

- (b) reviewing the implementation and operation of this Chapter;
 - (c) reviewing and discussing issues concerning the effective implementation of Articles 77 and 81;
 - (d) reporting the outcome of discussions of the Sub-Committee to the Joint Committee; and
 - (e) carrying out any other functions as may be delegated by the Joint Committee in accordance with Article 8.
2. The Sub-Committee shall be:
- (a) composed of representatives of the Parties, and where appropriate, may invite representatives of relevant entities other than of the Parties with the necessary expertise relevant to the issues to be discussed; and
 - (b) co-chaired by officials of the Parties.

3. The Sub-Committee shall hold its inaugural meeting within one year of the entry into force of this Agreement. Subsequent meetings shall be held at such venues and times as the Parties may mutually agree.

CHAPTER 9 INVESTMENT

Article 87 Scope of Application

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
- (a) investors of the other Party; and
 - (b) investments of investors of the other Party in the territory of the country of the former Party.
2. This Chapter shall apply to existing investments at the date of entry into force of this Agreement, as well as to investment made after the entry into force.
3. This Chapter shall not apply to claims or disputes arising out of events which occurred prior to its entry into force.
4. In the event of any inconsistency between this Chapter and Chapter 8:
- (a) with respect to matters covered by Articles 89, 90 and 92, Chapter 8 shall prevail to the extent of inconsistency; and

- (b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of the inconsistency.

Article 88

Definitions

1. For the purposes of this Chapter:

- (a) An enterprise is:
 - (i) “owned” by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and
 - (ii) “controlled” by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.
- (b) “enterprise of a Party” means any legal entity duly constituted or otherwise organised under applicable laws of the country of a Party, whether for profit or otherwise and whether privately-owned or governmentally-owned, including any corporation, partnership, trust, joint venture, sole proprietorship, organisation or association or branch of a company;
- (c) “freely usable currency” means any currency that is widely used to make payments for international transactions and widely traded in the international principal exchange markets as defined under the Articles of Agreement of the International Monetary Fund, as may be amended;
- (d) “investments” means every kind of asset owned or controlled, directly or indirectly, by an investor of a Party in the territory of the country of the other Party, in accordance with the latter’s laws, regulations and national policies, including:
 - (i) shares, stocks and debentures of companies or interests in the property of such companies;
 - (ii) a claim to money or a claim to any performance having financial value associated with the investment;
 - (iii) rights under contract, including turnkey, construction, management, production, concessions or revenue-sharing contracts;
 - (iv) intellectual property rights;

- (v) movable and immovable property and any other property rights such as mortgages, liens or pledges.

The term “investment” also includes amounts yielded by investments, in particular, profits, interests, capital gains, dividends, royalties and fees. Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investments.

Note: Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.

(e) “investor” means:

- (i) any natural person having the citizenship of or the right of permanent residence in the territory of the country of a Party in accordance with its laws, regulations and national policies; or
- (ii) an enterprise of a Party;

(f) “measures adopted or maintained by a Party” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form affecting investors or investments, adopted or maintained by:

- (i) central, regional or local governments or authorities; or
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

Note: The term “regional” refers to a state of Malaysia or a province of Pakistan.

Article 89

National Treatment

Each Party shall within its country’s territory accord to investors of the other Party and to their investments, treatment no less favourable than that it accords in like circumstances to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments (hereinafter referred to in this Chapter as “investment activities”).

Article 90
Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party and to their investments, treatment no less favourable than that it accords in like circumstances, to investors of a third State and to their investments, with respect to investment activities.
2. This Article shall not apply to treatment accorded under any bilateral, regional or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

Article 91
Promotion and Protection of Investment

1. Each Party shall encourage and create favourable conditions for investors of the other Party to invest in its country's territory and take all possible measures for protection of investments, in accordance with the laws and regulations of its country and national policies.
2. Investments of investors of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the country of the other Party.

Article 92
Prohibition of Performance Requirements

1. For the purposes of this Chapter, the Parties reaffirm their commitments to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement (hereinafter referred to as "TRIMS") and hereby incorporate the provisions of the TRIMS, as may be amended, as part of this Chapter.
2. A Party shall, upon notification by the other Party, promptly convene consultations with the other Party on any matter relating to this Article that affects the other Party's investors and their investments.

