

CHAPTER EIGHT

INVESTMENT

第八章

投资

Section A – Investment

A部分 – 投资

Article 8.1: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
- (a) investors of the other Party;
 - (b) covered investments; and
 - (c) with respect to Articles 8.8, 8.10, and 8.16, all investments in its territory.
2. For greater certainty, this Chapter does not apply 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.
3. For the purposes of this Chapter, measures adopted or maintained by a Party means measures adopted or maintained by:
- (a) a national, sub-national, or local government and authority; or
 - (b) a non-governmental body of a Party in the exercise of powers delegated by a national, sub-national, or local government and authority of the Party.

Article 8.2: Relation to Other Chapters

1. In the event of an inconsistency between this Chapter and another Chapter, the other Chapter prevails to the extent of the inconsistency.

条款8.1：范围和覆盖范围

1. 本章适用于一方采取或维持的与以下内容相关的措施：
- (a) 另一缔约方投资者；(b) 受保护投资；以及(c) 关于条款8.8、8.10和8.16，其领土内的所有投资。
2. 为了更明确起见，本章不适用于在本协议生效日期之前发生的行为或事实，也不适用于在本协议生效日期之前终止的情况。
3. 就本章而言，一方采取或维持的措施是指由以下一方采取或维持的措施：
- (a) 国家级、次国家级或地方政府和机构；或 (b) 一方非政府机构在行使由该方的国家级、次国家级或地方政府和机构授予的权力时采取或维持的措施。

第8.2条：与其他章节的关系

1. 当本章与其他章节之间出现不一致时，以不一致的范围为准，其他章节优先适用。

2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of 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 applies to measures adopted or maintained by the Party relating to the posted bond or financial security to the extent that such bond or financial security is a covered investment.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Ten (Financial Services).

Article 8.3: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the 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 of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

2. 一方要求另一方服务供应商在跨境提供服务时提供保证金或其他形式的金融担保，这本身并不使本章适用于该方为该跨境提供服务而采取或维持的措施。本章适用于该方为保证金或金融担保而采取或维持的措施，前提是该保证金或金融担保属于受保护投资。
3. 本章的规定不适用于一方为实施第十章（金融服务）的规定而采取或维持的措施。

第8.3条：国民待遇

1. 每一方应给予另一方投资者不低于其在本方领土内，在类似情况下，给予其本国投资者的待遇，包括设立、收购、扩张、管理、经营、运营以及出售或其他处置投资。
2. 每一方应给予受保护投资不低于其在本方领土内，在类似情况下，给予其本国投资者的投资的待遇，包括设立、收购、扩张、管理、经营、运营以及出售或其他处置投资。
3. 一方根据第1段和第2段给予的待遇，对于次国家级政府而言，应不低于该次国家级政府在与该次国家级政府相同的情况下给予其组成部分的缔约方的投资者和投资者的投资的待遇。

Article 8.4: Most-Favoured-Nation Treatment^{1,2}

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

Article 8.5: Minimum Standard of Treatment³

1. Each Party shall accord to covered investments treatment in accordance with customary international law, 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 minimum standard of treatment to be accorded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.
3. The obligation in paragraph 1 to provide:

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

¹ For greater certainty, the treatment accorded by a Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-party.

² For greater certainty, treatment “with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments” referred to in paragraphs 1 and 2 does not encompass Investor-State Dispute Settlement mechanisms, such as those in Section B of this Chapter that are provided for in international treaties or trade agreements.

³ This Article shall be interpreted in accordance with Annex 8-A.

第8.4条：最惠国待遇^{1,2}

1. 每一方应给予另一方投资者不低于其在该次国家级政府相同的情况下给予非方投资者的待遇，就其在领土内设立、收购、扩张、管理、经营、运营和出售或其他处置投资而言。
2. 每一方应给予受保护投资不低于其就非方投资者的投资在设立、收购、扩张、管理、经营、运营及出售或其他处置在其领土内的投资方面，在类似情况下所给予的待遇。

第8.5条：最低标准待遇³

1. 每一方应根据习惯国际法给予受保护投资待遇，包括公平公正待遇和充分保护与安全。
2. 为进一步明确，第1段规定了外国人习惯国际法最低待遇标准作为应给予受保护投资的最低标准待遇。第1段中的“公平公正待遇”和“充分保护与安全”概念不需要给予超出或附加于外国人习惯国际法最低待遇标准所要求的待遇。
3. 第1段规定的义务包括：

(a) “公平公正待遇”包括根据正当程序原则，在刑事、民事或行政司法程序中不得拒绝正义的义务；以及

¹ 为明确起见，根据本条款一方给予次国家级政府的待遇，是指在该次国家级政府与第三方投资者及其投资在类似情况下给予的待遇。

² 为明确起见，第1段和第2段所述的“与投资的设立、收购、扩张、管理、经营、运营及出售或其他处置有关的待遇”不包括投资者-国家争端解决机制，例如本章节B部分中根据国际条约或贸易协定提供的此类机制。

³ 本条款应根据附件8-A进行解释。

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

4. A breach of another provision of this Agreement, or of a separate international agreement, does not establish a breach of this Article.

Article 8.6: Compensation for Losses

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

2. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 8.3, but for Article 8.9.5(b).

Article 8.7: Senior Management and Boards of Directors

1. A Party shall not require an enterprise of that Party, which is a covered investment, to appoint natural persons of a particular nationality to senior management positions.

2. A Party may require that a majority of the board of directors, or a committee, of an enterprise of that Party, which is a covered investment, be of a particular nationality, or resident in the territory of that Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 8.8: Performance Requirements

1. A Party shall not, in connection with the establishment, acquisition, expansion, management, conduct, or operation of an investment in its territory of an investor of a Party or of a non-party, impose or enforce a requirement or enforce a commitment or undertaking⁴:

(a) to export a given level or percentage of goods or services;

(b) “充分保护与安全”要求每一方根据习惯国际法提供所需的警察保护水平。

4. 对本协议另一条款或单独国际协议的违反，不构成对本条的违反。

第8.6条：损失补偿

1. 每一方应给予另一方投资者和受保护投资以非歧视待遇，就其采取或维持的、与在其领土内因武装冲突或内乱而遭受损失的投资相关的措施而言。

2. 第1段不适用于与补贴或津贴相关的现有措施，但与第8.3条不一致，除非涉及第8.9.5(b)条。

第8.7条：高级管理人员和董事会

1. 一方不得要求其一方企业（该企业为受保护投资）任命特定国籍的自然人为高级管理人员。

2. 一方可以要求，该方所属的企业（受保护投资）的董事会或委员会中的多数成员具有特定的国籍，或居住在该方的领土内，前提是该要求不会实质性损害投资者对其投资行使控制权。

第8.8条：业绩要求

1. 一方在其领土内设立、收购、扩张、管理、开展或运营一方或非一方投资者的投资时，不得强加或强制要求或强制承诺或保证⁴：

(a) 出口一定水平或百分比的货物或服务；

⁴ For greater certainty, a condition for the receipt or continued receipt of an advantage pursuant to paragraph 3 does not constitute a “commitment or undertaking” for the purposes of this paragraph.

⁴ 为明确起见，根据第3段获得或继续获得第3段所述利益的条件，不构成本段意义上的“承诺或保证”。

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

2. A measure that requires an investment to use a technology to meet generally applicable health, safety, or environmental requirements is not to be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 8.3 and 8.4 apply to the measure.

3. A Party shall not make the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, or operation of an investment in its territory of an investor of a Party or of a non-party, conditional on compliance with any of the following requirements:

- (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 the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment; or
- (d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales to the volume or value of its exports or foreign exchange earnings.

(b) 实现一定水平或百分比的国内含量； (c) 购买、使用或给予优惠待遇其领土内生产或提供的商品或服务， 或从其领土内的人员购买商品或服务； (d) 将进口的数量或价值与出口的数量或价值或与该投资相关的外汇流入金额联系起来； (e) 通过将其销售与出口数量或价值或外汇收入联系起来， 来限制其领土内由该投资生产或提供的商品或服务的销售； (f) 将技术、生产过程或其他专有知识转移给其领土内的人员； 或 (g) 从一方领土专门供应该投资生产的商品或向特定区域市场或世界市场提供的服务的商品。

2. 要求通过投资使用技术以满足通用健康、安全或环境要求的一项措施不应被解释为与第1段(f)不一致。为明确起见，《第8.3条》和《第8.4条》适用于该措施。

3. 一方不得就一方或非一方投资者在其领土内设立、收购、扩张、管理、开展或运营一项投资而获得利益或持续获得利益， 以符合下列任何要求为条件：

(a) 达到给定的国内含量水平或百分比； (b) 购买、使用或给予优惠待遇其领土内生产的产品， 或从其领土内的人员购买产品； (c) 将进口的数量或价值与出口的数量或价值相关联， 或与该投资相关的外汇流入金额相关联； 或 (d) 通过将其销售与出口的数量或价值或外汇收入相关联， 来限制其领土内由该投资生产或供应的商品或服务的销售。

4. Paragraph 3 is not to be construed to prevent a Party from making the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-party, conditional 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.⁵

5. Paragraph 1(f) does not apply:

- (a) if a Party authorises use of an intellectual property right pursuant to Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or
- (b) 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 anti-competitive under the Party’s competition laws.⁶

6. The provisions of:

- (a) paragraphs 1(b), (c), (f) and (g), and 3(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
- (b) paragraphs 1(b), (c), (f) and (g), and 3(a) and (b) do not apply to procurement by a Party or a state enterprise; and
- (c) paragraphs 3(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

⁵ For greater certainty, paragraph 1 is not to be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, or operation 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 locate production, train or employ workers, or construct or expand particular facilities, in its territory, provided that such activity is consistent with paragraph 1(f).

