ <b>person</b> ” means a natural person or an enterprise.]	
[C: “ <b>person of a Party</b> ” means a national or an enterprise of a Party.]	<a href="#">WGI 10: Ch to reconsider “person” and “person of a party”</a>
[C, J, K: <b>protected information</b> means confidential business information or information that is privileged or otherwise protected from disclosure under a Party’s law,][J: including classified government information;]	
[C: “ <b>provincial level of government</b> ” means:  (a) for , [ ]; and  (b) for the People’s Republic of China, the provincial level of government.]  [I: “ <b>Regional Government</b> ” means a State Government or Union territory in case of India; and ----- in case of ]	<a href="#">WGI 10: Ch and In informed that it is necessary for them to define provincial/regional level of government.</a>
[C, J, K: <b>respondent</b> means the Party that is a party to an investment dispute;]	
[A, I: <b>returns</b> mean amounts yielded by or derived from an investment particularly, though not exclusively, any profits, interests, capital gains, dividends, royalties or fees;]	<a href="#">WGI 10: Other RPCs will consider including a definition of “returns” if it would be used in other parts of the Chapter</a>
[J, K: <b>Secretary-General</b> means the Secretary-General of ICSID; and]	
[C, I: “ <b>territory</b> ” means:  (a) with/in respect to/of,[].  (b)with respect to the People’s Republic of China, areas including the land territory, internal waters, territorial sea and the air space above them, as well as any area beyond its territorial sea within which the People’s Republic of China has sovereign rights or jurisdiction in accordance with the international law and Chinese law.]	<a href="#">WGI 10: Submitted as a cross-cutting issue</a>

<p>[I: In respect of India: the territory of the Republic of India in accordance with the Constitution of India, including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights, or exclusive jurisdiction in accordance with its Law the 1982 United Nations Convention on the Law of the Sea and international law. In respect of -----]</p>	
<p>[C: “TRIPS Agreement” means the <i>Agreement on Trade-Related Aspects of Intellectual Property Rights</i>, contained in Annex 1C to the WTO Agreement.<sup>32</sup>]</p> <p><i>FN:</i><sup>32</sup> For greater certainty, “TRIPS Agreement” includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.</p>	<p>WGI 10: <a href="#">To be submitted as a cross-cutting issue</a></p>
<p>[C, J, K: <b>UNCITRAL Arbitration Rules</b> means the arbitration rules of the United Nations Commission on International Trade Law.]</p>	
<p>[A: <b>WTO</b> means the World Trade Organisation; and]</p>	<p>WGI 10: <a href="#">Submitted as a cross-cutting issue</a></p>
<p>[A, C: <b>WTO Agreement</b> means the Marrakesh Agreement Establishing the World Trade Organisation, done at Marrakesh on the 15th day of April 1994 [A: and the other agreements negotiated thereunder.]</p>	<p>WGI 10: <a href="#">Submitted as a cross-cutting issue</a></p>
<p>[I: The Annexure, Provisios, Explanatory Statements and Footnotes in this <b>Chapter</b> constitute an integral part of this Agreement and are to be accorded the same effect as other provisions in this Agreement.</p> <p>If a term is not defined in this Chapter, it shall have the meaning ascribed to it under the Law of the Host State.]</p>	<p>WGI: <a href="#">In to further consider on placement</a></p>
<p style="text-align: center;"><b>Article XX NATIONAL TREATMENT</b></p>	<p>WGI 10: <a href="#">In submitted pre-establishment</a></p> <p>WGI 9: India’s NT text is for post-establishment only.</p>
<p>Each Party shall accord to investors of another/the other Party [A: , and to covered investments of investors of any</p>	<p>WGI 10: <a href="#">In prefers to have 1</a></p>

<p>other Party] treatment no less favourable than that it accords [A: through its measures], in like circumstances, to its own investors with respect to the establishment, [I: and] acquisition, [A, Au, C, J, K, NZ: expansion, management, conduct, operation, and sale or other disposition] of investments in its territory.</p>	<p><a href="#">paragraph for investors and another paragraph for covered investments to address the issue of pre- and post-establishment.</a> <a href="#">NZ propose for ASEAN to consider having 2 paragraphs.</a> <a href="#">Au can be flexible with either approach.</a></p> <p>WGI 9:</p> <p>ASEAN to consider the approach by most AFPs to have separate paragraphs for investors and covered investment.</p> <p>ASEAN to revert on “through its measures”</p>
<p>[I: 5.3 A determination of whether investments or investors are in “like circumstances” should be made, based upon an objective assessment of all circumstances on a case-by-case basis, including, <i>inter alia</i>:</p> <p>i. the sector the investor is in; ii. the location of the investment; iii. the aim of the measure concerned; and iv. the regulatory process generally applied in relation to the measure concerned. The examination shall not be limited to or biased towards any one factor.]</p>	
<p>2. [I: Subject to its laws and regulations.] [Au, C, I, J, K, NZ: Each Party shall accord to covered investments [I: and investor of the other Party] treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the [Au, C, J, K, NZ: establishment, acquisition, expansion,] management, conduct, operation, and sale or other disposition of [I: covered] investments.]</p>	<p><a href="#">WGI 10: In can consider “expansion” in pre-establishment.</a></p> <p>WGI 9: In to revert on the possible inclusion of “expansion”</p>
<p>[I: 11.3 A determination of whether Covered Investments or investors are in “like circumstances” should be made, based upon an objective assessment of all circumstances on a case-by-case basis, including, <i>inter alia</i>:</p>	

<p>i. the sector the investor is in; ii. the location of the Covered Investment; iii. whether the Covered Investment is public, private, or state-owned or controlled; iv. the aim of the measure concerned; the regulatory process generally applied in relation to the measure concerned. v. the actual and potential impact of the Covered Investment on third persons, the local community, or the environment; vi. the goods or services consumed or produced by the Covered Investment; and vii. the practical challenges of regulating the Covered Investment.</p> <p>The examination shall not be limited to or biased towards any one factor.</p> <p>For greater certainty, whether treatment is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or Covered Investments on the basis of legitimate regulatory objectives.]</p>	
<p>[<b>Au, J:</b> For greater certainty,] [<b>Au, I, J, K:</b> the treatment to be accorded by a Party under] [<b>I:</b> Article 5.1] [<b>Au, J, K:</b> paragraphs 1 and 2] means, with respect to a regional level [<b>Au, J, K:</b> of government], treatment no less favourable than the most favourable/favoured treatment accorded, in like circumstances, [<b>Au, J, K:</b> by that regional level of government] [<b>Au, I, J, K:</b> to investors, and to investments of [<b>I:</b> the] investors,] of the Party of which it forms a part.]</p> <p>[<b>I:</b> 11.2 Subject to its laws and regulations, the treatment to be accorded by a Party under Article 11.1 means, with respect to a regional level, treatment no less favourable than the treatment accorded at that regional level, in like circumstances, to Covered Investments, of the Party to which it forms a part.]</p>	<p><a href="#">WGI 10:</a> <a href="#">Merrill &amp; Ring Forestry LP vs Government of Canada NAFTA IIC 427 10 Ad Hoc Tribunal UNCITRAL</a></p>
<p><b>Article XX</b> <b>MOST FAVOURED NATION TREATMENT</b></p>	<p>India does not have a proposal for this Article.</p>
<p>1. Each Party shall accord to investors of [another/any other] Party treatment no less favourable than that it</p>	<p>WGI 9: ASEAN to consider reflecting “in its</p>

<p>accords, in like circumstances, to investors <b>[A, Au, C, J: of any other Party or]</b> <b>[A, Au: a]</b> <b>[C, J, K, NZ: of any]</b> non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in <b>[Au, C, J, K, NZ: its territory.]</b></p>	<p>territory”.</p>
<p>2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to <b>[A, Au, C, J, K: investments in its territory of]</b> investors <b>[A, Au, C, J: of any other Party or]</b> <b>[A, Au: a]</b> <b>[C, J, K, NZ: of any]</b> non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments <b>[NZ: in its territory.]</b></p>	
<p><b>[A: 3. The treatment, as set forth in paragraphs 1 and 2, shall not include:</b></p> <p>a. any preferential treatment accorded to investors and/or their investments under any existing bilateral, regional and/or international agreements or any forms of economic or regional cooperation with any non-Party; and</p> <p>b. any existing or future preferential treatment accorded to investors and/or their investments in any agreement or arrangement between or among ASEAN Member States.]</p>	<p>ASEAN to consider listing in the schedule of reservations.</p>
<p><b>[C: 3. Paragraphs 1 and 2 of this Article shall not be construed to oblige any Party to extend to the investors of another Party or covered investments any treatment, preference or privilege by virtue of any bilateral or multilateral agreement relating to investment in force or signed prior to the date of entry into force of this Agreement]</b></p>	<p>China will delete and place in their Reservation List.</p>
<p>5. For greater certainty, the <b>[A: obligation]</b> <b>[Au, C, J, NZ: treatment referred to]</b> in this Article does not encompass <b>[A: a requirement for a Party to extend to investors of another Party]</b> <b>[Au: any]</b> <b>[Au, J, NZ: international]</b> dispute resolution procedures <b>[Au, C, J, NZ: or mechanisms]</b> <b>[C, J, NZ: such as those included in Section B]</b> <b>[A: other than those set out in]</b> <b>[C: of]</b> <b>[A, C: this Chapter]</b></p> <p><i><b>[K footnote to MFN: For greater certainty, Article X.4 does not apply to investor-state dispute settlement mechanisms such as those set out in Section B.]</b></i></p>	
<p><b>[A: 4. Notwithstanding paragraphs 1 and 2, if a Party</b></p>	<p><a href="#">WGI 10:</a></p>

<p>accords more favourable treatment to investors of any other Party or a non-Party or their investments by virtue of any future agreements or arrangements to which the Party is a party, it shall not be obliged to accord such treatment to investors of any other Party or their investments. However, upon request from any other Party, it shall accord adequate opportunity to negotiate the benefits granted therein.]</p> <p><u>From In text Article 7 (Review of Reservations):</u>  <u>[In: 7.1 Where, after the entry into force of this Agreement, a Party enters into any agreement on investment with a non-Party, that Party may give consideration to a request by another Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation will be subject to mutual agreement and should maintain the overall balance of commitments undertaken by each Party under this Agreement.]</u></p>	<p><a href="#">In's Review of Reservations Article paragraph 7.1.</a></p>
<p><b>Article XX</b>  <b>TREATMENT OF INVESTMENT /</b>  <b>MINIMUM STANDARD OF TREATMENT <sup>1 2</sup></b></p>	
<p><b>[J, K: FN:</b> <sup>1</sup> <i>Article X.5(Minimum Standard of Treatment) shall be interpreted in accordance with Annex X-A(Customary International Law)]</i></p>	<p><b>WGI 10:</b>  <a href="#">In submitted MST Article</a></p> <p>WGI 9:  In would submit a revised MST Article</p>
<p><b>[I: 12.1</b> No Party shall subject Covered Investments made by investors of the other Party to measures which constitute a violation of customary international law<sup>1</sup> through:</p> <p>i. Denial of justice in any judicial or administrative proceedings; or  ii. fundamental breach of due process; or  iii. targeted discrimination on manifestly unjustified grounds, such as gender, race or religious belief; or  iv. manifestly abusive treatment, such as coercion, duress and harassment.]</p> <p><b>[IN: FN:</b> <i>For greater certainty, it is clarified that “customary international law” only results from a general and</i></p>	<p><b>WGI 10:</b>  <a href="#">In to further consider paragraph 12.5 on CIL</a></p>