Article 93
Reservations

1. Articles 89, 90 and 92 shall not apply to:
 - (a) any non-conforming measure that is maintained by:
 - (i) the central government of the country of a Party; or
 - (ii) a state of Malaysia or a province of Pakistanas set out in sectors, sub-sectors and activities specifically listed in Annex 7;

- (b) any non-conforming measure by a local government of the country of a Party;
- (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); and
- (d) an amendment or modification of any measure referred to in subparagraphs (a) and (b), provided that the amendment does not decrease the level of conformity of the measure, as it existed immediately before the amendment or modification, with Articles 89, 90 and 92.

2. Each Party reserves the right to adopt or maintain any measure not conforming with the obligations under Article 89 and Article 90 and Article 92 for sectors, sub-sectors and activities listed in Annex 7 other than those referred to in paragraph 1 of this Article.

3. Any amendment or modification of an existing measure or adoption of a new measure for sectors, sub-sectors or activities referred to in paragraph 2 of this Article shall not be more restrictive to existing investors and investments than the measure applied to such investors and investments immediately before such amendment or modification or adoption, unless specifically indicated in the sectors, sub-sectors or activities listed in Annex 7.

4. Neither Party may, under any measure adopted pursuant to paragraph 2 of this Article after the entry into force of this Agreement require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authority.

5. In cases where a Party makes an amendment or modification of existing measures or adopt new measures with respect to sectors, sub-sectors or activities listed in Annex 7, that Party shall:

- (a) promptly notify the other Party;
- (b) provide, upon request by the other Party, particulars of the amendment, modification or adoption of new measures to the other Party; and
- (c) hold, upon request by the other Party, consultations in good faith with that other Party with a view to achieve mutual satisfaction.

6. Each Party shall endeavour, where appropriate, to reduce or eliminate the reservations specified in Annex 7.

7. Articles 89, 90 and 92 shall not apply to:

- (a) government procurement; and
- (b) measures affecting investments adopted or maintained pursuant to Chapter 8 to the extent that they relate to the supply of any specific service through commercial presence.

8. Notwithstanding the provisions of Article 89 and 90 each Party may prescribe special formalities in connection with investment activities of investors of the other Party in its country's territory, such as the compliance with registration requirements, provided that such special formalities do not impair the substance of the rights under this Chapter.

Article 94 Expropriation

1. Neither Party shall take any measures of expropriation or nationalisation, or measures amounting thereto, against the investments of an investor of the other Party, except under the following conditions:

- (a) the measures are taken for a lawful or public purpose and under due process of law;
- (b) the measures are non-discriminatory;
- (c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation.

2. Such compensation shall amount to the fair market value of the investments affected immediately before the measure of dispossession became public knowledge, and it shall be effectively realisable and freely transferable in freely usable currencies from the country of the Party. Any unreasonable delay in payment of compensation shall carry an interest at prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.

3. The investor affected shall have a right to review, by a judicial or other independent authority of the Party which conducted the expropriation, of its case and of the valuation of its investment in accordance with the laws and regulations of the country of the hosting Party and the principles set out in this Article.

4. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the Agreement on Trade Related Aspects of Intellectual Property Rights in Annex 1A to the WTO Agreement (hereinafter referred to as "TRIPS").

Article 95
Protection from Strife

1. Investors of one Party whose investments in the territory of the country of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the country of the latter Party 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 investors of any third State.

2. Any payments made pursuant to paragraph 1 of this Article shall be effectively realizable, freely convertible and freely transferable.

Article 96
Repatriation of Investment

1. Each Party shall permit all transfers relating to investment to be made freely and without delay into and out of its country's territory in any freely usable currency. Such transfers include:

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) the net profits, dividends, royalties, technical fees, interest and other current incomes, accruing from any investment of the investors of the other Party;
- (c) the proceeds from the total or partial sale or liquidation of any investment made by investors of the other Party;
- (d) funds in repayment of borrowings or loans given by investors of one Party to the investors of the other Party which both Parties have recognised as investment;
- (e) the net earnings and other compensations of nationals of the country of one Party who are employed and allowed to work in connection with an investment in the territory of the country of the other Party;
- (f) the compensation provided for in Articles 94 and 95;
- (g) payments arising out of the settlement of a dispute under Article 97.