⁶ The Parties recognise that a patent does not necessarily confer market power.

4. 第3段不得解释为阻止一方就其领土内一方或非一方投资者的投资，因遵守在其领土内设立生产、提供服务、培训或雇佣工人、建设或扩建特定设施或进行研究和开发的要求，而获得利益或继续获得利益的条件。⁵

5. 第1段(f)不适用：

- (a) 如果一方根据与贸易有关的知识产权协定第31条授权使用一项知识产权，或要求披露专有信息的措施属于与贸易有关的知识产权协定第39条的范围并与之一致；或(b) 如果要求由法院、行政仲裁庭或竞争主管机关提出或执行，以纠正司法或行政程序认定具有反竞争性的行为，且该行为符合该方竞争法的规定。⁶

6. 以下条款的规定：

- (a) 第1(b)、(c)、(f)和(g)段，以及第3(a)和(b)段不适用于与出口促进和对外援助计划相关的商品或服务的资格要求； (b) 第1(b)、(c)、(f)和(g)段，以及第3(a)和(b)段不适用于一方或国有企业的采购；以及 (c) 第3(a)和(b)段不适用于进口方就符合优惠关税或优惠配额条件的商品内容所提出的资格要求。

⁵ 为明确起见，第1段不得解释为禁止一方在与其领土内一方或非一方投资者的投资设立、收购、扩张、管理、开展或运营相关时，对其领土内实施或执行要求或执行承诺或保证以在领土内定位生产、培训或雇佣工人，或建设或扩张特定设施，前提是该活动符合第1段(f)的规定。⁶ 缔约方认识到，专利不一定授予市场力量。

7. Paragraphs 1 and 3 do not apply to a commitment, undertaking, or requirement other than those set out in those paragraphs.

8. This Article does not preclude enforcement of a commitment, undertaking, or requirement between private parties, if a Party did not impose or require the commitment, undertaking, or requirement. For the purposes of this Article, private parties include designated monopolies or state enterprises, if such entities are not exercising delegated governmental authority.

Article 8.9: Non-Conforming Measures

1. Articles 8.3, 8.4, 8.7, and 8.8 do not apply to:
 - (a) an existing non-conforming measure that is maintained by:
 - (i) the national government of a Party, as set out in its Schedule to Annex I;
 - (ii) a sub-national government of a Party, as set out by that Party in its Schedule to Annex I⁷; or
 - (iii) a local government of a Party⁸;
 - (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not diminish the conformity of the measure, with Articles 8.3, 8.4, 8.7 and 8.8, as it existed immediately before the amendment.
2. Articles 8.3, 8.4, 8.7, and 8.8 do not apply to a measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II.
3. A Party shall not, under a measure adopted after the date of entry into force of this Agreement and set out in its Schedule to Annex II, 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.

⁷ For the purposes of this Article, sub-national government does not include local government.

⁸ For Korea, local government means a local government as defined in the *Local Autonomy Act*.

7. 第1和3段不适用于第1段和第3段中未列出的承诺、承担或要求。

8. 本条款并未排除私人方之间承诺、承担或要求的有效执行，如果一方未强制或要求该承诺、承担或要求。根据本条款，私人方包括指定垄断或国有企业，如果这些实体未行使授权政府权力。

条款8.9：不符合措施

1. 条款8.3、8.4、8.7和8.8不适用于：
 - (a) 一个由以下机构维持的现有不符合措施：(i) 一方的中央政府，如其在附件I的附件中所列；(ii) 一方的地方政府，如该方在其附件I的附件中规定⁷；或(iii) 一方的地方政府⁸；(b) 上述(a)中提到的不符合措施的延续或及时更新；或(c) 对上述(a)中提到的不符合措施的修订，只要该修订并未降低该措施与条款8.3、8.4、8.7和8.8的符合性，如修订前该措施立即存在的情况。
2. 条款8.3、8.4、8.7和8.8不适用于一方根据其附件II所附的附件制定或维持的关于部门、次级部门或活动的措施。
3. 一方不得在本协议生效日期之后所采取的措施中，要求另一方投资者因其国籍原因，出售或以其他方式处置在措施生效时已存在的投资。

⁷ 根据本条款，次级地方政府不包括地方政府。⁸ 对于韩国，地方政府是指根据《地方自治法》定义的地方政府。

4. Articles 8.3 and 8.4 do not apply to a measure that is an exception to, or derogation from, the obligations under Article 16.6 (National Treatment) as specifically provided in that Article.

5. Articles 8.3, 8.4, and 8.7 do not apply to:

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

Article 8.10: Investment and Environment

1. This Chapter is not to be construed to prevent a Party from adopting, maintaining, or enforcing a measure consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. The Parties recognise that it is inappropriate to encourage investment by relaxing domestic health, safety, or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion, or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, that Party may request consultations with the other Party and the Parties shall consult with a view to avoiding any such encouragement.

Article 8.11: Expropriation and Compensation⁹

1. A Party shall not expropriate or nationalise a covered investment, directly or indirectly, through a measure equivalent to expropriation or nationalisation (hereinafter referred to as “expropriation”), except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) in accordance with due process of law; and

⁹ For greater certainty, Article 8.11.1 shall be interpreted in accordance with Annex 8-B.

4. 第8.3条和第8.4条不适用于一项例外或背离第16.6条（国民待遇）义务的措施，该义务在第16.6条中具体规定。

5. 第8.3条、第8.4条和第8.7条不适用于：

- (a) 一方或国有企业的采购；或 (b) 一方或国有企业提供的补贴或津贴，包括政府支持贷款、担保和保险。

第8.10条：投资与环境

1. 本章不得解释为阻止一方采用、维持或执行与本章一致且其认为为确保其领土内的投资活动以敏感方式关注环境问题的适当措施。

2. 各方承认，通过放宽国内卫生、安全或环境措施来鼓励投资是不适当的。因此，一方不应放弃或以其他方式偏离，或提出放弃或以其他方式偏离此类措施，作为鼓励投资者在其领土内设立、收购、扩张或保留投资的鼓励。如果一方认为另一方提供了此类鼓励，该方可以要求与另一方磋商，各方应磋商以避免任何此类鼓励。

第8.11条：征收与补偿⁹

1. 一方不得通过征收或国有化相当的措施（以下简称“征收”），直接间接地征收或国有化受保护投资，但除：

- (a) 为公共利益； (b) 以非歧视性方式； (c) 依照正当法律程序；以及

⁹ 为明确起见，第8.11.1条应根据附件8-B进行解释。

- (d) on payment of prompt, adequate, and effective compensation.
- 2. The compensation referred to in paragraph 1(d) 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) include interest at a commercially reasonable rate accrued from the date of expropriation until the date of payment;
 - (d) not reflect any change in value that occurs as a result of prior knowledge of the intended expropriation;
 - (e) be fully realisable and freely transferable; and
 - (f) be payable in a freely usable or freely convertible currency.
- 3. The affected investor shall have the right under the law of the expropriating Party to a prompt review, by a judicial or other independent authority of that Party, of its case and of the valuation of its investment in accordance with the principles set out in this Article.
- 4. This Article does not apply to compulsory licenses granted in relation to intellectual property rights under the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, provided that the issuance, revocation, limitation, or creation is consistent with the WTO Agreement.

Article 8.12: Transfers

- 1. Each Party shall permit transfers relating to a covered investment to be made freely, and without delay, into and out of its territory. Those transfers include:
 - (a) contributions to capital, including the initial contribution;
 - (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance, and other fees;

- (d) 在支付及时、充分和有效的补偿后。
- 2. 第1段(d)项所述的补偿应：
 - (a) 及时支付；(b) 等于被征收投资在征收之日（“征收之日”）前的公平市场价值；(c) 包括自征收之日起至支付之日按商业合理利率计算的利息；(d) 不反映因事先知情拟征收而产生的任何价值变化；(e) 为完全可实现且自由可转移的；以及(f) 以自由使用或自由兑换的货币支付。
- 3. 受影响的投资者有权根据征收方的法律，要求由该方的司法或其他独立机构对其案件及其投资的评估进行及时审查，审查应依照本条款规定的原则进行。
- 4. 本条款不适用于与与贸易有关的知识产权协定项下的知识产权相关的强制许可，也不适用于知识产权的撤销、限制或创设，但前提是该等发行、撤销、限制或创设符合世界贸易组织协定。

条款 8.12：转移

- 1. 每一方应允许与受保护投资相关的转移自由地进行，且无延迟地转入和转出其领土。这些转移包括：
 - (a) 资本贡献，包括初始贡献；(b) 利润、股息、利息、资本利得、特许权使用费、管理费、技术援助和其他费用；

- (c) proceeds from the sale of all or part of the covered investment or from the partial or complete liquidation of the covered investment;
- (d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement;
- (e) payments made pursuant to Articles 8.6 and 8.11; 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. Transfers shall be made at the market rate of exchange prevailing at the time of transfer.

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

4. Notwithstanding paragraphs 1, 2, and 3, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its domestic law 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 reports of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) compliance with orders or judgments in judicial or administrative proceedings.

