



ASEAN COMPREHENSIVE INVESTMENT AGREEMENT

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations ("ASEAN"), hereinafter collectively referred to as "Member States" or singularly as "Member State";

RECALLING the decisions of the 39th ASEAN Economic Ministers ("AEM") Meeting held in Makati City, Philippines on 23 August 2007 to revise the Framework Agreement on the ASEAN Investment Area signed in Makati City, Philippines on 7 October 1998 ("AIA Agreement"), as amended, into a comprehensive investment agreement which is forward-looking, with improved features and provisions, comparable to international best practices in order to increase intra-ASEAN investments and to enhance ASEAN's competitiveness in attracting inward investments into ASEAN;

RECOGNISING the different levels of development within ASEAN especially the least developed Member States which require some flexibility including special and differential treatment as ASEAN moves towards a more integrated and interdependent future;

REAFFIRMING the need to move forward from the AIA Agreement and the ASEAN Agreement for the Promotion and Protection of Investments signed in Manila, Philippines on 15 December 1987 ("ASEAN IGA"), as amended, in order to further enhance regional integration to realise the vision of the ASEAN Economic Community ("AEC");



东盟全面投资协定

文莱达鲁萨兰国、泰国、柬埔寨、印度尼西亚共和国、老挝人民民主共和国、马来西亚、缅甸联邦、菲律宾共和国、新加坡共和国、泰国和越南社会主义共和国政府, 作为东南亚国家联盟(“东盟”)的成员国, 以下统称为“成员国”或单独称为“成员国”;

回顾 39th 东盟经济部长(“AEM”)于2007年8月23日在菲律宾马卡蒂市举行的会议决定, 对1998年10月7日在菲律宾马卡蒂市签署的《东盟投资区框架协议》(“AIA协议”)进行修订, 将其转化为一项前瞻性的全面投资协议, 该协议具有改进的特性和条款, 与国际最佳实践相当, 旨在增加东盟内部投资并提升东盟在吸引外来投资方面的竞争力;

认识到东盟内部发展水平存在差异, 尤其是最不发达成员国需要一定的灵活性, 包括特殊和差别待遇, 以推动东盟迈向更加一体化与相互依存的未来;

重申有必要从1987年12月15日在菲律宾马尼拉签署的《东盟投资区协议》和《东盟促进和保护投资协定》(“东盟投资保障协议”)及其修正案继续推进, 以进一步加强区域一体化, 实现东盟经济共同体(“东盟经济共同体”)的愿景;

CONVINCED that sustained inflows of new investments and reinvestments will promote and ensure dynamic development of ASEAN economies;

RECOGNISING that a conducive investment environment will enhance freer flow of capital, goods and services, technology and human resource and overall economic and social development in ASEAN; and

DETERMINED to further intensify economic cooperation between and among Member States,

HAVE AGREED as follows:

SECTION A

Article 1 Objective

The objective of this Agreement is to create a free and open investment regime in ASEAN in order to achieve the end goal of economic integration under the AEC in accordance with the AEC Blueprint, through the following:

- (a) progressive liberalisation of the investment regimes of Member States;
- (b) provision of enhanced protection to investors of all Member States and their investments;
- (c) improvement of transparency and predictability of investment rules, regulations and procedures conducive to increased investment among Member States;
- (d) joint promotion of the region as an integrated investment area; and

确信持续的新投资和再投资流入将促进并确保东盟经济体的动态发展;

认识到良好的投资环境将促进东盟内部资本、商品和服务、技术及人力资源的更自由流动, 以及整体经济和社会发展; 且

决心进一步加强成员国之间的经济合作,

达成如下协议:

章节 A

第1条 目标

本协议的目标是在东盟建立自由开放的投资制度, 以通过以下方式实现东盟经济共同体蓝图下的经济一体化最终目标:

- (a) 成员国投资制度的逐步自由化; (b) 为所有成员国投资者及其投资提供更强有力的保护; (c) 提高投资规则、法规和程序的透明度与可预测性, 以促进成员国间投资增长;
- (d) 共同推动该地区成为一体化投资区域; 及

- (e) cooperation to create favourable conditions for investment by investors of a Member State in the territory of the other Member States.

Article 2 Guiding Principles

This Agreement shall create a liberal, facilitative, transparent and competitive investment environment in ASEAN by adhering to the following principles:

- (a) provide for investment liberalisation, protection, investment promotion and facilitation;
- (b) progressive liberalisation of investment with a view towards achieving a free and open investment environment in the region;
- (c) benefit investors and their investments based in ASEAN;
- (d) maintain and accord preferential treatment among Member States;
- (e) no back-tracking of commitments made under the AIA Agreement and the ASEAN IGA;
- (f) grant special and differential treatment and other flexibilities to Member States depending on their level of development and sectoral sensitivities;
- (g) reciprocal treatment in the enjoyment of concessions among Member States, where appropriate; and
- (h) accommodate expansion of scope of this Agreement to cover other sectors in the future.

- (e) 开展合作，为成员国投资者在其他成员国领土内的投资创造有利条件。

第二条 指导原则

本协议应通过遵循以下原则，在东盟创建一个自由、便利、透明和竞争的投资环境：

- (a) 提供投资自由化、保护、投资促进和便利化；(b) 逐步实现投资自由化，以期在本地区建立自由开放的投资环境；(c) 使东盟内的投资者及其投资受益；(d) 维持并给予成员国之间优惠待遇；(e) 不倒退根据东盟投资区协议和东盟投资保障协议所作的承诺；(f) 根据成员国的发展水平和部门敏感性，给予特殊和差别待遇及其他灵活性；(g) 在适当情况下，成员国之间在享受让步方面给予互惠待遇；(h) 为未来将本协议范围扩展至其他部门预留空间。

Article 3 Scope of Application

1. This Agreement shall apply to measures adopted or maintained by a Member State relating to:

- (a) investors of any other Member State; and
- (b) investments, in its territory, of investors of any other Member State.

2. This Agreement shall apply to existing investments as at the date of entry into force of this Agreement as well as to investments made after the entry into force of this Agreement.

3. For the purpose of liberalisation and subject to Article 9 (Reservations), this Agreement shall apply to the following sectors:

- (a) manufacturing;
- (b) agriculture;
- (c) fishery;
- (d) forestry;
- (e) mining and quarrying;
- (f) services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying; and
- (g) any other sectors, as may be agreed upon by all Member States.