2. The exchange rates applicable to such transfers in paragraph 1 of this Article shall be the rate of exchange prevailing at the time of remittance.

3. The Parties undertake to accord to the transfers referred to in paragraph 1 of this Article a treatment as favourable as that accorded to transfer originating from investments made by investors of any third State.

4. Notwithstanding the provisions referred to in paragraph 1 of this Article, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of the creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offences;
- (d) social security, public retirement or compulsory savings scheme;
- (e) compliance with the judgments in judicial or administrative proceedings;
- (f) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

5. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

Article 97 Subrogation

If a Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment, the other Party shall, without prejudice to the rights of the former Party, recognise the transfer of any right or title of such investors to the former Party or its designated agency and the subrogation of the former Party or its designated agency to any right or title. The subrogation rights or claims shall not exceed the original rights or claims of such investors.

Article 98 Settlement of Investment Disputes between a Party and an Investor of the other Party

1. For the purposes of this Chapter, an “investment dispute” is a dispute between a Party and the investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Chapter with respect to the investments of the investor of the other Party.

Note: For greater certainty, where an agreement executed between an investor of a Party and the other Party provides for any arbitration or dispute resolution procedures, then any dispute which arises or occurs

between the parties in relation to anything or matter arising out of or in connection with that agreement shall be referred to and resolved by arbitration or dispute resolution provided in that agreement and recourse may only be made to the arbitration procedure in this Article where any breach expressly and directly arises or occurs between the parties in relation to breaches of any provisions of this Chapter.

2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as “disputing investor”) from seeking administrative or judicial settlement available within the country of the Party that is a party to the investment dispute (hereinafter referred to in this Article as “disputing Party”).

3. An investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute.

4. An investor shall not be entitled to make a claim, if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

5. If the investment dispute cannot be settled through such consultations referred to in paragraph 3 of this Article within six months from the date on which the disputing investor requested for the consultations in writing and if the disputing investor has not submitted the investment dispute for resolution under administrative or judicial settlement, the disputing investor may:

- (a) if agreed by the disputing Party, submit the investment dispute to the Kuala Lumpur Regional Centre for Arbitration for settlement by conciliation or arbitration;
- (b) submit the investment dispute to conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, 18 March 1965, as may be amended;
- (c) submit the investment dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on 28 April 1976, as may be amended; or
- (d) if agreed with the disputing Party, submit the investment dispute to arbitration in accordance with other arbitration rules.

6. The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified in this Article.

7. The disputing investor who intends to submit the investment dispute to conciliation or arbitration pursuant to paragraph 5 of this Article shall give to the disputing Party written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify:

- (a) the name and address of the disputing investor;
- (b) the specific measures of the disputing Party at issue and a summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Chapter alleged to have been breached; and
- (c) the dispute settlement procedures set forth in paragraph 5 of this Article which the disputing investor will seek.

8. Notwithstanding paragraph 5 of this Article and subject to the laws of the disputing Party, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or a court of justice.

9. Unless the disputing parties agree otherwise, the arbitration shall be held in the territory of the country of the disputing Party.

10. The award shall include:

- (a) judgment whether or not there has been a breach by the disputing Party of any rights conferred by this Chapter in respect of the disputing investor and its investments; and
- (b) remedy if there has been such breach. The remedy shall be limited to one or both of the following:
 - (i) payment of monetary damages and applicable interest; and
 - (ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

Costs may also be awarded in accordance with the applicable arbitration rules.

11. The award rendered in accordance with paragraph 10 of this Article shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of any such award and provide in the territory of the country of the disputing Party for the enforcement of

such award in accordance with the relevant laws and regulations of its country.

12. Neither Party shall, in respect of an investment dispute which one of its investors has submitted to arbitration in accordance with paragraph 5 of this Article, bring an international claim before another forum unless the other Party has failed to abide by and comply with the award rendered in such investment dispute.

13. This Article shall not apply to any dispute arising between a Party and an investor of the other Party on any right or privileges conferred or created by Article 89 and 92.

14. An investor of a Party whose investments are not made in compliance with the laws, regulations and national policies of the other Party shall not:

- (a) be entitled to submit an investment dispute to conciliation or arbitration referred to in paragraph 5 of this Article; and
- (b) resort to dispute settlement procedures under Chapter 12 as a means to settle the investment disputes between the investor and the other Party.