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<p><i>consistent practice of States that they follow from a sense of legal obligation.]</i></p>		<p>Formatted: Font:Bold, Italic</p>
<p>Each Party shall accord [I: in its territory] to covered investments [I: of the other Party and to investors with respect to their investments] [Au, J, K, NZ: treatment in accordance with the customary international law] [Au, NZ: minimum standard of treatment of aliens.] [Au, J, K, NZ: including] [A, Au, C, J, K, NZ: fair and equitable treatment and] full protection and security [C: in accordance with customary international law.]</p>		<p>Formatted ... [1]</p> <p>Deleted: [J: applicable]...customary international ... [2]</p> <p>Formatted ... [3]</p>
<p>[A, Au, C, J, K: For greater certainty,] [Au, C, J, K: 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.]</p>	<p>WGI 10:  <a href="#">Ch to revert on "additional substantive rights".</a>  <a href="#">NZ to consider "under"</a></p>	<p>Formatted ... [4]</p>
<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required [Au, C, J, K: by that standard.] [A, Au: under] [NZ: by the] customary international law [NZ: minimum standard of treatment], and [A, Au, C, J, K, NZ: do not create additional substantive rights] [Au, C, J, K, NZ: The obligation in paragraph 1 to provide:]</p>		<p>Deleted: [C: and do not create substantive rights]</p> <p>Formatted ... [5]</p>
<p>[A, Au, C, Jp, Kr, NZ: (a) fair and equitable treatment [A: requires each/a Party] [C: refers to] [Au, Jp, Kr, NZ: includes [Au, C, Jp, Kr, NZ: the obligation] not to deny justice in [A: any legal or administrative proceedings] [C: in] [Au, C, Jp, Kr, NZ: criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process] [C: of law] [Au, Jp, Kr: embodied in the principal legal systems of the world;] [Au, C, J, K: and;]]</p>		<p>Formatted ... [6]</p> <p>Deleted: , I</p> <p>Formatted ... [7]</p> <p>Deleted: , I</p> <p>Formatted ... [8]</p>
<p>[A, Au, C, Jp, Kr, NZ: (b) full protection and security [C: refers to the requirements on] [A, Au, Jp, Kr, NZ: requires] each/a Party, to [A, NZ: take such measures as may be reasonably necessary to [A, NZ: ensure the [NZ: physical] [A, protection] [A, Au, Jp, Kr, NZ: and security of the covered investment/s] [Au, C, Jp, Kr: provide the level of police protection required under customary international law.]]</p>		<p>Formatted ... [9]</p> <p>Deleted: /Member State</p> <p>Deleted: I,</p> <p>Formatted: Font:Bold</p> <p>Formatted ... [10]</p>
<p>[I: 12.5 Parties understand that each Party has different forms of administrative, legislative and judicial systems and that each Party at different levels of development may</p>		<p>Formatted: Font:Bold</p>

<p>not achieve the same standards at the same time. Paragraph 1 of this Article does not establish a single international standard in this context.]</p>	
<p>3. A determination that there has been a breach of another provision of this [A: Chapter] [Au, Ch, I, J, K, NZ: Agreement], or of a separate international agreement, [does/shall] not establish that there has been a breach of this Article.</p>	
<p>[I: 12.4 In considering an alleged breach of this Article, a Tribunal shall take account of whether the investor that has made a Covered Investment or, as appropriate, the locally-established enterprise, pursued action for remedies before domestic courts or tribunals prior to initiating a claim under this Agreement.]</p>	
<p style="text-align: center;"><b>Article XX</b> <b>PROHIBITION OF PERFORMANCE REQUIREMENTS</b></p>	<p>WGI 9:  Most AFPs prefer to include some TRIMs plus elements  ASEAN prefers to only include TRIMS level elements  In prefers not to include this Article</p>
<p>1. No Party [A, Au, NZ: shall] [C, J, K: may.] [Au, C, J, K, NZ: in connection with the] [A: impose or enforce as a condition for] establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory of an investor of [any other/another/a] Party [Au, C, J, K, NZ: or of a non-Party.] [A: any of the following requirements] [Au, C, J, K, NZ: impose or enforce any requirement or enforce any commitment or undertaking:<sup>1</sup>]</p> <p><i>FN <sup>1</sup>For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.</i></p>	<p>Au to revert on the application of "impose or enforce any requirement or enforce any commitment or undertaking"</p>
<p>(a) to export a given level or percentage of goods [Au, C, J, K, NZ: or services];</p>	<p>JP to revert on examples of services that can be exported</p>
<p>(b) to achieve a given level or percentage of domestic content [C: of goods];</p>	<p>RPCs to revert on inclusion "of goods"</p>
<p>(c) to purchase, use or accord a preference to goods produced [J: or services supplied] in its territory, or to</p>	

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<p>activity is consistent with paragraph 1 [J: (g)] [K: (f)].</p>	
<p><b>[Au, C, J, K, NZ: (b) Paragraph 1(f) shall not apply:</b></p> <p>(i) when a Party authorises use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, 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</p> <p>(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.] <b>[Au, C, J, K, NZ<sup>2</sup>]</b></p> <p><i>FN<sup>2</sup> The Parties recognise that a patent does not necessarily confer market power.</i></p>	
<p><b>[Au, C, J, K, NZ: [(d)/(c)] Paragraphs 1(a), 1(b), and 1(c), and 2(a) and 2(b), shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.]</b></p>	
<p><b>[Au, K: (c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), 1(c), and 1(f), and 2(a) and 2(b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures;]</b></p>	
<p><b>[Au: For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for the purposes of paragraph 1.]</b></p>	
<p><b>[Au, Kr: (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;</b></p> <p>(ii) necessary to protect human, animal, or plant life or health; or</p> <p>(iii) related to the conservation of living or non-living exhaustible natural resources.]</p>	
<p><b>[J K: (d) Paragraphs 1(b), (c), (f), (g), [J: and (l)] and 2(a) and (b)] do not apply to government procurement.]</b></p>	

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<p><b>[Au, C, J, K, NZ: (e)/(f)]</b> Paragraphs 2(a) and 2(b) [shall/do] not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.]</p>	
<p><b>[Au, C, J, K: 4.</b> For greater certainty, paragraphs 1 and 2 [A, C, J, K: shall/do] not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.]</p>	
<p><b>[Au, J, K, NZ: 5.</b> This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.] [K: For purposes of this Article, private parties include designated monopolies or state enterprises, where such entities are not exercising delegated governmental authority.]</p>	
<p><b>Article XX SENIOR MANAGEMENT AND BOARD OF DIRECTORS [C: AND ENTRY OF PERSONNEL]</b></p>	<p>India does not have a proposal for this Article.</p>
<p>1. [A: A] [Au, C, J, K, NZ: No] Party [A, Au: shall] [C, J, K, NZ: may] [A: not] require [A: a juridical person] [Au, C, J, K, NZ: that an enterprise] of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.</p>	<p>WGI 9: ASEAN to revert on the approach</p>
<p>2. [A Party] may require that a majority [Au: or less than a majority] of the board of directors, or any committee thereof, of [a juridical person/an enterprise] of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.</p>	<p>NZ to confirm change in approach.  Au to revert on "or less than a majority"</p>
<p>[C: 3. Subject to its measures relating to public health and safety and national security applicable to the entry and sojourn, a Party shall permit natural persons who have the nationality of another Party and,</p> <p>(a) attempt to make, are making, or have made an investment in its territory; or</p> <p>(b) are employed by any persons who attempt to make,</p>	<p>Ch prefers to include this in the Inv. Chapter but will consult with its Services counterpart.</p>

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<p>are making, or have made an investment in its territory, or are employed by any enterprise that is a covered investment, or an affiliate or subsidiary thereof, in a capacity that is managerial, executive or that requires specialized knowledge,</p> <p>to enter and stay temporarily in its territory.]</p>	
<p><b>Article XX</b> <b>RESERVATIONS / NON-CONFORMING MEASURES</b></p>	<p>WGI 10:</p> <p>WGI 9: In does not yet have a text for this Article</p>
<p>1. [A, Au, C, J, K, NZ: Article/s] [I: Pre-establishment (National Treatment), [A, Au, C, J, K, NZ: (Most-Favoured-Nation Treatment),] [Au, C, J, K, NZ: (Performance Requirements)] [A, Au, C, J, K, NZ: and (Senior Management and Boards of Directors),] shall not apply to:</p>	<p>WGI 9: In prefers not to include MFN and PPR</p>
<p>(a) any existing non-conforming measure that is maintained by a Party at:</p> <p style="padding-left: 40px;">(i) the central level [NZ: or regional] of government as set out by that Party in its Schedule of Reservations [Annex 1/List 1/3];</p> <p style="padding-left: 40px;">[A, Au, C, I, J, K: (ii) the [regional/provincial] level of government [A, Au, C, J, K, NZ: as set out by that Party in its Schedule of Reservations to [Annex 1/in List 1]]; or</p> <p style="padding-left: 40px;">(iii) the local level of government.[K:<sup>1</sup>]</p> <p><i>FN: <sup>1</sup> For Korea, local level of government means a local government as defined in the Local Autonomy Act.</i></p>	<p>WGI 9: In can only take commitments at the central level</p> <p>Kr informed that its footnote is for clarity</p> <p>To revisit levels of government to be covered in the Scope of the Chapter</p>
<p>(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a)/(i); or</p>	
<p>(c) an amendment to any non-conforming measure referred to in subparagraph (a)/(i) [A, Au, C, J, K, NZ: to the extent that the amendment does not decrease the conformity of the measure, as it existed] [A: at the date of entry into force of the Party's Schedule of Reservations in List 1] [Au, C, J, K, NZ: immediately before the amendment], [A, Au, C, J, K, NZ: with Articles (National Treatment), (Most-Favoured-Nation Treatment), [Au, C, J,</p>	<p>WGI 9: ASEAN and India prefer no ratchet</p> <p>In to revert on standstill</p>