第三条 适用范围

1. 本协议适用于成员国采取或维持的与以下方面相关的措施:

- (a) 任何其他成员国的投资者; 及 (b) 任何其他成员国投资者在其领土内的投资。

2. 本协议应适用于本协议生效之日已存在的投资, 以及本协议生效后进行的投资。

3. 为自由化之目的并受第九条(保留条款)约束, 本协议应适用于以下部门:

- (a) 制造业; (b) 农业; (c) 渔业; (d) 林业; (e) 采矿和采石业; (f) 与制造业、农业、渔业、林业、采矿和采石业相关的服务业; 以及 (g) 所有成员国可能商定的任何其他部门。

4. This Agreement shall not apply to:

- (a) any taxation measures, except for Articles 13 (Transfers) and 14 (Expropriation and Compensation);
- (b) subsidies or grants provided by a Member State;
- (c) government procurement;
- (d) services supplied in the exercise of governmental authority by the relevant body or authority of a Member State. For the purposes of this Agreement, a service supplied in the exercise of governmental authority means any service, which is supplied neither on a commercial basis nor in competition with one or more service suppliers; and
- (e) measures adopted or maintained by a Member State affecting trade in services under the ASEAN Framework Agreement on Services signed in Bangkok, Thailand on 15 December 1995 (“AFAS”).

5. Notwithstanding sub-paragraph 4 (e), for the purpose of protection of investment with respect to the commercial presence mode of service supply, Articles 11 (Treatment of Investment), 12 (Compensation in Cases of Strife), 13 (Transfers), 14 (Expropriation and Compensation) and 15 (Subrogation) and Section B (Investment Disputes Between an Investor and a Member State), shall apply, *mutatis mutandis*, to any measure affecting the supply of a service by a service supplier of a Member State through commercial presence in the territory of any other Member State but only to the extent that they relate to an investment and obligation under this Agreement regardless of whether or not such service sector is scheduled in the Member States’ schedule of commitments made under AFAS.

4. 本协议不适用于：

- (a) 任何税收措施，但第13条（转移）和第14条（征收与补偿）除外；(b) 成员国提供的补贴或赠款；(c) 政府采购；(d) 由成员国相关机构或当局在行使政府职权时提供的服务。就本协议而言，行使政府职权提供的服务指既非基于商业基础提供，亦非与一个或多个服务供应商竞争提供的任何服务；以及(e) 成员国根据1995年12月15日在泰国曼谷签署的《东盟服务框架协议》（“AFAS”）所采取或维持的影响服务贸易的措施。

5. 尽管有第4(e)项的规定，出于对商业存在模式的服务提供相关投资进行保护的目，第11条（投资待遇）、第12条（冲突情况下的补偿）、第13条（转移）、第14条（征收与补偿）和第15条（代位）以及B部分（投资者与成员国之间的投资争端）应经必要修改后适用于成员国服务供应商通过在任何其他成员国领土内的商业存在影响服务提供的任何措施，但仅限于这些措施与本协议下的投资及义务相关，无论该服务部门是否列入成员国根据AFAS所作的承诺表’。

6. Nothing in this Agreement shall affect the rights and obligations of any Member State under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

Article 4 Definitions

For the purpose of this Agreement:

- (a) “**covered investment**” means, with respect to a Member State, an investment in its territory of an investor of any other Member State in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and has been admitted according to its laws, regulations, and national policies, and where applicable, specifically approved in writing¹ by the competent authority of a Member State;
- (b) “**freely usable currency**” means a freely usable currency as determined by the International Monetary Fund (“IMF”) under its Articles of Agreement and any amendments thereto;

¹ For the purpose of protection, the procedures relating to specific approval in writing shall be as specified in Annex 1 (Approval in Writing).

6. 本协议中的任何规定均不影响任何成员国在税收协定下的权利和义务。如本协议与任何此类协定之间存在不一致，则以该协定为准，不一致之处以协定规定为限。

条款4 定 义

为本协议之目的：

- (a) “涵盖投资”指，对于一成员国而言，另一成员国投资者在其领土内于本协议生效之日已存在或之后设立、获取或扩大的投资，且已根据其法律、法规和国家政策获得准入，并在适用情况下，经成员国主管当局¹ 书面特别批准；
- (b) “自由使用货币”指国际货币基金组织(“IMF”)根据其协定条款及任何相关修正案所确定的自由使用货币；

¹ 为保护之目的，有关书面特别批准的程序应如附件1（书面批准）所规定。

(c) “**investment**”² means every kind of asset, owned or controlled, by an investor, including but not limited to the following:

- (i) movable and immovable property and other property rights such as mortgages, liens or pledges;
- (ii) shares, stocks, bonds and debentures and any other forms of participation in a juridical person and rights or interest derived therefrom;
- (iii) intellectual property rights which are conferred pursuant to the laws and regulations of each Member State;
- (iv) claims to money or to any contractual performance related to a business and having financial value;³
- (v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts; and

² 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.

³ For greater certainty, investment does not mean claims to money that arise solely from:

- (a) commercial contracts for sale of goods or services; or
- (b) the extension of credit in connection with such commercial contracts.

(c) “投资”² 指投资者拥有或控制的各类资产，包括但不限于以下各项：

- (i) 动产和不动产及其他财产权，如抵押、留置权或质押；(ii) 股份、股票、债券和公司债券及任何其他形式的法人参与及由此衍生的权利或利息；(iii) 根据各成员国法律法规授予的知识产权；(iv) 货币债权或与业务相关且具有财务价值的任何合同履行；³
- (v) 合同权利，包括交钥匙、建设、管理、生产或收益分成合同；及

² 若某项资产不具备投资的特征，则无论其采取何种形式，均不构成投资。投资的特征包括资本投入、收益或利润预期或风险承担。³ 为进一步明确，投资不包括仅因以下情形产生的货币债权：(a) 商品或服务销售的商业合同；或 (b) 与此类商业合同相关的信贷扩展。

- (vi) business concessions required to conduct economic activities and having financial value conferred by law or under a contract, including any concessions to search, cultivate, extract or exploit natural resources.

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

- (d) “**investor**” means a natural person of a Member State or a juridical person of a Member State that is making, or has made an investment in the territory of any other Member State;
- (e) “**juridical person**” means any legal entity duly constituted or otherwise organised under the applicable law of a Member State, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any enterprise, corporation, trust, partnership, joint venture, sole proprietorship, association, or organisation;
- (f) “**measures**” means any measure of a Member State, whether in the form of laws, regulations, rules, procedures, decisions, and administrative actions or practice, adopted or maintained by:
 - (i) central, regional or local government or authorities; or
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

- (vi) 为开展经济活动所需且依法或依合同授予的具有财务价值的商业特许权，包括勘探、种植、开采或开发自然资源的任何特许权。

术语“投资”还包括投资所产生的金额，特别是利润、利息、资本收益、股息、特许权使用费和费用。资产投资或再投资形式的任何改变均不影响其作为投资的分类；

- (d) “投资者”指在任一其他成员国领土内正在或已经进行投资的成员国自然人或法人；

- (e) “法人”指根据成员国适用法律正式设立或以其他方式组织的任何法律实体，无论是否以营利为目的，也无论私有或国有，包括任何企业、公司、信托、合伙企业、合资企业、独资企业、协会或组织；

- (f) “措施”指成员国采取或维持的任何措施，无论是以法律、法规、规则、程序、决定、行政行为或惯例的形式；

- (i) 中央、地区或地方政府或当局；或 (ii) 非政府机构在行使中央、地区或地方政府或当局授予的权力时；

- (g) “**natural person**” means any natural person possessing the nationality or citizenship of, or right of permanent residence in the Member State in accordance with its laws, regulations and national policies;
- (h) “**newer ASEAN Member States**” means the Kingdom of Cambodia, the Lao People’s Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;
- (i) “**WTO**” means the World Trade Organization; and
- (j) “**WTO Agreement**” means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, Morocco on 15 April 1994, as may be amended.

