

Chapter X: Investment

Article X.01 General Provisions

1. The Parties recognise the increasing importance of investment in their economies. In their efforts to gradually develop and broaden their relations, the Parties shall cooperate in the WTO and plurilateral fora, with the aim of creating the most favourable conditions for achieving further liberalisation and additional mutual opening of markets for investment.

2. With a view to developing and deepening their relations under this Agreement, the Parties agree that within two (2) years of the date of entry into force of this Agreement, they shall review developments related to investment, and consider the need for further disciplines in this area.

3. Upon the request of a Party, the other Party shall provide information, on a timely basis, on measures that may have an impact on investment.

Article X.02 Definitions

For the purposes of this Chapter:

investors means, for either Party, the following subjects who have made investments in the territory of the other Party in accordance with the legislation of the latter and the provisions of this Chapter:

- (a) any natural person who is a national of one of the Parties; or
- (b) legal persons, including companies, business associations, corporations, branch offices and any other organization duly incorporated or constituted in accordance with the laws of that Party, which has its seat in the territory of that Party and carries on business in the territory of that Party whether or not it is for profit;

investment means any kind of asset, defined in accordance with the laws of the host country, which the investor of one Party invests in the territory of the other Party in accordance with the latter's laws and regulations, and includes, in particular, though not exclusively:

- (a) movable and immovable property and any other rights in rem such as mortgages, liens or pledges, and similar rights;
- (b) shares, stock, securities and debentures of companies or any other form of participation in a company;
- (c) claims to money or to any performances having an economic value directly related to an investment;
- (d) intellectual property rights, including copyright and related rights, trade marks, geographical indications, drawings, models and industrial designs, patents, layout-designs, distinctive signs and know-how;

- (e) rights conferred by law or under contract, to undertake any economic and commercial activity, including any rights to search for, cultivate, extract or exploit natural resources.

Any change in the form of an investment does not affect its character as an investment; and

returns means all amounts yielded by an investment and in particular, though not exclusively, profits, interests, capital gains, dividends, royalties, fees or other current income.

Article X.03 Promotion and Admission

1. Each Party shall encourage and create favorable conditions in its territory for investments of the other Party, and shall admit such investments in accordance with its laws and regulations.
2. Once a Party has admitted an investment in its territory, it shall provide, in accordance with its laws and regulations, all necessary permits related to such investment.

Article X.04 Protection

1. Investments of either Party shall at all times be accorded fair and equitable treatment, and shall enjoy full legal protection and security in accordance with international law.
2. Neither of the Parties shall obstruct, in any manner, either through arbitrary or discriminatory measures, the enjoyment, use, management, conduct, operation and sale or other disposition thereof of such investments. Each Party shall comply with any obligation assumed regarding investments of the other Party.
3. Returns from investments and in the event of their re-investment the returns therefrom shall enjoy the same protection as the investment.

Article X.05 National and Most Favored Nation Treatment

1. In accordance with its laws and regulations, each Party shall accord to investments of the other Party in the former's territory, treatment no less favorable than that granted to investment of its own investors.
2. Each Party shall accord to investments and returns of the other Party in the former's territory, treatment no less favorable than that granted to investments of investors of any non-Party.
3. Each Party shall accord the treatment which is more favorable to the investment of the other Party, either national or most favored nation treatment.
4. Nothing in this Article shall be construed so as to oblige a Party to extend to investments of investors of the other Party advantages resulting from any existing or future association or participation in a free trade area, customs union, common market, economic and monetary union or any other similar institution of economic integration.

5. Nothing in this Article shall be construed so as to oblige a Party to extend to investments of investors of the other Party deductions, fiscal exemptions or any other similar advantages resulting from double taxation agreements or any other agreement regarding tax matters negotiated by one Party and any other non-Party.

Article X.06 Expropriation and Compensation

1. Investments of either Party in the territory of the other Party shall not be nationalized, expropriated or subjected to measures having an equivalent effect (hereinafter referred to as "expropriation"), except in cases when any of such measures have been adopted for the public good, in accordance with the due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation.

2. The compensation shall amount to the market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge, whichever is earlier. It shall include interest from the date of dispossession of the expropriated property until the date of payment. Interest shall be based on the average deposit rate prevailing in the national banking system of the Party where the expropriation was made. Compensation shall be paid without undue delay, in convertible currency, and be effectively realizable and be freely transferable.

3. The investor affected shall have a right, under the law of the Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

4. Nothing set out in this Article shall affect the ability of a government of a Party to negotiate with the other Party or any other non-Party, quantitative restrictions of its exports or its ability to assign export quotas negotiated through appropriate mechanisms and criteria. Consequently, any dispute in this regard will be resolved in accordance with the trade agreements applicable between the Parties. Thus, nothing in this Article shall be used as a basis for an investor to argue that the effects derived from the distribution or administration of a quota represent an indirect expropriation.