5. A Party shall not require its investors to transfer, or penalise its investors for failure to transfer the income, earnings, profits, or other amounts derived from, or attributable to investments in the territory of the other Party.

6. Paragraph 5 is not to be construed to prevent a Party from imposing a measure through the equitable, non-discriminatory, and good faith application of its domestic law relating to the matters referred to in paragraphs 4(a) through (e).

(c) 出售全部或部分受保护投资的收益或受保护投资的局部或完全清算的收益； (d) 投资者或受保护投资签订的合同项下的支付，包括根据贷款协议进行的支付； (e) 根据第8.6条和第8.11条进行的支付； 以及 (f) 争议引起的支付。

2. 每一方应当允许与受保护投资相关的转移以可自由使用货币进行。转移应当按照转移时的市场汇率进行。

3. 每一方应当允许与受保护投资相关的实物返还，按照一方与受保护投资或另一方投资者之间的书面协议中授权或指定的方式进行。

4. 尽管有第1、2和3段的规定，一方可以通过对其与破产、资不抵债或债权人权利保护相关的国内法的公平、非歧视和善意适用来阻止转移：

(a) 破产、资不抵债或债权人权利保护； (b) 发行、交易或处理证券、期货、期权或衍生品； (c) 刑事或刑事犯罪； (d) 转移财务报告，在必要时协助执法或金融监管机构；或(e) 司法或行政程序中的命令或判决的遵守。

5. 一方不得要求其投资者转移，或因其未能转移从另一方领土上的投资衍生或归因的收入、收益、利润或其他金额而对其进行处罚。

6. 第5段不得被解释为阻止一方通过对其国内法中与第4(a)至(e)段所述事项相关的公平、非歧视和善意适用来实施措施。

7. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict those transfers under this Agreement and as set out in paragraph 4.

Article 8.13: Subrogation

1. If a Party or an agency of a Party makes a payment to one of its investors under a guarantee or a contract of insurance that it has entered into in respect of an investment, the other Party shall recognise the validity of the subrogation in favour of that Party or the agency of the Party to a right or title held by the investor.
2. A Party or an agency of a Party which is subrogated to the rights of an investor in accordance with paragraph 1, is entitled in all circumstances to the same rights as those of the investor in respect of the investment. These rights may be exercised by the Party or an agency of the Party, or by the investor if the Party or an agency of the Party so authorises.

Article 8.14: 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 that 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.
2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party under whose domestic law it is constituted or organised and persons of a non-party, or of the denying Party, own or control the enterprise.

7. 尽管有第1段的规定，但在一方可以根据本协议和第4段所述情况限制实物转让的情况下，该方可以限制实物转让。

条款 8.13：代位求偿权

1. 如果一方或其机构根据其就一项投资所签订的担保或保险合同向其投资者之一支付款项，另一方应承认该一方或其机构为该投资者持有的一项权利或所有权而进行的代位求偿权的有效性。
2. 根据第1段被代位求偿权的一方或其机构，在任何情况下都享有与投资者就该项投资所享有的相同权利。这些权利可由该一方或其机构行使，或经该一方或其机构授权后由投资者行使。

条款 8.14：拒绝利益

1. 一方可以拒绝向其另一方投资者（该投资者为该一方的企业）及其投资提供本章的利益，如果非方人士拥有或控制该企业，并且拒绝方针对非方人士或非方人士采取或维持的措施禁止与该企业进行交易，或者如果向该企业或其投资提供本章的利益，这些措施将被违反或规避。
2. 一方可以拒绝向其另一方投资者（该投资者为该一方的企业）及其投资提供本章规定的利益，如果该企业在其根据国内法设立或组织的另一方的领土内没有实质性的业务活动，并且非方或拒绝方的人员拥有或控制该企业。

Article 8.15: Special Formalities and Information Requirements

1. Article 8.3 is not to be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, including a requirement that investments be legally constituted under the laws or regulations of the Party, provided that those formalities do not materially impair the protections afforded by a Party to investors of the other Party and investments of investors of the other Party under this Chapter.
2. Notwithstanding Articles 8.3 and 8.4, a Party may require an investor of the other Party, or its investment in the Party’s territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from disclosure that would prejudice the competitive position of the investor or the investment. This paragraph is not to 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 8.16: Corporate Social Responsibility

Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognised standards of corporate social responsibility in their practices and their internal policies, including statements of principle that are endorsed or supported by the Parties. These principles address issues such as labour, environment, human rights, community relations, and anti-corruption.

第8.15条：特殊程序和信息要求

1. 第8.3条不得解释为禁止一方采用或维持一项规定与另一方投资者设立投资相关特殊形式要求的措施，包括要求投资根据该方的法律或法规合法设立，前提是这些形式要求不会实质性损害一方根据本章向另一方投资者及其投资提供的保护。
2. 不论第8.3条和第8.4条如何规定，一方可以要求另一方投资者或其在另一方领土内的投资，仅出于信息或统计目的提供与该投资相关的常规信息。该方应当保护机密商业信息，防止其披露损害投资者或投资的竞争地位。本段不得解释为禁止一方在根据其法律公平善意地适用时，获取或披露信息。

第8.16条：企业社会责任

每一方应鼓励在其领土内运营或受其管辖的企业自愿将其实践和内部政策纳入企业社会责任的国际公认标准，包括由缔约方认可或支持的原则声明。这些原则涉及劳工、环境、人权、社区关系和反腐败等问题。

Section B – Investor-State Dispute Settlement

Article 8.17: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter Twenty-One (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes.

Article 8.18: Claim by an Investor of a Party on Its Own Behalf

An investor of a Party may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section A, other than Articles 8.10, 8.15, and 8.16 and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

Article 8.19: Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section A, other than Articles 8.10, 8.15, and 8.16 and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.
2. If an investor makes a claim pursuant to this Article and the investor or a non-controlling investor in the enterprise makes a claim pursuant to Article 8.18 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration pursuant to Article 8.23, the claims should be heard together by a Tribunal established under Article 8.28, unless the Tribunal finds that the interests of a disputing party would be prejudiced as a result.
3. An investment shall not make a claim under this Section.

B部分 – 投资者-国家争端解决

第8.17条：目的

在不损害缔约方根据第二十一章（争议解决）享有的权利和义务的情况下，本节建立了一种解决投资争议的机制。

第8.18条：一方投资者代表自身提出的索赔

一方投资者可根据本部分将一项索赔提交仲裁，该索赔认为另一方违反了A部分项下的义务，且该违反导致投资者因该违反而遭受损失或损害，但该索赔不包括第8.10条、8.15条和8.16条。

第8.19条：一方投资者代表企业提出的索赔

1. 一方投资者代表其拥有或直接或间接控制的另一方企业（该企业为法人）时，可根据本部分将一项索赔提交仲裁，该索赔认为另一方违反了A部分项下的义务，且该企业因该违反而遭受损失或损害，但该索赔不包括第8.10条、8.15条和8.16条。
2. 如果投资者根据本条款提出索赔，并且该投资者或企业中的非控制投资者根据第8.18条提出基于同一事件的索赔，而两项或多项索赔根据第8.23条提交仲裁，则应根据第8.28条设立的仲裁庭将索赔一并审理，除非仲裁庭认定争议方的利益将因此受到损害。
3. 投资不得根据本节提出索赔。

Article 8.20: Notice of Intent to Submit a Claim to Arbitration

1. The disputing investor shall deliver to the disputing Party written notice of its intent to submit a claim to arbitration (hereinafter referred to as the “Notice of Intent”) at least 90 days before submitting the claim. The Notice of Intent must specify:

- (a) the name and address of the disputing investor and, if a claim is made under Article 8.19, the name and address of the enterprise;
- (b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;
- (c) the legal and the factual basis for the claim, including the measures at issue; and
- (d) the relief sought and the approximate amount of damages claimed.

2. The disputing investor shall also deliver, with its Notice of Intent, evidence establishing that it is an investor of the other Party. Examples of evidence that might be relevant include a copy of a title to property, a deed of incorporation of the enterprise, share certificates, and a joint venture agreement.

Article 8.21: Consultation and Negotiation

In the event of an investment dispute, the disputing investor and the disputing Party shall initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding third-party procedures.

Article 8.22: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim to arbitration pursuant to Article 8.18 only if:

- (a) the disputing investor consents to arbitration in accordance with the procedures set out in this Agreement;
- (b) at least six months have elapsed since the events giving rise to the claim;

第8.20条：提交仲裁索赔的意向通知

1. 争议投资者应至少在提交索赔前90天向争议方提交书面意向通知，以提交仲裁索赔（以下简称“意向通知”）。意向通知必须明确说明：

- (a) 争议投资者的名称和地址；如果根据第8.19条提出索赔，则为企业名称和地址；(b) 本协议中据称被违反的条款以及任何其他相关条款；(c) 索赔的法律和事实依据，包括有争议的措施；以及(d) 寻求的救济和索赔的损害赔偿的近似金额。

2. 争议投资者还应在意向通知中提交证明其为对方投资者的证据。可能相关的证据示例包括财产权证书的副本、企业的成立证书、股票证书和合资企业协议。

第8.21条：磋商和谈判

发生投资争议时，争议投资者和争议方应首先通过磋商和谈判解决争议，这可能包括使用非约束性第三方程序。

第8.22条：提交仲裁索赔的先决条件

1. 争议投资者仅可依据第8.18条提交仲裁索赔，如果：

- (a) 争议投资者同意根据本协议规定的程序进行仲裁；(b) 自产生索赔的事件发生之日起已至少经过六个月；

- (c) not more than three years have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage thereby;
- (d) the disputing investor has delivered the Notice of Intent required under Article 8.20; and
- (e) the disputing investor and, if the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the disputing investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before an administrative tribunal or court under the domestic law of any Party, or other dispute settlement procedures, proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 8.18, except as set out in Annex 8-C.