Article 5 National Treatment

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

(g) “自然人”指根据成员国法律、法规和国家政策，拥有该国国籍、公民身份或永久居留权的任何自然人；

(h) “新东盟成员国”系指柬埔寨王国、老挝人民民主共和国、缅甸联邦和越南社会主义共和国；(i) “WTO”指世界贸易组织；(j) “WTO协定”指1994年4月15日在摩洛哥马拉喀什签署的《建立世界贸易组织协议》，该协定可经修订。

第五条 国民待遇

1. 各成员国应给予其他成员国投资者在准入、设立、收购、扩展、管理、经营、运营及出售或其他处置其领土内投资方面，在类似情形下不低于其给予本国投资者的待遇。
2. 各成员国应给予其他成员国投资者在其领土内投资的准入、设立、收购、扩展、管理、经营、运营及出售或其他处置方面，不低于在类似情况下给予本国投资者投资的待遇。

Article 6
Most-Favoured-Nation Treatment⁴

1. Each Member State shall accord to investors of another Member State treatment no less favourable than that it accords, in like circumstances, to investors of any other Member State or a non-Member State with respect to the admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.
2. Each Member State shall accord to investments of investors of another Member State treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Member State or a non-Member State with respect to the admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.
3. Paragraphs 1 and 2 shall not be construed so as to oblige a Member State to extend to investors or investments of other Member States the benefit of any treatment, preference or privilege resulting from:

⁴ For greater certainty:

- (a) this Article shall not apply to investor-State dispute settlement procedures that are available in other agreements to which Member States are party; and
- (b) in relation to investments falling within the scope of this Agreement, any preferential treatment granted by a Member State to investors of any other Member State or a non-Member State and to their investments, under any existing or future agreements or arrangements to which a Member State is a party shall be extended on a most-favoured-nation basis to all Member States.

第6条 最惠国待遇⁴

1. 各成员国应给予另一成员国投资者在准入、设立、收购、扩展、管理、经营、运营及出售或其他处置方面，不低于在类似情况下给予任何其他成员国或非成员国投资者的待遇。
2. 各成员国应给予另一成员国投资者在其领土内的投资，在准入、设立、收购、扩展、管理、经营、运营及出售或其他处置方面，不低于在类似情况下给予任何其他成员国或非成员国投资者投资的待遇。
3. 不得将第1款和第2款解释为要求一成员国将因下列原因产生的任何待遇、优惠或特权利益扩展至其他成员国的投资者或投资：

⁴ 为进一步明确：(a) 本条不适用于成员国作为缔约方的其他协议中提供的投资者-国家争端解决程序；且(b) 对于属于本协议范围内的投资，成员国根据其作为缔约方的任何现有或未来协议或安排，给予任何其他成员国或非成员国投资者及其投资的任何优惠待遇，应以最惠国待遇基础扩展至所有成员国。

- (a) any sub-regional arrangements between and among Member States;⁵ or
- (b) any existing agreement notified by Member States to the AIA Council pursuant to Article 8(3) of the AIA Agreement.⁶

Article 7

Prohibition of Performance Requirements

1. The provisions of the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement (TRIMs), which are not specifically mentioned in or modified by this Agreement, shall apply, *mutatis mutandis*, to this Agreement.
2. Member States shall undertake joint assessment on performance requirements no later than 2 years from the date of entry into force of this Agreement. The aim of such assessment shall include reviewing existing performance requirements and considering the need for additional commitments under this Article.
3. Non-WTO Members of ASEAN shall abide by the WTO provisions in accordance with their accession commitments to the WTO.

⁵ For greater certainty, sub-regional arrangements between and among Member States shall include but not be limited to Greater Mekong Sub-region (“GMS”), ASEAN Mekong Basin Development Cooperation (“AMBDC”), Indonesia-Malaysia-Thailand Growth Triangle (“IMT-GT”), Indonesia-Malaysia-Singapore Growth Triangle (“IMS-GT”), Brunei-Indonesia-Malaysia-Philippines East ASEAN Growth Area (“BIMP-EAGA”).

⁶ This sub-paragraph refers to the Treaty of Amity and Economic Relations between the Kingdom of Thailand and the United States of America signed in Bangkok, Thailand on 29 May 1966.

- (a) 成员国之间达成的任何次区域安排；⁵ 或

- (b) 成员国根据《东盟投资区协议》第8条第3款向AIA理事会通知的任何现有协议。⁶

第7条 禁止业绩要求

1. 《世界贸易组织协定》附件1A中《与贸易有关的投资措施协定》（TRIMs）的条款，如未在本协议中特别提及或修改，经必要修改后应适用于本协议。
2. 成员国应在本协议生效之日起不超过2年内对业绩要求进行联合评估。此类评估的目的应包括审查现有业绩要求，并考虑是否需要根据本条作出额外承诺。
3. 东盟非WTO成员应根据其对世界贸易组织的加入承诺遵守WTO条款。

⁵ 为更明确起见，成员国之间的次区域安排应包括但不限于大湄公河次区域（“GMS”）、东盟湄公河流域发展合作（“AMBDC”）、印度尼西亚-马来西亚-泰国增长三角（“IMT-GT”）、印度尼西亚-马来西亚-新加坡增长三角（“IMS-GT”）、文莱-印度尼西亚-马来西亚-菲律宾东部东盟增长区（“BIMP-EAGA”）。

⁶ 本分段提及1966年5月29日在泰国曼谷签署的《泰王国与美利坚合众国友好经济关系条约》。

Article 8
Senior Management and Board of Directors

1. A Member State shall not require that a juridical person of that Member State appoint to senior management positions, natural persons of any particular nationality.
2. A Member State may require that a majority of the board of directors of a juridical person of that Member State, be of a particular nationality, or resident in the territory of the Member State, provided that this requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 9
Reservations

1. Articles 5 (National Treatment) and 8 (Senior Management and Board of Directors) shall not apply to:
 - (a) any existing measure that is maintained by a Member State at:
 - (i) the central level of government, as set out by that Member State in its reservation list in the Schedule referred to in paragraph 2;
 - (ii) the regional level of government, as set out by that Member State in its reservation list in the Schedule referred to in paragraph 2; and
 - (iii) a local level of government;
 - (b) the continuation or prompt renewal of any reservations referred to sub-paragraph (a).

