

## CHAPTER 9

### INVESTMENT

#### Section A

##### Article 9.1: Definitions

For the purposes of this Chapter:

**Centre** means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

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

**covered investment** means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement for those Parties or established, acquired, or expanded thereafter;

**disputing parties** means the claimant and the respondent;

**disputing party** means either the claimant or the respondent;

**enterprise** means an enterprise as defined in Article 1.3 (General Definitions), and a branch of an enterprise;

**enterprise of a Party** means an enterprise constituted or organised under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there;<sup>1</sup>

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

**ICC Arbitration Rules** means the arbitration rules of the International Chamber of Commerce;

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<sup>1</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 organised.

## 第 9 章

### 投资

#### A 节

#### 第 9.1 条 定义

就本章而言：

**中心**指根据《解决投资争端国际中心公约》设立的解决投资争端国际中心(ICSID)；

**申请人**指与另一缔约方产生投资争端的一缔约方的投资者。如该投资者为自然人，而该自然人同时为一缔约方的永久居民和另一缔约方的国民，则该自然人不得针对该后一缔约方提出仲裁请求；

**涵盖投资**，对于一缔约方，指截至本协定对相关缔约方生效之日在一缔约方领土内存在的另一缔约方投资者的投资，或在此后设立、获得或扩大的投资；

**争端双方**指申请人和被申请人；

**争端一方**指申请人或被申请人；

**企业**指如第 1.3 条(一般定义)中所定义的一企业和一企业的分支机构；

**一缔约方的企业**指根据一缔约方的法律组成或组织的企业，或位于一缔约方领土内并在该领土内开展经营活动的分支机构；<sup>1</sup>

**可自由使用货币**指由国际货币基金组织根据《国际货币基金组织协定》确定的“可自由使用货币”；

**ICC 仲裁规则**指国际商会的仲裁规则；

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<sup>1</sup>为进一步明确，“企业”和“一缔约方的企业”的定义包括“分支机构”不损害一缔约方根据其法律将分支机构视为不具有独立法律存在且不是单独组织的一实体的能力。

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

**ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and Nationals of other States*, done at Washington, March 18, 1965;

**Inter-American Convention** means the *Inter-American Convention on International Commercial Arbitration*, done at Panama, January 30, 1975;

**investment** means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments and loans;<sup>2, 3</sup>
- (d) futures, options and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;
- (f) intellectual property rights;
- (g) licences, authorisations, permits and similar rights conferred pursuant to the Party's law;<sup>4</sup> and

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<sup>2</sup> Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

<sup>3</sup> A loan issued by one Party to another Party is not an investment.

<sup>4</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 depends on such factors as the nature and extent of the rights that the holder has under the Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

**ICSID 附加便利规则**指《解决投资争端国际中心秘书处关于程序管理的附加便利规则》；

**ICSID 公约**指 1965 年 3 月 18 日订于华盛顿的《解决国家和他国国民之间投资争端公约》；

**美洲公约**指 1975 年 1 月 30 日订于巴拿马的《美洲国际商事仲裁公约》；

**投资**指一投资者直接或间接拥有或控制的具有投资特征的各种资产，此类特征包括资本或其他资源的投入、获得收入或利润的预期或风险的承担等。投资可采取的形式包括：

- (a) 一企业；
- (b) 一企业中的股份、股票和其他形式的参股；
- (c) 债券、无担保债券、其他债务工具和贷款；<sup>2,3</sup>
- (d) 期货、期权和其他衍生品；
- (e) 交钥匙、建设、管理、生产、特许权、收入分成及其他类似合同；
- (f) 知识产权；
- (g) 根据该缔约方法律授予的批准、授权、许可和其他类似权利；<sup>4</sup>以及

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<sup>2</sup> 一些形式的债务，例如债券、无担保债券和远期票据更可能具有投资特征，而其他形式的债务，例如源于货物或服务销售而产生的立即到期的支付请求权，则不大可能具有投资特征。

<sup>3</sup> 一缔约方向另一缔约方提供的贷款不属于投资。

<sup>4</sup> 一特定类型的批准、授权、许可或类似文件(包括特许权，只要其具有此种文件的性质)是否具有投资特征，取决于根据缔约方的法律持有者享有权利的性质和范围等因素。此类文件中不具有投资特征的是那些不创设受缔约方法律保护的任何权利的文件。为进一步明确，前述规定不影响与此类文件相联系的任何资产是否具有投资特征。

- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action.

**investment agreement** means a written agreement<sup>5</sup> that is concluded and takes effect after the date of entry into force of this Agreement<sup>6</sup> between an authority at the central level of government<sup>7</sup> of a Party and a covered investment or an investor of another Party and that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 9.25.2 (Governing Law), on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, and that grants rights to the covered investment or investor:

- (a) with respect to natural resources that a national authority controls, such as oil, natural gas, rare earth minerals, timber, gold, iron ore and other similar resources,<sup>8</sup> including for their exploration, extraction, refining, transportation, distribution or sale;

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<sup>5</sup> “Written agreement” refers to an agreement in writing, negotiated and executed by both parties, whether in a single instrument or in multiple instruments. For greater certainty:

- (a) a unilateral act of an administrative or judicial authority, such as a permit, licence, authorisation, certificate, approval, or similar instrument issued by a Party in its regulatory capacity, or a subsidy or grant, 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.

<sup>6</sup> For greater certainty, a written agreement that is concluded and takes effect after the entry into force of this Agreement does not include the renewal or extension of an agreement in accordance with the provisions of the original agreement, and on the same or substantially the same terms and conditions as the original agreement, which has been concluded and entered in force prior to the entry into force of this Agreement.

<sup>7</sup> For the purposes of this definition, “authority at the central level of government” means, for unitary states, an authority at the ministerial level of government. Ministerial level of government means government departments, ministries or other similar authorities at the central level of government, but does not include: (a) a governmental agency or organ established by a Party’s constitution or a particular legislation that has a separate legal personality from government departments, ministries or other similar authorities under a Party’s law, unless the day to day operations of that agency or organ are directed or controlled by government departments, ministries or other similar authorities; or (b) a governmental agency or organ that acts exclusively with respect to a particular region or province.

<sup>8</sup> For the avoidance of doubt, this subparagraph does not include an investment agreement with respect to land, water or radio spectrum.

- (h) 其他有形或无形财产、动产或不动产及相关财产权利，例如租赁、抵押、留置和质押。

但投资不包括司法或行政诉讼中的指令或判决。

**投资协议**指一缔约方中央一级政府一主管机关<sup>7</sup>与一涵盖投资或另一缔约方的投资者之间，在本协定生效之日后<sup>6</sup>缔结和生效的一书面协议<sup>5</sup>，该书面协议创设相互之间的权利和义务，根据第9.25.2条(准据法)下的适用法律对双方当事人具有约束力，该涵盖投资或投资者依赖该协议设立或获得不同于该书面协议本身的一涵盖投资，且该协议授予该涵盖投资或投资者下列权利：

- (a) 对于一国家主管机关控制的自然资源，例如石油、天然气、稀土矿物、木材、黄金、铁矿石和其他类似资源，<sup>8</sup>包括勘探、开采、冶炼、运输、分销或销售；

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<sup>5</sup> “书面协议”指双方当事人谈判和签署的书面形式的协议，无论是单个文件还是多个文件。为进一步明确，下列各项不得被视为书面协议：

- (a) 行政或司法机关的单方行为，例如由一缔约方在其监管职权内颁发的许可、执照、授权、证明、批准或类似文件，或给予补贴或赠款，或法令、命令、判决本身；及
- (b) 双方同意的行政或司法法令或命令。

<sup>6</sup> 为进一步明确，在本协定生效之日后缔结和生效的书面协议不包括：依照在本协定生效前已缔结和生效的原始协议的规定对协议的展期或延期，且以与原始协议相同或实质相同的条款和条件对协议的展期或延期。

<sup>7</sup> 就这一定义而言，“中央一级政府的主管机关”，对于单一制国家，指部级政府机关。部级政府指中央一级政府的政府部门、各部或其他类似机构，但不包括：(a)依照一缔约方的宪法或一特定立法设立的、根据该缔约方法律具有独立于政府部门、各部或其他类似机构的法人地位的政府机关或机构，除非该机关或机构的日常运转受政府部门、各部或其他类似机构指导或控制；或(b)仅在一特定地区或省份行使权力的一政府机关或机构。

<sup>8</sup> 为避免疑义，本项不包括关于土地、水或无线电频谱的投资协议。

- (b) to supply services on behalf of the Party for consumption by the general public for: power generation or distribution, water treatment or distribution, telecommunications, or other similar services supplied on behalf of the Party for consumption by the general public;<sup>9</sup> or
- (c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams or pipelines or other similar projects; provided, however, that the infrastructure is not for the exclusive or predominant use and benefit of the government;

**investment authorisation**<sup>10</sup> means an authorisation that the foreign investment authority of a Party<sup>11</sup> grants to a covered investment or an investor of another Party;

**investor of a non-Party** means, with respect to a Party, an investor that attempts to make,<sup>12</sup> is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

**investor of a Party** means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party;

**LCIA Arbitration Rules** means the arbitration rules of the London Court of International Arbitration;

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<sup>9</sup> For the avoidance of doubt, this subparagraph does not cover correctional services, healthcare services, education services, childcare services, welfare services or other similar social services.

<sup>10</sup> For greater certainty, the following are not encompassed within this definition: (i) actions taken by a Party to enforce laws of general application, such as competition, environmental, health or other regulatory laws; (ii) non-discriminatory licensing regimes; and (iii) a Party's decision to grant to a covered investment or an investor of another Party a particular investment incentive or other benefit, that is not provided by a foreign investment authority in an investment authorisation.

<sup>11</sup> For the purposes of this definition, "foreign investment authority" means, as of the date of entry into force of this Agreement: (a) for Australia, the Treasurer of the Commonwealth of Australia under Australia's foreign investment policy including the *Foreign Acquisitions and Takeovers Act 1975*; (b) for Canada, the Minister of Industry, but only when issuing a notice under Section 21 or 22 of the *Investment Canada Act*; (c) for Mexico, the National Commission of Foreign Investments (*Comisión Nacional de Inversiones Extranjeras*); and (d) for New Zealand, the Minister of Finance, the Minister of Fisheries or the Minister for Land Information, to the extent that they make a decision to grant consent under the *Overseas Investment Act 2005*.

<sup>12</sup> For greater certainty, the Parties understand that, for the purposes of the definitions of "investor of a non-Party" and "investor of a Party", 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 a permit or licence.

- (b) 代表该缔约方提供服务供公众消费：发电或配电、水处理或配送、电信，或代表该缔约方提供类似服务供公众消费；<sup>9</sup>或
- (c) 承担基础设施项目，例如公路、桥梁、运河、堤坝或管道或其他类似项目的建设，但条件是基础设施并非专门或主要供政府使用及为政府的利益。

**投资授权**<sup>10</sup>指一缔约方外国投资管理机关<sup>11</sup>给予另一缔约方的一涵盖投资或投资者的授权；

**非缔约方投资者**，对于一缔约方而言，指试图<sup>12</sup>、正在或已经在该缔约方领土内进行投资的投资者，但其不属于一缔约方的投资者；

**缔约方投资者**指试图、正在或已经在另一缔约方领土内投资的一缔约方或一缔约方的国民或企业；

**LCIA 仲裁规则**指伦敦国际仲裁院的仲裁规则；

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<sup>9</sup> 为避免疑义，本项不涵盖惩教服务、卫生服务、教育服务、儿童保育服务、福利服务或其他类似社会服务。

<sup>10</sup> 为进一步明确，这一定义不包含下列情况：(i)一缔约方为执行普遍适用的法律所采取的行动，例如竞争、环境、卫生或其他监管法律；(ii)非歧视的许可制度；以及(iii)一缔约方授予另一缔约方的一涵盖投资或投资者一特定投资激励或其他利益的决定，该特定激励或其他利益未在国外投资管理机关的投资授权中规定。

<sup>11</sup> 就这一定义而言，截至本协定生效之日，“外国投资管理机关”指：(a)对于澳大利亚，澳大利亚联邦财政部长，根据包括《1975 年外国收购与兼并法》在内的澳大利亚外国投资政策；(b)对于加拿大，工业部长，但仅当其根据《加拿大投资法》第 21 节或第 22 节发布通知之时；(c)对于墨西哥，国家外国投资委员会；以及(d)对于新西兰，财政部长、渔业部长或土地信息部长，但仅限于其根据《2005 年海外投资法》作出同意的决定的情况。

<sup>12</sup> 为进一步明确，缔约方理解，就“非缔约方投资者”和“缔约方投资者”的定义而言，如投资者已采取一项或多项进行投资的具体行动，例如为设立一商业而引入资源或资金，或申请许可或执照，则该投资者应被视为“试图”投资。



**negotiated restructuring** means the restructuring or rescheduling of a debt instrument that has been effected through (a) a modification or amendment of that debt instrument, as provided for under its terms, or (b) a comprehensive debt exchange or other similar process in which the holders of no less than 75 per cent of the aggregate principal amount of the outstanding debt under that debt instrument have consented to the debt exchange or other process;

**New York Convention** means the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York, June 10, 1958;

**non-disputing Party** means a Party that is not a party to an investment dispute;

**protected information** means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, including classified government information;

**respondent** means the Party that is a party to an investment dispute;

**Secretary-General** means the Secretary-General of ICSID; and

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law.

## **Article 9.2: Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

- (a) investors of another Party;
- (b) covered investments; and
- (c) with respect to Article 9.10 (Performance Requirements) and Article 9.16 (Investment and Environmental, Health and other Regulatory Objectives), all investments in the territory of that Party.

2. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:

- (a) the central, regional or local governments or authorities of that Party; and

**协商重组**指通过如下方式实现的债务工具重组或改期：(a)按债务工具条款所规定的对其进行的修改或变更；或(b)持有该债务工具下未偿付债务的本金总额 75% 及以上的持有人同意实施的全面债务置换或其他类似过程；

**《纽约公约》**指 1958 年 6 月 10 日订于纽约的联合国《承认和执行外国仲裁裁决的公约》；

**非争端缔约方**指不属一投资争端当事方的一缔约方；

**受保护信息**指机密商业信息，或根据一缔约方法律享有保密特权或受保护不应泄露的信息，包括机密政府信息；

**被申请人**指作为一项投资争端当事方的一缔约方；

**秘书长**指解决投资争端国际中心的秘书长；以及

**UNCITRAL 仲裁规则**指联合国国际贸易法委员会的仲裁规则。

## 第 9.2 条 范围

1. 本章应适用于一缔约方采取或维持的与下列内容相关的措施：

- (a) 另一缔约方的投资者；
- (b) 涵盖投资；以及
- (c) 就第 9.10 条(业绩要求)和第 9.16 条(投资与环境、卫生和其他监管目标)而言，该缔约方领土内的所有投资。

2. 一缔约方在本章下的义务应适用于由下列机关和人采取或维持的措施：

- (a) 该缔约方的中央、地区或地方政府或主管机关；及

- (b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party.<sup>13</sup>

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

### **Article 9.3: Relation to Other Chapters**

1. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement of a Party that a service supplier of another Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 11 (Financial Services).