2. A disputing investor may submit a claim to arbitration pursuant to Article 8.19 only if:

- (a) both the disputing investor and the enterprise consent to arbitration in accordance with the procedures set out in this Agreement;
- (b) at least six months have elapsed since the events giving rise to the claim;
- (c) not more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby;
- (d) the disputing investor has delivered the Notice of Intent required pursuant to Article 8.20; and
- (e) both the disputing investor and the enterprise waive their right to initiate or continue before an administrative tribunal or court under the domestic law of any Party, or other dispute settlement procedures, proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 8.19, except as set out in Annex 8-C.

(c) 自争议投资者首次获得或应当首次获得所谓违规的知识以及争议投资者因此遭受损失或损害的知识之日起，已不超过三年；

(d) 争议投资者已提交第8.20条规定的意向通知；以及 (e) 争议投资者和，如果索赔是针对争议投资者直接或间接拥有或控制的另一方企业的利益损失的，该企业，放弃其根据任何一方国内法向行政仲裁庭或法院提起或继续的或其他争端解决程序、程序的权利，关于争议方据称违反第8.18条所述措施，除附件8-C中规定的情况外。

2. 争议投资者仅可根据第8.19条提交仲裁索赔：

(a) 争议投资者和企业均同意根据本协议规定的程序进行仲裁； (b) 自产生索赔的事件发生之日起已至少经过六个月； (c) 自企业首次获得或应首次获得所谓违规的知识以及企业因此遭受损失或损害之日起，已不超过三年； (d) 争议投资者已提交第8.20条要求的意向通知；以及 (e) 争议投资者和企业放弃根据任何一方国内法在行政仲裁庭或法院提起或继续进行诉讼或其他争端解决程序的权利，但附件8-C中另有规定的除外。

3. A consent and waiver required by this Article shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.
4. A waiver from the enterprise under paragraph 1(e) or 2(e) shall not be required only if a disputing Party has deprived a disputing investor of control of the enterprise.
5. Failure to meet any of the conditions precedent provided for in paragraphs 1, 2, and 3 nullifies the consent of the Parties given in Article 8.24.

Article 8.23: Submission of a Claim to Arbitration

1. Except as provided in Annex 8-C, a disputing investor who meets the conditions precedent provided for in Article 8.22 may submit the claim to arbitration:
- (a) under the ICSID Convention, if both Parties are party to the Convention;
 - (b) under the ICSID Additional Facility Rules, if only one Party is a party to the ICSID Convention;
 - (c) under the UNCITRAL Arbitration Rules; or
 - (d) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules.
2. The applicable arbitration rules govern the arbitration unless they are modified by this Section.

Article 8.24: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.
2. The consent given in paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:
- (a) Chapter II of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties; and

3. 根据本条要求的同意和放弃应提交给争议方， 并应作为仲裁索赔的提交内容。
4. 企业根据第1段(e)或第2段(e)放弃的放弃不得仅因争议方剥夺争议投资者对企业的控制权而要求。
5. 未能满足第1段、第2段和第3段规定的任何先决条件， 将使第8.24条中缔约方给予的同意无效。

第8.23条：提交仲裁索赔

1. 除附件8-C另有规定外， 符合第8.22条规定的先决条件的争议投资者可以提交仲裁索赔：
- (a) 根据《国际投资争端解决中心公约》， 如果双方均为公约缔约方；
 - (b) 根据《国际投资争端解决中心附加便利规则》， 如果只有一方为《国际投资争端解决中心公约》缔约方； (c) 根据《联合国国际贸易法委员会仲裁规则》； 或(d) 如果争议方同意， 向任何其他仲裁机构或根据任何其他仲裁规则。

2. 适用的仲裁规则 govern 仲裁， 除非本节进行修改。

条款8.24： 仲裁同意

1. 每一方同意根据本协议规定的程序提交仲裁索赔。
2. 第1段的同意以及争议投资者提交仲裁索赔的行为应满足以下要求：
- (a) 国际投资争端解决中心公约第II章和国际投资争端解决中心附加便利规则关于各方书面同意的； 以及

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

Article 8.25: Arbitrators

1. Except in respect of a Tribunal established pursuant to Article 8.28, and unless the disputing parties agree otherwise, the Tribunal shall be composed of 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. Arbitrators must:
 - (a) have expertise or experience in public international law, international trade or international investment rules, or the resolution of disputes arising under international trade or international investment agreements; and
 - (b) be independent of, and not be affiliated with or take instructions from, either Party or the disputing investor.
3. The disputing parties should agree on the arbitrators’ remuneration. If the disputing parties do not agree on such remuneration before the Tribunal is constituted, the prevailing ICSID rate for arbitrators applies.

Article 8.26: Constitution of a Tribunal by the Secretary-General

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section if a Party fails to appoint an arbitrator or the disputing parties are unable to agree on a presiding arbitrator.
2. If a Tribunal, other than a Tribunal established pursuant to Article 8.28, is not constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, at the request of either disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The presiding arbitrator shall not be a national of either Party.

(b) 纽约公约第II条关于书面协定的规定。

第8.25条：仲裁员

1. 除根据第8.28条设立的仲裁庭外，且除非争议方另有约定，仲裁庭应由三名仲裁员组成，每位争议方任命一名仲裁员，第三名仲裁员（首席仲裁员）由争议方协议任命。
2. 仲裁员必须：
 - (a) 具备国际公法、国际贸易或国际投资规则或国际贸易或国际投资协议项下争议解决的专长或经验；以及 (b) 独立于任何一方或争议投资者，不得与任何一方有关联或接受其指示。
3. 争议方应就仲裁员的报酬达成一致。如果争议方在仲裁庭成立前未能就此类报酬达成一致，则适用ICSID仲裁员的现行费率。

第8.26条：由秘书长组成仲裁庭

1. 如果一方未能指定仲裁员，或争议方未能就首席仲裁员达成一致，秘书长应作为本节项下仲裁的指定机构。
2. 如果仲裁庭，除根据第8.28条设立的仲裁庭外，在索赔提交仲裁之日起90天内未能成立，则秘书长应根据任何争议方的请求，在其自由裁量权范围内任命尚未任命的仲裁员或仲裁员。首席仲裁员不得是任何一方国家的国民。

Article 8.27: Agreement to Appointment of Arbitrators

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 based on a ground other than nationality:

- (a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a disputing investor referred to in Article 8.18 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and
- (c) a disputing investor referred to in Article 8.19.1 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

Article 8.28: Consolidation

- 1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, unless otherwise provided in this Section.
- 2. If a Tribunal established under this Article is satisfied that claims submitted to arbitration under Article 8.23 have a question of law or fact in common, the Tribunal may, in the interests 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; or
- (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.

第8.27条：指定仲裁员的协定

根据国际投资争端解决中心公约第39条和国际投资争端解决中心附加便利规则第C附表第7条的规定，且不妨碍基于国籍以外的理由对仲裁员提出异议：

- (a) 争议方同意指定根据国际投资争端解决中心公约或国际投资争端解决中心附加便利规则设立的仲裁庭的每个成员；(b) 第8.18条所述的争议投资者只有在书面同意指定仲裁庭的每个成员的情况下，才能根据国际投资争端解决中心公约或国际投资争端解决中心附加便利规则提交仲裁索赔或继续仲裁索赔；以及(c) 第8.19.1条所述的争议投资者只有在争议投资者和企业书面同意指定仲裁庭的每个成员的情况下，才能根据国际投资争端解决中心公约或国际投资争端解决中心附加便利规则提交仲裁索赔或继续仲裁索赔。

第8.28条：合并

- 1. 根据本条设立的仲裁庭应根据联合国国际贸易法委员会仲裁规则进行设立，并应根据该等规则进行程序，除非本节另有规定。
- 2. 如果根据本条款设立的仲裁庭认为，根据第8.23条提交仲裁的索赔存在共同的法律或事实问题，仲裁庭可以为了公平高效地解决索赔，并在听取争议方之后，通过命令：

- (a) 对全部或部分索赔行使管辖权，并共同审理和认定；或 (b) 对一个或多个索赔行使管辖权，并审理和认定其认为有助于解决其他索赔的索赔。

3. A disputing party that seeks an order under paragraph 2 shall request that the Secretary-General establish a Tribunal and shall specify in the request:
- (a) the name of the disputing Party or disputing investors against which the order is sought;
 - (b) the nature of the order sought; and
 - (c) the grounds for the order sought.
4. The disputing party shall deliver a copy of the request to the disputing Party or disputing investors against which the order is sought.
5. The Secretary-General shall, within 60 days of receipt of the request, establish a Tribunal composed of three arbitrators appointed from the ICSID Panel of Arbitrators. To the extent arbitrators are not available from that Panel, appointments shall be at the discretion of the Secretary-General. The Secretary-General shall appoint one member who is a national of the disputing Party, one member who is a national of the Party of the disputing investors and a presiding arbitrator, who is not a national of either Party.
6. If a Tribunal is established pursuant to this Article, a disputing investor that has submitted a claim to arbitration pursuant to Article 8.23 and that has not been named in a request made pursuant to paragraph 3 may submit a written request to the Tribunal that it be included in an order made pursuant to paragraph 2, and shall specify in the request:
- (a) the name and address of the disputing investor;
 - (b) the nature of the order sought; and
 - (c) the grounds for the order sought.
7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made pursuant to paragraph 3.
8. A Tribunal established pursuant to Article 8.23 does not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established pursuant to this Article has assumed jurisdiction.