第八条 高级管理层和董事会

1. 成员国不得要求其法人任命任何特定国籍的自然人担任高级管理职位。
2. 成员国可要求其法人实体的董事会多数成员具有特定国籍，或为该成员国领土内的居民，前提是该要求不会实质性损害投资者对其投资行使控制的能力。

第九条 保
留条款

1. 第五条（国民待遇）和第八条（高级管理层和董事会）不适用于：
 - (a) 成员国在以下层级维持的任何现行措施：(i) 中央政府层级，如该成员国在第2款所述附表的保留清单中所列；(ii) 地方政府层级，如该成员国在第2款所述附表的保留清单中所列；及(iii) 基层政府层级；(b) 对(a)项所述任何保留条款的延续或及时更新。

2. Each Member State shall submit its reservation list to the ASEAN Secretariat for the endorsement of the AIA Council within 6 months after the date of signing of this Agreement. This list shall form a Schedule to this Agreement.

3. Any amendment or modification to any reservations contained in the Schedule referred to in paragraph 2 shall be in accordance with Article 10 (Modification of Commitments).

4. Each Member State shall reduce or eliminate the reservations specified in the Schedule in accordance with the three phases of the Strategic Schedule of the AEC Blueprint and Article 46 (Amendments).

5. Articles 5 (National Treatment) and 6 (Most-Favoured-Nation Treatment) shall not apply to any measure covered by an exception to, or derogation from, the obligations under Articles 3 and 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended ("TRIPS Agreement"), as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

Article 10 Modification of Commitments

1. For a period of 12 months after the date of submission of each Member State's reservation list, a Member State may adopt any measures or modify any of its reservations made in the Schedule under Article 9 (Reservations) for prospective applications to investors of any other Member States and their investments, provided that such measures or modification shall not adversely affect any existing investors and investments.

2. After the expiration of the period referred to in paragraph 1, a Member State may, by negotiation and

2. 各成员国应在本协议签署之日起6个月内，将其保留清单提交东盟秘书处，供AIA理事会批准。该清单将构成本协议的附表。

3. 对第2款所述附表中包含的任何保留条款的修正或修改，应按照第10条（承诺的修改）进行。

4. 各成员国应根据东盟经济共同体蓝图的战略时间表三个阶段和第46条（修正案），减少或消除附表中指定的保留条款。

5. 第5条（国民待遇）和第6条（最惠国待遇）不适用于任何措施，只要该措施属于《与贸易有关的知识产权协议》（可能经修正，“TRIPS协议”）中附件1C所列WTO协定第3条和第4条义务的例外或减损，且这些条款及TRIPS协议第5条另有具体规定。

第10条 承诺的修改

1. 在各成员国提交保留清单之日起12个月内，成员国可采取任何措施或修改其在第9条（保留条款）下附表中对任何其他成员国投资者及其投资未来适用所作的任何保留，但此类措施或修改不得对现有投资者及投资产生不利影响。

2. 第1款所述期限期满后，一成员国可通过与根据本协议作出承诺的其他任一成员国协商并

agreement with any other Member States to which it made commitments under this Agreement, adopt any measure, or modify or withdraw such commitments and reservations, provided that such measure, modification or withdrawal shall not adversely affect any existing investors or investments.⁷

3. In any such negotiations and agreement referred to in paragraph 2, which may include provisions for compensatory adjustments with respect to other sectors, the Member States concerned shall maintain a general level of reciprocal and mutually advantageous commitments and reservations that is not less favourable to investors and investments than that provided for in this Agreement prior to such negotiations and agreements.

4. Notwithstanding paragraphs 1 and 2, a Member State shall not, under any measure adopted pursuant to this Article after the entry into force of this Agreement, require an investor of any other Member State, by reason of that investor's 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 authorities.

Article 11 Treatment of Investment

1. Each Member State shall accord to covered investments of investors of any other Member State, fair and equitable treatment and full protection and security.

2. For greater certainty:

⁷ For the avoidance of doubt, Member States shall not adopt any measures or modify any of its reservation under the Schedule for a period of 6 months after the expiration of the period specified in paragraph 1.

达成协议，采取任何措施，或修改或撤销此类承诺和保留条款，前提是该措施、修改或撤销不得对现有投资者或投资造成不利影响。⁷

3. 在第2款提及的任何此类谈判和协议中（可包含针对其他部门的补偿性调整条款），相关成员国应维持互惠互利承诺与保留条款的总体水平，确保其对投资者及投资的优惠程度不低于本协议在此类谈判和协议达成前所规定的标准。

4. 尽管有第1款和第2款规定，成员国不得根据本条款生效后采取的任何措施，以其他成员国投资者的国籍为由，要求其出售或以其他方式处置该措施生效时已存在的投资，除非相关当局的初步批准中另有明确规定。

第11条 投资待遇

1. 各成员国应给予其他成员国投资者的涵盖投资以公平公正待遇及充分保护与安全。

2. 为进一步明确：

⁷ 为避免疑义，成员国在第1款规定的期限届满后6个月内，不得采取任何措施或修改其附表中的任何保留条款。

- (a) fair and equitable treatment requires each Member State not to deny justice in any legal or administrative proceedings in accordance with the principle of due process; and
- (b) full protection and security requires each Member State to take such measures as may be reasonably necessary to ensure the protection and security of the covered investments.

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

Article 12 Compensation in Cases of Strife

Each Member State shall accord to investors of any other Member State, in relation to their covered investments which suffered losses in its territory due to armed conflict or civil strife or state of emergency, non-discriminatory treatment with respect to restitution, compensation or other valuable consideration.

Article 13 Transfers

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

- (a) contributions to capital, including the initial contribution;
- (b) profits, capital gains, dividends, royalties, license fees, technical assistance and technical and

(a) 公平公正待遇要求各成员国不得在任何法律或行政程序中违反正当程序原则拒绝司法；以及 (b) 充分保护与安全要求各成员国采取合理必要措施以确保涵盖投资的保护与安全。

3. 判定违反本协议其他条款或另一项国际协定的行为，并不构成对本条款的违反。

第12条 冲突情况下的补偿

各成员国应给予其他成员国投资者非歧视性待遇，就其因武装冲突、内乱或紧急状态而在其领土内遭受损失的涵盖投资，提供恢复原状、补偿或其他有价值的对价。

第13条 转 移

1. 各成员国应允许所有与涵盖投资相关的转移自由且无延迟地进出其领土。此类转移包括：

(a) 资本出资，包括初始出资；(b) 利润、资本收益、股息、特许权使用费、许可费、技术援助及技术及

management fees, interest and other current income accruing from any covered investment;

- (c) proceeds from the total or partial sale or liquidation of any covered investment;
- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Articles 12 (Compensation in Cases of Strife) and 14 (Expropriation and Compensation);
- (f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the Member States to the dispute; and
- (g) earnings and other remuneration of personnel employed and allowed to work in connection with that covered investment in its territory.