### **Article 9.4: National Treatment<sup>14</sup>**

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

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

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<sup>13</sup> For greater certainty, governmental authority is delegated under the Party's law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

<sup>14</sup> For greater certainty, whether treatment is accorded in "like circumstances" under Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

- (b) 经该缔约方的中央、地区或地方政府或主管机关授权行使任何政府权力的任何人，包括一国家企业或任何其他机构。<sup>13</sup>

3. 为进一步明确，对于本协定对一缔约方生效之日前发生的一行为或事实或曾经存在但已终止的情况，本章对该缔约方不得具有约束力。

### 第 9.3 条 与其他章的关系

1. 如本章与本协定另一章存在任何不一致，则在不一致的范围内应以该另一章为准。
2. 一缔约方关于另一缔约方的服务提供者提交保函或其他形式的经济担保作为跨境提供一服务的条件的要求本身，并不导致本章适用于该缔约方采取或维持的与该跨境提供服务相关的措施。本章应适用于该缔约方采取或维持的与所提交的保函或经济担保相关的措施，只要该保函或经济担保属涵盖投资。
3. 本章不适用于一缔约方采取或维持的属第 11 章(金融服务)涵盖范围的措施。

### 第 9.4 条 国民待遇<sup>14</sup>

1. 每一缔约方在设立、获得、扩大、管理、经营、运营、出售或以其他方式处置在其领土内的投资方面给予另一缔约方投资者的待遇不得低于在相似情况下该缔约方给予本国投资者的待遇。
2. 每一缔约方在设立、获得、扩大、管理、经营、运营、出售或以其他方式处置投资方面给予涵盖投资的待遇不得低于在相似情况下该缔约方给予本国投资者在其领土内投资的待遇。

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<sup>13</sup> 为进一步明确，根据缔约方法律授予的政府职权包括通过立法授权或通过政府命令、指令或其他方式转移或授权行使的政府职权。

<sup>14</sup> 为进一步明确，待遇是否根据第 9.4 条(国民待遇)或第 9.5 条(最惠国待遇)在“相似情况”下给予取决于整体情况，包括相关待遇是否根据合法公共福利目标对投资者或投资加以区分。

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

#### **Article 9.5: Most-Favoured-Nation Treatment**

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

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

3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, such as those included in Section B (Investor-State Dispute Settlement).

#### **Article 9.6: Minimum Standard of Treatment<sup>15</sup>**

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

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

- (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

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<sup>15</sup> Article 9.6 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 9-A (Customary International Law).

3. 为进一步明确，一缔约方根据第 1 款和第 2 款所给予的待遇，对于一地区政府，指不低于该地区政府在相似情况下给予其作为一部分的该缔约方的投资者或投资者的投资的最优惠待遇。

### 第 9.5 条 最惠国待遇

1. 每一缔约方在设立、获得、扩大、管理、经营、运营、出售或以其他方式处置在其领土内投资方面给予另一缔约方的投资者的待遇不得低于在相似情况下该缔约方给予任何其他缔约方或任何非缔约方的投资者的待遇。

2. 每一缔约方在设立、获得、扩大、管理、经营、运营、出售或以其他方式处置投资方面给予涵盖投资的待遇不得低于在相似情况下该缔约方给予任何其他缔约方或任何非缔约方的投资者在其领土内投资的待遇。

3. 为进一步明确，本条中所指的待遇不包括国际争端解决程序或机制，例如本章 B 节(投资者-国家间争端解决)所包括的程序或机制。

### 第 9.6 条 最低标准待遇<sup>15</sup>

1. 每一缔约方应依照适用的习惯国际法原则给予涵盖投资包括公平公正待遇及充分保护和安全的待遇。

2. 为进一步明确，第 1 款规定将习惯国际法中给予外国人的最低标准待遇作为给予涵盖投资的标准待遇。“公平公正待遇”和“充分保护和安全的概念不要求缔约方给予额外的或超出该标准所要求的待遇，且不创设额外的实体权利。第 1 款中的义务要求提供：

- (a) “公平公正待遇”包括依照世界主要法律制度中所包含的正当程序原则，在刑事、民事或行政裁决程序中不拒绝司法的义务；及

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<sup>15</sup> 第 9.6 条(最低标准待遇)应依照附件 9-A(习惯国际法)加以解释。

- (b) “full protection and security” requires each Party to provide the level of police protection required under customary international law.

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

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

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

#### **Article 9.7: Treatment in Case of Armed Conflict or Civil Strife**

1. Notwithstanding Article 9.12.6(b) (Non-Conforming Measures), each Party shall accord to investors of another Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

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

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

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

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 9.4 (National Treatment) but for Article 9.12.6(b) (Non-Conforming Measures).

(b) “充分保护和安全”要求每一缔约方提供习惯国际法所要求的治安保护水平。

3. 关于存在违反本协定另一条款或另一单独国际协定的确定并不能证明违反本条的情况存在。

4. 为进一步明确，一缔约方采取或未能采取可能不符合投资者期待的一行动的事实本身不构成对本条的违反，即使涵盖投资因此受到损失或损害。

5. 为进一步明确，一缔约方未发放、继续发放或维持一项补贴或赠款，或修改或减少该补贴或赠款的事实本身不构成对本条的违反，即使涵盖投资因此受到损失或损害。

### 第 9.7 条 武装冲突或内乱情况下的待遇

1. 尽管有第 9.12.6 条(b)项(不符措施)，但是每一缔约方在采取或维持与其领土内的武装冲突或内乱而使投资所遭受损失相关的措施方面，应给予另一缔约方的投资者和涵盖投资非歧视待遇。

2. 尽管有第 1 款，但是如一缔约方的投资者在第 1 款中所指的情况下因下列原因在另一缔约方领土内遭受损失：

(a) 涵盖投资全部或部分被后一缔约方的军队或政府征用；或

(b) 涵盖投资全部或部分被后一缔约方的军队或政府在并非情势所必需的情况下破坏，

则后一缔约方针对该损失向投资者恢复原状或进行赔偿，或酌情同时恢复原状和进行赔偿。

3. 第 1 款不得适用于与补贴或赠款相关的现行措施，如无第 9.12.6 条(b)项(不符措施)，此类措施即与第 9.4 条(国民待遇)不一致。



### **Article 9.8: Expropriation and Compensation<sup>16</sup>**

1. No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:

- (a) for a public purpose;<sup>17, 18</sup>
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and
- (d) in accordance with due process of law.

2. Compensation shall:

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

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

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<sup>16</sup> Article 9.8 (Expropriation and Compensation) shall be interpreted in accordance with Annex 9-B (Expropriation) and is subject to Annex 9-C (Expropriation Relating to Land).

<sup>17</sup> For greater certainty, for the purposes of this Article, the term “public purpose” refers to a concept in customary international law. Domestic law may express this or a similar concept by using different terms, such as “public necessity”, “public interest” or “public use”.

<sup>18</sup> For the avoidance of doubt: (i) if Brunei Darussalam is the expropriating Party, any measure of direct expropriation relating to land shall be for the purposes as set out in the *Land Code* (Cap. 40) and the *Land Acquisition Act* (Cap. 41), as of the date of entry into force of the Agreement for it; and (ii) if Malaysia is the expropriating Party, any measure of direct expropriation relating to land shall be for the purposes as set out in the *Land Acquisitions Act 1960*, *Land Acquisition Ordinance 1950* of the State of Sabah and the *Land Code 1958* of the State of Sarawak, as of the date of entry into force of the Agreement for it.

## 第 9.8 条 征收和补偿<sup>16</sup>

1. 任何缔约方对一涵盖投资不得直接征收或实行国有化，或通过等同于征收和实行国有化(征收)的措施间接征收或实行国有化，除非符合下列条件：

- (a) 为公共目的；<sup>17,18</sup>
- (b) 以非歧视的方式进行；
- (c) 依照第 2 款、第 3 款和第 4 款支付及时、充分和有效的补偿；以及
- (d) 根据正当法律程序进行。

2. 补偿应：

- (a) 无迟延支付；
- (b) 等同于紧接征收发生前(征收之日)被征收投资的公平市场价值；
- (c) 不反映因征收意图提前公开而发生的任何价值变化；以及
- (d) 可全部变现并可自由转移。

3. 如公平市场价值以可自由使用货币计价，则支付的补偿不得低于征收之日的公平市场价值，另加以该货币合理商业利率计算的征收之日至付款之日产生的利息。

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<sup>16</sup> 第 9.8 条(征收和补偿)应依照附件 9-B(征收)加以解释，并遵守附件 9-C(土地征用)。

<sup>17</sup> 为进一步明确，就本条而言，“公共目的”一词指习惯国际法中的一概念。国内法可能使用不同的词语来表达这一概念或类似概念，例如“公共需要”、“公共利益”或“公共使用”等。

<sup>18</sup> 为避免疑义：(i)如文莱达鲁萨兰国是进行征收的缔约方，则自本协定对其生效之日起，其与土地相关的任何直接征收措施应符合其《土地法》(第 40 章)和《土地收购法》(第 41 章)中所列目的；及(ii)如马来西亚是进行征收的缔约方，则自本协定对其生效之日起，其与土地相关的任何直接征收措施应符合《1960 年土地收购法》、沙巴州《1950 年土地收购法令》和砂拉越州《1958 年土地法典》中所列目的。

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

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

5. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that the issuance, revocation, limitation or creation is consistent with Chapter 18 (Intellectual Property) and the TRIPS Agreement.<sup>19</sup>

6. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant,

- (a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or
- (b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant,

standing alone, does not constitute an expropriation.

## **Article 9.9: Transfers<sup>20</sup>**

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

- (a) contributions to capital;<sup>21</sup>
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;

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<sup>19</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 those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

<sup>20</sup> For greater certainty, this Article is subject to Annex 9-E (Transfers).

<sup>21</sup> For greater certainty, contributions to capital include the initial contribution.

4. 如公平市场价值以不可自由使用货币计价，则以付款之日市场汇率转换为支付货币的支付的补偿不得低于：

- (a) 根据当日市场汇率转换为可自由使用货币的征收之日的公平市场价值；另加
- (b) 以该可自由使用货币的合理商业利率计算的征收之日至付款之日产生的利息。

5. 本条不适用于依照《TRIPS 协定》对一知识产权颁发强制许可，也不适用于知识产权的撤销、限制或创设，只要颁发、撤销、限制或创设符合第 18 章(知识产权)和《TRIPS 协定》。<sup>19</sup>

6. 为进一步明确，一缔约方关于不发放、继续发放或维持一补贴或赠款的决定，或关于修改或减少一补贴或赠款的决定：

- (a) 在法律或合同项下无关于发放、继续发放或维持该补贴或赠款的任何具体承诺的情况下作出；或
- (b) 依照该补贴或赠款的发放、继续发放、修改、减少和维持所附任何条款或条件作出，

则单独该决定本身不构成征收。

## 第 9.9 条 转移<sup>20</sup>

1. 每一缔约方应允许与涵盖投资相关的所有转移可自由进出其领土且无迟延。此类转移包括：

- (a) 资本出资；<sup>21</sup>
- (b) 利润、股息、利息、资本收益、特许权使用费、管理费、技术指导费和其他费用；

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<sup>19</sup> 为进一步明确，缔约方认识到，就本条而言，知识产权的“撤销”一词包括注销这些权利或使这些权利无效，知识产权的“限制”一词包括这些权利的例外。

<sup>20</sup> 为进一步明确，本条需遵守附件 9-E(转移)。

<sup>21</sup> 为进一步明确，资本出资包括初始出资。

- (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Article 9.7 (Treatment in Case of Armed Conflict or Civil Strife) and Article 9.8 (Expropriation and Compensation); and
- (f) payments arising out of a dispute.

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

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

4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws<sup>22</sup> relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) criminal or penal offences;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

5. Notwithstanding paragraph 3, a Party 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 4.

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<sup>22</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 programmes.

- (c) 全部或部分出售涵盖投资所得，或全部或部分清算涵盖投资所得；
  - (d) 根据一合同所付款项，包括贷款协议；
  - (e) 根据第 9.7 条(武装冲突或内乱情况下的待遇)和第 9.8 条(征收和补偿)所付款项；以及
  - (f) 一争端产生的款项。
2. 每一缔约方应允许与一涵盖投资相关的转移以按转移之时市场汇率换算的可自由使用货币进行。
3. 每一缔约方应允许按一该缔约方与一涵盖投资或与另一缔约方的投资者的书面协议中所授权或规定的提供与一涵盖投资相关的实物回报。
4. 尽管有第 1 款、第 2 款和第 3 款，但是一缔约方可对下列情况通过公正、非歧视和善意适用其法律<sup>22</sup>以阻止或延迟转移：
- (a) 破产、无力偿还债务或保护债权人的权利；
  - (b) 证券、期货、期权或衍生品的发行、买卖或交易；
  - (c) 刑事或刑事犯罪；
  - (d) 在为协助执法或金融监管机关所必要时对转移进行财务报告或记录；或
  - (e) 保证司法或行政程序的命令或判决得以遵守。
5. 尽管有第 3 款，但是在一缔约方在其他情况下本可限制根据本协定进行的此类转移时，包括第 4 款中所列情况，该缔约方可限制实物回报的转移。

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<sup>22</sup> 为进一步明确，本条不阻止公正、非歧视和善意适用一缔约方与社会保障、公共退休或强制储蓄计划相关的法律。

### **Article 9.10: Performance Requirements**

1. No Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking:<sup>23</sup>

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investment;
- (e) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer a particular technology, a production process or other proprietary knowledge to a person in its territory;
- (g) to supply exclusively from the territory of the Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market;
- (h) (i) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party;<sup>24</sup> or
  - (ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a particular technology; or
- (i) to adopt:

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<sup>23</sup> For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “requirement” or a “commitment or undertaking” for the purposes of paragraph 1.

<sup>24</sup> For the purposes of this Article, the term “technology of the Party or of a person of the Party” includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive licence.

### 第 9.10 条 业绩要求

1. 任何缔约方对于一缔约方或非缔约方的投资者在其领土内的投资的设立、获得、扩大、管理、经营、运营、出售或其他处置方面，不得施加或强制执行任何要求，或强制要求作出任何承诺或保证，包括：<sup>23</sup>

- (a) 出口达到一指定水平或比例的货物或服务；
- (b) 当地含量达到一指定水平或比例；
- (c) 购买、使用其领土内生产的货物，或给予此类货物优惠，或要求自其领土内的人购买货物；
- (d) 以任何方式将进口量或进口额与出口量或出口额或与该投资有关的外汇流入金额相关联；
- (e) 通过以任何方式将该投资生产或提供的货物或服务与其出口量或出口额或外汇收入相关联，限制此类货物或服务在其领土内的销售；
- (f) 要求向其领土内的人转让一特定技术、一生产工序或其他专有知识；
- (g) 要求仅可自该缔约方领土向一特定地区市场或向世界市场供应该投资所生产的货物或提供的服务；
- (h) (i) 要求在其领土内购买、使用该缔约方或该缔约方的人的技术<sup>24</sup>，或给予此种技术优惠；  
或  
(ii) 要求在其领土内阻止购买或使用一特定技术，或阻止给予该特定技术优惠；或
- (i) 对于在施加或强制执行该要求时或强制执行任何承诺或保证时已存在的任何许可合同，或该投资者与

<sup>23</sup> 为进一步明确，第 2 款中所指的获得或继续获得一优惠的条件不构成就第 1 款而言的“要求”或“承诺或保证”。

<sup>24</sup> 就本条而言，“该缔约方或该缔约方的人的技术”的措辞包括由该缔约方或该缔约方的人所拥有的技术，及该缔约方或该缔约方的人拥有独占许可的技术。



- (i) a given rate or amount of royalty under a licence contract;  
or
- (ii) a given duration of the term of a licence contract,

in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future licence contract<sup>25</sup> freely entered into between the investor and a person in its territory, provided that the requirement is imposed or the commitment or undertaking is enforced in a manner that constitutes direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, paragraph 1(i) does not apply when the licence contract is concluded between the investor and a Party.