Article X.07 Compensation for Losses

Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, insurrection, riot or any other similar event, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Party accords to investments of its own investors or investments of investors of any non-Party, whichever is more favourable to the investment of the investor of the former Party. All payments that may result shall be deemed freely transferable.

Article X.08 Transfers

1. Each Party shall permit investors of the other Party, in accordance with its laws and regulations, the unrestricted transfer of payments related to their

investments. Such transfers include, in particular, though not exclusively, the following:

- (a) initial capital and additional amounts needed to maintain, expand and develop the investment;
- (b) funds in repayment of loans made pursuant to Article X.02 subparagraph (c) under the definition “**investment**”;
- (c) compensation referred to in Articles X.06 and X.07;
- (d) proceeds derived from the partial or total sale or liquidation of the investment;
- (e) proceeds derived from any compensation owed to an investor by virtue of a resolution of the dispute settlement procedures established by this Chapter;
- (f) returns;
- (g) the earnings of nationals of one Party who are allowed to work in connection with an investment in the territory of the other.

2. Transfers referred to in this Article shall be effected in freely convertible currency at the applicable exchange rate on the date of the transfer without undue delay on a non-discriminatory basis. Transfers shall be considered to have been made “without undue delay” when they have been made within the period normally necessary for the completion of the transfer.

3. Notwithstanding the provisions of paragraph 1 of this Article, each Party shall be entitled, under circumstances of exceptional or serious balance of payments difficulties, to limit transfers temporarily, on a fair and non-discriminatory basis, and in accordance with internationally accepted criteria. Limits on transfers adopted or maintained by a Party, as well as their elimination, under this paragraph shall be notified promptly to the other Party.

4. When transfers are restricted by a Party due to balance of payments difficulties, the Party shall implement measures or a programme in accordance with the rules of the International Monetary Fund.

5. Notwithstanding the above, a Party may prevent a transfer through the equitable and non-discriminatory application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or administrative offenses;
- (d) failure to report transfers of currency or other monetary instruments;
or
- (e) ensuring the satisfaction of judgments and awards in adjudicatory proceedings.

Article X.09 Application of Other Rules

If the laws of one of the Parties or any current or future obligation under International Law, provide more favourable conditions than those granted by this Chapter to investments of investors of the other Party, the most favourable provision shall apply.

Article X.10 Subrogation

If a Party or its designated agency, makes a payment under an indemnity against non-commercial risks given in respect of an investment in the territory of the other Party, the latter Party shall recognize the assignment, under the law of that country, of any right or claim from the investor to the former Party, or its designated agency, as well as the entitlement by virtue of subrogation, to exercise the rights and enforce the claims of that investor. This subrogation shall entitle the former Party, or its designated agency, to assert any such right or claim to the same extent as its predecessor.

Article X.11 Settlement of Investment Disputes Between One Party and Investors of the Other Party

1. Any investment dispute which may arise between one Party and an investor of the other Party with respect to matters regulated by this Chapter, shall be notified in writing by the investor to the host Party. Such notification shall include in detail all relevant information. To the extent possible, the dispute shall be settled amicably between the parties.

2. If a dispute has not been settled amicably within a period of six (6) months from the date of the notification referred in paragraph 1 above, it may be submitted, at the choice of the investor concerned, either to the competent Courts or Administrative Tribunals of the Party in whose territory the investment was made, or to international arbitration. Where the dispute is referred to international arbitration, the investor may submit the dispute to either:

- (a) the International Centre for the Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of other States" opened for signature at Washington D.C. on 18 March 1965, provided both Parties are signatories of the ICSID Convention; or
- (b) the Additional Facility Rules of ICSID, provided that one of the Parties, but not both, is a party to the ICSID Convention; or
- (c) an ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), where none of the Parties is a signatory of the ICSID Convention.

3. Once the investor has submitted the dispute either to a competent Tribunal of the disputing Party or to an arbitral procedure, the selection of one or the other shall be final.

4. The arbitral award shall be based on:

- (a) the provisions of this Chapter and any other binding agreements between the Parties;
- (b) the national laws of the Party where the investment was made, including the rules dealing with conflicts of laws; and
- (c) the rules and generally recognized principles of International Law.

5. The arbitral awards shall be final and binding on both parties to the dispute. Each Party assumes the commitment to implement the awards in accordance with its national laws.

6. The Parties shall abstain from addressing through diplomatic channels any matter submitted either to the domestic tribunals or to arbitration tribunals according to the terms of this Article, until such proceedings are concluded. Once the judicial proceedings or the international arbitration is concluded, a Party shall not make any diplomatic demand relating to the dispute, except where the disputing Party has not complied with the judicial or arbitral decision.