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

3. Notwithstanding paragraphs 1 and 2, a Member State may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations 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 and the recovery of the proceeds of crime;

管理费、利息及任何涵盖投资所产生的其他经常性收入；

(c) 任何涵盖投资全部或部分出售或清算的收益；(d) 根据合同（包括贷款协议）作出的付款；(e) 依照第12条（冲突情况下的补偿）和第14条（征收与补偿）作出的付款；(f) 通过任何方式（包括裁决、仲裁或争议成员国之间的协议）解决争议所产生的付款；以及(g) 受雇并获准在其领土内从事该涵盖投资相关工作的人员的收入及其他报酬。

2. 各成员国应允许以自由使用货币按转移时的市场汇率进行与涵盖投资相关的转移。

3. 尽管有第1款和第2款的规定，成员国仍可通过公平、非歧视且善意地适用其与以下事项相关的法律法规来阻止或延迟转移：

(a) 破产、资不抵债或债权人权利保护；(b) 证券、期货、期权或衍生品的发行、交易或买卖；(c) 刑事或刑事犯罪及犯罪收益追回；

- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;
- (f) taxation;
- (g) social security, public retirement, or compulsory savings schemes;
- (h) severance entitlements of employees; and
- (i) the requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of a Member State.

4. Nothing in this Agreement shall affect the rights and obligations of the Member States as members of the IMF, under the Articles of Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF, provided that a Member State shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Agreement regarding such transactions, except:

- (a) at the request of the IMF;
- (b) under Article 16 (Measures to Safeguard the Balance-of-Payments); or
- (c) where, in exceptional circumstances, movements of capital cause, or threaten to cause, serious economic or financial disturbance in the Member State concerned.

(d) 在必要时协助执法或金融监管机构的财务报告或转移记录保存；(e) 确保遵守司法或行政诉讼中的命令或判决；(f) 税收；(g) 社会保障、公共退休或强制储蓄计划；(h) 员工的遣散费权利；以及(i) 成员国中央银行和其他相关当局规定的注册和满足其他手续的要求。

4. 本协议的任何规定均不得影响成员国作为国际货币基金组织成员的权利和义务，包括符合国际货币基金组织协定条款的外汇行动的使用，但前提是成员国不得对本协议项下关于此类交易的具体承诺不一致地实施任何资本交易限制，除非：

- (a) 应国际货币基金组织请求；(b) 根据第16条（保障国际收支的措施）；或(c) 在特殊情况下，资本流动导致或可能导致相关成员国出现严重的经济或金融动荡时。

5. The measures taken in accordance with sub-paragraph 4(c)⁸:

- (a) shall be consistent with the Articles of Agreement of the IMF;
- (b) shall not exceed those necessary to deal with the circumstances described in sub-paragraph 4(c);
- (c) shall be temporary and shall be eliminated as soon as conditions no longer justify their institution or maintenance;
- (d) shall promptly be notified to the other Member States;
- (e) shall be applied such that any one of the other Member States is treated no less favourably than any other Member State or non-Member State;
- (f) shall be applied on a national treatment basis; and
- (g) shall avoid unnecessary damage to investors and covered investments, and the commercial, economic and financial interests of the other Member State(s).

⁸ For greater certainty, any measures taken to ensure the stability of the exchange rate including to prevent speculative capital flows shall not be adopted or maintained for the purpose of protecting a particular sector.

5. 根据第4(c)项⁸采取的措施:

- (a) 应与《国际货币基金组织协定条款》保持一致; (b) 不得超过应对第4(c)项所述情形所必需的程度; (c) 应是临时性的, 且一旦条件不再证明其设立或维持的合理性, 即应予以取消; (d) 应立即通知其他成员国; (e) 实施时应确保任一其他成员国所获待遇不低于任何其他成员国或非成员国; (f) 应在国民待遇基础上实施; 以及(g) 应避免对投资者和涵盖投资以及其他成员国的商业、经济和金融利益造成不必要的损害。

⁸ 为更加明确起见, 任何为确保汇率稳定 (包括为防止投机性资本流动) 而采取的措施, 均不得以保护特定行业为目的而采取或维持。

Article 14
Expropriation and Compensation⁹

1. A Member State shall not expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or nationalisation (“expropriation”),¹⁰ except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate, and effective compensation; and
- (d) in accordance with due process of law.

2. The compensation referred to in sub-paragraph 1(c) shall:

- (a) be paid without delay;¹¹
- (b) be equivalent to the fair market value of the expropriated investment immediately before or at the time when the expropriation was publicly announced, or when the expropriation occurred, whichever is applicable;

⁹ This Article shall be read with Annex 2 (Expropriation and Compensation).

¹⁰ For the avoidance of doubt, any measure of expropriation relating to land shall be as defined in the Member States’ respective existing domestic laws and regulations and any amendments thereto, and shall be for the purposes of and upon payment of compensation in accordance with the aforesaid laws and regulations.

¹¹ Member States understand that there may be legal and administrative processes that need to be observed before payment can be made.

第14条 征收与补偿⁹

1. 成员国不得直接或通过等同于征收或国有化的措施对涵盖投资实施征收或国有化（“征收”），¹⁰ 除非：

- (a) 出于公共目的；(b) 以非歧视性方式；(c) 支付迅速、充分和有效补偿；及 (d) 依据法律正当程序。

2. 第1款(c)项所指补偿应：

- (a) 毫不迟延地支付；¹¹
- (b) 相当于征收前或征收公开宣布时或征收发生时（以适用者为准）被征收投资的公平市场价值；

⁹ 本条款应与附件2（征收与补偿）一并解读。¹⁰ 为避免疑义，任何涉及土地的征收措施应按照成员国各自现行国内法律法规及其修正案进行定义，且须基于上述法律法规之目的并按该等法律法规支付补偿。¹¹ 成员国理解，在支付前可能需要遵循法律和行政程序。

- (c) not reflect any change in value because the intended expropriation had become known earlier; and
- (d) be fully realisable and freely transferable in accordance with Article 13 (Transfers) between the territories of the Member States.

3. In the event of delay, the compensation shall include an appropriate interest in accordance with the laws and regulations of the Member State making the expropriation. The compensation, including any accrued interest, shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely useable currency, the compensation referred to in sub-paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement.

Article 15 Subrogation

1. If a Member State or an agency of a Member State makes a payment to an investor of that Member State under a guarantee, a contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of an investment, the other Member State shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the

- (c) 不反映因拟议征收提前公开而导致的任何价值变化；
且 (d) 根据第13条（转移）规定可在成员国领土之间完全实现并自由转让。

3. 如发生延迟，补偿应包括根据实施征收的成员国法律法规计算的适当利息。补偿（包括任何应计利息）应以投资原币种支付，或应投资者要求以自由使用货币支付。

4. 若投资者要求以自由使用货币付款，则第1款(c)项所述补偿（包括任何应计利息）应按支付日期的市场汇率折算为支付货币。

5. 本条不适用于根据TRIPS协议颁发的与知识产权相关的强制许可。

第15条代 位

1. 如一成员国或其机构根据其对一项投资提供的非商业风险担保、保险合同或其他形式的赔偿向该成员国投资者付款，其他成员国应承认就该投资产生的任何权利或所有权的代位或转让。被代位或转让的权利或索赔不得超过投资者的原始权利或索赔。

investor. This, however, does not necessarily imply recognition of the latter Member State of the merits of any case or the amount of any claims arising therefrom.