K, NZ: Performance Requirements] [A, Au, C, J, K, NZ: and (Senior Management and Boards of Directors).]	
2. Article/s (National Treatment), (Most-Favoured-Nation Treatment), [Au, C, J, K, NZ: (Performance Requirements),] and [C: Paragraphs 1 and 2 of] (Senior Management and Boards of Directors [C: and Entry of Personnel]), shall not apply to any reservation for measures that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in [its Schedule to Annex II/List 2].	
[A, Au, C, J, K: 3. No Party [C, J, K: may,] [A: Au: shall] under any measure adopted [Au, C, J, K: after the date of entry into force of this Agreement] and covered by its Schedule [to/in] Annex II, require an investor of [any/the other/another] Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.]	WGI 9: NZ will provide text later
<p>[C, J, K, NZ: 3. Articles (National Treatment) and (Most Favoured Nation Treatment) do not apply to any measure that is an exception to, or derogation from, [a Party's/the] obligations under [C: Article 3 or 4 of] [C, J, NZ: the TRIPS Agreement] [K: Article [XX.X] (National Treatment, IP Chapter's General Provisions)] [C, J, K: , as specifically provided] [C: in those Articles and in Article 5 of the TRIPS Agreement] [J: in that agreement] [K: in that Article].</p> <p>[A, I: 4. Nothing in this Chapter shall be construed so as to derogate from rights and obligations under international agreements in respect of protection of intellectual property rights to which the Parties are party, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and other treaties concluded under the auspices of the World Intellectual Property Organization.]</p> <p><i>Australia note: subject to the drafting of the IP Chapter, it may be preferable to include a provision to clarify the relationship between the National Treatment and Most Favoured Nation obligations of the Investment Chapter and the National Treatment obligation of the IP Chapter.</i></p>	<p>WGI 9: May have to wait for developments within the IP WG to finalise the text for this provision</p> <p>ASEAN to revert on the reference to WIPO treaties</p>
[I: 6.2 Article 5 (Pre-establishment National Treatment), shall not apply to any measure that a Party adopts or maintains with respect to existing or new and emerging sectors, sub-sectors and activities set out in its Schedule in Annex 4.	

<p>6.3 Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex 4, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.</p> <p>6.4. In cases where a Party makes an amendment or a modification to any existing non-conforming measure set out in its Schedule in Annex 3 or where a Party adopts any new or more restrictive measure with respect to sectors, sub-sectors or activities set out in its Schedule in Annex 4 after the entry into force of this Agreement, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or in exceptional circumstances, as soon as possible thereafter: notify the other Party of detailed information on such amendment, modification or measure; and hold, upon request by the other Party, consultations in good faith with that other Party with a view to achieving mutual satisfaction.</p> <p>6.5 Each Party shall endeavour, where appropriate, to reduce or eliminate the exceptions specified in its Schedules in Annexes 3 and 4, respectively.]</p>	
<p>[J, K: 5. Articles (National Treatment), (Most-Favored/Favoured)-Nation Treatment), and (Senior Management and Board of Directors) do not apply to:</p> <p>(a) government procurement; or</p> <p>(b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.]</p> <p>[C: 6. Nothing in this Chapter shall apply to any measure of any Party in respect of government procurement.]</p> <p>[C, NZ: 4. Articles (National Treatment), (Most Favoured Nation Treatment) and (Senior Management and Board of Directors [C: and Entry of Personnel]) do not apply to: subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.]</p>	<p>Au may submit a text on this provision</p>
<p>[C: 7. Nothing in this Chapter shall apply to any measure of any Party in respect of cultural industries. For purpose of this Article, “cultural industries” means natural persons</p>	<p>Ch to revert back on this provision including its coverage</p>

<p>or enterprises engaged in any of the following activities:</p> <p>(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but does not include the sole activity of printing or typesetting any of the foregoing;</p> <p>(b) the publication, production, distribution, sale or exhibition of film or video recordings;</p> <p>(c) the publication, production, distribution, sale or exhibition of audio or video music recordings;</p> <p>(d) the publication, production, distribution, sale or exhibition of music in print or machine readable form;</p> <p>(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio stations, television stations, radio frequencies, television channels, radio and/or television transmission and coverage networks, and the production and operation of radio and television programmes; or</p> <p>(f) Cultural information services such as news, publication, audiovisual programs, audio and video products, and games that are provided through Internet.]</p>	
<p><b>Article XX</b> <b>TRANSFERS AND ANNEX ON TRANSFERS</b></p>	
<p>[K: ARTICLE X.7: TRANSFERS<sup>1</sup></p> <p><i>FN: <sup>1</sup> For greater certainty, Annex X-F applies to this Article.]</i></p>	
<p>[I: Subject to the laws and regulations of the Host State,]Each Party/Member State shall [allow/permit] all transfers/funds [I: of an investor of the other Member State][NZ: into and out of its territory] relating to a covered investment [I: in its territory] to be [A, Au, C, J, K, NZ: made] freely [A, Au, C, J, K, NZ: and without delay] [NZ: in a freely usable currency at the market rate of exchange at the time of transfer.][I: transferred and on a non-discriminatory basis.] [A, AU, C, J, K: into and out of its territory]. Such transfers/funds include [C: <sup>2</sup>]:</p> <p><i>FN: <sup>2</sup> Any transfer obligation provided in this article does not, in any situation and in any form, affect each Party's ability to administer</i></p>	

foreign exchange under current account and capital account, including to impose necessary formality requirements.	
(a) contributions to capital, [A, Au, J, K, NZ: including the initial contribution;]	
<p>[A, NZ: (b) profits, capital gains, dividends, [NZ: interest] [royalties/royalty payments],[A: license fees,] technical assistance [A: and technical and] management fees, [NZ: and other fees][A: interest and other current income accruing from any covered investment;]</p> <p>[Au, C, I, J, K: (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;</p> <p>[A, NZ: (c) proceeds from the sale [NZ: of all or any part of the covered investment] or [NZ: from the partial or complete] liquidation of any covered investment;]</p> <p>(c) interest, royalty payments, management fees, and technical assistance and other fees;]</p>	
(d) payments made under a contract, including][NZ: payments made pursuant to] a loan agreement;	
(e) payments made [in accordance/pursuant] to [NZ: to Article (Treatment in Case of Armed Conflict or Civil Strife)][ Article (Compensation for Losses)] and Article (Expropriation)] [NZ: and payments arising out of the settlement of a dispute;]	
[A, Au, C, I, J, K: (f) payments arising out of the settlement of a dispute][A: by any means including adjudication, arbitration or the agreement of the parties to the dispute; and]	
[A, C, NZ: (g) earnings and [A, NZ: other] remuneration [A, NZ: of personnel engaged from abroad in connection with that investment.] [C: of a national of a Party who works in connection with a covered investment in the territory of another Party.]	
<p>2. Each Party shall [allow/permit] such transfers relating to a/the covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer [C: in the market of that Party<sup>3</sup>].</p> <p><i>FN:</i><sup>3</sup> For greater certainty, paragraph 2 does not require that the</p>	

<p>market rate of exchange in the territory of a Party be unaffected by any government intervention.</p>	
<p>[Au, C, J, K: 3. Each Party shall permit returns in kind relating to a covered investment to be made as [authorized/authorised] or specified in a written agreement between the Party and a covered investment or an investor of [any other/another] Party.]</p>	
<p>3. Notwithstanding Paragraphs 1 [and 2/through 3], a Party/Host State may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws[J: <sup>41</sup> [A, Au, C: [and] regulations][C: and rules] relating to:</p> <p>(a) bankruptcy, insolvency, or the protection of the rights of creditors;</p> <p>(b) issuing, trading, or dealing in securities, futures, options, or derivatives;</p> <p>(c) criminal or penal offences [A, I: and the recovery of the proceeds of crime];</p> <p>(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;</p> <p>(e) ensuring compliance with orders or judgments in judicial or administrative proceedings;</p> <p>[A, I, NZ: (f) taxation; [NZ: and]</p> <p>(g) social security, public retirement, or compulsory savings schemes;][I: including provident funds, retirement gratuity programmes and employees insurance programmes;]</p> <p>[A, I: (h) severance entitlements of employees; and</p> <p>(i) requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of a Party.]</p> <p>[I: (j) in the case of India, requirements to lock-in initial capital investments, as provided in India's Foreign Direct Investment (FDI) Policy, where applicable, provided that, any new measure which would require a lock-in period for investments should not apply to existing investments. ]</p>	

<p><i>[J: FN: <sup>4</sup> For greater certainty, this Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's laws relating to its social security, public retirement, or compulsory savings programs.]</i></p>	
<p>[I, J: 5. Notwithstanding paragraph [J: 3] [[1 and 2 of this Article], a Party/Host State may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 3/4.]</p>	
<p>[A: 4. Nothing in this Agreement shall affect the rights and obligations of the Parties as members of the International Monetary Fund (IMF) under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XX (Temporary Safeguard Measures) or at the request of the Fund. ]</p>	
<p>[I: 5. Notwithstanding paragraphs 1 and 2 of this Article, a Host State may temporarily restrict transfers in the event of serious balance-of-payments difficulties or threat thereof; or in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.]</p>	
<p><b>[K: Annex X-F Transfers</b></p>	
<p>1. Nothing in this Chapter, Chapter [XX] (Cross-Border Trade in Services), or [Chapter XX] (Financial Services) shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures with regard to payments and capital movements:</p> <p>(a) in the event of serious balance of payments or external financial difficulties or threat thereof; or</p> <p>(b) where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party.</p> <p>2. The measures referred to in paragraph 1:</p>	

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

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

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

(d) shall avoid unnecessary damage to the commercial, economic, or financial interests of any other Party;

(e) shall not otherwise interfere with investors' ability to earn a market rate of return in the territory of the Party on any restricted assets;<sup>5</sup>

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

(g) shall not be confiscatory;

(h) shall promptly be notified to the other Party;

(i) are applied in a manner consistent with Articles X.3(National Treatment),XX.X (National Treatment of the Cross-Border Trade in Services Chapter) and XX.X(National Treatment of the Financial Services) and Articles X.4(Most-Favored-Nation Treatment) , XX.X (Most-Favored-Nation Treatment of the Cross-Border Trade in Services Chapter) and XX.X(Most-Favored-Nation Treatment of the Financial Services Chapter) subject to the Schedules set out in Annex I, Annex II, and Annex III;

(j) shall not constitute a dual or multiple exchange rate practice; and

(k) shall not restrict payments or transfers associated with foreign direct investment.  
3. Nothing in this Chapter, Chapter [XX] (Cross-Border Trade in Services), or [Chapter XX] (Financial Services) shall be regarded to affect the rights enjoyed and obligations undertaken by a Party as a party to the *Articles of Agreement of the International Monetary Fund.*]