2. No Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investment; or
- (d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

- (b) Paragraphs 1(f), 1(h) and 1(i) shall not apply:

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<sup>25</sup> A “licence contract” referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

该缔约方领土内的人自由达成的任何未来许可合同<sup>25</sup>，要求采用：

- (i) 一许可合同下特许权使用费的指定费率或金额；或
- (ii) 一许可合同的指定期限，

只要施加该要求或强制执行该承诺或保证的方式构成一缔约方在行使非司法性质的政府职权时对该许可合同的直接干预。为进一步明确，如许可合同在投资者与一缔约方之间订立，则第1款(i)项不适用。

2. 任何缔约方对于一缔约方或非缔约方的投资者在其领土内的投资的设立、获得、扩大、管理、经营、运营、出售或其他处置方面，不得将遵守下列任何要求作为获得或继续获得一优惠的条件：

- (a) 当地含量达到一指定水平或比例；
- (b) 购买、使用其领土内生产的货物，或给予此类货物优惠，或向其领土内的人购买货物；
- (c) 以任何方式将进口量或进口额与出口量或出口额或与该投资有关的外汇流入金额相关联；或
- (d) 通过以任何方式将该投资生产或提供的货物或服务与其出口量或出口额或外汇收入相关联，限制此类货物或服务在其领土内的销售；

3. (a) 第2款中任何内容不得解释为阻止一缔约方将遵守在其领土内确定生产地点、提供服务、培训或雇佣员工、建设或扩大特定设施、开展研发的要求作为一缔约方或非缔约方的投资者在该缔约方领土内的投资获得或继续获得一优惠的条件。

- (b) 第1款(f)项、第1款(h)项和第1款(i)项不得适用于：

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<sup>25</sup> 本项中所指的“许可合同”指与技术、生产工序或其他专有知识的许可有关的任何合同。

- (i) if a Party authorises use of an intellectual property right in accordance with Article 31<sup>26</sup> 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
  - (ii) if 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.<sup>27, 28</sup>
- (c) Paragraph 1(i) shall not apply if the requirement is imposed or the commitment or undertaking is enforced by a tribunal as equitable remuneration under the Party's copyright laws.
- (d) 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), 1(f), 2(a) and 2(b) shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:
  - (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;
  - (ii) necessary to protect human, animal or plant life or health; or
  - (iii) related to the conservation of living or non-living exhaustible natural resources.
- (e) Paragraphs 1(a), 1(b), 1(c), 2(a) and 2(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
- (f) Paragraphs 1(b), 1(c), 1(f), 1(g), 1(h), 1(i), 2(a) and 2(b) shall not apply to government procurement.

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<sup>26</sup> The reference to "Article 31" includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the *Doha Declaration on the TRIPS Agreement and Public Health* (WT/MIN (01)/DEC/2).

<sup>27</sup> The Parties recognise that a patent does not necessarily confer market power.

<sup>28</sup> In the case of Brunei Darussalam, for a period of 10 years after the entry into force of this Agreement for it or until it establishes a competition authority or authorities, whichever occurs earlier, the reference to the Party's competition laws includes competition regulations.

- (i) 如一缔约方依照《TRIPS 协定》第 31 条<sup>26</sup>授权使用一知识产权，或对于要求披露属《TRIPS 协定》第 39 条范围内的专有信息且符合该条的措施；或
- (ii) 如该要求由法院、行政法庭或竞争主管机关施加，或承诺或保护由上述机关强制执行，用以纠正一项根据该缔约方竞争法经司法或行政程序确定为反竞争行为的做法。<sup>27,28</sup>
- (c) 如该要求由一法庭施加或该承诺或保证由一法庭强制执行，以此作为根据该缔约方著作权法律的合理的报酬，则第 1 款(i)项不得适用。
- (d) 只要此类措施不以任意或不合理的方式实施，或不构成对国际贸易或投资的变相限制，则第 1 款(b)项、第 1 款(c)项、第 1 款(f)项、第 2 款(a)项和第 2 款(b)项不得解释为阻止一缔约方采取或维持下列措施，包括环境措施：
  - (i) 保证遵守不与本协定相抵触的法律法规所必需的措施；
  - (ii) 保护人类、动植或植物的生命或健康所必需的措施；或
  - (iii) 与保护生物或非生物的可用尽自然资源相关的措施。
- (e) 第 1 款(a)项、第 1 款(b)项、第 1 款(c)项、第 2 款(a)项和第 2 款(b)项不得适用于与出口促进和对外援助计划相关的货物或服务的资格要求。
- (f) 第 1 款(b)项、第 1 款(c)项、第 1 款(f)项、第 1 款(g)项、第 1 款(h)项、第 1 款(i)项、第 2 款(a)项和第 2 款(b)项不得适用于政府采购。

<sup>26</sup> 所提及的“第 31 条”包括为实施《TRIPS 协定与公共健康多哈宣言》第 6 段而对《TRIPS 协定》所作的任何豁免或修正。

<sup>27</sup> 缔约方认识到专利并不必然授予市场支配力。

<sup>28</sup> 对于文莱达鲁萨兰国，在本协定对其生效后 10 年期限内或直至其设立一个或多个竞争执法机关为止，以在先者为准，所提及的“该缔约方竞争法”包括竞争法规。

- (g) Paragraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
- (h) Paragraphs (1)(h) and (1)(i) shall not be construed to prevent a Party from adopting or maintaining measures to protect legitimate public welfare objectives, provided that such measures are not applied in an arbitrary or unjustifiable manner, or in a manner that constitutes a disguised restriction on international trade or investment.

4. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement, or enforcing a commitment or undertaking, to employ or train workers in its territory provided that the employment or training does not require the transfer of a particular technology, production process or other proprietary knowledge to a person in its territory.

5. For greater certainty, paragraphs 1 and 2 shall not apply to any commitment, undertaking or requirement other than those set out in those paragraphs.

6. This Article does not preclude enforcement of any commitment, undertaking or requirement between private parties, if a Party did not impose or require the commitment, undertaking or requirement.

#### **Article 9.11: Senior Management and Boards of Directors**

1. No Party shall require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of 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.

- (g) 第 2 款(a)项和第 2 款(b)项不得适用于由一进口缔约方对获得优惠关税或优惠配额资格所必需的货物成分施加的要求。
- (h) 第 1 款(h)项和第 1 款(i)项不得解释为阻止一缔约方采取或维持保护合法公共福利目标的措施，只要此类措施不以任意或不合理的方式适用，或不构成对国际贸易或投资的变相限制。

4. 为进一步明确，第 1 款中任何内容不得解释为阻止一缔约方，对于一缔约方或非缔约方的投资者在其领土内的投资的设立、获得、扩大、管理、经营、运营、出售或其他处置，施加或强制执行一要求或强制执行一承诺或保证，以雇佣或培训其领土内的工人，只要该雇佣或培训不要求将一特定技术、生产工序或其他专有知识转让给其领土内的人。

5. 为进一步明确，第 1 款和第 2 款不得适用于该两款中所列之外的任何其他承诺、保证或要求。

6. 本条不阻止履行私人当事人之间的任何承诺、保证或要求，如一缔约方未施加或要求该承诺、保证或要求。

### 第 9.11 条 高级管理人员和董事会

1. 一缔约方不得要求属一涵盖投资的该缔约方的一企业任命一具有特定国籍的自然人担任一高级管理职务。

2. 一缔约方可要求属一涵盖投资的该缔约方的一企业的董事会或董事会的任何委员会的半数以上成员具有一特定国籍或在该缔约方领土内居住，只要该要求不实质损害该投资者控制其投资的能力。

### **Article 9.12: Non-Conforming Measures**

1. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
  - (i) the central level of government, as set out by that Party in its Schedule to Annex I;
  - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) or Article 9.11 (Senior Management and Boards of Directors).<sup>29</sup>

2. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in its Schedule to Annex II.

3. If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in paragraph 1(a)(ii), creates a material impediment to investment in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.<sup>30</sup>

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<sup>29</sup> With respect to Viet Nam, Annex 9-I (Non-Conforming Measures Ratchet Mechanism) applies.

<sup>30</sup> For greater certainty, any Party may request consultations with another Party regarding a non-conforming measure applied by a central level of government, as referred to in paragraph 1(a)(i).

## 第 9.12 条 不符措施

1. 第 9.4 条(国民待遇)、第 9.5 条(最惠国待遇)、第 9.10 条(业绩要求)和第 9.11 条(高级管理人员和董事会)不得适用于:

- (a) 一缔约方在下列政府层级维持的任何现行不符措施:
  - (i) 中央一级政府, 如该缔约方在其附件 1 减让表中所列;
  - (ii) 地区一级政府, 如该缔约方在其附件 1 减让表中所列; 或
  - (iii) 地方一级政府;
- (b) (a)项中所指的任何不符措施的继续或迅速展期; 或
- (c) 对(a)项中所指的任何不符措施的修正, 只要与该措施紧接修正前的情况相比, 该修正未降低该措施与第 9.4 条(国民待遇)、第 9.5 条(最惠国待遇)、第 9.10 条(业绩要求)或第 9.11 条(高级管理人员和董事会)的相符程度。<sup>29</sup>

2. 第 9.4 条(国民待遇)、第 9.5 条(最惠国待遇)、第 9.10 条(业绩要求)和第 9.11 条(高级管理人员和董事会)不得适用于一缔约方对于其在附件 2 减让表中所列部门、分部门或活动采取或维持的任何措施。

3. 如一缔约方认为另一缔约方的地区一级政府实施的、如第 1 款(a)项(ii)目中所指的一不符措施, 对与前一缔约方相关的投资构成实质阻碍, 则该缔约方可请求就该措施进行磋商。这些缔约方应进行磋商, 以期交流该措施实施情况的信息并考虑采取进一步行动是否必要和是否适当。<sup>30</sup>

<sup>29</sup> 对于越南而言, 附件 9-I(不符措施棘轮机制)对其适用。

<sup>30</sup> 为进一步明确, 任何缔约方可请求就中央一级政府实施的如第 1 款(a)项(i)目中所列一不符措施与另一缔约方进行磋商。



4. No Party shall, under any measure adopted after the date of entry into force of this Agreement for that Party and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

5. (a) Article 9.4 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by:

(i) Article 18.8 (National Treatment); or

(ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 18 (Intellectual Property).

(b) Article 9.5 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by:

(i) Article 18.8 (National Treatment); or

(ii) Article 4 of the TRIPS Agreement.

6. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

7. For greater certainty, any amendments or modifications to a Party's Schedules to Annex I or Annex II, pursuant to this Article, shall be made in accordance with Article 30.2 (Amendments).

### **Article 9.13: Subrogation**

If a Party, or any agency, institution, statutory body or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the

4. 任何缔约方不得根据在本协定对其生效之日采取的、其附件 2 减让表所涵盖的任何措施，要求另一缔约方的投资者基于其国籍出售或以其他方式处置在该措施生效时已存在的一投资。
5. (a) 第 9.4 条(国民待遇)不得适用于属对下列条款所施加义务的例外或减损范围的任何措施：
  - (i) 第 18.8 条(国民待遇)；或
  - (ii) 《TRIPS 协定》第 3 条，如该例外或减损与第 18 章(知识产权)未处理的事项相关。
- (d) 第 9.5 条(最惠国待遇)不得适用于属《TRIPS 协定》第 5 条范围内的任何措施，或对下列条款所施加义务的例外或减损：
  - (i) 第 18.8 条(国民待遇)；或
  - (ii) 《TRIPS 协定》第 4 条。
6. 第 9.4 条(国民待遇)、第 9.5 条(最惠国待遇)和第 9.11 条(高级管理人员和董事会)不得适用于：
  - (a) 政府采购；或
  - (b) 一缔约方给予的补贴或赠款，包括政府支持的贷款、担保和保险。
7. 为进一步明确，根据本条对附件 1 或附件 2 的一缔约方减让表的任何修正或修改应依照第 30.2 条(修正)作出。

### 第 9.13 条 代位

如一缔约方或该缔约方指定的任何机关、机构、法定机构或公司根据其所签订的与一涵盖投资有关的担保、保险合同或其他形式的补偿协议向该缔约方的一投资者进行支付，则该涵盖投资所在领土所属另一缔约方应承认任何权利的代位或转让，而该

covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

#### **Article 9.14: Special Formalities and Information Requirements**

1. Nothing in Article 9.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 9.4 (National Treatment) and Article 9.5 (Most-Favoured-Nation Treatment), a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

#### **Article 9.15: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if the enterprise:

- (a) is owned or controlled by a person of a non-Party or of the denying Party; and
- (b) has no substantial business activities in the territory of any Party other than the denying Party.

2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

权利为该投资者对于涵盖投资在本章下如非代位则本应享有的权利，且该投资者不得在代位的限度内寻求这些权利。

#### 第 9.14 条 特殊手续和信息要求

1. 第 9.4 条(国民待遇)不得解释为阻止一缔约方采取或维持一措施，以规定与一涵盖投资有关的特殊手续，例如投资注册的居住要求，或要求一涵盖投资应根据该缔约方的法律或法规合法设立，只要这些手续不实质损害该缔约方根据本章对另一缔约方的投资者和涵盖投资所提供的保护。
2. 尽管有第 9.4 条(国民待遇)和第 9.5 条(最惠国待遇)，但是一缔约方可仅为信息或统计目的，要求另一缔约方的投资者或其涵盖投资提供与该投资有关的信息。该缔约方应保护属机密性质的商业信息不被披露而导致损害投资者或涵盖投资的竞争地位。本款中任何内容不得解释为阻止一缔约方以其他方式获得或披露与公正和善意适用其法律有关的信息。

#### 第 9.15 条 拒绝给予利益

1. 一缔约方可拒绝将本章的利益给予属另一缔约方一企业的该另一缔约方的一投资者和该投资者的投资，如该企业：
  - (a) 为一非缔约方的人或拒绝给予利益的缔约方的人所拥有或控制；及
  - (b) 在除拒绝给予利益的缔约方之外的任何缔约方领土内无实质经营活动。
2. 一缔约方可拒绝将本章的利益给予属另一缔约方一企业的该另一缔约方的一投资者和该投资者的投资，如一非缔约方的人拥有或控制该企业且拒绝给予利益的缔约方针对该非缔约方或该非缔约方的人采取或维持措施以禁止与该企业进行交易，或如本章的利益被授予该企业或其投资，则会违反或规避此类措施。

### **Article 9.16: Investment and Environmental, Health and other Regulatory Objectives**

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives.

### **Article 9.17: Corporate Social Responsibility**

The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.