3. 请求第2段命令的争议方应当请求秘书长设立仲裁庭，并在请求中说明：
- (a) 争议方的名称或争议投资者；(b) 所寻求的命令的性质；以及 (c) 所寻求的命令的理由。
4. 争议方应当向所寻求的命令的争议方或争议投资者提交请求的副本。
5. 秘书长应当在收到请求之日起 60 天内设立一个由三名从国际投资争端解决中心仲裁员小组任命的仲裁员组成的仲裁庭。如果从该小组中无法获得仲裁员，则任命应由秘书长决定。秘书长应当任命一名争议方国籍的成员、一名争议投资者当事人国籍的成员以及一名首席仲裁员，该首席仲裁员不隶属于任何一方。
6. 如果根据本条款设立仲裁庭，已根据第 8.23 条提交仲裁索赔且未在根据第 3 段提出的请求中提及的争议投资者，可以提交书面请求，要求仲裁庭将其包括在第 2 段规定的命令中，并在请求中说明：
- (a) 争议投资者的名称和地址；(b) 所寻求命令的性质；以及(c) 所寻求命令的理由。
7. 第6段中提到的争议投资者应将其请求的副本提交给根据第3段提出的请求中指
定的争议方。
8. 根据 第8.23条设立的仲裁庭不具有对根据本条款设立仲裁庭已取得管辖权的索
赔或索赔的一部分作出决定的管辖权。

9. On the application of a disputing party, a Tribunal established pursuant to this Article, pending its decision pursuant to paragraph 2, may order that the proceedings of a Tribunal established pursuant to Article 8.23 be stayed, unless the latter Tribunal has already adjourned its proceedings.

Article 8.29: Notice to the Non-Disputing Party

A disputing Party shall deliver to the non-disputing Party a copy of the Notice of Intent and other documents, such as the Notice of Arbitration and the Statement of Claim, within 30 days of the date that those documents are delivered to the disputing Party.

Article 8.30: Documents

- The non-disputing Party is entitled, at its cost, to receive from the disputing Party:
 - a copy of the evidence that has been tendered to the Tribunal;
 - copies of all pleadings filed in the arbitration; and
 - copies of the written arguments of the disputing parties.
- The non-disputing Party receiving information pursuant to paragraph 1 shall treat the information on the same basis as the Party providing the information treats them.

Article 8.31: Participation by the Non-Disputing Party

- On written notice to the disputing parties, the non-disputing Party may make oral or written submissions to a Tribunal on a question of interpretation of this Agreement. Upon the request of a disputing party, the non-disputing Party shall submit its oral submission in writing.
- The non-disputing Party shall treat the information it receives at hearings on the same basis as the Party providing the information treats them.

9. 在争议方申请时，根据本条款设立的仲裁庭，在其根据第2段作出决定之前，可以命令根据 第8.23条设立的仲裁庭暂停程序，除非后者仲裁庭已经休庭。

第8.29条：向非争议方发送通知

争议方应在将相关文件交付争议方之日起30天内，向非争议方交付意向通知的副本以及其他文件，例如仲裁通知和索赔声明。

第8.30条：文件

- 非争议方有权以自付费用方式从争议方处获得：
 - 已提交给仲裁庭的证据副本；
 - 提交仲裁的所有诉讼文书副本；以及
 - 争议方提交的书面辩论副本。
- 根据第1段接收信息的非争议方应将所接收的信息与提供信息的方所处理的信息相同对待。

第8.31条：非争议方的参与

- 应向争议方发出书面通知，非争议方可以向仲裁庭就本协议的解释问题提出口头或书面提交。应争议方的要求，非争议方应以书面形式提交其口头提交。
- 非争议方应当以提供信息的方对待其信息的相同方式处理其在听证会上收到的信息。

Article 8.32: Place of Arbitration

1. Unless otherwise agreed by the disputing parties, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:
- (a) the ICSID Additional Facility Rules, if the arbitration is under those Rules or the ICSID Convention; or
 - (b) the UNCITRAL Arbitration Rules, if the arbitration is under those Rules.
2. Unless otherwise agreed by the disputing parties, the Tribunal may determine a place for meetings and hearings, other than the legal place of arbitration. In doing so, the Tribunal shall take into consideration, its convenience for the parties and the arbitrators, the location of the subject matter, and the proximity of the evidence.

Article 8.33: Language of Proceedings

1. Unless otherwise agreed by the disputing parties, the language of the arbitration proceedings, including hearings, decisions, and awards, shall be:
- (a) French and English if Canada is a disputing Party; and
 - (b) Korean and English if Korea is a disputing Party.
2. Communications, submissions, witness statements and documentary evidence can be submitted in either one of the language of the arbitration without a translation.

Article 8.34: Preliminary Objections to Jurisdiction or Admissibility

If issues relating to jurisdiction or admissibility are raised as preliminary objections, the Tribunal shall, whenever possible, decide the matter before proceeding to the merits.

第8.32条：仲裁地点

1. 除非争议方另有约定，仲裁庭应在纽约公约缔约方领土内举行仲裁，该领土的选择应符合：
- (a) 如果仲裁适用《国际投资争端解决中心附加便利规则》或《国际投资争端解决中心公约》，则适用该规则；或 (b) 如果仲裁适用《联合国国际贸易法委员会仲裁规则》，则适用该规则。
2. 除非争议方另有约定，仲裁庭可以确定除仲裁地点以外的会议和听证会地点。在此过程中，仲裁庭应考虑其对争议方和仲裁员的便利性、标的所在地以及证据的邻近性。

第8.33条：程序语言

1. 除非争议方另有约定，仲裁程序的语言，包括听证会、决定和裁决书，应为：
- (a) 如果加拿大是争议方，则为法语和英语；以及 (b) 如果韩国是争议方，则为韩语和英语。
2. 通信、提交文件、证人陈述和书面证据可以提交仲裁语言中的一种，无需翻译。

第8.34条：管辖权或可受理性初步异议

如果就管辖权或可受理性提出初步异议，仲裁庭应当尽可能在进入实体问题之前决定该事项。

Article 8.35: Transparency of Arbitral Proceedings

1. Subject to paragraphs 2, 3, and 4, the disputing Party shall, after receiving the following documents, promptly transmit them to the non-disputing Party 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 Articles 8.28, 8.31, and 8.36;

(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. However, a disputing party that intends to use information designated as protected information in a hearing shall advise the Tribunal. The Tribunal shall make appropriate arrangements to protect the information from disclosure.
3. This Section does not require a disputing Party to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Articles 22.2 (National Security) and 22.5 (Disclosure of Information).
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), the disputing parties or the Tribunal shall not disclose to the 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) a disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the Tribunal;

第8.35条：仲裁程序的透明度

- 1.除第2、3、4段的规定外，争议方在收到下列文件后，应当及时将文件传送给非争议方并予以公开：
- (a) 意向通知；(b) 仲裁通知；(c) 争议方向仲裁庭提交的诉讼文书、陈述状和简报，以及根据第8.28条、第8.31条和第8.36条提交的任何书面提交文件；(d) 仲裁庭的会议记录或听证会记录，如有；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，并与争议方协商确定适当的后勤安排。但是，打算在听证会中使用被指定为受保护信息的争议方应通知仲裁庭。仲裁庭应采取适当安排以保护信息免于披露。
3. 本节不要求争议方披露受保护信息，也不要求其提供或允许访问其根据第22.2条（国家安全）和第22.5条（信息披露）可能保留的信息。
4. 任何提交给仲裁庭的受保护信息都应根据以下程序得到保护，不得披露：
- (a) 根据第（d）项，如果提供信息的争议方按照第（b）项明确指定了信息，则争议方或仲裁庭不得向非争议方或公众披露任何受保护信息；(b) 声称某些信息构成受保护信息的争议方，应在将信息提交给仲裁庭时明确指定该信息；

- (c) a disputing party shall, at the time it submits a document containing information claimed to be protected information, also submit a redacted version of the document that does not contain such protected information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1;
- (d) the Tribunal shall decide an objection by a disputing party regarding the designation of information claimed to be protected information. If the Tribunal determines that such information was not properly designated, the disputing party that submitted the information may:
 - (i) withdraw all or part of its submission containing such information; or
 - (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the Tribunal’s determination and subparagraph (c).

In either case, the other disputing party shall, if necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information; and

- (e) at the request of a disputing Party, the Commission shall consider issuing a decision in writing regarding a determination by the Tribunal that information claimed to be protected was not properly designated. If the Commission issues a decision within 60 days of such a request, it shall be binding on the Tribunal, and the decision or award issued by the Tribunal must be consistent with that decision. If the Commission does not issue a decision within 60 days, the Tribunal’s determination shall remain in effect only if the non-disputing Party submits a written statement to the Commission within that period that it agrees with the Tribunal’s determination.