<p><i>FN: <sup>5</sup>For greater certainty, the term “restricted assets” in subparagraph (d) refers only to assets invested in the territory of Korea by an investor of any other Party that are restricted from being transferred out of the territory of Korea.</i></p>	
<p><b>Article XX SPECIAL FORMALITIES AND DISCLOSURE OF INFORMATION</b></p>	<p><b>Remarks</b></p>
<p>Nothing in Article (National Treatment) [A, C: or (Most Favoured Nation Treatment)] shall be construed to prevent a Party/Host State from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, [including a/such as a] [A, Au, C, I, K: requirement] [J, NZ: residency requirements for registration or a requirement] that covered investments be legally constituted under [the/its] laws or regulations [A, C, I: of the Party/Host State], provided that such formalities do not substantially/materially impair the protections afforded by a Party/Host State to investors of another Party/Member State and [their] covered investments [pursuant to/in accordance with] this Chapter/Agreement.</p>	
<p>Notwithstanding Article (National Treatment) [A, Au, C, J, K, NZ: and/or (Most Favoured Nation Treatment),] a Party/Host State may require an investor of another Party/Member State, or [a/its] covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party/Host State shall protect [A, I: to the extent possible] [such/any] [A, C, I, K: confidential] [C, K: business] information [Au, J, NZ: that is confidential] [A: which has been provided] from any disclosure that would prejudice [A, I: legitimate commercial interests] [Au, C, J, K, NZ: the competitive position] of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party/Host State from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law/s.</p>	
<p><b>Article XX COMPENSATION IN CASES OF STRIFE/TREATMENT IN CASE OF ARMED CONFLICT OR CIVIL STRIFE</b></p>	
<p>[Au, C, J, K: Notwithstanding Article (XX)(subsidies and</p>	

<p>grants)), [Au, C, J, K, NZ: each Party shall accord to investors of the other Party, and to covered investments,] [C, J, K: non-discriminatory treatment] [Au, C, J, K, NZ: with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife,] [Au, NZ: treatment no less favourable than that it accords, in like circumstances, to:</p> <p>a) its own investors and their investments; and</p> <p>(b) investors of any non-Party and their investments.]</p> <p>[A: A Party shall accord to] [A, I: Investors of] [A: any other] [I: a] [A, I: Party] [A, I: whose covered investments [I: in the territory of the Host State suffer] [A: suffered] [A, I: losses] [I: owing] [A: due] [A, I: to war or other armed conflict, [I: a] [A, I: state of national emergency] [I: or civil disturbances in the territory of the latter Party,] [A: civil strife or other similar events in its territory] [I: shall be accorded by the latter Party] [A, I: treatment,] [A: no less favourable than that accorded, in like circumstances, to its own investors or investors of a non-Party, relating to] [I: as regards] [A, I: restitution, indemnification, compensation or other [A: forms of] settlement], [I: if any, no less favourable than that which the host State accords to its own investors and their investments or to investors of any other Party or non-Party and their covered investments.]</p>	
<p>[Au, C, J, K, NZ: 2. Notwithstanding paragraph 1, if an investor of a Party,] [Au, C, J, K: in the situations referred to in paragraph 1,] [Au, C, J, K, NZ: suffers a loss in the territory of [the other/any other/another] Party resulting from:]</p> <p>[Au, C, J, K, NZ: a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or</p> <p>(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,]</p>	
<p>[Au, C, J, K, NZ: the latter Party shall provide the investor with restitution, compensation, or both as appropriate, for such loss.] [Au: In the event of both, the combined value of restitution and compensation shall not exceed the loss.] [Au, C, K, NZ: Any] [Au, K: compensation [Au: or restitution] shall be prompt, adequate, and effective,] [Au: and with respect to] [Au, C, K, NZ: compensation, shall be]</p>	

<p>[C, NZ: made] [Au, C, K, NZ: in accordance with Article [Expropriation and Compensation] paragraphs 2 through 4, <i>mutatis mutandis</i>.]</p>	
<p>[I: 2. For the purposes of this Article, state of emergency excludes natural disaster.]</p>	
<p>[Au, C, J, K: 3. Paragraph 1] [C, J, K does] [Au: shall] [Au, C, J, K: not apply to existing measures relating to subsidies or grants that would be inconsistent with Article [National Treatment] but for Article [C, J, K: Non-Conforming Measures] [Au: Scope] (5) [subsidies and grants].]</p>	
<p><b>Article XX SUBROGATION</b></p>	
<p>1. [A, C, I, J, NZ: If] [K: Where] [A, C, I, J, NZ: a Party/Member State] [A, C, J, K, NZ: or a/an/any [C: statutory body, governmental] [K: designated] [A, C, J, K, NZ: agency] [C, J, NZ: or institution,] [J, NZ: statutory body] [C, J, NZ: or corporation] [C, J, K, NZ: designated by] [C: the] [A, K: of a] [A, C, I, K: Party/Member State] [J, NZ: it.] [A, C, I, J, K, NZ: makes a payment to] [A, C, I, J, NZ: an] [K: any of its] [A, C, I, J, K, NZ: investor/s] [A, C, I, J, K, NZ: of] [A, I, NZ: that] [C, J: the] [A, C, I, J, K, NZ: Party/Member State under a guarantee, a contract of insurance or other form of indemnity] [C, J: that] [A, C, I, J: it has granted] [A, I: on] [C, J: into] [K, NZ: against] [A, I, K, NZ: non-commercial risk/s] [C, J: with] [A, I, K, NZ: in] [A, C, I, J, K, NZ: respect] [C, J: to] [A, I, K, NZ: of] [A, C, J: a covered] [I, K, NZ: an] [A, C, I, J, K, NZ: investment] [K: of an investor of that Party,] [A, C, I, J, NZ: the] [K: any] [A, C, I, J, K, NZ: other Party/Member State] [C, J: in whose territory the covered investment was made,] [A, C, I, J, K, NZ: shall recognise the subrogation or transfer of any right/s [A, K: or claim] [I, NZ: or title] [A, I, K, NZ: in] [C, J: with] [A, C, I, J, K, NZ: respect] [C, J: to the] [A, I, K, NZ: of such] [A, C, I, J, K, NZ: investment] [C, J: but for the subrogation,] [C: including any rights under Section B,] [C, J: and the investor shall be precluded from pursuing such right to the extent of the subrogation.]</p> <p>[Au: Where a Party or an agency authorised by a Party has granted an indemnity, a guarantee or a contract of insurance against non-commercial risks with regard to an investment by one of its investors in the territory of another</p>	

<p>Party and when payment has been made under this indemnity, guarantee or contract of insurance by the former Party or the agency authorised by it, the latter Party shall recognise the rights of the former Party or the agency authorised by the former Party by virtue of the principle of subrogation to the rights of the investor.]</p>	
<p>[A, Au, I, NZ: The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.]</p>	
<p>2. [A, Au, I, K, NZ: Where a Party/Member State or an/the agency] [Au, K: authorised by a/that Party] [NZ: institution, statutory body or corporation designated by it] [A, Au, I, K, NZ: has made a payment to] [A, I, NZ: an] [Au, K: its] [A, Au, I, K, NZ: investor] [A, I, NZ: of that Party/Member State] [A, Au, I, K, NZ: and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or] [A, I: the] [A, Au, I, K: agency] [I: of a Member State] [Au, K: authorised by the Party] [NZ: (or any agency, institution, statutory body or corporation designated by it)] [A, Au, I, K, NZ: making the payment, pursue those rights and claims against the other Party/Member State.]</p>	
<p>[I: 3. In any proceeding involving an investment dispute, a Member State shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.]</p>	
<p>[A, I: In the exercise of subrogated rights or claims, a Party/Member State or the agency of the Party/Member State exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the relevant Party/Member State.]</p>	
<p><b>Article XX</b> <b>EXPROPRIATION AND COMPENSATION</b></p> <p><i>FN: [Au, K, NZ: <sup>1</sup> [NZ: This] Article [Expropriation and Compensation] shall be interpreted in accordance with [Au: Possible Annex on Expropriation]. [K: Annexes X-A and X-B]. [NZ: Annex [X] (Expropriation).]</i></p>	
<p>[A, I: A Party shall not] [Au, C, J, K: No Party may] [NZ: No Party shall] expropriate or nationalise [NZ: or subject to</p>	

<p>measures equivalent to nationalisation or expropriation] [A, Au, C, J, K, NZ: a] covered investment/s [I: in its territory or adopt any other measures] [A, Au, C, J, K: either directly or through measures [I: having an effect] equivalent to expropriation [A, Au, C, J, K: or nationalisation (“expropriation”)] [A: <sup>2</sup>] except:</p> <p>a. [A, Au, C, J, K, NZ: for a public purpose] [I: in the public interest];</p> <p>b. in/on a non-discriminatory [A, Au, C, J, K, NZ: manner] [I: basis];</p> <p>c. On payment of [A, Au, I, J, K, NZ: prompt, adequate] [A, Au, J, K, NZ: and effective] compensation [Au, C, J, NZ: accordance with] [Au, J, NZ: paragraphs 2 through 4] [C: this Article] and</p> <p>d. in accordance with [C: applicable legal procedure of that Party and] due process of law. [K: and Article X.5.1 through X.5.3.]</p> <p><i>[A, I: FN: <sup>2</sup>For the avoidance of doubt, [I: where India is the expropriating Party] any measure of expropriation relating to land shall be [A: as defined in the Parties’ respective existing domestic laws and regulations and any amendments thereto, and shall be for the purposes of and upon payment of compensation in accordance with the aforesaid laws and regulations.] [I: for the purposes as set out in its Law relating to land acquisition and any questions as to “public purpose” and compensation shall be determined in accordance with the procedure specified in such Law.]</i></p>	
<p>2. [A, C, J, K: The] compensation [A, C, J, K: referred to in Paragraph 1(c)] [I: of this Article] shall:</p> <p>a. be paid without delay; [A: <sup>3</sup>] [NZ: <sup>5</sup>]</p> <p>b. be equivalent to the fair market value of the expropriated [investment [A: at the time when or] immediately before the expropriation [Au, C, J, K, NZ: took place (“the date of expropriation”);] [A: was publicly announced<sup>6</sup>], or when the expropriation occurred, whichever is applicable;]</p> <p>c. not reflect any change in value [Au, C, J, K, NZ: occurring] because the intended expropriation had become known earlier; and</p> <p>d. be [A: effectively] [Au, C, J, K, NZ: fully] realisable and freely transferable [A: between the territories of the</p>	