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

### **Article 9.18: Consultation and Negotiation**

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, such as good offices, conciliation or mediation.
2. The claimant shall deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue.
3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

### **Article 9.19: Submission of a Claim to Arbitration**

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation):
  - (a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:
    - (i) that the respondent has breached:

### 第 9.16 条 投资与环境、卫生和其他监管目标

本章中任何内容不得解释为阻止一缔约方采取、维持或执行在其他方面符合本章且该缔约方认为对保证在其领土内的投资活动以积极考虑环境、卫生或其他监管目标的方式开展所适当的任何措施。

### 第 9.17 条 企业社会责任

缔约方重申每一缔约方鼓励在其领土内经营或受其管辖的企业自愿将该缔约方赞同或支持的企业社会责任的国际公认标准、指南和原则纳入其内部政策的重要性。

## B 节：投资者-国家间争端解决

### 第 9.18 条 磋商和谈判

1. 如发生一投资争端，则申请人和被申请人应首先寻求通过磋商和谈判解决该争端，可包括使用无约束力的第三方程序，例如斡旋、调解或调停。
2. 申请人应向被申请人递送书面磋商请求，其中列出关于一项或多项争议措施的简要事实说明。
3. 为进一步明确，启动磋商和谈判不得理解为承认仲裁庭的管辖权。

### 第 9.19 条 提交仲裁请求

1. 如一投资争端未能在被申请人收到根据第 9.18.2 条(磋商和谈判)提出的一书面磋商请求后 6 个月内得到解决，则：
  - (a) 申请人，可以自身名义，根据本节将下列请求提交仲裁：
    - (i) 被申请人已经违反：

- (A) an obligation under Section A;
  - (B) an investment authorisation;<sup>31</sup> or
  - (C) an investment agreement; and
- (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and
- (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:
  - (i) that the respondent has breached:
    - (A) an obligation under Section A;
    - (B) an investment authorisation; or
    - (C) an investment agreement; and
  - (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

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.

2. When the claimant submits a claim pursuant to paragraph 1(a)(i)(B), 1(a)(i)(C), 1(b)(i)(B) or 1(b)(i)(C), the respondent may make a counterclaim in connection with the factual and legal basis of the claim or rely on a claim for the purpose of a set off against the claimant.<sup>32</sup>

3. At least 90 days before submitting any claim to arbitration under this Section, the claimant shall deliver to the respondent a written notice of its

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<sup>31</sup> Without prejudice to a claimant's right to submit to arbitration other claims under this Article, a claimant shall not submit to arbitration a claim under subparagraph (a)(i)(B) or subparagraph (b)(i)(B) that a Party covered by Annex 9-H has breached an investment authorisation by enforcing conditions or requirements under which the investment authorisation was granted.

<sup>32</sup> In the case of investment authorisations, this paragraph shall apply only to the extent that the investment authorisation, including instruments executed after the date the authorisation was granted, creates rights and obligations for the disputing parties.

- (A) A 节下一义务；
- (B) 一投资授权；<sup>31</sup>或
- (C) 一投资协议；以及
- (ii) 由于此项违反或源于此项违反导致申请人遭受损失或损害；以及
- (b) 申请人，可代表其直接或间接拥有或控制的具有法人资格的被申请人的一企业，根据本节将下列请求提交仲裁：
  - (i) 被申请人已经违反：
    - (A) A 节下一义务；
    - (B) 一投资授权；或
    - (C) 一投资协议；以及
  - (ii) 由于此项违反或源于此项违反导致申请人遭受损失或损害，

条件是，只有请求的标的和所要求的损害赔偿与依赖相关投资协议已设立或获得或寻求设立或获得的涵盖投资直接相关时，该申请人方可根据(a)项(i)目(C)子目或(b)项(i)目(C)子目提交违反该投资协议的请求。

2. 如申请人根据第 1 款(a)项(i)目(B)子目、第 1 款(a)项(i)目(C)子目、第 1 款(b)项(i)目(B)子目或第 1 款(b)项(i)目(C)子目提交一请求时，被申请人可提出与该请求的事实和法律根据有关的反诉或依赖一请求以达到抵销该申请人的目的。<sup>32</sup>

3. 在根据本节提交任何仲裁请求前至少 90 天，申请人应以书面形式向被申请人递送关于其提交仲裁请求意向的通知(意向通

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<sup>31</sup> 在不损害申请人根据本条将其他请求提交仲裁的权利的情况下，申请人不得根据(a)项(i)目(B)子目或(b)项(i)目(B)子目提交仲裁请求，声称附件 9-H 所涵盖的一缔约方因强制执行据以授予一投资授权的条件或要求而已违反该投资授权。

<sup>32</sup> 对于投资授权，本款仅在该投资授权，包括在授予该授权之日后执行的文件，为争端双方创设权利和义务的限度内适用。



intention to submit a claim to arbitration (notice of intent). The notice shall specify:

- (a) the name and address of the claimant and, if a claim is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;
- (b) for each claim, the provision of this Agreement, investment authorisation or investment agreement alleged to have been breached and any other relevant provisions;
- (c) the legal and factual basis for each claim; and
- (d) the relief sought and the approximate amount of damages claimed.

4. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:

- (a) the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings*, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;
- (b) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;
- (c) the UNCITRAL Arbitration Rules; or
- (d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.

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

- (a) referred to in the ICSID Convention is received by the Secretary-General;
- (b) referred to in the ICSID Additional Facility Rules is received by the Secretary-General;
- (c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or
- (d) referred to under any arbitral institution or arbitration rules selected under paragraph 4(d) is received by the respondent.

知)。该通知应列明：

- (a) 申请人的姓名和地址，且如代表一企业提交一请求，则为该企业的名称、地址和注册地；
- (b) 对于每一请求，被指控违反的本协定、投资授权或投资协议的条款和任何其他相关条款；
- (c) 每一请求的法律和事实根据；以及
- (d) 寻求的救济和要求赔偿的大致金额。

4. 申请人可将第 1 款中所指的请求提交到下列机构之一：

- (a) ICSID 公约和 ICSID 仲裁程序规则，条件是被申请人和申请人所属缔约方均为 ICSID 公约缔约方；
- (b) ICSID 附加便利规则，条件是被申请人或申请人所属缔约方其中之一为 ICSID 公约缔约方；
- (c) UNCITRAL 仲裁规则；或
- (d) 如申请人和被申请人同意，则向任何其他仲裁机构或根据任何其他仲裁规则提出。

5. 如申请人的仲裁通知或仲裁请求(“仲裁通知”)按下列方式收到，则一请求应被视为已根据本节提交仲裁：

- (a) 秘书长收到 ICSID 公约中所指的仲裁通知；
- (b) 秘书长收到 ICSID 附加便利规则中所指的仲裁通知；
- (c) 被申请人收到 UNCITRAL 仲裁规则中所指的仲裁通知及该规则中所指的关于请求的说明；或
- (d) 被申请人收到根据第 4 款(d)项所选择的任何仲裁机构或仲裁规则下所指的仲裁通知。

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

6. The arbitration rules applicable under paragraph 4 that are in effect on the date the claim or claims were submitted to arbitration under this Section shall govern the arbitration except to the extent modified by this Agreement.

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

- (a) the name of the arbitrator that the claimant appoints; or
- (b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

#### **Article 9.20: Consent of Each Party to Arbitration**

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

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

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;
- (b) Article II of the New York Convention for an "agreement in writing"; and
- (c) Article I of the Inter-American Convention for an "agreement".

#### **Article 9.21: Conditions and Limitations on Consent of Each Party**

1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.19.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 9.19.1(a)) or the enterprise (for claims brought under Article 9.19.1(b)) has incurred loss or damage.

2. No claim shall be submitted to arbitration under this Section unless:

- (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

申请人在提交此种仲裁通知后首次提出的一项请求应被视为在适用的仲裁规则所规定的接收之日根据本节提交仲裁。

6. 根据第 4 款适用的、且根据本节提交仲裁请求之日有效的仲裁规则应适用该仲裁，除非本协定作出修改。

7. 申请人应与仲裁通知一并提供：

- (a) 申请人指定的仲裁员的姓名；或
- (b) 申请人对秘书长指定该仲裁员的书面同意。

### 第 9.20 条 每一缔约方对仲裁的同意

1. 每一缔约方同意依照本协定根据本节将一请求提交仲裁。

2. 第 1 款下的同意及根据本节提交仲裁请求应被视为符合下列要求：

- (a) ICSID 公约第 2 章(中心管辖权)和 ICSID 附加便利规则关于争端双方书面同意的规定；
- (b) 《纽约公约》第 2 条关于“书面协议”的规定；以及
- (c) 《美洲公约》第 1 条关于“协议”的规定。

### 第 9.21 条 每一缔约方同意的条件和限制

1. 如自申请人首次获知或应首次获知根据第 9.19.1 条(提交仲裁请求)指控的违反行为，并获知申请人(对于根据第 9.19.1 条(a)项提出的请求)或企业(对于根据第 9.19.1 条(b)项提出的请求)已遭受损失或损害之日起已过去 3 年零 6 个月以上，则不得将任何请求根据本节提交仲裁。

2. 任何请求不得根据本节提交仲裁，除非：

- (a) 申请人书面同意依照本协定中所列程序进行仲裁；  
及

- (b) the notice of arbitration is accompanied:
  - (i) for claims submitted to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), by the claimant's written waiver; and
  - (ii) for claims submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any court or administrative tribunal under the law of a Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to Arbitration).

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 9.19.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 9.19.1(b)) may 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.

## **Article 9.22: Selection of Arbitrators**

1. Unless the disputing parties agree otherwise, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within a period of 75 days after the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, 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.

4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(b) 仲裁通知附有：

- (i) 对于根据第 9.19.1 条(a)项(提交仲裁请求)提交仲裁的请求，申请人的书面弃权；及
- (ii) 对于根据第 9.19.1 条(b)项(提交仲裁请求)提交仲裁的请求，申请人和企业的书面弃权，

放弃根据一缔约方法律在任何法院或行政法庭、或根据任何其他争端解决程序，对任何被指控构成第 9.19 条(提交仲裁请求)中所列一违反行为的任何措施启动或继续任何程序的任何权利。

3. 尽管有第 2 款(b)项，但是申请人(对于根据第 9.19.1 条(a)项(提交仲裁请求)提交的请求)和申请人或企业(对于根据第 9.19.1 条(b)项提交的请求)可在被申请人的司法或行政法庭采取或继续一项寻求临时禁令救济而不涉及金钱赔偿的诉讼，只要提起该诉讼的惟一目的是在仲裁未决状态下维护该申请人或该企业的权利和利益。

## 第 9.22 条 仲裁员的选择

1. 除非争端双方另有议定，否则仲裁庭应由 3 名仲裁员组成，每一争端方指定一名仲裁员，第三名仲裁员应经争端双方同意指定并担任首席仲裁员。

2. 秘书长应作为根据本节所提交仲裁的指定机构。

3. 如仲裁庭在根据本节提交仲裁请求之日后 75 天内仍未组成，则应争端一方请求，秘书长应行使他或她的自由裁量权，指定尚未指定的一名或多名仲裁员。秘书长不得指定被申请人的国民或申请人所属缔约方的国民担任首席仲裁员，除非争端双方另有议定。

4. 就 ICSID 公约第 39 条和 ICSID 附加便利规则附件 C 第 7 条而言，并在不损害以国籍之外的理由对一仲裁员提出异议的情况下：

- (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a claimant referred to in Article 9.19.1(a) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and
- (c) a claimant referred to in Article 9.19.1(b) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

5. In the appointment of arbitrators to a tribunal for claims submitted under Article 9.19.1(a)(i)(B) (Submission of a Claim to Arbitration), Article 9.19.1(b)(i)(B), Article 9.19.1(a)(i)(C) or Article 9.19.1(b)(i)(C), each disputing party shall take into account the expertise or relevant experience of particular candidates with respect to the relevant governing law under Article 9.25.2 (Governing Law). If the parties fail to agree on the appointment of the presiding arbitrator, the Secretary-General shall also take into account the expertise or relevant experience of particular candidates with respect to the relevant governing law under Article 9.25.2.

6. The Parties shall, prior to the entry into force of this Agreement, provide guidance on the application of the Code of Conduct for Dispute Settlement Proceedings under Chapter 28 (Dispute Settlement) to arbitrators selected to serve on investor-State dispute settlement tribunals pursuant to this Article, including any necessary modifications to the Code of Conduct to conform to the context of investor-State dispute settlement. The Parties shall also provide guidance on the application of other relevant rules or guidelines on conflicts of interest in international arbitration. Arbitrators shall comply with that guidance in addition to the applicable arbitral rules regarding independence and impartiality of arbitrators.

### **Article 9.23: Conduct of the Arbitration**

1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 9.19.4 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided

- (a) 被申请人同意根据 ICSID 公约和 ICSID 附加便利规则设立的仲裁庭的每一成员的指定；
- (b) 第 9.19.1 条(a)项(提交仲裁请求)中所指的申请人，只有在其书面同意仲裁庭每一人员指定的条件下，方可根据本节提交根据 ICSID 公约或 ICSID 附加便利规则进行仲裁的请求或继续一请求；以及
- (c) 第 9.19.1 条(b)项(提交仲裁请求)中所指的申请人，只有在其和企业书面同意仲裁庭每一人员指定的条件下，方可根据本节提交根据 ICSID 公约和 ICSID 附加便利规则进行仲裁的请求或继续一请求。

5. 在为根据第 9.19.1 条(a)项(i)目(B)子目(提交仲裁请求)、第 9.19.1 条(b)项(i)目(B)子目、第 9.19.1 条(a)项(i)目(C)子目或第 9.19.1 条(b)项(i)目(C)子目提交的请求指定仲裁员时，每一争端方应考虑一特定候选人对于第 9.25.2 条(准据法)下的相关准据法的专门知识或相关经验。如双方未能就首席仲裁员的指定达成一致，则秘书长还应考虑一特定候选人对于第 9.25.2 条下的相关准据法的专门知识或相关经验。

6. 在本协定生效前，缔约方应就第 28 章(争端解决)下的《争端解决程序行为准则》对根据本条选定担任投资者-国家间争端解决仲裁庭的仲裁员的适用问题提供指导，包括对《行为准则》的任何必要修改以符合投资者-国家间争端解决的情况。缔约方还应就其他相关规则或指南对国际仲裁中的利益冲突的适用问题提供指导。仲裁员除应遵守关于仲裁员独立性和公正性的适用仲裁规则之外，还应遵守上述指导。

## 第 9.23 条 仲裁的进行

1. 争端双方可根据第 9.19.4 条(提交仲裁请求)下适用的仲裁规则议定任何仲裁地。如双方未能达成一致，则仲裁庭应依照适用的仲裁规则确定该地点，条件是该地点应位于一属《纽约公



that the place shall be in the territory of a State that is a party to the New York Convention.

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

3. After consultation with the disputing parties, the tribunal may accept and consider written *amicus curiae* submissions regarding a matter of fact or law within the scope of the dispute 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 but 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 submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards) or that a claim is manifestly without legal merit.