5. This Section does not require a disputing Party to withhold from the public information required to be disclosed in accordance with its domestic law.

(c) 在提交包含据称为受保护信息文件的争议方，应同时提交不包含此类受保护信息的文件的红头文件版本。仅红头文件版本应提供给非争议方，并按照第1段的规定公开；

(d) 仲裁庭应当决定一方提出的关于据称受保护信息的指定提出的异议。如果仲裁庭认定该信息未正确指定，则提交该信息的争议方可以：

- (i)撤回包含该信息的全部或部分提交；或 (ii)根据仲裁庭的认定和第 (c) 段，同意重新提交完整且经过删减的文件，并更正指定。

在任何情况下，另一方争议方都应，如有必要，重新提交完整且经过删减的文件，这些文件要么通过首先提交信息的争议方撤回 (i) 中的信息，要么根据首先提交信息的争议方在 (ii) 中的指定重新指定该信息；并且

(e)应一方争议方的请求，委员会应考虑以书面形式就仲裁庭认定据称受保护的信息未正确指定作出决定。如果委员会在该请求之日起 60 天内作出决定，该决定对仲裁庭具有约束力，仲裁庭作出的决定或裁决必须与该决定一致。如果委员会在 60 天内未作出决定，则仲裁庭的认定仅在非争议方在该期间内向委员会提交书面声明表示同意仲裁庭的认定时才保持有效。

5. 本节不要求争议方根据其国内法要求披露的信息向公众隐瞒。

6. Each Party may share with officials of its respective national, sub-national, and local governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but it shall ensure that those persons protect any confidential information in those documents.

Article 8.36: Submissions by a Non-Disputing Party

1. Any person of a Party, or a person with a significant presence in the territory of a Party, that wishes to file a written submission with a Tribunal (hereinafter referred to as the “applicant”) shall apply for leave from the Tribunal to file a non-disputing party submission, in accordance with Annex 8-D. The applicant shall attach the submission to the application.
2. The applicant shall serve the application for leave to file a non-disputing party submission and its written submission on all disputing parties and the Tribunal.
3. The Tribunal shall set an appropriate date for the disputing parties to comment on the application for leave to file a non-disputing party submission.
4. In determining whether to grant leave to file a non-disputing party submission, the Tribunal shall consider, among other things, the extent to which:
 - (a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
 - (b) the non-disputing party submission would address a matter within the scope of the dispute; and
 - (c) the non-disputing party has a significant interest in the arbitration.
5. The Tribunal shall ensure that:
 - (a) the non-disputing party submission does not disrupt the proceedings;
 - (b) the non-disputing party submission does not unduly burden or unfairly prejudice a disputing party; and

6. 各方可以在本协议项下的争端解决过程中，与各自的国家、次国家和地方政府官员分享所有相关的未删节文件，但应确保这些人保护这些文件中的任何机密信息。

第8.36条：非争议方提交

1. 任何一方当事人或在一方领土内有重大利益的人，若希望向仲裁庭提交书面提交文件（以下简称“申请人”），应根据附件8-D向仲裁庭申请提交非争议方提交文件。申请人应将提交文件附于申请文件中。
2. 申请人应将提交非争议方提交文件的申请及其书面提交文件送达所有争议方和仲裁庭。
3. 仲裁庭应确定一个适当日期，供争议方对提交非争议方提交文件的申请提出意见。
4. 在决定是否准予提交非争议方提交文件时，仲裁庭应考虑，但不限于以下方面：
 - (a) 非争议方提交文件是否通过提供与争议方不同的观点、特别知识或见解，协助仲裁庭对与仲裁相关的_fact或法律问题作出认定；(b) 非争议方提交文件是否涉及争议的范围内的事项；以及(c) 非争议方在仲裁中具有重大利益。
5. 仲裁庭应确保：
 - (a) 非争议方提交不扰乱程序；(b) 非争议方提交不过度负担或不公平歧视争议方；和

(c) disputing parties are given an opportunity to present their observations on the non-disputing party submission.

6. After consulting the disputing parties, the Tribunal shall decide whether to grant leave to file a non-disputing party submission. If leave to file a non-disputing party submission is granted, the Tribunal shall set an appropriate date for the disputing parties to respond in writing to the non-disputing party submission. By that date, the non-disputing Party may, pursuant to Article 8.31, address any issues of interpretation of this Agreement presented in the non-disputing party submission.

7. The Tribunal that grants leave to file a non-disputing party submission is not required to address the submission at any point in the arbitration, and the non-disputing party that files the submission is not entitled to make further submissions in the arbitration.

8. The provisions pertaining to public access to hearings and documents pursuant to Article 8.35 govern access to hearings and documents by non-disputing parties that file applications pursuant to this Article.

Article 8.37: Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. The Commission’s interpretation of a provision of this Agreement shall be binding on a Tribunal established under this Section and an award under this Section shall be consistent with that interpretation.

Article 8.38: Interpretation of Annexes

1. If the disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I, Annex II or Annex III, the Tribunal shall, at the request of that disputing Party, request the Commission to interpret the issue. Within 60 days of delivery of the request, the Commission shall submit in writing its interpretation to the Tribunal.

2. Further to Article 8.37.2, the interpretation by the Commission submitted under paragraph 1 is binding on the Tribunal. If the Commission fails to submit an interpretative decision within 60 days, the Tribunal shall decide the issue.

(c) 争议方有机会就非争议方提交提出意见。

6. 在咨询争议方后，仲裁庭应决定是否准许非争议方提交。如果准许非争议方提交，仲裁庭应设定适当日期，供争议方书面回应非争议方提交的内容。截至该日期，非争议方可以依据第8.31条，就非争议方提交中提出的本协议解释问题进行回应。

7. 准许提交非争议方提交的仲裁庭无需在任何时候处理该提交，且提交该提交的非争议方无权在仲裁中作出进一步提交。

8. 依据第8.35条关于听证会和文件公开的规定，适用于依据本条提交申请的非争议方对听证会和文件的访问。

第8.37条：适用法律

1. 根据本节设立的仲裁庭应根据本协议和适用国际法规则裁决争议事项。

2. 委员会对本协议条款的解释对根据本节设立的仲裁庭具有约束力，根据本节作出的裁决应与该解释一致。

第8.38条：附件的解释

1. 如果争议方以抗辩主张被指控违反的措施属于附件I、附件II或附件III中规定的保留或例外范围，仲裁庭应根据该争议方的请求，请求委员会解释该事项。在收到请求之日起60天内，委员会应以书面形式向仲裁庭提交其解释。

2. 根据 第8.37.2条，委员会根据第1段提交的解释对仲裁庭具有约束力。如果委员会在60天内未能提交解释性决定，仲裁庭应决定该问题。

Article 8.39: Expert Reports

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

Article 8.40: Interim Measures of Protection

The 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. The Tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 8.18 or 8.19. For the purposes of this Article, an order includes a recommendation.

Article 8.41: Final Award

1. If the Tribunal makes a final award against a disputing Party, the Tribunal may award, separately or in combination, only:
- (a) monetary damages and any applicable interest; or

(b) 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.

The Tribunal may also award costs in accordance with the applicable arbitration rules.

2. Subject to paragraph 1, if a claim is made pursuant to Article 8.19.1:
- (a) an award of monetary damages and any applicable interest shall state that the monetary damages and interest are paid to the enterprise;

第8.39条：专家报告

在不影响其他类型专家任命的情况下，如果经适用仲裁规则授权，仲裁庭应应争议方请求或除非争议方不反对，可自行决定任命一名或多名专家，就争议方在程序中提出的涉及环境、健康、安全或其他科学事项的事实问题向其提交书面报告，并遵守争议方可能商定的条款和条件。

第8.40条：临时保护措施

仲裁庭可以责令采取临时保护措施以维护争议方的权利，或确保仲裁庭的管辖权得到充分有效行使，包括责令争议方保存其持有或控制的证据或保护仲裁庭的管辖权。仲裁庭不得责令扣押或禁止采取据称构成第8.18条或第8.19条所述违反的措施。就本条而言，命令包括建议。

第8.41条：最终裁决

1. 如果仲裁庭对争议方作出最终裁决，仲裁庭可以单独或结合只裁决：
- (a) 货币损害赔偿和任何适用的利息；或 (b) 财产返还，在这种情况下，裁决应规定争议方可以用货币损害赔偿和任何适用的利息代替财产返还。

仲裁庭也可根据适用的仲裁规则裁决费用。

2. 除第1段的规定外，若根据第8.19.1条提出索赔： (a) 货币损害赔偿裁决及任何适用利息应说明货币损害赔偿和利息支付给企业；

- (b) an award of restitution of property shall provide that restitution be made to the enterprise; and
 - (c) the award shall provide that it is made without prejudice to a right that a person may have in the relief under applicable domestic law.
3. The Tribunal shall not order a disputing Party to pay punitive damages.

Article 8.42: Finality and Enforcement of an Award

1. An award made by the Tribunal does not have binding force except between the disputing parties and in respect of that particular case.
2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
3. 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; or
 - (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
 - (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.