<p>Parties.]</p> <p>[I: Such compensation shall be adequate and be at least equivalent to the fair market value of the expropriated investment immediately on the day before the expropriation takes place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value. The compensation referred to in Article 13.1 (iv) shall be paid without delay.<sup>2]</sup></p> <p><i>[A, I, NZ FN: <sup>3</sup> The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.</i></p> <p><i>[I: ii. The computation of the fair market value of the property shall exclude any consequential or exemplary losses or speculative or windfall profits claimed by the investor, including those relating to moral damages or loss of goodwill,</i></p> <p><i>iii. The valuation date for computation of compensation shall be the day immediately before the expropriation takes place.]</i></p> <p><i>[A: FN: <sup>6</sup> In the case of the Philippines, the time when or immediately before the expropriation was publicly announced refers to the date of filing of the Petition for Expropriation.]</i></p>	
<p>[A: 3. In the event of delay, the compensation shall include an appropriate interest in accordance with the laws and regulations of the Party making the expropriation. The compensation, including any accrued interest, shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in a freely usable currency.]</p> <p>[I: Payment of compensation shall be made in a freely convertible currency. Interest on payment of compensation, where applicable, shall be paid in simple interest at a commercially reasonable rate from the date of expropriation until the date of actual payment. On payment, compensation shall be freely transferable in accordance with Article 15 (Transfers).]</p>	
<p>[A: 4. If an investor requests payment in a freely useable currency, the compensation referred to in Paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.]</p>	
<p>[Au, C, J, K, NZ: 3. If the fair market value is denominated</p>	

<p>in a freely usable currency, the compensation] [C, J, K: referred to in paragraph 1(c)] [Au, NZ: paid] [Au, C, J, K, NZ: shall be no less than the fair market value on the date of expropriation, plus] [C: simple interest at the contemporary LIBOR] [Au, J, K, NZ: interest at a commercially reasonable rate] [Au, C, J, K, NZ: for that currency, accrued from the date of expropriation until the date of payment.]</p>	
<p>[Au, C, J, K, NZ: 4. If the fair market value is denominated in a currency that is not freely usable, the compensation] [Au, NZ: paid] [C, J, K: 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:]</p> <p>(a) [Au, C, J, K, NZ: 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]</p> <p>(b) [C: simple interest at the contemporary LIBOR] [Au, J, K, NZ: interest at a commercially reasonable rate] [Au, C, J, K, NZ: for that freely usable currency, accrued from the date of expropriation until the date of payment.]</p>	
<p>5. This Article [A, Au, C, J, K, NZ: does] not apply to the issuance of compulsory licences granted in relation to intellectual property rights, [Au, C, J, K, NZ: 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 [A, Au, J, K, NZ: Chapter XX (Intellectual Property Rights)] [A, Au, J: and] [A, Au, C, J, the TRIPS Agreement] [A, Au: <sup>7</sup>]</p> <p><i>[A, Au: FN: <sup>7</sup> For greater certainty, the Parties recognise that, for the purposes of this Article, the term “revocation” of intellectual property rights includes the cancellation or nullification of such rights, and the term “limitation” of intellectual property rights includes exceptions to such rights].</i></p>	
<p>[I: Notwithstanding [A: paragraphs 1, 2, 3 and 4] [I: Article 13.1 and 13.2], any measure of expropriation relating to land shall be as defined in the existing domestic laws, [I: and] regulations [I: and any amendments thereto] [A: of the expropriating Party on the date of entry into force of this Agreement,] and shall be, for the purposes of and upon payment of compensation, in accordance with the aforesaid laws and regulations.]</p>	

[A: Such compensation shall be subject to any subsequent amendments to the aforesaid legislation relating to the amount of compensation where such amendments follow the general trends in the market value of the land.]	
[I: 13.4 For the avoidance of doubt, the Parties agree that an action taken by a Party in its commercial capacity shall not constitute expropriation or any other measure having similar effect.  13.6 In considering an alleged breach of this Article, a Tribunal shall take account of whether the investor or, as appropriate, the locally-established enterprise, pursued action for remedies before domestic courts or tribunals prior to initiating a claim under this Agreement.]	
<b>Annex on Expropriation</b>	Note: India's text is part of their proposed Expropriation Article.  ASEAN does not yet have a text for the Annex.
[Au, C, I, J, K: The Parties confirm their shared understanding that:]	
[Au, C: 1. Article [Expropriation and Compensation] is intended to reflect customary international law concerning the obligation of States with respect to expropriation.]	
[Au, C, J, K, NZ: An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right [Au, C, J, NZ: or property interest] in an investment.]	
[Au, C, J, K: [3/2.] Article (Expropriation and Compensation) addresses two situations. The first is  [I, NZ: Expropriation may be direct or indirect:]  [Au, C, I, J, K, NZ: direct expropriation] [Au, C, J, K: , where an investment is nationalised or otherwise directly expropriated] [I, NZ: occurs when] [I: an investment is nationalised or otherwise directly expropriated] [NZ: a Party takes an investor's property outright, by nationalisation or other direct expropriation] [Au, C, I, J, K, NZ: through formal transfer of title or outright seizure.]	
[Au, C, J, K: The second situation addressed by Article XX	

<p>(Expropriation and Compensation) is] [Au, C, I, J, K, NZ: indirect expropriation] [Au, C, J, K: , where] [NZ: occurs when a Party takes an investor's property through] [Au, C, J, K, NZ: an action or a series of actions] [Au, C, J, K: by a Party has] [NZ: which have] [Au, C, I, J, K, NZ: an effect equivalent to direct expropriation] [I: if a measure or series of measures of a Party has an effect equivalent to direct expropriation, in that it substantially or permanently deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment,] [Au, C, I, J, K, NZ: without formal transfer of title or outright seizure.]</p>	
<p>[Au, C, I, J, K, NZ: The determination of whether] [Au, C, J, K, NZ: an action or series of actions by a Party in a specific fact situation, constitutes an indirect expropriation,] [I: a Measure or series of Measures have an effect equivalent to expropriation] [Au, C, I, J, K, NZ: requires a case-by-case, fact-based inquiry that] [Au, C, J, K, NZ: considers] [I: takes into consideration:] [Au, K: relevant factors relating to the investment, including:] [C, J, NZ: , among other factors:]</p>	
<p>[Au, C, I, J, K, NZ: (i) the economic impact of [I: the measure or series of measures,] [Au, C, J, K, NZ: the government action,] although the [I: sole] fact that [Au, C, J, K, NZ: an action or a series of actions by] [I: a measure or series of measures of] a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;]</p>	
<p>[I, NZ: (b) whether the government [I: measure] [NZ: action] breaches the government's prior binding written commitment to the investor whether by contract, licence or other legal document; and]</p>	
<p>[Au, C, J, K: (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;][Au, J, K: <sup>8</sup>]</p> <p><i>[Au, J, K: FN: <sup>8</sup> For greater certainty, whether an investor's investment-backed expectations are reasonable [Au: may include consideration of] [J, K: depends] [J: to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and] [K: in part on] [Au, J, K: the nature and extent of governmental regulation] [J: or the potential for government regulation] [Au, J, K: in the relevant sector.] [K: For example, an investor's expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.]</i></p>	

<p>[Au, C, J, K, NZ: (iii)/(c) the character [C: and objective] of the government action] [Au, NZ: including its objectives] [Au: and whether the action is disproportionate to the public purpose.] [K: and context. Relevant considerations could include whether the government action imposes a special sacrifice on the particular investor or investment that exceeds what the investor or investment should be expected to endure for the public interest.]</p> <p>[I: the character of the measure or series of measures, notably their object, context and intent; ]</p>	
<p>[I: the duration of the measure or series of measures of a Party; and]</p>	
<p>[NZ: 4. In order to constitute indirect expropriation, the state's deprivation of the investor's property must be so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith.]</p>	
<p>[Au, C, K: Except in rare circumstances.] [K: such as, for example, when an action or a series of actions is extremely severe or disproportionate in light of its purpose or effect,] [Au, C, I, J, K, NZ: Non-discriminatory regulatory [Au, C, J, K, NZ: actions by a Party] [I: measures by a Party or measures or awards by judicial bodies of a Party that are designed and applied] [Au, C, J, K: to protect legitimate public] [Au, C, J, K: welfare objectives, such as] [I: interest or public welfare objectives, such as] [C: public moral] [Au, C, I, J, K: public health, safety, and the environment,] [K: and real estate price stabilization (through, for example, measures to improve the housing conditions for low-income households),] [C, J, K: do] [Au: does] [I: shall] not constitute [Au, C, J, K, NZ: indirect] expropriation/s. [Au, K: <sup>9</sup>] [I: under this Article.] [NZ: of the type referred to in paragraph 2(b).] [J: , except in rare circumstances.]</p> <p><i>[Au, K: FN: <sup>9</sup>For greater certainty, the list of "legitimate public welfare national treatments" in subparagraph (b) is not exhaustive.]</i></p>	
<p><b>[K: Annex On Taxation And Expropriation</b></p>	
<p>The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all</p>	

<p>relevant factors relating to the investment, including the factors listed in Annex X-B and the following considerations:</p> <p>(a) The imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of a taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;</p> <p>(b) A taxation measure that is consistent with internationally recognized tax policies, principles, and practices should not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;</p> <p>(c) A taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and</p> <p>(d) A taxation measure generally does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.]</p>	
<p><b>Article XX</b> <b>Investor-State Dispute Settlement</b></p>	<p>Note: So far, China, Japan and Korea have submitted texts for ISDS.</p>
<p>Article [C, J, K: Consultation(s)] [J, K: and Negotiation]</p>	
<p>[J, K: 1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.] [J: such as good offices, conciliation and mediation.]</p> <p>[C: 1. In the event of an investment dispute, after two months since the occurrence of the measure or event giving rise to the dispute, the claimant may deliver to the respondent a written request for consultations. The request shall:</p> <p>(a) specify the name and address of the claimant and,</p>	

<p>where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;</p> <p>(b) for each claim, identify the provision of this Chapter or the investment agreement alleged to have been breached and any other relevant provisions;</p> <p>(c) for each claim, identify the measures or events giving rise to the claim;</p> <p>(d) for each claim, indicate whether the claim is made on its own behalf or on behalf of the enterprise;</p> <p>(e) for each claim, provide a brief summary of the legal and factual basis sufficient to present the problem clearly; and</p> <p>(f) specify the relief sought, the approximate amount of damages claimed and its standard or basis for calculation.]</p>	
<p>[C: 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.]</p>	
<p>[J: 2. The claimant shall deliver to the respondent a written request for consultations setting forth a brief description of facts regarding the measure or measures at issue. ]</p>	
<p>[J: 3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.]</p>	
<p>[C: 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.]</p>	
<p>[C, J, K: ARTICLE X.X: <b>Submission of a Claim to Arbitration</b>]</p>	
<p>1. [C, K: In the event that] [J: If] an/a [K: disputing party considers that an] investment dispute [J: has not been resolved within 6 months of the receipt by the respondent of a written request for] [C, K: cannot be settled by] consultation(s) [C: under Article X.28 (Consultations)]</p>	