- (a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.
- (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
- (c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards), the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment

约》缔约方的国家领土内。

2. 非争端缔约方可就本协定的解释向仲裁庭提交口头和书面陈述。

3. 在与争端双方进行磋商后，仲裁庭可接受和考虑由不属争端方但对仲裁程序具有实质利益的人或实体就争端范围内的事实或法律事项提交的、可协助仲裁庭评估争端双方陈述和观点的法庭之友书面陈述。每一份陈述应指明作者，披露其与任何争端方之间的直接或间接从属关系，并确认在其准备该陈述过程中已提供或将提供任何财政或其他援助的任何人、政府或其他实体。每份陈述应以仲裁所用一种语文书就，并遵守仲裁庭设定的任何页数限制和最后期限。仲裁庭应给予争端双方对此类陈述进行回应的机会。仲裁庭应保证陈述不会干扰或不当迟延仲裁程序，或对任何争端方造成不公正的损害。

4. 在不损害仲裁庭作为先决问题处理其他异议的职权的前提下，例如对一争端不属仲裁庭权限的异议，包括对仲裁庭管辖权的异议，仲裁庭应作为先决问题处理被申请人提出的如下异议并作出裁决：即作为一法律事项，所提交的一请求并非一可根据第 9.29 条(裁决)作出有利于申请人裁决的请求，或一请求明显缺乏法律根据。

- (a) 本款下的异议应在仲裁庭组成后尽快提交，且决不能迟于仲裁庭选定的被申请人提交答辩状的日期，或在是对仲裁通知进行修改的情况下，不迟于仲裁庭选定的被申请人对该修改作出答复的日期。
- (b) 在收到本款下的异议时，仲裁庭应中止关于实体问题的任何程序，设定考虑该异议的时间表，该时间表应与已设定的考虑其他先决问题的时间表相一致，对异议作出决定或裁决并阐述有关理由。
- (c) 在对本款下提出的关于所提交一请求并非一项可根据第 9.29 条(裁决)作出有利于申请人裁决的请求的异议作出决定时，仲裁庭应假定申请人用于支持仲裁通知(或任何修改)中任何请求的事实指控是真

thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

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

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, 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.

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

7. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 9.6 (Minimum Standard of Treatment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.

8. A respondent may not assert as a defence, counterclaim, right of set-off or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

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 referred to in Article 9.19 (Submission of a Claim to

实的，且在根据 UNCITRAL 仲裁规则提交的一争端中，UNCITRAL 仲裁规则相关条款中所指的仲裁请求也是真实的。仲裁庭还可考虑无争议的任何其他相关事实。

- (d) 被申请人不会仅因根据本款提出或未提出任何异议或使用第 5 款中所列快速程序而放弃对权限提出任何异议、包括对管辖权提出异议或放弃关于实体问题的论据。

5. 如被申请人在仲裁庭组成后 45 天内提出请求，则仲裁庭应快速裁决第 4 款下的异议或关于争端不在仲裁庭权限范围的异议，包括争端不在仲裁庭管辖权范围的异议。仲裁庭应中止关于实体问题的任何程序，并不迟于该请求提出之日后 150 天内发布关于异议的决定或裁决并陈述相关理由。然而，如争端一方请求举行听证会，则仲裁庭可再用 30 天时间发布决定或裁决。无论是否请求举行听证会，仲裁庭可在表明存在特别原因的情况下短暂推迟发布其决定或裁决，时间不超过 30 天。

6. 如仲裁庭就被申请人根据第 4 款或第 5 款提出的异议作出决定，如确有必要，则仲裁庭可裁决胜诉方承担在提交异议或反对异议过程中产生的合理费用和律师费。在确定此种裁决是否必要时，仲裁庭应考虑申请人的请求或被申请人的异议是否是轻率的，并应为争端双方提供合理评论机会。

7. 为进一步明确，如一缔约方的投资者根据本节提出请求，包括关于声称一缔约方违反第 9.6 条(最低标准待遇)的请求，则在与适用于国际仲裁的国际法的一般法律原则相一致的情况下，该投资者应承担证明其请求的所有要素的责任。

8. 被申请人不得将申请人根据一保险或担保合同已获得或将获得对其声称的全部或部分损失的赔偿或其他补偿，作出其所声称的抗辩、反诉、抵销权的理由或任何其他理由。

9. 仲裁庭可下令采取临时保护措施以维护争端一方的权利，或以保证仲裁庭管辖权充分有效，包括作出保全由争端一方拥有或掌握的证据的命令或保证仲裁庭管辖权的命令。仲裁庭不得下

Arbitration). For the purposes of this paragraph, an order includes a recommendation.

10. 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. Within 60 days after 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 comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.

11. 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 9.29 (Awards) 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 9.24 (Transparency of Arbitral Proceedings).

#### **Article 9.24: Transparency of Arbitral Proceedings**

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

- (a) the notice of intent;
- (b) the notice of arbitration;
- (c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 9.23.2 (Conduct of the Arbitration) and Article 9.23.3 and Article 9.28 (Consolidation);
- (d) minutes or transcripts of hearings of the tribunal, if available; and
- (e) orders, awards and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such

令扣押或不得下令禁止适用被指控构成第 9.19 条(提交仲裁请求)中所指违反情况的一措施。就本款而言，命令包括建议。

10. 在根据本节进行的任何仲裁中，应争端一方请求，仲裁庭在发布一项关于责任的决定或裁决之前，应向争端双方传送拟议决定或裁决。在仲裁庭传送其拟议决定或裁决后 60 天内，争端双方可向仲裁庭提交关于其对拟议决定或裁决任何方面的书面评论。仲裁庭应对任何评论予以考虑，并不迟于 60 天评论期期满后 45 天发布其决定或裁决。

11. 如未来在其他机制性安排下设立审查投资者-国家间争端解决仲裁庭裁决的上诉机制，则缔约方应考虑根据第 9.29 条(裁决)作出的裁决是否应适用于该上诉机制。缔约方应努力保证其考虑采用的任何此种上诉机制关于程序透明度的规定与第 9.24 条(仲裁程序的透明度)所确立的透明度规定相类似。

### 第 9.24 条 仲裁程序的透明度

1. 在遵守第 2 款和第 4 款的前提下，被申请人在收到下列文件后，应迅速将文件传送非争端缔约方，并使公众可获得：

- (a) 意向通知；
- (b) 仲裁通知；
- (c) 争端一方向仲裁庭提交的诉状、备忘录和摘要，及根据第 9.23.2 条(仲裁的进行)和第 9.23.3 及第 9.28 条(合并审理)提交的任何书面陈述；
- (d) 仲裁庭庭审记录或笔录(如可获得)；以及
- (e) 仲裁庭的命令、裁决和决定。

2. 仲裁庭应举行向公众开放的听证会，并应经与争端双方磋商后确定适当的行政安排。如一争端有意在一听证会中使用指定为受保护的信息或需遵守第 3 款的其他信息，则应据此通知仲裁庭。仲裁庭应作出适当安排以保护该信息不被披露，其中可包括

information from disclosure which may include closing the hearing for the duration of the discussion of that information.

3. Nothing in this Section, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose 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 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information).<sup>33</sup>

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

- (a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
- (b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;
- (c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and
- (d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:
  - (i) withdraw all or part of its submission containing that 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 subparagraph (d)(i) by the

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<sup>33</sup> For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information), the respondent may still withhold that information from disclosure to the public.

听证会讨论该信息的过程不对外公开。

3. 本节中任何内容，包括第 4 款(d)项，不要求被申请人在仲裁程序过程中或之后向公众提供或通过其他方式披露受保护信息，包括听证会，也不要求被申请人提供或允许获取依照第 29.2 条(安全例外)或第 29.7 条(信息披露)可拒绝提供的信息。<sup>33</sup>

4. 向仲裁庭提交的任何受保护信息均应依照下列程序以防止被披露：

- (a) 在遵守(d)项的前提下，如提供信息的争端一方根据(b)项明确将其指定为受保护信息，则争端双方和仲裁庭均不得将该信息向非争端缔约方或向公众披露；
- (b) 声称部分信息构成受保护信息的任何争端方，应根据仲裁庭规定的时间表明确指定该信息属保护信息；
- (c) 争端一方应根据仲裁庭设定的任何时间表，提交一份不含受保护信息的该文件的编辑版本。只有该编辑版本才应依照第 1 款予以披露；以及
- (d) 仲裁庭，在遵守第 3 款的前提下，应对声称信息包含受保护信息的指定所提任何异议作出决定。如仲裁庭确定对该信息所作指定不适当，则提交该信息的争端一方可：
  - (i) 全部或部分撤回包含该信息的陈述；或
  - (ii) 同意依照仲裁庭的确定和(c)项，重新提交完整的和经编辑的文件并作出正确指定。

无论在以上哪种情况下，另一争端方均应在必要时重新提交完整的和经编辑的文件，或去除由首次提交该信息的争端一方根据(d)项(i)目撤回的信息，或

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<sup>33</sup> 为进一步明确，当被申请人选择向仲裁庭披露其依照第 29.2 条(安全例外)或第 29.7 条(信息披露)可拒绝提供的信息时，其仍可拒绝向公众披露该信息。



disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavour to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.

### **Article 9.25: Governing Law**

1. Subject to paragraph 3, when a claim is submitted under Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.<sup>34</sup>

2. Subject to paragraph 3 and the other provisions of this Section, when a claim is submitted under Article 9.19.1(a)(i)(B) (Submission of a Claim to Arbitration), Article 9.19.1(a)(i)(C), Article 9.19.1(b)(i)(B) or Article 9.19.1(b)(i)(C), the tribunal shall apply:

- (a) the rules of law applicable to the pertinent investment authorisation or specified in the pertinent investment authorisation or investment agreement, or as the disputing parties may agree otherwise; or
- (b) if, in the pertinent investment agreement the rules of law have not been specified or otherwise agreed:
  - (i) the law of the respondent, including its rules on the conflict of laws;<sup>35</sup> and
  - (ii) such rules of international law as may be applicable.

3. A decision of the Commission on the interpretation of a provision of this Agreement under Article 27.2.2(f) (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

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<sup>34</sup> For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent when it is relevant to the claim as a matter of fact.

<sup>35</sup> The “law of the respondent” means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case. For greater certainty, the law of the respondent includes the relevant law governing the investment agreement, including law on damages, mitigation, interest and estoppel.

对该信息作出重新指定以符合首次提交该信息的争端一方根据(d)项(ii)目所作指定。

5. 本节中任何内容不限制被申请人向公众提供其法律要求予以披露的信息。被申请人应努力以对保护被指定为受保护信息免于泄露的方式实施有关法律。

## 第 9.25 条 准据法

1. 在遵守第 3 款的前提下，如一请求根据第 9.19.1 条(a)项(i)目(A)子目(提交仲裁请求)或第 9.19.1 条(b)项(i)目(A)子目提交仲裁，则仲裁庭应依照本协定和适用的国际法规则对争议事项作出决定。<sup>34</sup>

2. 在遵守第 3 款和本节其他规定的前提下，如一请求根据第 9.19.1 条(a)项(i)目(B)子目(提交仲裁请求)、第 9.19.1 条(a)项(i)目(C)子目、第 9.19.1 条(b)项(i)目(B)子目或第 9.19.1 条(b)项(i)目(C)子目提交仲裁，则仲裁庭应适用：

- (a) 相关投资授权的法律规则或在相关投资授权或投资协议中规定的法律规则，或争端双方可能另有议定的法律规则；或
- (b) 如在相关投资协议中未规定法律规则或未另有议定，则为：
  - (i) 被申请人的法律，包括其冲突法；<sup>35</sup>及
  - (ii) 可能适用的国际法规则。

3. 自贸协定委员会根据第 27.2.2 条(f)项(自贸协定委员会的职能)作出的对本协定条款进行解释的决定应对仲裁庭具有约束力，仲裁庭作出的任何决定或裁决必须与该决定相一致。

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<sup>34</sup> 为进一步明确，这一规定不影响在被申请人的国内法律作为事实问题与该请求相关时对此类国内法律的任何考虑。

<sup>35</sup> “被申请人的法律”指具有适当管辖权的一国内法院或法庭在相同案件中适用的法律。为进一步明确，被申请人的法律包括管辖该投资协议的相关法律，包括关于损害赔偿、减轻损害、利益和禁止反言的法律。

### **Article 9.26: Interpretation of Annexes**

1. If a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision on its interpretation under Article 27.2.2(f) (Functions of the Commission) to the tribunal within 90 days of delivery of the request.

2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 90 days, the tribunal shall decide the issue.

### **Article 9.27: Expert Reports**

Without prejudice to the appointment of other kinds of experts when authorised by the applicable arbitration rules, a tribunal, on 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 scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions that the disputing parties may agree.

### **Article 9.28: Consolidation**

1. If two or more claims have been submitted separately to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) 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.

2. 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:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

### 第 9.26 条 对附件的解释

1. 如被申请人以被指控违反的措施属于附件 1 或附件 2 中所列不符措施的范围为由进行抗辩，则应被申请人请求，仲裁庭应请求获得自贸协定委员会对此问题的解释。自贸协定委员会应在该请求递送后 90 天内以书面形式向仲裁庭提交关于根据第 27.2.2 条(f)项(自贸协定委员会的职能)其所作解释的任何决定。
2. 自贸协定委员会根据第 1 款作出的决定应对仲裁庭具有约束力，仲裁庭作出的任何决定或裁决必须与该决定相一致。如委员会未能在 90 天内作出决定，则仲裁庭应对该问题作出决定。

### 第 9.27 条 专家报告

在不影响经适用的仲裁规则授权指定其他类型专家的情况下，仲裁庭可应争端一方请求或主动，除非争端双方反对，指定一位或多位专家，就争端一方在仲裁程序中提出的科学问题的任何事实问题提交书面报告，但需遵守争端双方可能议定的任何条款和条件。

### 第 9.28 条 合并审理

1. 如两个或多个请求根据第 9.19.1 条(提交仲裁请求)分别提交仲裁，而请求包含共同法律或事实问题且产生自相同事件或情况，则任何争端方可依照寻求为合并审理命令所涵盖的所有争端方达成的一致意见，或根据第 2 款至第 10 款的条件寻求合并审理的命令。
2. 根据本条寻求合并审理命令的争端一方应以书面形式向秘书长和寻求为该命令所涵盖的争端方递送一书面请求，并在请求中列明下列内容：
  - (a) 寻求为该命令所涵盖的所有争端方的姓名和地址；
  - (b) 所寻求的命令的性质；以及
  - (c) 寻求该命令的理由。

3. Unless the Secretary-General finds within a period of 30 days after the date of receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order agree otherwise, a tribunal established under this Article shall comprise three arbitrators:

- (a) one arbitrator appointed by agreement of the claimants;
- (b) one arbitrator appointed by the respondent; and
- (c) the presiding arbitrator appointed by the Secretary-General, provided that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.

5. If, within a period of 60 days after the date when 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 request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) 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:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
- (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) instruct a tribunal previously established under Article 9.22 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:
  - (i) that tribunal, on request of a claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and
  - (ii) that tribunal shall decide whether a prior hearing shall be repeated.