2. Where a Member State or an agency of a Member State has made a payment to an investor of that Member State and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Member State or the agency of the Member State making the payment, pursue those rights and claims against the other Member State.

3. In the exercise of subrogated rights or claims, a Member State or the agency of the Member State exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the relevant Member State.

Article 16 Measures to Safeguard the Balance-of-Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member State may adopt or maintain restrictions on payments or transfers related to investments. It is recognised that particular pressures on the balance-of-payments of a Member State in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the IMF;

但这并不必然意味着后一成员国承认任何案件的实体问题或由此产生的索赔金额。

2. 如某一成员国或其机构已向该成员国投资者作出付款，并接管了该投资者的权利和索赔，则该投资者不得对另一成员国主张这些权利和索赔，除非被授权代表作出付款的成员国或其机构行事。

3. 在行使代位权或索赔时，行使此类权利或索赔的成员国或其机构应向相关成员国披露其与投资者之间的索赔安排范围。

第16条 保障国际收支的 措施

1. 在发生严重的国际收支和外部财政困难或其威胁时，成员国可对与投资相关的支付或转账采取或维持限制措施。成员国在经济发展过程中可能面临国际收支的特殊压力，因而有必要使用限制措施以确保特别是维持足以实施其经济发展计划的财政储备水平。

2. 第1款所述限制应：

- (a) 与国际货币基金组织协定条款保持一致；

- (b) avoid unnecessary damage to the commercial, economic and financial interests of another Member State;
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;
- (e) be applied such that any one of the other Member States is treated no less favourably than any other Member State or non-Member State.

3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Member States.

4. To the extent that it does not duplicate the process under WTO, IMF, or any other similar processes, the Member State adopting any restrictions under paragraph 1 shall commence consultations with any other Member State that requests such consultations in order to review the restrictions adopted by it.

Article 17 General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Member States or their investors where like conditions prevail, or a disguised restriction on investors of any other Member State and their investments, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member State of measures:

- (b) 避免对另一成员国的商业、经济和金融利益造成不必要的损害；(c) 不得超过处理第1款所述情况所必需的范围；
- (d) 具有临时性，并随着第1款所述情况的改善逐步取消；
- (e) 实施时应确保其他任一成员国所获待遇不低于任何其他成员国或非成员国。

3. 根据第1款采取或维持的任何限制，或其任何变更，应立即通知其他成员国。

4. 在不与世界贸易组织、国际货币基金组织或任何其他类似程序重复的前提下，根据第1款采取任何限制的成员国应应请求与任何其他成员国展开磋商，以审查其采取的限制措施。

第17条 一般例外

1. 在不构成对条件相同的成员国或其投资者进行任意或不合理歧视的手段，或对其他任何成员国投资者及其投资构成变相限制的前提下，本协议不得解释为阻止任何成员国采取或执行以下措施：

- (a) necessary to protect public morals or to maintain public order;¹²
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with this Agreement, including those relating to:
 - (i) the prevention of deceptive and fraudulent practices to deal with the effects of a default on a contract;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
- (d) aimed at ensuring the equitable or effective¹³ imposition or collection of direct taxes in respect of investments or investors of any Member State;
- (e) imposed for the protection of national treasures of artistic, historic or archaeological value;

¹² The public order exception may be invoked by a Member State only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

¹³ For the purpose of this sub-paragraph, footnote 6 of Article XIV of the General Agreement on Trade in Services in Annex 1B to the WTO Agreement (GATS) is incorporated into and forms an integral part of this Agreement, *mutatis mutandis*.

- (a) 为保护公共道德或维护公共秩序所必需的措施；¹²
- (b) 为保护人类、动物或植物的生命或健康所必需；
- (c) 为确保遵守与本协议不相抵触的法律或法规所必需，包括与以下方面相关的法律或法规：
 - (i) 防止欺骗和欺诈行为以处理合同违约的影响；
 - (ii) 保护个人隐私，涉及个人数据的处理和传播以及个人记录和账户的保密性；
 - (iii) 安全；
- (d) 旨在确保公平或有效¹³ 征收或收取任何成员国投资或投资者的直接税；
- (e) 为保护具有艺术、历史或考古价值的国家珍宝而实施；

¹² 公共秩序例外仅在社会基本利益面临真实且足够严重的威胁时，方可由成员国援引。¹³ 就本项而言，《WTO协定》附件1B《服务贸易总协定》（GATS）第XIV条脚注6经必要修改后纳入本协议，并构成本协议的组成部分。

- (f) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. Insofar as measures affecting the supply of financial services are concerned, paragraph 2 (Domestic Regulation) of the Annex on Financial Services of the General Agreement on Trade in Services in Annex 1B to the WTO Agreement (“GATS”) shall be incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

Article 18 Security Exceptions

Nothing in this Agreement shall be construed:

- (a) to require any Member State to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Member State from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:
 - (i) action relating to fissionable and fusionable materials or the materials from which they derived;
 - (ii) action relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

- (f) 与保护可耗尽的自然资源相关，但此类措施需与对国内生产或消费的限制同时生效。

2. 就影响金融服务供应的措施而言，《世界贸易组织》附件1B《服务贸易总协定》的《金融服务附件》第2款（国内法规）应经必要修改后纳入本协议，并构成本协议的组成部分。

第18条 安全例外

本协议的任何内容不得解释为：

- (a) 要求任何成员国提供其认为披露会违背其基本安全利益的任何信息；或 (b) 阻止任何成员国采取其认为对保护其基本安全利益所必需的任何行动，包括但不限于：(i) 与裂变和聚变材料或其衍生材料有关的行动；(ii) 与武器交易、弹药和战争工具有关的行动，以及直接或间接为供应军事机构而进行的其他货物和材料的此类交易；

- (iii) action taken in time of war or other emergency in domestic or international relations;
 - (iv) action taken so as to protect critical public infrastructure, including communication, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructure; or
- (c) to prevent any Member State from taking any action pursuant to its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 19 Denial of Benefits

1. A Member State may deny the benefits of this Agreement to:

- (a) an investor of another Member State that is a juridical person of such other Member State and to investments of such investor if an investor of a non-Member State owns or controls the juridical person and the juridical person has no substantive business operations in the territory of such other Member State;
- (b) an investor of another Member State that is a juridical person of such other Member State and to investments of such investor if an investor of the denying Member State owns or controls the juridical person and the juridical person has no substantive business operations in the territory of such other Member State; and

(iii) 在战争或国内国际关系其他紧急情况下采取的行动；(iv) 为保护关键公共基础设施（包括通信、电力和水利基础设施）免受蓄意破坏或削弱此类基础设施的企图而采取的行动；或

(c) 阻止任何成员国根据《联合国宪章》规定的义务为维护国际和平与安全采取任何行动。

第十九条 利益拒 绝

1. 成员国可拒绝给予本协定利益予以下对象：

(a) 作为另一成员国法人的该成员国投资者及其投资，若该法人由非成员国投资者拥有或控制，且该法人在该另一成员国领土内无实质性业务运营；(b) 作为另一成员国法人的该成员国投资者及其投资，若该法人由拒绝给予利益的成员国投资者拥有或控制，且该法人在该另一成员国领土内无实质性业务运营；以及

- (c) an investor of another Member State that is a juridical person of such other Member State and to an investment of such investor if investors of a non-Member State own or control the juridical person, and the denying Member State does not maintain diplomatic relations with the non-Member State.