within 120 days after the date of receipt of the request for consultations,] [J: pursuant to Article II.18(2):] [K: and negotiation:]	
[C, J, K: (a) the claimant, on its own behalf, may submit to arbitration under this Section a claim]	
[C, J, K: (i) that the respondent has breached]	
[C, J, K: (A) an obligation under] [J, K: Section A,] [J: or] [C: Articles X.3 (National Treatment) and X.4 (Most-Favored Nation Treatment) provided that the claim does not in any way relate to treatment with respect to establishment, acquisition or expansion of investments in the territory of the respondent;]	
[C: (B) an obligation under Article X.5 (Minimum Standard of Treatment), Article X.7 (Senior Management and Boards of Directors and Entry of Personnel), Article X.9 (Expropriation and Compensation), Article X.10 (Compensation for Losses) and Article X.11 (Transfers);] [K: (B) an investment authorization,] [C, K: or]	
[C, J, K: [C, K: (C)] [J: (B)] an investment agreement,] [C, J: and]	
[C, J, K: (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach[C: <sup>1</sup> ]; and]  <i>[C: FN: <sup>1</sup> For greater certainty, the loss or damage incurred by the claimant that forms the subject matter of a claim under sub-paragraph (a) shall not include reflective loss or damage suffered by the claimant because of loss or damage caused to an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly by reason of, or arising out of the alleged breach by the respondent.]</i>	
[C, J, K: (b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim]	
[C, J, K: (i) that the respondent has breached]	
[C, J, K: (A) an obligation under] [C: Articles X.3 (National Treatment) and X.4 (Most-favored nation treatment) provided that the claim does not in any way relate to treatment with respect to establishment, acquisition or expansion of investments in the territory of the	

respondent;] [J, K: section A,]  [C: (B) an obligation under Articles Article X.5 (Minimum Standard of Treatment), Article X.7 (Senior Management and Boards of Directors and Entry of Personnel), Article X.9 (Expropriation and Compensation), Article X.10 (Compensation for Losses) and Article X.11 (Transfers);] [C, J: or]	
[K: (B) an investment authorization, or]	
[C, J, K: [C, K: (C)] [J: (B)] an investment agreement; and]	
[C, J, K: (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,] [C: provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.]	
[J, K: provided that a claimant may submit pursuant to subparagraph (a)(i)[J: (B)] [K: (C)] or (b)(i) [J: (B)] [K: (C)] a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.]	
[C: 2. A claimant cannot submit or continue to pursue a claim under this Section where the investment of the claimant in the territory of the respondent is held indirectly by an investor of a non-Party, and the investor of the non-Party submits or has submitted a claim with respect to the same measure or event under any agreement between the respondent and that non-Party.]	
[J, K: 2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:]	
[J, K: (a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name,	

address, and place of incorporation of the enterprise;]	
[J, K: (b) for each claim, the provision of this Agreement,] [K: investment authorization,] [J, K: or investment agreement alleged to have been breached and any other relevant provisions;]	
[J, K: (c) the legal and factual basis for each claim; and]	
[J, K: (d) the relief sought and the approximate amount of damages claimed.]	
[K: 3. Provided that six months have elapsed since the events giving rise to the claim,] [C, J: 3.] [C, K: A] [J: The] [C, J, K: claimant may submit a claim referred to in paragraph 1 [J: under one of the following alternatives] :]	
[C, J, K: (a) [C, K: under] the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the [C, K: non- disputing] Party [J: of the claimant] are parties to the ICSID Convention] [C: and the claimant waives its right to request annulment of the award with the Secretary-General in accordance with the ICSID Convention Article 52;]	
[C, J, K: (b) [C, K: under] the ICSID Additional Facility Rules, provided that either the respondent or the [C, K: non-disputing] Party [J: of the claimant] is a party to the ICSID Convention;]	
[C, J, K: (c) under the UNCITRAL Arbitration Rules; or]	
[C, J, K: (d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.]	
[C: 4. Where a claim is submitted to arbitration under paragraph 3(b), (c) and (d) (except where a claim is submitted to any other arbitration institution under paragraph 3(d)), the disputing parties and the tribunal constituted thereunder shall request ICSID to provide administrative services for the arbitration proceedings. All Parties shall endeavor to make proper institutional arrangements with ICSID to accommodate such requests following the entry into force of this Agreement.]	
[C, J, K: 5. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of	

[K: ,] or request for [K: ,] arbitration ("notice of arbitration");]	
[C, J, K: (a) referred to in [C, K: paragraph 1 of Article 36 of] the ICSID Convention is received by the Secretary-General;]	
[C, J, K: (b) referred to in [C, K: Article 2 of Schedule C of] the ICSID Additional Facility Rules is received by the Secretary-General;]	
[C, J, K: (c) referred to in [C, K: Article 3 of] the UNCITRAL Arbitration Rules, together with the statement of claim referred to [J: there] in [C, K: Article [C: 20] [K: 18] of the UNCITRAL Arbitration Rules,] are received by the respondent; or]	
[C, J, K: (d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent] [C: , provided that no claim shall be deemed submitted under this Section if that claim is asserted by the claimant for the first time after such notice of arbitration is submitted.]	
[C, J, K: A [C: counterclaim] [J,K: claim] asserted by the [J, K: claimant for the first time] [C: respondent within 180 days] 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 arbitral rules.]	
[J, K: 5. The arbitration rules applicable under paragraph 3, and 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 Agreement.]	
[C: 6. A notice of arbitration shall:	
[C: (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 that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;]	
[C: (b) for each claim, identify the provision of this Chapter or the investment agreement 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 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	
(f) specify the relief sought, the approximate amount of damages claimed and its standard or basis for calculation.]	
[C: 7] [J, K: 6] The claimant shall provide with the notice of arbitration:	
[C, J, K: (a) the name of the arbitrator that the claimant appoints; or]	
[C, J, K: (b) the claimant's written consent for the Secretary-General to appoint that arbitrator.]	
[C: 8. The arbitration rules applicable under paragraph 3, and 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 provided that, in the case of arbitration under the UNCITRAL Arbitration Rules, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not be applicable unless the disputing parties otherwise agree.]	
<b>Article [C: X30] [J:X20] [K: X.19] Consent of Each Party to Arbitration]</b>	
[C, J, K: 1.] [J: (a)] Each Party consents to the submission of a claim to arbitration under this Section in accordance with this [J, K: Agreement.] [C: Chapter. Failure to meet any of the conditions and limitations provided for in Article X.31 (Conditions and Limitations on Consent of Each Party) shall nullify that consent.]	
[J: (b) In the case of a claim submitted pursuant to subparagraph 1(a)(i)(B) or 1(b)(i)(B) of Article X.19, if the investment agreement provides a provision that designates forum for dispute settlement, such provision shall not be construed as the revocation or exclusion of the consent under subparagraph (a) with respect to a claim	

alleging a breach of the investment agreement.]	
[C, J, K: 2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall [J: be deemed to] satisfy the requirements of]	
[J, K: (a)] [C, J, K: Chapter II of the ICSID Convention [C, J: (Jurisdiction of the Centre)] and the ICSID Additional Facility Rules for written consent of the parties to the dispute] [C: .] [J, K: ;] [K: and]	
[J, K: (b) Article II of the New York Convention for an “agreement in writing.”]	
<b>[C: X31] [J: X21] [K: X20] Conditions and Limitations on Consent of Each Party</b>	
1. [C, J, K: [C: Subject to Article X.40 (Appellate Review)] No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date [C, J: on which] the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article X [J, K: 18.1] [C: 29 [Submission of a Claim to Arbitration] (1)] and knowledge that the claimant (for claims brought under Article [J: X.19.1(a)] [K: X.18.1(a)] [C: X29 (Submission of a Claim to Arbitration)(1)(a)] or the enterprise (for claims brought under Article [J: X.19.1(b)] [K: 18.1(b)] [C: X29 (Submission of a Claim to Arbitration)(1)(b)] has incurred loss or damage [C: , provided that in no event may a claim be submitted to arbitration under this Section after four years since the occurrence of the measures and/or events giving rise to the breach alleged under Article X.29 (Submission of a Claim to Arbitration)(1).]	
[C, J, K: 2. No claim may be submitted to arbitration under this Section unless:]	
[C: (a) the claimant has complied with rules and procedures set forth in Article X.28 (Consultations) and X.29 (Submission of a Claim to Arbitration)];	
[C: (b) the claim has been explicitly included in the request for consultations submitted by the claimant in accordance with Article X.28 (Consultations);]	
[C: (c)] [J, K: (a)] the claimant consents in writing to arbitration in accordance with the procedures set out in	

<p>this] [J, K: Agreement; and] [C: Chapter, including, in particular, the appellate review arrangements set forth under Article X.40 (Appellate Review); and,]</p>	
<p>[C: (d)] [J, K: (b)] the notice of arbitration is accompanied,]</p>	
<p>[C, J, K: (i) for claims submitted to arbitration under [C: Article X.29 (Submission of a Claim to Arbitration)(1)(a)] [J, X.19.1(a)] [K: X.18.1(a)] by the claimant's written waiver, and]</p>	
<p>[C, J, K: (ii) for claims submitted to arbitration under Article [C: Article X.29 [Submission of a Claim to Arbitration] (1)(b)] [J: Article X.19.1(b)] [K: Article X.18.1(b)], by the claimant's and the enterprise's written waivers, [C: and written waiver by all persons through which the claimant owns or controls the enterprise,] of any right to initiate [C, J: or continue] [K: any proceedings, excluding proceedings for interim injunctive relief referred to in paragraph 3,] before any [C, J: administrative tribunal or court under the law of] [C: either] [J: a] [C, J: Party, or] [J: any] [K: of the] other dispute settlement [C, J: procedures, any proceeding with respect to any measure] [C: or event] [C, J: alleged to constitute a breach referred to in Article] [C: X.29 (Submission of a Claim to Arbitration)] [J: X19.] [K: for a breach referred to in Article X.18 in relation to the matter under dispute.]</p>	
<p>[C: 3. Notwithstanding paragraph 2(d)(ii), a waiver from the enterprise shall not be required only if the respondent has deprived the claimant of its control of the enterprise.]</p>	
<p>[C: 4] [J, K: 3] Notwithstanding paragraph 2 [C: (d)] [J, K: (b)], the claimant (for claims brought under Article [J: X19.1(a)] [K: X18.1(a)] [C: X29 (Submission of a Claim to Arbitration)(1)(a)] and the claimant or the enterprise (for claims brought under Article [J: X19.1(b)] [K: X18.1(b)] [C: X29 (Submission of a Claim to Arbitration)(1)(b)]) may [C: , in accordance with the laws of the respondent,] initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, 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.]</p>	
<p><b>[C: ARTICLE X.32: Constitution of the Tribunal]</b> <b>[J, K: Article X.22/X21: Selection of Arbitrators]</b></p>	