(b) 财产返还裁决应规定财产返还给企业；以及 (c) 裁决应规定其作出不影响任何人根据适用国内法救济措施可能拥有的权利。

3. 仲裁庭不得命令争议方支付惩罚性赔偿。

第8.42条：裁决的最终性和执行

1. 仲裁庭作出的裁决除在争议方之间及针对该特定案件外，不具有约束力。
2. 除第3段及临时裁决的适用审查程序外，争议方应立即遵守并履行裁决。
3. 争议方不得寻求最终裁决的执行，直到：(a) 在根据国际投资争端解决中心公约作出的最终裁决的情况下：(i) 裁决作出之日起120天已过，且没有任何争议方请求修正或撤销该裁决；或(ii) 修正或撤销程序已完成；或(b) 在根据国际投资争端解决中心附加便利规则或联合国国际贸易法委员会仲裁规则作出的最终裁决的情况下：(i) 裁决作出之日起90天已过，且没有任何争议方已开始修正、撤销或撤销该裁决的程序；或(ii) 法院已驳回或允许修正、撤销或撤销该裁决的申请，且没有进一步的上诉。

4. Each Party shall provide for the enforcement of an award in its territory.
5. If the disputing Party fails to abide by or comply with a final award, the Party of the disputing investor may refer the matter to a dispute settlement panel under Chapter Twenty-One (Dispute Settlement). The Party of the disputing investor may seek the following in these 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) a recommendation that the disputing Party abide by or comply with the final award.
6. A disputing investor may seek to enforce an arbitration award under the ICSID Convention, or the New York Convention regardless of whether proceedings are taken pursuant to paragraph 5.
7. A claim that is submitted to arbitration under this Section is considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

Article 8.43: Procedural and Other Matters

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:
- (a) the Request for Arbitration pursuant to paragraph1 of Article 36 of the ICSID Convention is received by the Secretary-General;
 - (b) the Notice of Arbitration pursuant to Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General; or
 - (c) the Notice of Arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

4. 每一方应在其领土内提供裁决的执行。
5. 如果争议方不遵守或不履行最终裁决，争议投资者的当事人可依据第二十一章（争议解决）向争议解决小组提交该事项。争议投资者的当事人可在这些程序中寻求以下内容：
- (a) 认定不遵守或不履行最终裁决与本协议的义务不一致；以及 (b) 建议争议方遵守或不履行最终裁决。
6. 争议投资者可依据国际投资争端解决中心公约或纽约公约强制执行仲裁裁决，无论是否根据第5段采取程序。
7. 根据本条款提交仲裁的索赔被视为根据纽约公约第一条的目的源于商业关系或交易。

第8.43条：程序及其他事项

索赔提交仲裁的时间

1. 当根据第36条第1款的国际投资争端解决中心公约提交仲裁申请书时，或根据国际投资争端解决中心附加便利规则第C附表第2条的仲裁通知时，或根据联合国国际贸易法委员会仲裁规则提交仲裁通知时，本节规定的一项索赔提交仲裁：
- (a) 国际投资争端解决中心秘书长收到仲裁申请书； (b) 国际投资争端解决中心秘书长收到仲裁通知；或 (c) 争议方收到仲裁通知。

Service of Documents

2. Notices and other documents shall be delivered to a Party at the place named for that Party below:

- (a) for Canada:

Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, Ontario
K1A 0H8; and
- (b) for Korea:

International Legal Affairs Division
Building #1, Government Complex-Gwacheon
47, Gwanmun-ro, Gwacheon-si, Gyeonggi-do
Republic of Korea,

or their respective successors.

Receipts under Insurance or Guarantee Contracts

3. In an arbitration under this Section, a disputing Party shall not assert, as a defence, counterclaim, right of setoff, or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Article 8.44: Exclusions

The dispute settlement provisions of this Section and of Chapter Twenty-One (Dispute Settlement) shall not apply to the matters referred to in Annex 8-F.

文件送达

2. 通知和其他文件应交付给下方为该方指定的地点：

- (a) 对于加拿大：加拿大副检察长办公室司法大楼
284惠灵顿街渥太华安大略省K1A 0H8；以及(b) 对
于韩国：国际法律事务局1号楼gwacheon政府综合
大楼47, 桂门路, gwacheon市, 京畿道韩国,

或其各自的后继者。

保险或担保合同项下的收据

3. 在本节项下的仲裁中，争议方不得作为抗辩、反诉、抵销权或其他方式，主张争议投资者已根据保险或担保合同收到或将要收到全部或部分其声称的损害的赔偿或补偿。

第8.44条：排除

本节及第二十一章（争议解决）的争端解决条款不适用于附件8-F中所述事项。

Section C – Definitions

Article 8.45: Definitions

For the purposes of this Chapter:

confidential information means confidential business information and information that is privileged or otherwise protected from disclosure under a Party’s domestic law;

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party existing on the date of entry into force of this Agreement, or established, acquired, or expanded thereafter;

disputing investor means an investor that makes a claim under Section B;

disputing Party means a Party against which a claim is made under Section B;

disputing party means the disputing investor or the disputing Party;

enterprise means an “enterprise” as defined in Article 1.8 (Definitions of General Application) and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the domestic law of a Party, and a branch of that enterprise located in the territory of a Party and carrying out business activities there;

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

ICSID means 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 on 18 March 1965;

intellectual property rights means copyright and related rights, trademark rights, rights in geographical indications, rights in the industrial designs, patent rights, rights in layout designs of integrated circuits, and rights in relation to protection of undisclosed information;

C部分 – 定义

第8.45条：定义

本章规定如下：

机密信息是指商业秘密和根据一方国内法享有特权或受保护免于披露的信息；

受保护投资是指，对于一方而言，在其领土上于本协议生效之日存在的另一方投资者投资，或此后设立、获得或扩大的投资；

争议投资者是指根据B部分提出索赔的投资者；

争议方是指根据B部分被提出索赔的一方；

争议方是指争议投资者或争议方；

企业是指根据第1.8条（通用定义）定义的“企业”以及企业的分支机构；

一方的企业是指根据一方国内法成立或组织的企业，以及位于一方领土内并在该领土内开展业务活动的该企业的分支机构；

可自由使用货币是指国际货币基金组织根据其协定及其修正案确定的“可自由使用货币”；

ICSID是指国际投资争端解决中心；

ICSID公约是指于1965年3月18日在华盛顿签署的《国家与他国国民间投资争端解决公约》；

知识产权是指版权和相关权利、商标权、地理标志权、工业设计权、专利权、集成电路布图设计权以及未披露信息保护权；

investment means any 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, the assumption of risk, and a certain duration. 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 loans¹⁰;
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights; and
- (g) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges¹¹.

For the purposes of this Agreement, a claim to payment that arises solely from the commercial sale of goods and services is not an investment, unless it is a loan that has the characteristics of an investment.

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of that Party;

investor of a Party¹² means a Party or a state enterprise thereof, or a national or enterprise of a Party that seeks to make, is making, or has made an investment in the territory of the other Party, provided however that:

- (a) a natural person who is a dual citizen is deemed to be exclusively a national of the State of his or her dominant and effective citizenship; and

¹⁰ 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 are less likely to have such characteristics.

¹¹ For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

¹² For greater certainty, it is understood that an investor of a Party “seeks” to make an investment in the territory of the other Party only if the investor has taken concrete steps necessary to make said investment, such as when the investor has made an application for a permit or license authorising the establishment of an investment.

投资是指投资者直接或间接拥有或控制的、具有投资特征的任何资产，包括资本或其他资源的投入、收益或利润的预期、风险的承担以及一定的期限。投资可能采取的形式包括：

- (a) 一家企业；(b) 企业中的股份、股票和其他形式的股权参与；(c) 债券、债券、其他债务工具和贷款¹⁰；(d) 期货、期权和其他衍生品；(e) 交钥匙、建设、管理、生产、特许权、收入分成和其他类似合同；(f) 知识产权；以及(g) 其他有形或无形、动产或不动产，以及相关的财产权，如租赁权、抵押权、留置权和质押权¹¹。

根据本协议，仅因商品和服务商业销售而产生的付款请求权不是投资，除非它是一项具有投资特征贷款。

一方投资者的投资是指由该方投资者直接或间接拥有或控制的投资；

一方投资者¹²是指该方或其国有企业，或寻求在另一方领土内进行、正在进行的或已经进行的投资的一方国家或企业，但前提是：

- (a) 一名双重国籍的自然人被视为仅为其主要和有效国籍的国家国民；以及

某些债务形式，如债券、债券和长期票据，更有可能具有投资的特性，而其他形式的债务则不太可能具有这些特性。¹¹ 为明确起见，市场份额、市场准入、预期收益和盈利机会本身并非投资。¹² 为明确起见，理解为一方投资者“寻求”在另一方领土上进行投资，仅当投资者已采取必要的具体步骤进行该投资时，例如投资者已提出许可证或执照的申请以允许投资设立。

(b) a natural person who is a citizen of a Party and a permanent resident of the other Party is deemed to be exclusively a national of the Party of which that natural person is a citizen;

investor of a non-party means an investor other than an investor of a Party, that seeks to make, is making, or has made an investment;

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

non-disputing Party means the Party that is not a party to an investment dispute under Section B;

Secretary-General means the Secretary-General of ICSID;

transfers include international payments;

Tribunal means an arbitration tribunal established pursuant to Article 8.23 or Article 8.28;