2. Following notification to the Member State of the investor, and without prejudice to paragraph 1, a Member State may deny the benefits of this Agreement to investors of another Member State and to investments of that investor, where it establishes that such investor has made an investment in breach of the domestic laws of the denying Member State by misrepresenting its ownership in those areas of investment which are reserved for natural or juridical persons of the denying Member State.

3. A juridical person is:

- (a) “owned” by an investor in accordance with the laws, regulations and national policies of each Member States;
- (b) “controlled” by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

Article 20

Special Formalities and Disclosure of Information

1. Nothing in Articles 5 (National Treatment) or 6 (Most-Favoured-Nation Treatment) shall be construed to prevent a Member State from adopting or maintaining a measure that prescribes special formalities in connection with investments, including a requirement that investments be legally constituted or assume a certain legal form under the laws or regulations of the Member State and compliance with

- (c) 作为另一成员国法人的该成员国投资者及其投资，若该法人由非成员国投资者拥有或控制，且拒绝给予利益的成员国与该非成员国无外交关系。

2. 在通知投资者所属成员国后，且在不影响第1款的前提下，若一成员国认定某投资者通过虚假陈述其所有权的方式，在专属于该成员国自然人或法人的投资领域内违反拒绝给予利益的成员国国内法进行投资，则该成员国可拒绝给予该另一成员国投资者及其投资本协议利益。

3. 法人是指：

- (a) 根据各成员国法律、法规和国家政策由投资者“拥有”；
- (b) 若投资者有权任命其多数董事或以其他方式合法指导其行为，则该法人被视为由投资者“控制”。

第20条 特殊程序和信息披露

1. 条款5（国民待遇）或条款6（最惠国待遇）中的任何规定均不得解释为阻止成员国采取或维持与投资相关的特殊措施，包括要求投资根据成员国的法律或法规合法成立或采取特定法律形式，并遵守

registration requirements, provided that such formalities do not materially impair the rights afforded by a Member State to investors of another Member State and investments pursuant to this Agreement.

2. Notwithstanding Articles 5 (National Treatment) or 6 (Most-Favoured-Nation Treatment), a Member State may require an investor of another Member State, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Member State shall protect any confidential information from any disclosure that would prejudice legitimate commercial interests or particular juridical persons, public or private or the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Member State from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 21 Transparency

1. In order to achieve the objectives of this Agreement, each Member State shall:

- (a) promptly and at least annually inform the AIA Council of any investment-related agreements or arrangements which it has entered into and where preferential treatment was granted;
- (b) promptly and at least annually inform the AIA Council of the introduction of any new law or of any changes to existing laws, regulations or administrative guidelines, which significantly affect investments or commitments of a Member State under this Agreement;

注册要求，前提是此类手续不会实质性损害成员国根据本协议给予另一成员国投资者及投资的权利。

2. 尽管有第五条（国民待遇）或第六条（最惠国待遇）的规定，成员国可要求另一成员国的投资者或涵盖投资提供与该投资相关的信息，仅用于信息或统计目的。成员国应保护任何机密信息免遭披露，以免损害合法商业利益或特定法人（无论是公共还是私人）或投资者或涵盖投资的竞争地位。本款任何内容不得解释为阻止成员国以其他方式获取或披露信息，以公平和善意地适用其法律。

第二十一条 透明度

1. 为实现本协议的目标，各成员国应：

- (a) 迅速且至少每年一次向AIA理事会通报其签订的任何投资相关协议或安排，以及授予优惠待遇的情况；(b) 迅速且至少每年一次向AIA理事会通报任何新法律的出台或现有法律、法规或行政指导方针的变更，这些变更显著影响成员国根据本协议所作的投资或承诺；

- (c) make publicly available, all relevant laws, regulations and administrative guidelines of general application that pertain to, or affect investments in the territory of the Member State; and
- (d) establish or designate an enquiry point where, upon request of any natural person, juridical person or any other Member State, all information relating to the measures required to be published or made available under subparagraphs (b) and (c) may be promptly obtained.

2. Nothing in this Agreement shall require a Member State to furnish or allow access to any confidential information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular juridical persons, public or private.

Article 22 Entry, Temporary Stay and Work of Investors and Key Personnel

Subject to its immigration and labour laws, regulations and national policies relating to the entry, temporary stay and authorisation to work, and consistent with its commitments under AFAS, each Member State shall grant entry, temporary stay and authorisation to work to investors, executives, managers and members of the board of directors of a juridical person of any other Member State, for the purpose of establishing, developing, administering or advising on the operation in the territory of the former Member State of an investment to which they, or a juridical person of the other Member States that employs such

(c) 公开所有与成员国领土内投资相关或影响投资的一般适用法律、法规及行政指导方针；

(d) 设立或指定一个咨询点，以便任何自然人、法人或其他成员国提出请求时，可迅速获取与(b)和(c)项下要求公布或提供的措施相关的所有信息。

2. 本协议中的任何规定均不得要求成员国提供或允许获取任何机密信息，包括涉及特定投资者或投资的信息，此类信息的披露会妨碍执法，或以其他方式违背公共利益，或损害特定法人（无论公有或私有）的合法商业利益。

第22条 投资者和关键人员的入境、 临时居留和工作

在不违反其关于入境、临时居留和工作许可的移民及劳动法、法规和国家政策，并与AFAS项下承诺保持一致的前提下，各成员国应允许其他成员国法人的投资者、高管、经理及董事会成员为在前者领土内建立、发展、管理或就某项投资运营提供咨询之目的入境、临时居留及获得工作许可。该投资须由上述人员或其所属的其他成员国法人已投入或正在投入大量资本或其他资源。

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.