<p>[C, J, K: 1. Unless the disputing parties] [C: have agreed to appoint a sole arbitrator] [J, K: otherwise agree], the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the [C: chairperson] [J, K: presiding arbitrator,] appointed by agreement of the disputing parties.]</p>	
<p>[C, J: 2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.]</p>	
<p>[C: 3. If the disputing parties agree to appoint a sole arbitrator, the disputing parties shall seek to agree on the sole arbitrator.]</p>	
<p>[C: 4] [J: 3] If a tribunal has not been constituted within [C: 90] [J: 75] days from the date that a claim is submitted to arbitration under this Section, the [C: appointing authority] [J: Secretary-General], on the request of a disputing party, shall appoint, in his or her discretion, [C: the remaining arbitrators from the list established pursuant to paragraph 5 below.] [J: the arbitrator or arbitrators not yet appointed. The Secretary General shall not appoint a national of either the respondent or the Party of the claimant as the presiding arbitrator unless the disputing parties agree otherwise.]</p>	
<p>[C: 5. The Committee for the Settlement of Investor-State Disputes shall no later than the entry into force of this Agreement, establish a list of individuals who are willing and able to serve as arbitrators. The Committee for Investor-State Dispute Settlement shall ensure that at all times the list includes at least X individuals.]</p>	
<p>[C: 6. All arbitrators appointed pursuant to this Section shall have expertise or experience in public international law, international trade or international investment rules, or the resolution of disputes arising under international trade or international investment agreements. They shall be independent, serve in their individual capacities and not take instructions from any organization or government with regard to matters related to the dispute, or be affiliated with the government of either Party or any disputing party, and shall comply with [Annex XX (code of conduct) to be formulated by the Parties].</p>	

<p>[C: 7] [J: 4] [K: 2] For 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:]</p>	
<p>[C, J, K: (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;]</p>	
<p>[C, J, K: (b) a claimant referred to in Article [C: Article X.29 (Submission of a Claim to Arbitration)(1)(a)] [J, X.19.1(a)] [K: X.18.1(a)] 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]</p>	
<p>[C, J, K: (c) a claimant referred to in Article [C: Article X.29 (Submission of a Claim to Arbitration)(1)(b)] [J, X.19.1(b)] [K: X.18.1(b)] 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.]</p>	
<p>[C, J, K: <b>ARTICLE X.33: Conduct of the Arbitration</b>]</p>	
<p>[C, J, K: 1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article[C: Article X.29 (Submission of a Claim to Arbitration)(3)] [J, X.19.3] [K: X.18.3]. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules] [J, K: , provided that the place shall be in the territory of a State that is a party to the New York Convention.]</p>	
<p>[K: 2. At the request of a disputing party, and unless the disputing parties otherwise agree, the tribunal may determine the place of meetings, including consultations and hearings, taking into consideration appropriate factors, including the convenience of the parties and the arbitrators, the location of the subject matter, and the proximity of evidence. The preceding sentence is without prejudice to any appropriate factors a tribunal may consider under paragraph 1.]</p>	

<p>[C, J: 2] [K: 3] [C: Each] [J: A] [K: The] [J, K: non-disputing] Party may make oral and written submissions to the tribunal regarding the interpretation of this] [C: Chapter.] [J, K: Agreement.] [K: On the request of a disputing party, the non-disputing Party should resubmit its oral submission in writing.]</p>	
<p>[J: 3] [K: 4] After [J: consultation with] [K: consulting] the disputing parties, the tribunal may [J: accept and consider] [K: allow a party or entity that is not a disputing party to file a] written amicus curiae submission(s) [J: regarding a matter of fact or law] [K: with the tribunal regarding a matter] within the scope of the dispute [J: that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party that has a significant interest in the arbitral proceedings. Each submission shall identify the author, disclose any affiliation, direct or indirect, with any disputing party, and identify any person, government, or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration, and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.] [K: In determining whether to allow such a filing, the tribunal shall consider, among other things, the extent to which:]</p>	
<p>[K: (a) the amicus curiae submission would assist the tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge, or insight that is different from that of the disputing parties;]</p>	
<p>[K: (b) the amicus curiae submission would address a matter within the scope of the dispute; and]</p>	
<p>[K: (c) the amicus curiae has a significant interest in the proceeding.]</p>	
<p>[K: The tribunal shall ensure that the amicus curiae submission does not disrupt the proceeding or unduly burden or unfairly prejudice either disputing party, and that the disputing parties are given an opportunity to present their observations on the amicus curiae submission.]</p>	

<p>[C: 3. Subject to paragraph 2, without written consent of the disputing parties, the tribunal shall have no authority to accept or consider <i>amicus curiae</i> submissions from a person or entity that is not a disputing party.]</p>	
<p>[C, J, K: 4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, [C, K: a tribunal shall address and decide as a preliminary question any] [J: , 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] objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article [C: X.39 (Awards of First Instance)] [J: X29] [K: X28]</p>	
<p>[C, J, K: (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] [J, K: 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.]</p>	
<p>[C, J, K: (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/e.]</p>	
<p>[C, J, K: (c) In deciding an objection under this paragraph, the tribunal shall assume to be true [J: the] claimant's factual allegations in support of any claim in the notice of arbitration [J, K: (or any amendment thereof)] and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in [J: the relevant] article [C: 20] K: 18] of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.]</p>	
<p>[C, J, K: (d) The respondent does not waive any objection as to competence [J: , including an objection to jurisdiction.] or any argument on the merits merely because the respondent did or did not raise an objection</p>	

<p>under this paragraph or make use of the expedited procedure set out in paragraph [C: 5] [J, K: 6]</p>	
<p>[C, J: 5] [K: 6] In the event that the respondent so requests within 45 days [C, J: after] [K: of the date] the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph [C, J: 4] [K: 6] [C, K: and] [J: or] any objection that the dispute is not within the tribunal's competence [J: 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/e, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 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 30 days.]</p>	
<p>[C, J: 6] [K: 7] When it decides a respondent's objection under paragraph [C, J: 4 or 5] [K: 5 or 6], 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.]</p>	
<p>[C, J: 7] [K: 8] [C: Without prejudice to Article X.13 (Subrogation),] [C, J, K: A respondent may not assert as a defense, counterclaim, [K: or] right of set-off, or for any other reason [K: .] that the claimant [C: or the enterprise referred to in Article X.29 (Submission of a Claim to Arbitration)(1)(b)] has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an [C: indemnity,] insurance or guarantee contract] [K: , except with respect to any subrogation as provided for in Article X.14.]</p>	
<p>[J: 8] K: 9] A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach</p>	

referred to in Article [J: X19] [K: X18]. For purposes of this paragraph, an order includes a recommendation.]	
[J: 9] [K: (a)] In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties [K: and to the non-disputing Party]. Within 60 days after [K: the date] the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after [J: the expiration of] [K: the date] the 60-day comment period [K: expires.]	
[K: (b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 11 or Annex X-D.]	
[J: 10. 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 Article X.29 should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article X.24.]	
[K: 11. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article X.28 in arbitrations commenced after the multilateral agreement enters into force between the Parties.]	
<b>ARTICLE [C: X34] [J: X24] [K: 23] Transparency of Arbitral Proceedings]</b>	
1. Subject to paragraphs [C: 3 and 5] [J: 2 and 4] [K: 2,3 and 4], the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing	

Party [J, K: and make them available to the public] :	
[C: (a) the request for consultations;]	
[J, K: (a) the notice of intent;]	
[C, J, K: (b) the notice of arbitration; ]	
[C, J, K: (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article [C: X38 (Consolidation)] [J: 23.2 and X.23.3 and Article X.28] [K: .22.3 and X.22.4 and Article X.27;]	
[C, J, K: (d) minutes or transcripts of hearings of the tribunal, where available; and]	
[C, J, K: (e) orders, awards, and decisions of the tribunal.]	
[J, K: 2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information [J: that is] designated as protected information [J: or otherwise subject to paragraph 3] in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure] [J: which may include closing the hearing for the duration of any discussion of such information.]	
[J, K: 3. Nothing in this Section, [J: including paragraph 4(d),] requires a respondent to [J: make available to the public or otherwise] disclose [J: during or after the arbitral proceedings, including the hearing,] protected information or to furnish or allow access to information that it may withhold in accordance with Article XX (Essential Security [J: Article] of the Exception Chapter) or Article XX (Disclosure of Information [J: Article] of the Exception Chapter).]	
[J, K: 4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:]	
[C: 2] [J, K: (a)] Subject to [C: paragraphs 3 and 5] [J, K: subparagraph (d)], [C: the respondent:]	
[C: (a)] Neither the disputing parties nor the tribunal shall disclose to [C: the Parties] [J, K: any non-disputing Party]	

<p>or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);]</p>	
<p>[C, J, K: (b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information [C, K: at the time it is submitted to] [J: according to any schedule set by] the tribunal;]</p>	
<p>(c) [C, J, K: A disputing party shall [C: within 7 days after] [K: at the time] [C, K: it submits a document containing information claimed to be protected information,] [J: according to any schedule set by the tribunal,] submit a redacted version of the document that does not contain the information. Only the redacted version [C: may] [J, K: shall] be [C, K: provided to the] [J: disclosed] [C: Parties] [K: non-disputing Party] [C, K: and made public] in accordance with paragraph[s] 1] [C: and 2].</p>	
<p>[J, K: (d) The tribunal, [J: subject to paragraph 3,] shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information] [J: .] [K: ; and]</p>	
<p>[K: (e) At the request of a disputing Party, the Joint Committee shall consider issuing a decision in writing regarding a determination by the tribunal that information claimed to be protected was not properly designated. If the Joint Committee issues a decision within 60 days of such a request, it shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Committee does not issue a decision within 60 days, the tribunal's determination shall remain in effect only if the non-disputing Party submits a written statement to the Joint</p>	

Committee within that period that it agrees with the tribunal's determination.]	
[J, K: 5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.]	
<b>ARTICLE [C: X.35] [J: X25] [K: X24] Governing Law</b>	
<p>[C, J, K: 1. Subject to paragraph 3, when a claim is submitted under Article [C: X29 (Submission of a Claim to Arbitration) (1)(a)(i)(A) or (B) or Article X29 (Submission of a Claim to Arbitration)](1)(b)(i)(A) (B),] [J: X.19.1(a)(i)(A) or Article X.19.1(b)(i)(A)] [K: X.18.1(a)(i)(A) or Article X.18.1(b)(i)(A)] the tribunal shall decide the issues in dispute in accordance with this [C: Chapter as clarified in accordance with customary rules of interpretation of public international law, as codified in the Vienna Convention on the Law of Treaties. Where relevant and appropriate, the tribunal shall also take into consideration the law of the respondent.] [J, K: Agreement and applicable rules of international law] [J:<sup>1</sup></p> <p><i>[J: FN: <sup>1</sup>For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent where it is relevant to the claim as a matter of fact.]</i></p>	
<p>2. [C, J, K: Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article [C: X29 (Submission of a Claim to Arbitration)(1)(a)(i)(C), or Article X.29 (Submission of a Claim to Arbitration) (1)(b)(i)(C)] [J: X.19.1(a)(i)(B), or Article X.19.1(b)(i)(B)] [K: X.18.1(a)(i)(B) or (C), or Article X.18.1(b)(i)(B) or (C)], the tribunal shall apply:]</p>	
<p>(a) [C, J, K: the rules of law specified in the pertinent [K: investment authorization or] investment agreement, or as the disputing parties may otherwise agree; or]</p>	
<p>(b) [C, J, K: if the rules of law have not been specified or otherwise agreed:]</p>	
<p>[C, J, K: [C, K: (i)] the law of the respondent, including its rules on the conflict of laws;<sup>3</sup> and]</p> <p><i>[C, J, K: FN: <sup>3</sup>[K: For purposes of clause (i),] the "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.]</i></p>	