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

(b) 一名既是某一方公民又是另一方永久居民的自然人被视为仅为其公民的国家的国民；

非缔约方投资者是指除缔约方投资者以外的投资者，该投资者寻求进行、正在进行或已经进行了投资；

纽约公约是指于1958年6月10日在纽约缔结的《联合国承认及执行外国仲裁裁决公约》；

非争议方是指根据B部分不属于投资争议的一方；

秘书长是指国际投资争端解决中心的秘书长；

转移包括国际支付；

仲裁庭是指根据第8.23条或第8.28条设立的仲裁庭；

联合国国际贸易法委员会仲裁规则是指联合国国际贸易法委员会的仲裁规则，该规则于1976年12月15日经联合国大会批准。

Annex 8-A

Customary International Law

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 8.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 8.5, 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 8-A

习惯国际法

缔约方确认他们共同的共识，即“习惯国际法”通常以及在第8.5条中具体引用的内容，源于国家普遍且一致的实践，而国家遵循这些实践是出于一种法律义务感。关于第8.5条，外国人最低待遇标准的习惯国际法是指所有保护外国人投资的习惯国际法原则。

Annex 8-B

Expropriation

The Parties confirm their shared understanding that:

- (a) indirect expropriation results from an action or a series of actions by a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure;
- (b) an action or series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment and eliminates all or nearly all of its value;
- (c) the determination of whether an action or a series of actions by a Party, in a specific fact situation, constitute an indirect expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including:
 - (i) the economic impact of the government action, although the sole fact that an action or a series of actions by a Party, in a specific fact situation, has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;
 - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations¹³; and
 - (iii) the character of the government action, including its objectives and context. Relevant considerations could include whether the government action imposes a special sacrifice on the particular investor or investment that exceeds what the investor or investment should be expected to endure for the public interest; and

¹³ For greater certainty, whether an investor’s investment-backed expectations are reasonable depends in part, on the nature and extent of governmental regulation in the relevant sector. For example, an investor’s expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.

附件8-B

征收

缔约方确认其共同理解如下：

- (a) 间接征收是由一方采取的行为或一系列行为造成的，这些行为的效果等同于直接征收，但未进行正式转移所有权或完全没收；
- (b) 一方采取的行为或一系列行为，除非干扰了投资中的有形或无形财产权并使其全部或几乎全部价值丧失，否则不能构成征收；
- (c) 在特定事实情况下，判断一方采取的行为或一系列行为是否构成间接征收，需要进行个案的、基于事实的调查，并考虑与投资相关的所有相关因素，包括：
 - (i) 政府行为的经济影响，尽管一方在特定事实情况下采取的行为或一系列行为对投资的经济价值产生不利影响，但这并不能证明发生了间接征收；
 - (ii) 政府行为干预了独立的、合理的投资预期¹³；和
 - (iii) 政府行为的特点，包括其目标和背景。相关的考虑因素可能包括政府行为是否对特定的投资者或投资强加了特殊的牺牲，使其超过投资者或投资应为公共利益所承受的范围；以及

¹³ 为进一步明确，投资者投资预期是否合理取决于部分，相关行业的政府监管的性质和程度。例如，投资者预期法规不会改变的期望，在监管较重的行业比在监管较轻的行业不太可能合理。

(d) except in rare circumstances, such as, for example, when an action or a series of actions are so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory regulatory actions of a Party that are designed and applied to protect legitimate public welfare objectives, such as, public health, safety, environment, and real estate price stabilisation through, for example, measures to improve the housing conditions for low-income households, do not constitute indirect expropriations¹⁴.

¹⁴ For greater certainty, the list of “legitimate public welfare objectives” in subparagraph (d) is not exhaustive.

(d) 除罕见情况外，例如，当一项行为或一系列行为根据其目的而言非常严重，以至于不能合理地被视为善意采取和应用的，一方为保护合法公共利益目标而设计和应用的非歧视性监管措施，例如，通过例如改善低收入家庭住房条件的措施来保护公共卫生、安全、环境和房地产价格稳定，并不构成间接征收¹⁴。

¹⁴ 为进一步明确，第（d）款中“合法公共利益目标”的清单并非详尽无遗。

Annex 8-C

Submission of a Claim to Arbitration

1. An investor of Canada shall not submit to arbitration under Section B a claim that Korea has breached an obligation under Section A:

- (a) on the investor’s own behalf pursuant to Article 8.18; or
- (b) on behalf of an enterprise of Korea that is a juridical person that the investor owns or controls directly or indirectly pursuant to Article 8.19,

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 Korea.

2. If an investor of Canada or an enterprise of Korea that is a juridical person that an investor of Canada owns or controls directly or indirectly makes an allegation that Korea has breached an obligation under Section A before a judicial or administrative tribunal of Korea, that election is final and that investor shall not thereafter allege the same breach in an arbitration under Section B.

3. Paragraphs 1 and 2 do not preclude an investor of Canada from initiating an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of Korea, provided that the action is brought for the sole purpose of preserving the disputing investor’s or the enterprise’s rights and interests during the pendency of the arbitration.

4. An investor of Korea may initiate or continue proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before a judicial or administrative tribunal under the domestic law of Canada.

附件8-C

仲裁索赔的提交

1. 加拿大投资者不得根据B部分向仲裁庭提交一项索赔，该索赔指控韩国违反了A部分规定的义务：

- (a) 根据第8.18条，代表投资者本人；或 (b) 根据第8.19条，代表韩国的企业法人，该企业法人由投资者直接或间接拥有或控制，

如果投资者或该企业，分别地，已经向韩国的法院或行政仲裁庭提出过关于违反A部分规定的义务的指控。

2. 如果加拿大投资者或由加拿大投资者直接或间接拥有或控制的韩国企业法人，在韩国的司法或行政法庭上提出指控，指控韩国违反了A部分规定的义务，则该选择是最终的，该投资者此后不得在B部分规定的仲裁中提出同样的违反指控。

3. 第1段和第2段并未阻止加拿大投资者在韩国的司法或行政法庭之前提起寻求临时禁令救济且不涉及货币损害赔偿的行动，前提是该行动的唯一目的是在仲裁悬而未决期间保护争议投资者或企业的权利和利益。

4. 一位韩国投资者可以在加拿大的国内法规定的司法或行政法庭前提起或继续针对禁令、宣告或非常救济（不涉及损害赔偿）的程序。

Annex 8-D

Submissions by Non-Disputing Parties

1. An application for leave to file a non-disputing party submission must:
 - (a) be made in writing, and be dated and signed by the person filing the application, and include the address and other contact details of the applicant;
 - (b) not exceed five typed pages;
 - (c) describe the applicant, including, if relevant, its membership and legal status (for example, company, trade association or other non-governmental organisation), its general objectives, the nature of its activities, and any parent organisation (including any organisation that directly or indirectly controls the applicant);
 - (d) disclose whether the applicant has an affiliation, direct or indirect, with a disputing party;
 - (e) identify any government, person or organisation that has provided any financial or other assistance to prepare the submission;
 - (f) specify the nature of the interest that the applicant has in the arbitration;
 - (g) identify the specific issues of fact or law in the arbitration that the applicant has addressed in its written submission;
 - (h) explain, by referring to the factors specified in Article 8.36.4, why the Tribunal should accept the submission; and
 - (i) be made in a language of the arbitration.
2. The submission filed by a non-disputing party must:
 - (a) be dated and signed by the person filing the submission;
 - (b) be concise, and not exceed 20 typed pages, including any appendices;
 - (c) set out a precise statement supporting the applicant’s position on the issues; and
 - (d) only address matters within the scope of the dispute.

附件8-D

非争议方的提交

1. 提交非争议方提交的许可申请必须：
 - (a) 以书面形式提交，并由提交申请的人签署并注明日期，并包括申请人的地址和其他联系信息；
 - (b) 不得超过五页打印页；
 - (c) 描述申请人，包括，如适用，其成员资格和法律地位（例如，公司、行业协会或其他非政府组织）、其总体目标、其活动的性质以及任何母公司（包括任何直接或间接控制申请人的组织）；
 - (d) 披露申请人是否与非争议方有任何关联关系，直接或间接；
 - (e) 确定任何政府、个人或组织是否为准备提交文件提供了任何财务或其他援助；
 - (f) 说明申请人在仲裁中的利益性质；
 - (g) 确定申请人通过书面提交文件在仲裁中解决的特定事实或法律问题；
 - (h) 通过参考第8.36.4条中规定的因素，解释为什么仲裁庭应接受提交；以及
 - (i) 使用仲裁语言提交。
2. 非争议方提交的提交必须：
 - (a) 由提交方签署并注明日期；
 - (b) 内容简洁，包括所有附件在内的打印页数不超过20页；
 - (c) 提出一个精确的声明，支持申请人关于争议问题的立场；以及
 - (d) 仅涉及争议范围内的内容。

Annex 8-E

Possibility of a Bilateral Appellate Mechanism

Within three years after the date this Agreement enters into force, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered pursuant to Article 8.42 in arbitrations commenced after they establish the appellate body or similar mechanism.

附件 8-E

双边上诉机制的可能性

在本协议生效之日起三年内，缔约方应考虑是否建立双边上诉机构或类似机制，以审查在建立上诉机构或类似机制后启动的根据第8.42条作出的裁决。

Exclusions from Dispute Settlement

A decision by Canada following a review under the *Investment Canada Act*, with respect to whether or not to permit an investment that is subject to review, is not subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).

争端解决中的排除

加拿大根据《加拿大投资法案》进行的审查后作出的决定，关于是否允许受审查的投资，不适用本章B部分或第二十一章（争端解决）的争端解决条款。