3. 除非秘书长在收到根据第 2 款所提请求之日后 30 天内认为该请求明显缺乏根据，否则应根据本条设立仲裁庭。

4. 除非寻求为该命令所涵盖的所有争端方另有议定，否则根据本条设立的仲裁庭应由 3 名仲裁员组成：

- (a) 经申请人一致同意指定的一名仲裁员；
- (b) 由被申请人指定的一名仲裁员；以及
- (c) 由秘书长指定的首席仲裁员，条件是该首席仲裁员不属被申请人的国民或任何申请人所属缔约方的国民。

5. 如在秘书长收到根据第 2 款所提请求之日后 60 天内，被申请人未能或申请人未能依照第 4 款指定一仲裁员，则应寻求为该命令所涵盖的任何争端方请求，秘书长应以他或她的自由裁量权指定一名或多名尚未指定的仲裁员。

6. 如根据本条设立的仲裁庭确信，根据第 9.19.1 条(提交仲裁请求)提交仲裁的两个或多个请求包含一共同法律或事实问题，且产生自相同事件或情况，则为公平有效解决该请求，仲裁庭可在听取争端双方意见后通过命令：

- (a) 对全部或部分请求一并行使管辖权、进行审理和作出确定；
- (b) 对一个或多个请求行使管辖权、进行审理和作出确定，仲裁庭认为该确定有助于其他请求的解决；或
- (c) 指示一此前根据第 9.22 条(仲裁员的选择)设立的仲裁庭对全部或部分请求一并行使管辖权、进行审理和作出确定，条件是：
  - (i) 应此前不属该仲裁庭的争端一方的一申请人请求，该仲裁庭应以原成员重新组成，但申请人的仲裁员应根据第 4 款(a)项和第 5 款指定；及
  - (ii) 该仲裁庭应决定此前的审理是否需要重复。

7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) 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. The request shall specify:

- (a) the name and address of the claimant;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 9.22 (Selection of Arbitrators) 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.

10. On the 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 9.22 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.

#### **Article 9.29: Awards**

1. When a tribunal makes a final award, the tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.

3. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine

7. 如已根据本条设立仲裁庭，则根据第 9.19.1 条(提交仲裁请求)已经提交请求但在根据第 2 款提交的请求中未被提名的一申请人，可向仲裁庭提出关于将其包括在根据第 6 款作出的任何命令中的书面请求。该请求应列明：

- (a) 申请人的姓名和地址；
- (b) 所寻求的命令的性质；以及
- (c) 寻求命令的理由。

申请人应将其请求的副本递送秘书长。

8. 根据本条设立的仲裁庭应依照 UNCITRAL 仲裁规则进行其仲裁，但需按经本节修改后的规则。

9. 根据第 9.22 条(仲裁员的选择)设立的仲裁庭不得对根据本条设立或受到指示的仲裁庭已行使管辖权的一请求或一请求的一部分行使决定权。

10. 应争端一方申请，根据本条设立的仲裁庭在作出第 6 款下的决定前，可命令根据第 9.22(仲裁员的选择)设立的仲裁庭的程序予以暂停，除非后一仲裁庭已经停止仲裁程序。

## 第 9.29 条 裁决

1. 如仲裁庭作出最终裁决，则仲裁庭只能单独或一并就下列各项作出裁决：

- (a) 金钱赔偿和任何适用利息；及
- (b) 返还财产，在此种情况下裁决应规定被申请人可支付金钱赔偿和任何适用利息以替代返还。

2. 为进一步明确，如一缔约方的投资者根据第 9.19.1 条(a)项(提交仲裁请求)将一请求提交仲裁，则该投资者仅能获得对其作为一缔约方投资者的身份所遭受损失或损害的赔偿。

3. 仲裁庭还可依照本节和适用的仲裁规则，对争端双方发生的、与仲裁程序有关的费用和律师费作出裁决，并应确定这些费



how and by whom those costs and attorney's fees shall be paid, in accordance with this Section and the applicable arbitration rules.

4. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award to the respondent reasonable costs and attorney's fees.

5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration) and an award is made in favour of the enterprise:

- (a) an award of restitution of property shall provide that restitution be made to the enterprise;
- (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
- (c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.

6. A tribunal shall not award punitive damages.

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

8. Subject to paragraph 9 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

9. A disputing party shall not seek enforcement of a final award until:

- (a) in the case of a final award made under the ICSID Convention:
  - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
  - (ii) revision or annulment proceedings have been completed; and
- (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected

用和律师费如何支付及由谁支付。

4. 为进一步明确，对于指控违反 A 节下有关试图投资的一义务的请求，如所作裁决有利于申请人，则惟一可作出裁决的损害赔偿为申请人已证明在试图投资过程中遭受的损失，只要申请人还证明此项违反为这些损失的直接原因。如仲裁庭确定此类请求是轻率的，则仲裁庭可裁决由申请人承担合理费用和律师费。

5. 在遵守第 1 款的前提下，如一请求根据第 9.19.1 条(b)项(提交仲裁请求)提交仲裁且所作裁决有利于该企业，则：

- (a) 财产返还的裁决应规定返还对象为企业；
- (b) 金钱赔偿和任何适用利息的裁决应规定有关款项的支付对象为企业；以及
- (c) 裁决应规定该裁决的作出不损害任何人根据对该裁决中所规定的救济适用的国内法可能拥有的任何权利。

6. 仲裁庭不得作出惩罚性赔偿的裁决。

7. 仲裁庭所作裁决除对争端双方和特定案件外不具有约束力。

8. 在遵守第 9 款和对临时裁决适用的审议程序的前提下，争端一方应立即遵守和履行一裁决。

9. 争端一方不得寻求执行一最终裁决，直至：

- (a) 对于根据 ICSID 公约作出的最终裁决，
  - (i) 自裁决作出之日起已满 120 天且无争端方请求修改或撤销该裁决；或
  - (ii) 修改或撤销程序已经完成；以及
- (b) 对于根据 ICSID 附加便利规则、UNCITRAL 仲裁规则或根据第 9.19.4 条(d)项(提交仲裁请求)所选择

pursuant to Article 9.19.4(d) (Submission of a Claim to Arbitration):

- (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.

10. Each Party shall provide for the enforcement of an award in its territory.

11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 28.7 (Establishment of a Panel). The requesting Party may seek in those proceedings:

- (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
- (b) in accordance with Article 28.17 (Initial Report), a recommendation that the respondent abide by or comply with the final award.

12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 11.

13. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

### **Article 9.30: Service of Documents**

Delivery of notice and other documents to a Party shall be made to the place named for that Party in Annex 9-D (Service of Documents on a Party Under Section B). A Party shall promptly make publicly available and notify the other Parties of any change to the place referred to in that Annex.

的仲裁规则作出的最终裁决：

- (i) 自裁决作出之日起已满 90 天且无争端方启动修改、取消或撤销该裁决的程序；或
- (ii) 法院已驳回或许可关于修改、取消或撤销该裁决的申请，且无进一步上诉。

10. 每一缔约方应就在其领土内执行裁决作出规定。

11. 如被申请人未能遵守或履行最终裁决，则在申请人所属缔约方递送一请求后，应根据第 28.7 条(设立专家组)设立专家组。提出请求的缔约方可寻求在这些程序中：

- (a) 就未能遵守或履行最终裁决的行为与本协定的义务不一致作出确定；及
- (b) 依照第 28.17 条(最初报告)，对被申请人遵守或履行最终裁决提出建议。

12. 无论是否已根据第 11 款进行有关程序，争端一方可根据 ICSID 公约、《纽约公约》或《美洲公约》寻求执行一仲裁裁决。

13. 根据本节提交仲裁的请求应被视为产生自就《纽约公约》第 1 条和《美洲公约》第 1 条而言的一商业关系或交易。

### 第 9.30 条 文件送达

向一缔约方送达通知和其他文书应递送至该缔约方在附件 9-D(根据 B 节向一缔约方送达文件)中指定的地点。一缔约方应迅速将该附件中所指定地点的任何变更情况公开提供并通知其他缔约方。

**ANNEX 9-A**

**CUSTOMARY INTERNATIONAL LAW**

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 9.6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

## 附件 9-A

### 习惯国际法

缔约方确认如下共同理解：即一般意义上的“习惯国际法”和在第 9.6 条(最低标准待遇)中特别提及的习惯国际法源各国对法律义务的遵循而进行的普遍和一致的实践。外国人待遇的习惯国际法最低标准指保护外国人投资的所有习惯国际法原则。

## ANNEX 9-B

### EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Article 9.8.1 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article 9.8.1 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
  - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
    - (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
    - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;<sup>36</sup> and
    - (iii) the character of the government action.
  - (b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as

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<sup>36</sup> For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

## 附件 9-B

### 征收

缔约方确认对下列事项的共同理解：

1. 一缔约方的一项行为或一系列行为不能构成一项征收，除非对一项投资中的有形或无形财产权或财产利益造成影响。
2. 第 9.8.1 条(征收和补偿)处理两种情况。第一种情况为直接征收，在此情况下一投资被国有化或通过正式转让所有权或完全没收而被直接征收。
3. 第 9.8.1 条(征收和补偿)处理的第二种情况为间接征收，在此情况下一缔约方的一项行为或一系列行为具有与直接征收同等效果而无需转让所有权或完全没收。
  - (a) 对于一缔约方的一项行为或一系列行为在一特定情况下是否构成间接征收所作确定，需逐案根据事实进行调查，需考虑的因素除其他外包括：
    - (i) 尽管一缔约方的一项行为或一系列行为已对一投资的经济价值产生不利影响，但是单独政府行为的经济影响本身并不能证明已经发生间接征收；
    - (ii) 政府行为对基于投资的明显合理预期的影响程度；<sup>36</sup>以及
    - (iii) 政府行为的性质。
  - (b) 一缔约方旨在并用于保护公共健

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<sup>36</sup> 为进一步明确，投资者基于投资的预期是否合理，在相关的限度内，取决于政府是否向投资者提供具有约束力的书面保证和政府监管措施的性质和程度或政府监管在相关产业中的潜在影响等因素。



public health,<sup>37</sup> safety and the environment, do not constitute indirect expropriations, except in rare circumstances.

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<sup>37</sup> For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances and blood and blood-related products.

康<sup>37</sup>、安全和环境等合法公共福利目标的非歧视性监管行为不构成间接征收，除非在极少数情况下。

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<sup>37</sup> 为进一步明确且在不限制本项范围的前提下，保护公共健康的监管行为除其他外包括与药物(包括生物产品)、诊断方法、疫苗、医疗设备、基因疗法和技术、健康相关援助和器械以及血液和血液制品的监管、定价、供应和报销有关的措施。

**ANNEX 9-C****EXPROPRIATION RELATING TO LAND**

1. Notwithstanding the obligations under Article 9.8 (Expropriation and Compensation), where Singapore is the expropriating Party, any measure of direct expropriation relating to land shall be for a purpose and upon payment of compensation at market value, in accordance with the applicable domestic legislation<sup>38</sup> and any subsequent amendments thereto relating to the amount of compensation where such amendments provide for the method of determination of the compensation which is no less favourable to the investor for its expropriated investment than such method of determination in the applicable domestic legislation as at the time of entry into force of this Agreement for Singapore.

2. Notwithstanding the obligations under Article 9.8 (Expropriation and Compensation), where Viet Nam is the expropriating Party, any measure of direct expropriation relating to land shall be: (i) for a purpose in accordance with the applicable domestic legislation;<sup>39</sup> and (ii) upon payment of compensation equivalent to the market value, while recognising the applicable domestic legislation.

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<sup>38</sup> The applicable domestic legislation is the *Land Acquisition Act* (Cap. 152) as at the date of entry into force of this Agreement for Singapore.

<sup>39</sup> The applicable domestic legislation is Viet Nam's *Land Law*, Law No. 45/2013/QH13 and *Decree 44/2014/ND-CP Regulating Land Prices*, as at the date of entry into force of this Agreement for Viet Nam.

## 附件 9-C

### 土地征用

1. 尽管有第 9.8 条(征收和补偿)下的义务，但是如新加坡是进行征收的缔约方，则关于土地直接征用的任何措施的目的和按照市场价值的赔偿支付，应符合适用的国内法<sup>38</sup>及此后对国内法作出的与赔偿金额相关的修正，而此类修正规定的赔偿确定方法不会比在本协定对新加坡生效之时适用的国内立法中规定的方法对投资者被征收的投资更为不利。
2. 尽管有第 9.8 条(征收和补偿)下的义务，但是如越南是进行征收的缔约方，则土地直接征用的任何措施应：(i)其目的应符合适用的国内立法；<sup>39</sup>及(ii)应支付与市场价值相当的赔偿，同时承认适用的国内立法。

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<sup>38</sup> 截至本协定对新加坡生效之日，适用的国内立法为《土地收购法》(第 152 章)。

<sup>39</sup> 截至本协定对越南生效之日，适用的国内立法为越南的《土地法》、第 45/2013/QH13 号法律和关于土地价格管理的第 44/2014/ND-CP 号法令。

**ANNEX 9-D**

**SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B  
(INVESTOR-STATE DISPUTE SETTLEMENT)**

**Australia**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade  
R.G. Casey Building  
John McEwen Crescent  
Barton ACT 0221  
Australia

**Brunei Darussalam**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Brunei Darussalam by delivery to:

The Permanent Secretary (Trade)  
Ministry of Foreign Affairs and Trade  
Jalan Subok  
Bandar Seri Begawan, BD 2710  
Brunei Darussalam

**Canada**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Canada by delivery to:

Office of the Deputy Attorney General of Canada  
Justice Building  
239 Wellington Street  
Ottawa, Ontario  
K1A 0H8  
Canada

## 附件 9-D

### 根据 B 节(投资者-国家间争端解决)向一缔约方送达文件

#### 澳大利亚

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向澳大利亚提供:

Department of Foreign Affairs and Trade  
R.G. Casey Building  
John McEwen Crescent  
Barton ACT 0221  
Australia

#### 文莱达鲁萨兰国

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向文莱达鲁萨兰国提供:

The Permanent Secretary (Trade)  
Ministry of Foreign Affairs and Trade  
Jalan Subok  
Bandar Seri Begawan, BD 2710  
Brunei Darussalam

#### 加拿大

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向加拿大提供:

Office of the Deputy Attorney General of Canada  
Justice Building  
239 Wellington Street  
Ottawa, Ontario  
K1A 0H8  
Canada

## **Chile**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Chile by delivery to:

Dirección de Asuntos Jurídicos del Ministerio de Relaciones Exteriores de  
la República de Chile  
Teatinos 180  
Santiago  
Chile

## **Japan**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Japan by delivery to:

Economic Affairs Bureau  
Ministry of Foreign Affairs  
2-2-1 Kasumigaseki, Chiyoda-ku  
Tokyo  
Japan

## **Malaysia**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Malaysia by delivery to:

Attorney General's Chambers  
Level 16, No. 45 Persiaran Perdana  
Precint 4  
Federal Government Administrative Centre  
62100 Putrajaya  
Malaysia

## 智利

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向智利提供:

Dirección de Asuntos Jurídicos del Ministerio de Relaciones Exteriores de  
la República de Chile  
Teatinos 180  
Santiago  
Chile

## 日本

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向日本提供:

Economic Affairs Bureau  
Ministry of Foreign Affairs  
2-2-1 Kasumigaseki, Chiyoda-ku  
Tokyo  
Japan

## 马来西亚

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向马来西亚提供:

Attorney General's Chambers  
Level 16, No. 45 Persiaran Perdana  
Precint 4  
Federal Government Administrative Centre  
62100 Putrajaya  
Malaysia



## **Mexico**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Mexico by delivery to:

Dirección General de Consultoría Jurídica de Comercio Internacional  
Secretaría de Economía  
Alfonso Reyes #30, piso 17  
Col. Hipódromo Condesa  
Del. Cuauhtémoc  
México D.F.  
C.P. 06140