[C, K: (ii) such rules of customary international law as may be applicable.]	
3. [C, J, K: A [C: joint] decision of the [C: Parties, acting through the Committee for the Settlement of Investor-State Disputes, declaring their interpretation of a provision of this Chapter] [J, K: Joint Committee] [J: on the] [K: declaring its] [J, K: interpretation of a provision of this Agreement under Article [XX.X] (Joint Committee)] shall be binding on a tribunal [C: of any ongoing or subsequent dispute,] and any decision or award issued by [C: such] a tribunal must be consistent with that [C: joint] decision.	
<b>ARTICLE [C: X.36] [J: X26] [X25]: Interpretation of Annexes</b>	
1. [C, J, K: Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of [C, K: an entry] [J: a non-conforming measure] set out in Annex [C: I, II, or III,] [J, K: I or Annex II] the tribunal shall, on request of the respondent, request the interpretation of the [C: Parties] [J, K: Joint Committee] on the issue. The [C: Parties] [J, K: Joint Committee] shall submit in writing any [C: joint] decision [C, K: declaring] [C: their] [J: on] [J, K: its] interpretation [J, K: under Article [XX.X] (Joint Committee)] to the tribunal within [C, J: 90] [K: 60] days of delivery of the [C: tribunal's] request.]	
2. [C, J, K: A] [C: joint] decision issued [J, K: by the Joint Committee under paragraph 1] under paragraph 1 [C: by the Parties, acting through the Committee for the Settlement of Investor-State Disputes], shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that joint decision. If the [C: Parties] [J, K: Joint Committee] fail/s to issue such a decision within 90 days, the tribunal shall decide the issue. [C: In such a case, the tribunal shall draw no inference from the fact that the Parties fail to issue such a decision.]	
[C: 3. A joint decision issued under paragraph 1 by the Parties shall also be binding on the tribunal of any dispute subsequent to the date of the joint decision to the extent applicable and not modified by another joint decision issued pursuant to paragraph 1 subsequent to the first said joint decision.]	
<b>Article [C: X37] [J: X27] [K: X26] Expert Reports</b>	

<p>[C, J, K: Without prejudice to the appointment of other kinds of experts where authorized 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 [C, K: 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.]</p>	
<p><b>ARTICLE [C: X.38] [J: X28] [K: X27] Consolidation</b></p>	
<p>[C, J, K: 1. Where two or more claims have been submitted separately to arbitration under Article [J, K:X.18.1] [C: X.29 (Submission of a Claim to Arbitration) (1)] and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.]</p>	
<p>2. [C, J, K: A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:]</p>	
<p>[C, J, K: (a) the names and addresses of all the disputing parties sought to be covered by the order;]</p>	
<p>[C, J, K: (b) the nature of the order sought; and]</p>	
<p>[C, J, K: (c) the grounds on which the order is sought.]</p>	
<p>3. [C, J, K: Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.]</p>	
<p>[C, J, K: 4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:]</p>	
<p>[C, J, K: (a) one arbitrator appointed by agreement of the claimants; ]</p>	
<p>[C, J, K: (b) one arbitrator appointed by the respondent;</p>	

and]	
[C, J, K: (c) the presiding arbitrator appointed by the Secretary-General [C: from the list of chairpersons established pursuant to Article X.32 (Constitution of the Tribunal)(5)] [J, K: , provided, however, that the presiding arbitrator shall not be a national [J, of the respondent or of a Party of any claimant.] [K: of either Party.]	
5. [C, J, K: If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed [C: from the list of arbitrations established pursuant to Article X.32 (Constitution of the Tribunal) (5)] [K: If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party].]	
6. [C, J, K: Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article [C: X29 (Submission of a Claim to Arbitration)(1)] [J: X19.1] [K: X18.1] have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:]	
[C, J, K: (a) assume jurisdiction over, and hear and determine together, all or part of the claims;]	
[C, J, K: (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or]	
[C, J, K: (c) instruct a tribunal previously established under Article [C: X32 (Constitution of the Tribunal)] [J: X22] [K: X21] to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that]	
[C, J, K: (i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the	

<p>arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and</p> <p>(ii) that tribunal shall decide whether any prior hearing shall be repeated.]</p>	
<p>[C, J, K: 7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article [C: X29 (Submission of a Claim to Arbitration)(1)] [J: X19.1] [K: X18.1] and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:]</p>	
<p>[C, J, K: (a) the name and address of the claimant;</p> <p>(b) the nature of the order sought; and</p> <p>(c) the grounds on which the order is sought.]</p> <p>[C, J, K: The claimant shall deliver a copy of its request to the Secretary-General.]</p>	
<p>8. [C, J, K: A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this [J, K: Section] [C: Chapter, provided that, the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall not be applicable unless the disputing parties otherwise agree]</p>	
<p>9. [C, J, K: A tribunal established under Article [C: X32 (Constitution of the Tribunal)] [J: X22] [K: X21] shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.]</p>	
<p>10. [C, J, K: On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article [C: X32 (Constitution of the Tribunal)] [J: X22] [K: X21] be stayed, unless the latter tribunal has already adjourned its proceedings.]</p>	
<p><b>ARTICLE [C: X.39: Awards of First Instance] [J: X29 Awards] [K: X28 Award]</b></p>	

<p>[C: Where a Tribunal makes an award against a respondent, the Tribunal may award, separately or in combination, only monetary damages and restitution of property, but the respondent may pay monetary damages in lieu of restitution. A Tribunal may not award punitive damages. A disputing Party shall abide by and comply with an arbitral award.]</p>	
<p>[C, J, K: 1. Where a tribunal makes a/an [J, K: final] award against a respondent, the tribunal may award, separately or in combination, only:]</p>	
<p>[C, J, K: (a) monetary damages and any applicable interest; and</p> <p>(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.]</p>	
<p>[J: 2. For greater certainty, when an investor of a Party submits a claim to arbitration under Article X.19.1(a), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.]</p>	
<p>[C, J, K: A tribunal may also award costs and attorney's fees [J: incurred by the disputing parties in connection with the arbitral proceeding and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance] in accordance with this [C: Chapter] [J, K: Section] and the applicable arbitration rules.]</p>	
<p>[C: 2] [J: 4] [K: 3] Subject to paragraph 1, where a claim is submitted to arbitration under Article [C: 29 (Submission of a Claim to Arbitration)(1)(b)] [J: X19.1(b)] [K: X18.1(b)]:</p> <p>(a) an award of restitution of property shall provide that restitution be made to the enterprise;</p> <p>(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and</p> <p>(c) the award shall provide that it is made without prejudice to any right that any person may have [C, K: in the relief] under applicable domestic law [J: law in the relief provided in the award.]</p> <p>[C: provided that such relief does not grant or result in</p>	

duplicated remedies to any person in light of the award rendered.]	
[C: 3] [J: 5] [K: 4] A tribunal may not award punitive damages.]	
[J: 6] [K: 5] An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.]	
[J: 7] [K: 6] Subject to paragraph [J: 8] [K: 7] and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.]	
[J: 8] [K: 7] A disputing party may not seek enforcement of a final award until:  (a) in the case of a final award made under the ICSID Convention,  (i) 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]	
[J, K: (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article [J: X.19.3(d)] [K: X.18.3(d)],  (i) 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.]	
[J: 9] [K: 8] Each Party shall provide for the enforcement of an award in its territory.]	
[J: 10] [K: 9] If the respondent fails to abide by or comply with a final award, on delivery of a request by the [K: non-disputing] Party [J: of the claimant], a panel shall be established under Article [J: [XX].xx] (Establishment of	

<p>Panel/ an Arbitral Tribunal Article of the Dispute Settlement Chapter)] [K: [XX].9 (Establishment of Panel of the Dispute Settlement Chapter)]. The requesting Party may seek in such proceedings:</p> <p>(a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and</p> <p>(b) in accordance with Article [J: [XX].xx (Panel Report/ Initial Report Article of the Dispute Settlement Chapter)] [K: Article [XX].11 (Panel Report of the Dispute Settlement Chapter)] a recommendation that the respondent abide by or comply with the final award.]</p>	
<p>[J: 11] [K: 10] A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph [J: 10] [K: 9]</p>	
<p>[J: 12] [K: 11] A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention. ]</p>	
<p>[C: ARTICLE X.40: <b>Appellate Review</b> <b>(To be proposed)</b></p>	
<p>[C: ARTICLE X.41: <b>Awards of Finality</b> <b>(To be proposed)</b></p>	
<p>[C: ARTICLE X.42: <b>Annexes and Footnotes</b></p>	
<p>[C: The Annexes and footnotes shall form an integral part of this Chapter.]</p>	
<p>ARTICLE [C: X.43] [J; X30] [K: X29] <b>Service of Documents</b></p>	
<p>[C, J, K: Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex X-C.] [J: (Service of Documents on a Party Under Section B).A Party shall promptly make publicly available and notify to the other Parties any change to the place referred to in that annex.]</p>	

<p>[C, J, K: Annex X.C:  <b>Service [C: on] [J, K: of] Documents on a Party] [J, K:  under Section B]</b></p>	
<p>Notices and other documents [J, K: in disputes under  Section B] shall be served on [the [        ]/Japan/Korea] by  delivery to:</p> <p>[C: 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]</p> <p>[J: [insert addressee here]</p> <p>[K: Office of International Legal Affairs  Ministry of Justice of the Republic of Korea  Government Complex, Gwacheon  Korea]</p>	
<p>[C: ARTICLE X.44: <b>Committee for the Settlement of  Investor-State Disputes</b><sup>6</sup></p> <p><i>FN: <sup>6</sup> The establishment of the Committee shall be  adapted to the institutions established by the Agreement.]</i></p>	
<p>[C: The Committee for the Settlement of Investor-State  Disputes:</p> <p>(a) shall establish a list of arbitrators pursuant to Article  X.32 [Constitution of the Tribunal] (5);</p> <p>(b) may, pursuant to Article X.35 [Governing Law] (3) or  Article X.36 [Interpretation of Annexes], adopt a joint  decision of the Parties, declaring their interpretation of a  provision of this Chapter or an entry set out in Annex I, II,  or III, as the case may be;</p> <p>(c) shall, pursuant to Article X.40 [Appellate Review],  establish the Appellate Body and formulate the rules and  procedures of the Appellate Body; and</p> <p>(d) may propose amendments to Section B in the light of  experience of their operation.]</p>	

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