Article 99 **Measures to Safeguard Balance-of-Payments**

1. A Party may adopt or maintain measures not conforming with its obligations under Article 89 relating to cross-border capital transactions and Article 98:

- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof, or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management in particular, monetary and exchange rate policies.

2. The measures referred to in paragraph 1 of this Article shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) be applied in such a manner that the other Party is treated no less favourably than any third State;
- (c) not exceed those necessary to deal with the circumstances set out in paragraph 1 of this Article;
- (d) be promptly notified to the other Party; and

- (e) be temporary and be phased out progressively as the situation specified in paragraph 1 of this Article improves.

Article 100

Prudential Measures

Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

Note: "financial services" shall have the same meaning as in subparagraph (a) of paragraph 5 of the Annex on Financial Services to the GATS.

Article 101

Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to an investment of such investor if investors of a third State own or control the enterprise, and the denying Party:

- (a) does not maintain diplomatic relations with the third State; or
- (b) adopts or maintains measures with respect to the third State that prohibits transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to investments of such investor if investors of a third State own or control the enterprise. A Party may also deny the benefits of this Chapter to an investor of the other Party if the investor has no substantial investment or business activities in the Party under whose laws it is constituted or organised.

Note: In order to prevent the possibility of companies of a third State unduly benefiting from this Agreement, companies of a third State registered in another Party, their offices, liaison offices, "shell companies" and "mail box companies" and companies specifically established for providing certain services to their parent companies are deemed as investors which have no substantial investment or business activities in the territory of the

country of the Party under whose laws it is constituted or organised.

Article 102

Facilitation of Movement of Investors

1. Subject to its immigration laws, regulations and national policies relating to entry, stay and authorisation to work, each Party shall grant entry, temporary stay and authorisation to work to investors, and executives, managers and members of the board of directors of an enterprise of the other Party, for the purposes of establishing, developing, administering or advising on the operation in the country of the former Party of an investment to which they, or an enterprise of the other Party that employs such executives, managers and members of the board of directors, have committed or are in the process of committing a substantial amount of capital or other resources, so long as they continue to meet the requirements of this Article.

2. Each Party shall, to the extent possible, make publicly available, requirements and procedures for application for a renewal of the period of temporary stay, a change of status of temporary stay or an issuance of a work permit for a natural person of the other Party who has been granted entry and temporary stay with respect to an investment. Each Party shall endeavour to facilitate the procedures to the extent possible, in accordance with its laws and regulations.

Article 103

Sub-Committee on Investment

1. For the purposes of effective implementation of this Chapter, the functions of the Sub-Committee on Investment (hereinafter referred to in this Article as “the Sub-Committee”) established in accordance with Article 9 shall be to:

- (a) exchange information on any matters related to this Chapter;
- (b) review and monitor the implementation and operation of this Chapter and the reservations set out in the Annex;
- (c) discuss cooperation in promoting and facilitating investments between the countries of the Parties;
- (d) discuss any issues related to this Chapter;
- (e) report to the Joint Committee; and
- (f) carry out any other functions as may be delegated by the Joint Committee

3. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

4. The Sub-Committee shall:
 - (a) comprise representatives of the Parties; and
 - (b) co-chaired by government officials of the Parties.

CHAPTER 10 INTELLECTUAL PROPERTY

Article 104 Principles

1. The Parties recognise the importance of intellectual property in promoting economic and social development, particularly in the new digital economy, technological innovation and trade.
2. The Parties recognise the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.

Article 105 Observance of International Obligations

The Parties reaffirm and shall comply with their existing rights and obligations with respect to each other under the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which they are both parties.

Article 106 Cooperation

The Parties shall, subject to the terms of this Agreement and the national laws, regulations and policies from time to time in force in their respective countries, endeavour to strengthen, promote and develop cooperation in the area of intellectual property. Such cooperation may, *inter alia* include:

- (a) exchange of information relating to developments in intellectual property policy in their respective agencies;
- (b) exchange of information on the implementation of intellectual property systems, aimed at promoting the efficient registration of intellectual property rights;
- (c) promotion of the development of contacts and cooperation among their respective agencies, including enforcement agencies, educational institutions and other relevant organisations with an interest in the field of intellectual property;