## **New Zealand**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on New Zealand by delivery to:

The Secretary  
Ministry of Foreign Affairs and Trade  
195 Lambton Quay  
Wellington 6011  
New Zealand

## **Peru**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Peru by delivery to:

Dirección General de Asuntos de Economía Internacional,  
Competencia y Productividad  
Ministerio de Economía y Finanzas  
Jirón Lampa 277, piso 5  
Lima, Perú

## 墨西哥

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向墨西哥提供:

Dirección General de Consultoría Jurídica de Comercio Internacional  
Secretaría de Economía  
Alfonso Reyes #30, piso 17  
Col. Hipódromo Condesa  
Del. Cuauhtémoc  
México D.F.  
C.P. 06140

## 新西兰

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向新西兰提供:

The Secretary  
Ministry of Foreign Affairs and Trade  
195 Lambton Quay  
Wellington 6011  
New Zealand

## 秘鲁

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向秘鲁提供:

Dirección General de Asuntos de Economía Internacional,  
Competencia y Productividad  
Ministerio de Economía y Finanzas  
Jirón Lampa 277, piso 5  
Lima, Perú

## **Singapore**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Singapore by delivery to:

Permanent Secretary  
Ministry of Trade & Industry  
100 High Street #09-01  
Singapore 179434  
Singapore

## **United States**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on the United States by delivery to:

Executive Director (L/EX)  
Office of the Legal Adviser  
Department of State  
Washington, D.C.20520  
United States of America

## **Viet Nam**

Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Viet Nam by delivery to:

General Director  
Department of International Law  
Ministry of Justice  
60 Tran Phu Street  
Ba Dinh District  
Ha Noi  
Viet Nam

### 新加坡

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向新加坡提供:

Permanent Secretary  
Ministry of Trade & Industry  
100 High Street #09-01  
Singapore 179434  
Singapore

### 美国

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向美国提供:

Executive Director (L/EX)  
Office of the Legal Adviser  
Department of State  
Washington, D.C.20520  
United States of America

### 越南

B 节(投资者-国家间争端解决)下争端中的通知和其他文件应通过递送至下列地址向越南提供:

General Director  
Department of International Law  
Ministry of Justice  
60 Tran Phu Street  
Ba Dinh District  
Ha Noi  
Viet Nam

ANNEX 9-E<sup>40</sup>

## TRANSFERS

## Chile

1. Notwithstanding Article 9.9 (Transfers), Chile reserves the right of the Central Bank of Chile (*Banco Central de Chile*) to maintain or adopt measures in conformity with Law 18.840, Constitutional Organic Law of the Central Bank of Chile (*Ley 18.840, Ley Orgánica Constitucional del Banco Central de Chile*), and *Decreto con Fuerza de Ley N°3 de 1997, Ley General de Bancos* (General Banking Act) and *Ley 18.045, Ley de Mercado de Valores* (Securities Market Law), in order to ensure currency stability and the normal operation of domestic and foreign payments. Such measures include, *inter alia*, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement (*encaje*).

2. Notwithstanding paragraph 1, the reserve requirements that the Central Bank of Chile can apply pursuant to Article 49 No. 2 of Law 18.840, shall not exceed 30 per cent of the amount transferred and shall not be imposed for a period which exceeds two years.

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<sup>40</sup> For greater certainty, this Annex shall apply to transfers covered by Article 9.9 (Transfers) and payments and transfers covered by Article 10.12 (Payments and Transfers).

## 附件 9-E<sup>40</sup>

### 转移

#### 智利

1. 尽管有第 9.9 条(转移), 但是智利保留智利中央银行遵照第 18.840 号法律《智利中央银行组织法》、《一般银行法》和《证券市场法》采取或维持措施的权利, 以保证货币稳定和境内外支付正常运转。此类措施特别包括对往来智利的经常付款和转账(资本流动)及与之相关的交易设置限制或限额, 例如对往来一外国的存款、投资或贷款设定准备金要求。
2. 尽管有第 1 款, 但是智利中央银行根据第 18.840 号法律第 2 章第 49 条可以实施的准备金要求不得超过转账金额的 30% 且实施期限不得超过 2 年。

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<sup>40</sup> 为进一步明确, 本附件应适用于第 9.9 条(转移)所涵盖的转移和第 10.12 条(支付和转移)所涵盖的支付和转移。

## ANNEX 9-F

### DL 600

#### Chile

1. The obligations and commitments contained in this Chapter do not apply to Decree Law 600, Foreign Investment Statute (*Decreto Ley 600, Estatuto de la Inversión Extranjera*) (hereinafter referred to in this Annex as “DL 600”), or its successors, and to Law 18.657, Foreign Capital Investment Fund Law (*Ley 18.657, Ley de Fondos de Inversión de Capital Extranjero*), with respect to:

- (a) The right of the Foreign Investment Committee of Chile (*Comité de Inversiones Extranjeras*) or its successor to accept or reject applications to invest through an investment contract under DL 600<sup>41</sup> and the right to regulate the terms and conditions of foreign investment under DL 600 and Law 18.657.
- (b) The right to maintain existing requirements that transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of a Party or from the partial or complete liquidation of the investment which may not take place until a period not to exceed:
  - (i) in the case of an investment made pursuant to DL 600, one year from the date of transfer to Chile; or
  - (ii) in the case of an investment made pursuant to Law 18.657,<sup>42</sup> five years from the date of transfer to Chile.
- (c) The right to adopt measures, consistent with this Annex, establishing future special voluntary investment programmes in addition to the general regime for foreign investment in Chile, except that any such measures may restrict transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of another Party or from the partial or complete liquidation

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<sup>41</sup> The authorisation and execution of an investment contract under DL 600 by an investor of a Party or a covered investment does not create any right on the part of the investor or the covered investment to engage in particular activities in Chile.

<sup>42</sup> Law 18.657 was derogated on May 1, 2014 by law 20.712. The transfer requirement established under subparagraph (b)(ii) will only be applicable to investments made pursuant to Law 18.657 prior to May 1, 2014 and not to investments made pursuant to Law 20.712.

附件 9-F  
第 600 号法令

智利

1. 本章所含义务和承诺在下列方面不适用于第 600 号法令《外国投资法》(在本附件中下称“第 600 号法令”)或其后继法令, 及第 18.657 号法律《外国资本投资基金法》:

- (a) 智利外国投资委员会或其后继者接受或拒绝根据第 600 号法令下的一投资合同<sup>41</sup>的投资申请的权利, 及根据第 600 号法令和第 18.657 号法律对外国投资的条款和条件进行监管的权利。
- (b) 维持如下现行要求的权利: 即自出售一缔约方的投资者的全部或部分投资所得收入, 或自全部或部分清算该投资所得收入在一未超过下列时间的期限期满前不能转移出智利:
  - (i) 对于根据第 600 号法令进行的投资, 自转移至智利之日起 1 年; 或
  - (ii) 对于根据第 18.657 号法律进行的投资, <sup>42</sup>自转移至智利之日起 5 年。
- (c) 采取符合本附件的如下措施的权利: 即在智利外国投资一般制度基础上设立未来特别自愿投资计划, 但任何此类措施可限制自出售一缔约方投资者的全部或部分投资所得收入, 或自全部或部分清算该投

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<sup>41</sup> 一缔约方的一投资者或一涵盖投资对第 600 号法令下一投资合同的授权和执行不对该投资者或该涵盖投资创设在智利从事特定活动的任何权利。

<sup>42</sup> 第 18.657 号法律于 2014 年 5 月 1 日为第 20.712 号法律所取代。(b)项(ii)目下规定的转移要求将仅适用于 2014 年 5 月 1 日前根据第 18.657 号法律进行的投资, 不适用于根据第 20.712 号法律进行的投资。



of the investment for a period not to exceed five years from the date of transfer to Chile.

2. For greater certainty, except to the extent that paragraph 1(b) or (c) provides an exception to Article 9.9 (Transfers), the investment entered through an investment contract under DL 600, through Law 18.657 or through any future special voluntary investment programme, will be subject to the obligations and commitments of this Chapter, to the extent that the investment is a covered investment under Chapter 9 (Investment).

资所得收入，在自转移至智利之日起不超过 5 年的期限内不能转移出智利。

2. 为进一步明确，除第 1 款(b)项或第 1 款(c)项规定对第 9.9 条(转移)的一项例外情况，通过第 600 号法令下一投资合同、通过第 18.657 号法律或通过任何未来特别自愿投资计划实施的投资，在该投资属第 9 章(投资)下涵盖投资的限度内，将遵守本章的义务和承诺。

**ANNEX 9-G****PUBLIC DEBT**

1. The Parties recognise that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award shall be made in favour of a claimant for a claim under Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A) with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non-payment constitutes a breach of an obligation under Section A, including an uncompensated expropriation pursuant to Article 9.8 (Expropriation and Compensation).

2. No claim that a restructuring of debt issued by a Party breaches an obligation under Section A shall be submitted to, or if already submitted continue in, arbitration under Section B (Investor-State Dispute Settlement) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after that submission, except for a claim that the restructuring violates Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment).

3. Notwithstanding Article 9.19.4 (Submission of a Claim to Arbitration), and subject to paragraph 2, an investor of another Party shall not submit a claim under Section B (Investor-State Dispute Settlement) that a restructuring of debt issued by a Party breaches an obligation under Section A, other than Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment), unless 270 days have elapsed from the date of receipt by the respondent of the written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation).<sup>43</sup>

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<sup>43</sup> Paragraphs 2 and 3 of this Annex do not apply to any claim under Section B (Investor-State Dispute Settlement) against Singapore or the United States.

## 附件 9-G

### 公债

1. 缔约方认识到购买一缔约方发行的债务涉及商业风险。为进一步明确，仲裁庭对于根据第 9.19.1 条(a)项(i)目(A)子目(提交仲裁请求)或第 9.19.1 条(b)项(i)目(A)子目项针对一缔约方的债务违约或拒不偿债行为提出的一请求不得作出有利于申请人的裁决，除非申请人承担其举证责任，证明该债务违约或拒不偿债构成对 A 节下一义务的违反，包括第 9.8 条(征收和补偿)下未给予补偿的征收。
2. 在如下情况下不得将关于一缔约方所发行债务的重组违反 A 节下一义务的请求提交 B 节(投资者-国家间争端解决)下的仲裁，如已提交则仲裁不得继续：即在提交时重组为协商重组，或在提交后改为协商重组，但关于该重组违反第 9.4 条(国民待遇)或第 9.5 条(最惠国待遇)的请求除外。
3. 尽管有第 9.19.4 条(提交仲裁请求)，但是在遵守第 2 款的前提下，另一缔约方的投资者不得根据 B 节(投资者-国家间争端解决)提交关于一缔约方所发行债务的重组违反 A 节下除第 9.4 条(国民待遇)或第 9.5 条(最惠国待遇)外一义务的请求，除非自被申请人收到根据第 9.18.2 条(磋商和谈判)提出的书面磋商请求之日后已过去 270 天。<sup>43</sup>

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<sup>43</sup> 本附件第 2 款和第 3 款不适用于根据 B 节(投资者-国家间争端解决)针对新加坡或美国提出的任何请求。

**ANNEX 9-H**

1. A decision under Australia's foreign investment policy, which consists of the *Foreign Acquisitions and Takeovers Act 1975*, *Foreign Acquisitions and Takeovers Regulations 1989*, *Financial Sector (Shareholdings) Act 1998* and associated Ministerial Statements by the Treasurer of the Commonwealth of Australia or a minister acting on his or her behalf, on whether or not to approve a foreign investment proposal, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).
2. A decision by Canada following a review under the *Investment Canada Act* (R.S.C. 1985, c.28 (1st Supp.)), with respect to whether or not to permit an investment that is subject to review, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).
3. A decision by the National Commission on Foreign Investment (*Comisión Nacional de Inversiones Extranjeras*) following a review pursuant to the entry at Annex I – Mexico – 6 with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).
4. A decision under New Zealand's *Overseas Investment Act 2005* to grant consent, or to decline to grant consent, to an overseas investment transaction that requires prior consent under that Act shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).

## 附件 9-H

1. 根据澳大利亚外国投资政策作出的关于是否批准一外国投资建议的决定不得受 B 节(投资者-国家间争端解决)或第 28 章(争端解决)下的争端解决的约束, 上述政策包括《1975 年外国收购与兼并法》、《1989 年外国收购与兼并条例》、《1998 年金融部门(持股)法》以及澳大利亚联邦财政部部长或代表他或她行事的一位部长发表的有关部长声明。
2. 加拿大在根据《加拿大投资法》(R.S.C.1985, c.28(1<sup>st</sup> Supp.))进行审查后作出的关于是否允许一项需经审查的投资的决定, 不得受 B 节(投资者-国家间争端解决)或第 28 章(争端解决)下的争端解决的约束。
3. 墨西哥外国投资国家委员会在根据附件 1-墨西哥-条目 6 进行审查之后作出的关于是否允许一项需经审查的并购的决定, 不得受 B 节(投资者-国家间争端解决)或第 28 章(争端解决)下的争端解决的约束。
4. 根据新西兰《2005 年海外投资法案》作出的同意或拒绝一项根据该法案需经事先同意的海外投资交易的决定, 不得受 B 节(投资者-国家间争端解决)或第 28 章(争端解决)下的争端解决的约束。

## ANNEX 9-I

### NON-CONFORMING MEASURES RATCHET MECHANISM

Notwithstanding Article 9.12.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it:

- (a) Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to an amendment to any non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of this Agreement for Viet Nam, with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) or Article 9.11 (Senior Management and Boards of Directors);
- (b) Viet Nam shall not withdraw a right or benefit from an investor or covered investment of another Party, in reliance on which the investor or covered investment has taken any concrete action,<sup>44</sup> through an amendment to any non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and
- (c) Viet Nam shall provide to the other Parties the details of any amendment to a non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.

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<sup>44</sup> Concrete action includes the channelling of resources or capital in order to establish or expand a business and applying for permits and licences.

## 附件 9-I

### 不符措施棘轮机制

尽管有第 9.12.1 条(c)项(不符措施),但是对于越南,在本协定对其生效之日后 3 年内:

- (a) 第 9.4 条(国民待遇)、第 9.5 条(最惠国待遇)、第 9.10 条(业绩要求)和第 9.11 条(高级管理人员和董事会)不得适用于对第 9.12.1 条(a)项(不符措施)中所指任何不符措施的修正,只要与该措施在本协定对越南生效之日的情况相比,该修正未降低该措施与第 9.4 条(国民待遇)、第 9.5 条(最惠国待遇)、第 9.10 条(业绩要求)或第 9.11 条(高级管理人员和董事会)的相符程度;
- (b) 越南不得通过对第 9.12.1 条(a)项(不符措施)中所指的任何不符措施进行修正而自另一缔约方的一投资者或一涵盖投资处撤回该投资者或该涵盖投资赖以采取任何具体行动<sup>44</sup>的权利或利益。如与该措施在紧接修正前的情况相比,该修正可降低该措施的相符程度;以及
- (c) 越南应至少在作出修正前 90 天向其他缔约方提供对第 9.12.1 条(a)项(不符措施)中所指的对任何不符措施所作任何修正的细节,如与该措施在紧接修正前的情况相比,该修正会降低该措施的相符程度。

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<sup>44</sup> 具体行动包括引导资源或资金以建立或扩大经营,并申请许可和执照。



**ANNEX 9-J****SUBMISSION OF A CLAIM TO ARBITRATION**

1. An investor of a Party may not submit to arbitration under Section B (Investor-State Dispute Settlement) a claim that Chile, Mexico, Peru or Viet Nam has breached an obligation under Section A either:

- (a) on its own behalf under Article 9.19.1(a) (Submission of a Claim to Arbitration); or
- (b) on behalf of an enterprise of Chile, Mexico, Peru, or Viet Nam, that is a juridical person that the investor owns or controls directly or indirectly under 9.19.1(b) (Submission of a Claim to Arbitration),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of Chile, Mexico, Peru or Viet Nam.

2. For greater certainty, if an investor of a Party elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of Chile, Mexico, Peru or Viet Nam, that election shall be definitive and exclusive, and the investor may not thereafter submit the claim to arbitration under Section B (Investor-State Dispute Settlement).

**附件 9-J**  
**提交仲裁请求**

1. 一缔约方的一投资者不得将下列关于智利、墨西哥、秘鲁或越南违反 A 节下一义务的请求根据 B 节(投资者-国家间争端解决)提交仲裁:

- (a) 根据第 9.19.1 条(a)项(提交仲裁请求)以自身名义提交; 或
- (b) 根据第 9.19.1 条(b)项(提交仲裁请求)代表该投资者直接或间接拥有或控制的、具有法人资格的智利、墨西哥、秘鲁或越南的一企业提交,

如该投资者或该企业在智利、墨西哥、秘鲁或越南的一法院或行政法庭的诉讼程序中已对违反 A 节下一义务的行为提出指控。

2. 为进一步明确, 如一缔约方的一投资者选择将第 1 款中所述类型的请求提交智利、墨西哥、秘鲁或越南的一法院或行政法庭, 则该选择应是最终的和排他性的, 且该投资者此后不得根据 B 节(投资者-国家间争端解决)将该请求提交仲裁。

**ANNEX 9-K****SUBMISSION OF CERTAIN CLAIMS  
FOR THREE YEARS AFTER ENTRY INTO FORCE****Malaysia**

Without prejudice to a claimant's right to submit other claims to arbitration pursuant to Article 9.19 (Submission of a Claim to Arbitration), Malaysia does not consent to the submission of a claim that Malaysia has breached a government procurement contract with a covered investment, below the specified contract value, for a period of three years after the date of entry into force of this Agreement for Malaysia. The specified contract values are: (a) for goods, SDR 1,500,000; (b) for services, SDR 2,000,000; and (c) for construction, SDR 63,000,000.

附件 9-K  
生效后 3 年内某些请求的提交

马来西亚

在不损害一申请人根据第 9.19 条(提交仲裁请求)将其他请求提交仲裁权利的前提下，在本协定对马来西亚生效之日起 3 年期限内，马来西亚不同意将关于马来西亚已违反与一涵盖投资签订的低于规定合同金额的政府采购合同的请求提交仲裁。规定合同金额为：(a)对于货物，150 万特别提款权；(b)对于服务，200 万特别提款权；以及(c)对于工程，6300 万特别提款权。

## ANNEX 9-L

### INVESTMENT AGREEMENTS

#### A. Agreements with selected international arbitration clauses

1. An investor of a Party may not submit to arbitration a claim for breach of an investment agreement under Article 9.19.1(a)(i)(C) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(C) if the investment agreement provides the respondent's consent for the investor to arbitrate the alleged breach of the investment agreement and further provides that:

- (a) a claim may be submitted for breach of the investment agreement under at least one of the following alternatives:
  - (i) the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings*, provided that both the respondent and the Party of the investor are parties to the ICSID Convention;
  - (ii) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the investor is a party to the ICSID Convention;
  - (iii) the UNCITRAL Arbitration Rules;
  - (iv) the ICC Arbitration Rules; or
  - (v) the LCIA Arbitration Rules; and
- (b) in the case of arbitration not under the ICSID Convention, the legal place of the arbitration shall be:
  - (i) in the territory of a State that is party to the New York Convention; and
  - (ii) outside the territory of the respondent.

2. Notwithstanding Article 9.21.2(b) (Conditions and Limitations on Consent of Each Party), if a claimant submits to arbitration a claim that the respondent has breached:

## 附件 9-L 投资协议

### A. 包含选定国际仲裁条款的协议

1. 一缔约方的一投资者不得根据第 9.19.1 条(a)项(i)目(C)子目(提交仲裁请求)或第 9.19.1 条(b)项(i)目(C)子目将关于违反一投资协议的一请求提交仲裁, 如该投资协议规定被申请人同意该投资者将指控违反该投资协议的行为诉诸仲裁并进一步规定:

- (a) 可将关于违反该投资协议的请求提交至至少下列一个机构:
  - (i) ICSID 公约和 ICSID 仲裁程序规则, 条件是被申请人和投资者所属缔约方均为 ICSID 公约缔约方;
  - (ii) ICSID 附加便利规则, 条件是被申请人或投资者所属缔约方其中之一为 ICSID 公约缔约方;
  - (iii) UNCITRAL 仲裁规则;
  - (iv) ICC 仲裁规则; 或
  - (v) LCIA 仲裁规则; 以及
- (b) 在仲裁未根据 ICSID 公约进行的情况下, 仲裁的法定地点应:
  - (i) 位于一属《纽约公约》缔约方的国家领土内; 及
  - (ii) 在被申请人的领土之外。

2. 尽管有第 9.21.2 条(b)项(每一缔约方同意的条件和限制), 但是如一申请人将被申请人已违反下列义务或授权的一请求提交仲裁:

- (a) an obligation under Section A pursuant to Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A); or
- (b) an investment authorisation pursuant to Article 9.19.1(a)(i)(B) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(B),

the claimant's submission of a written waiver shall not preclude its right to initiate or continue an arbitration under an investment agreement, if that investment agreement meets the criteria in paragraph 1, with respect to any measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to Arbitration).

3. If a claimant:

- (a) submits to arbitration a claim that the respondent has breached an obligation under Section A pursuant to Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A) or an investment authorisation pursuant to Article 9.19.1(a)(i)(B) or Article 9.19.1(b)(i)(B); and
- (b) submits a claim to arbitration under an investment agreement that meets the criteria in paragraph 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 of Article 9.28 (Consolidation).

**B. Certain agreements between Peru and covered investments or investors<sup>45</sup>**

1. Pursuant to Legislative Decrees 662 and 757, Peru may enter into agreements known as “stability agreements” with covered investments or investors of another Party.

2. As part of a stability agreement referred to in paragraph 1, Peru accords certain benefits to the covered investment or the investor that is a party to the agreement. These benefits typically include a commitment to maintain the

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<sup>45</sup> The fact that this Annex addresses only agreements entered into by Peru shall not prejudice the determination by a tribunal established under Section B (Investor-State Dispute Settlement) regarding whether an agreement entered into by the government of another Party meets the definition of “investment agreement” in Article 9.1 (Definitions).

- (a) A 节下一义务，根据第 9.19.1 条(a)项(i)目(A)子目(提交仲裁请求)或第 9.19.1 条(b)项(i)目(A)子目；或
- (b) 一投资授权，根据第 9.19.1 条(a)项(i)目(B)子目(提交仲裁请求)或第 9.19.1 条(b)项(i)目(B)子目，

申请人提交书面弃权不得排除其根据一投资协议对指控构成第 9.19 条(提交仲裁请求)中所指违反行为的任何措施启动仲裁或继续仲裁的权利，如该投资协议符合第 1 款中的标准。

3. 如一申请人：

- (a) 根据第 9.19.1 条(a)项(i)目(A)子目(提交仲裁请求)或第 9.19.1 条(b)项(i)目(A)子目将关于被申请人已违反 A 节下一义务的一请求提交仲裁，或根据第 9.19.1 条(a)项(i)目(B)子目或第 9.19.1 条(b)项(i)目(B)子目将关于被申请人违反一投资授权的一请求提交仲裁；及
- (b) 根据符合第 1 款标准的一投资协议将一请求提交仲裁，而此类请求包含共同法律或事实问题且产生自相同事件或情况，

则任何争端方可依照与寻求为合并审理命令所涵盖的所有争端方所达成的协议，或根据第 9.28 条(合并审理)第 2 款至第 10 款的条件，寻求一合并审理命令。

## B. 秘鲁与涵盖投资或投资者之间的某些协议<sup>45</sup>

1. 依照第 662 号和第 757 号法令，秘鲁可与另一缔约方的涵盖投资或投资者订立名为“稳定协议”的协议。
2. 作为第 1 款中所指的稳定协议的一部分，秘鲁向作为该协议一方的涵盖投资或投资者授予某些利益。这些利益通常包括关

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<sup>45</sup> 本附件仅处理秘鲁所订立的协议的事实不得损害根据 B 节(投资者-国家间争端解决)设立的仲裁庭就另一缔约方的政府所订立的协议是否符合第 9.1 条(定义)中“投资协议”的定义所作确定。



existing income tax regime applicable to such covered investment or investor during a specified period of time.

3. A stability agreement referred to in paragraph 1 may constitute one of multiple written instruments that make up an “investment agreement”, as defined in Article 9.1 (Definitions).<sup>46</sup> If that is the case, a breach of such a stability agreement by Peru may constitute a breach of the investment agreement of which it is a part.

4. If a stability agreement does not constitute one of multiple instruments that make up an “investment agreement”, as defined in Article 9.1 (Definitions), a breach of such a stability agreement by Peru shall not constitute a breach of an investment agreement.

### **C. Limitation of Mexico’s consent to arbitration**

1. Without prejudice to a claimant’s right to submit other claims pursuant to Article 9.19 (Submission of a Claim to Arbitration), Mexico does not consent to the submission of any claim to arbitration under Article 9.19.1(a)(i)(C) or 9.19.1(b)(i)(C) if the submission to arbitration of that claim would be inconsistent with the following laws with respect to the relevant acts of authority<sup>47</sup>:

- (a) *Hydrocarbons Law*, Articles 20 and 21;
- (b) *Law on Public Works and Related Services*, Article 98, paragraph 2;
- (c) *Public Private Partnerships Law*, Article 139, paragraph 3;
- (d) *Law on Roads, Bridges, and Federal Motor Carriers*, Article 80;
- (e) *Ports Law*, Article 3, paragraph 2;
- (f) *Airports Law*, Article 3, paragraph 2;
- (g) *Regulatory Law of the Railway Service*, Article 4, paragraph 2;

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<sup>46</sup> For greater certainty, for multiple written instruments to make up an “investment agreement”, as defined in Article 9.1 (Definitions), one or more of those instruments must grant rights to the covered investment or the investor as defined in subparagraph (a), (b) or (c) of that definition. A stability agreement may constitute one of multiple written instruments that make up an “investment agreement” even if the stability agreement is not itself the instrument in which such rights are granted.

<sup>47</sup> For greater certainty, the term “act of authority” includes omissions.

于在一规定期限内维持适用于该涵盖投资或投资者的现行所得税制度的承诺。

3. 第 1 款中所指的稳定协议可构成组成如第 9.1 条(定义)中所定义的“投资协议”的多份书面文件之一。<sup>46</sup>如情况确实如此, 秘鲁对此种稳定协议的违反可构成对该稳定协议为其组成部分的的投资协议的违反。

4. 如稳定协议不构成组成第 9.1 条(定义)所定义“投资协议”的多份书面文件之一, 则秘鲁对此种稳定协议的违反不构成对投资协议的违反。

### C. 墨西哥对仲裁的同意的限制

1. 在不损害申请人根据第 9.19 条(提交仲裁请求)提交其他请求的权利的前提下, 如申请人根据第 9.19.1 条(a)项(i)目(C)子目或第 9.19.1 条(b)项(i)目(C)子目针对主管机关相关行为<sup>47</sup>所提交仲裁的请求将与下列法律不符, 则墨西哥不同意将任何此类请求提交仲裁:

- (a) 《碳氢化合物法》, 第 20 条和第 21 条;
- (b) 《公共工程及相关服务法》, 第 98 条第 2 款;
- (c) 《公私合作法》, 第 139 条第 3 款;
- (d) 《道路、桥梁和联邦汽车承运人法》, 第 80 条;
- (e) 《港口法》, 第 3 条第 2 款;
- (f) 《机场法》, 第 3 条第 2 款;
- (g) 《铁路服务监管法》, 第 4 条第 2 款;

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<sup>46</sup> 为进一步明确, 对于组成第 9.1 条(定义)所定义的一“投资协议”的多份书面文件, 这些文件中的一份或多份必须向涵盖投资或投资者授予该定义(a)项、(b)项或(c)项中所定义的权利。一稳定协议可构成组成一“投资协议”的多份书面文件之一, 即使该稳定协议本身并不是授予此类权利的文件。

<sup>47</sup> 为进一步明确, “主管机关的行为”一词包括不作为。

- (h) *Commercial and Navigation Maritimes Law*, Article 264, paragraph 2;
- (i) *Civil Aviation Law*, Article 3, paragraph 2; and
- (j) *Political Constitution of the United Mexican States*, Article 28, paragraph 20, subparagraph VII, and *Federal Telecommunications and Broadcasting Law*, Article 312,

provided, however, that the application of the provisions referred to in subparagraphs (a) through (i) shall not be used as a disguised means to repudiate or breach the investment agreement.

2. If any law referred to in paragraph 1 is amended to permit the submission to arbitration of such a claim after the entry into force of this Agreement for Mexico, the limitation of Mexico's consent specified in paragraph 1 shall not apply with respect to that law.<sup>48</sup>

#### **D. Specific Canadian entities under subpart (c) of definition**

For Canada, authority at the central level of government includes entities listed under Schedule III of the *Financial Administration Act* (R.S.C. 1985, c. F-11), and port or bridge authorities, that have concluded an investment agreement under subpart (c) of the definition of "investment agreement" only if the government directs or controls the day to day operations or activities of the entity or authority in carrying out its obligations under the investment agreement.

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<sup>48</sup> For greater certainty, when any law referred to in paragraph 1 is amended consistent with paragraph 2, any subsequent amendment of that law may not re-establish the applicability of paragraph 1.

- (h) 《沿海商业和航运法》，第 264 条第 2 款；
- (i) 《民用航空法》，第 3 条第 2 款；以及
- (j) 《墨西哥合众国政治组成法》，第 28 条第 20 款第 7 项，以及《联邦电信和广播法》，第 312 条，

但条件是(a)项至(i)项中所指规定的适用不得用作拒不履行或违反投资协议的变相手段。

2. 如第 1 款中所指的任何法律在本协定对墨西哥生效之后经修正而允许将此种请求提交仲裁，则第 1 款中所规定的对墨西哥同意所设限制不得再适用于该法律。<sup>48</sup>

#### D. 定义(c)子节下加拿大的特定实体

对于加拿大，中央政府一级主管机关包括已缔结“投资协定”定义(c)子节下一投资协议的《金融管理法》(R.S.C.1985, c. F-11)表 3 下所列实体及港口或桥梁主管机关，且仅当政府指示或控制上述实体或机关履行其在投资协议项下义务的日常经营或活动时方可包括在内。

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<sup>48</sup> 为进一步明确，如第 1 款中所指的任何法律以符合第 2 款的方式予以修正，则此后对该法律的任何修正不得重新确立第 1 款的适用。