Article 23 Special and Differential Treatment for the Newer ASEAN Member States

In order to increase the benefits of this Agreement for the newer ASEAN Member States, and in accordance with the objectives and principles set out in the Preamble and Articles 1 (Objective) and 2 (Guiding Principles), Member States recognise the importance of according special and differential treatment to the newer ASEAN Member States, through:

- (a) technical assistance to strengthen their capacity in relation to investment policies and promotion, including in areas such as human resource development;
- (b) commitments in areas of interest to the newer ASEAN Member States; and
- (c) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

Article 24 Promotion of Investment

Member States shall cooperate in increasing awareness of ASEAN as an integrated investment area in order to increase foreign investment into ASEAN and intra-ASEAN investments through, among others:

高管、经理及董事会成员已投入或正在投入大量资本或其他资源。

第23条 新东盟成员国的特殊和差别待遇

为增加本协议对新东盟成员国的利益，并根据序言及第一条（目标）和第二条（指导原则）中规定的目标和原则，成员国认识到通过以下方式给予新东盟成员国特殊和差别待遇的重要性：

- (a) 提供技术援助以加强其在投资政策和促进方面的能力，包括人力资源开发等领域；(b) 在新东盟成员国感兴趣的领域作出承诺；及 (c) 承认每个新东盟成员国可根据其各自发展阶段作出承诺。

第24条 投资促进

成员国应通过以下方式合作提升东盟作为一体化投资区域的认知度，以增加对东盟的外国投资及东盟内部投资：

- (a) encouraging the growth and development of ASEAN small and medium enterprises and multi-national enterprises;
- (b) enhancing industrial complementation and production networks among multi-national enterprises in ASEAN;
- (c) organising investment missions that focus on developing regional clusters and production networks;
- (d) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations and policies; and
- (e) conducting exchanges on other issues of mutual concern relating to investment promotion.

Article 25 Facilitation of Investment

Member States shall endeavour to cooperate in the facilitation of investments into and within ASEAN through, among others:

- (a) creating the necessary environment for all forms of investments;
- (b) streamlining and simplifying procedures for investment applications and approvals;
- (c) promoting dissemination of investment information, including investment rules, regulations, policies and procedures;
- (d) establishing one-stop investment centres;

- (a) 鼓励东盟中小企业及跨国企业的成长与发展；(b) 加强东盟跨国企业间的产业互补与生产网络；(c) 组织聚焦发展区域集群和生产网络的投资代表团；(d) 组织并支持举办关于投资机会及投资法律、法规 and 政策的各类简报会与研讨会；(e) 开展投资促进相关其他共同关切议题的交流。

条款 25 投资便利化

成员国应努力通过以下方式（包括但不限于）在东盟内外投资便利化方面开展合作：

- (a) 为各种形式的投资创造必要的环境；(b) 简化和优化投资申请及批准程序；(c) 促进投资信息的传播，包括投资规则、法规、政策和程序；(d) 建立一站式投资中心；

- (e) strengthening databases on all forms of investments for policy formulation to improve ASEAN's investment environment;
- (f) undertaking consultation with the business community on investment matters; and
- (g) providing advisory services to the business community of the other Member States.

Article 26 Enhancing ASEAN Integration

Member States recognise the importance of fostering ASEAN economic integration through various initiatives, including the Initiative for ASEAN Integration, Priority Integration Sectors, and AEC, all of which include cooperation on investment. In order to enhance ASEAN economic integration, Member States shall endeavour to, among others:

- (a) harmonise, where possible, investment policies and measures to achieve industrial complementation;
- (b) build and strengthen capacity of Member States, including human resource development, in the formulation and improvement of investment policies to attract investment;
- (c) share information on investment policies and best practices, including promoted activities and industries; and
- (d) support investment promotion efforts amongst Member States for mutual benefits.

- (e) 加强各类投资数据库建设以支持政策制定, 改善东盟投资环境; (f) 就投资事务与商业界进行磋商; (g) 向其他成员国商业界提供咨询服务。

第26条 加强东盟一体化

成员国认识到通过各种倡议促进东盟经济一体化的重要性, 这些倡议包括东盟一体化倡议、优先整合领域和东盟经济共同体, 所有这些都包含投资合作。为了加强东盟经济一体化, 成员国应特别努力:

- (a) 尽可能协调投资政策和措施, 以实现产业互补; (b) 建设和加强成员国能力, 包括人力资源开发, 以制定和完善吸引投资的投资政策; (c) 分享投资政策和最佳实践的信息, 包括促进活动和产业; (d) 支持成员国之间的投资促进努力, 以实现互利。

Article 27
Disputes Between or Among Member States

The ASEAN Protocol on Enhanced Dispute Settlement Mechanism signed in Vientiane, Lao PDR on 29 November 2004, as amended, shall apply to the settlement of disputes concerning the interpretation or application of this Agreement.

SECTION B
**Investment Dispute Between
an Investor and a Member State**

Article 28
Definitions

For the purpose of this Section:

- (a) “**Appointing Authority**” means:
- (i) in the case of arbitration under Article 33(1)(b) or (c), the Secretary-General of ICSID;
 - (ii) in the case of arbitration under Article 33(1)(d), the Secretary-General of the Permanent Court of Arbitration; or
 - (iii) in the case of arbitration under Article 33(1)(e) and (f), the Secretary-General, or a person holding equivalent position, of that arbitration centre or institution;

第二十七条 成员国之间的争端

2004年11月29日在老挝人民民主共和国万象签署并经修订的《东盟加强争端解决机制议定书》应适用于解决有关本协议解释或适用的争端。

B部分
投资者与成员国之间的投资争端

第二十
八条 定义

就本章节而言：

- (a) “指定机构” 指：
- (i) 在根据第三十三条第一款第二项或第三项进行仲裁的情况下，由国际投资争端解决中心秘书长指定；
 - (ii) 在根据第三十三条第一款第四项进行仲裁的情况下，由常设仲裁法院秘书长指定；或(iii) 在根据第33条第1款第(e)项和第(f)项进行仲裁的情况下，由该仲裁中心或机构的秘书长或担任同等职位的人员指定；

- (b) **“disputing investor”** means an investor of a Member State that makes a claim on its own behalf under this Section, and where relevant, includes an investor of a Member State that makes a claim on behalf of a juridical person of the other Member State that the investor owns or controls;
- (c) **“disputing Member State”** means a Member State against which a claim is made under this Section;
- (d) **“disputing parties”** means a disputing investor and a disputing Member State;
- (e) **“ICSID”** means the International Centre for Settlement of Investment Disputes;
- (f) **“ICSID Additional Facility Rules”** means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;
- (g) **“ICSID Convention”** means the Convention on the Settlement of Investment Disputes between States and National of other States, done at Washington, D.C., United States of America on 18 March 1965;
- (h) **“New York Convention”** means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, United States of America on 10 June 1958;
- (i) **“non-disputing Member State”** means the Member State of the disputing investor; and

(b) “争议投资者”指根据本章代表自身提出索赔的成员国投资者，在适用情况下，还包括代表其拥有或控制的另一成员国法人提出索赔的成员国投资者；(c) “争议成员国”指根据本章被提出索赔的成员国；(d) “争议各方”指争议投资者与争议成员国；(e) “ICSID”指国际投资争端解决中心；(f) “ICSID附加便利规则”指由国际投资争端解决中心秘书处管理的《附加便利程序管理规则》；(g) “ICSID公约”指1965年3月18日于美利坚合众国华盛顿特区签署的《解决国家与他国国民间投资争端公约》；(h) “纽约公约”指1958年6月10日于美利坚合众国纽约签署的《联合国承认及执行外国仲裁裁决公约》；

(i) “非争议成员国”指争议投资者所属的成员国；及

- (j) “**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.

Article 29 Scope of Coverage

1. This Section shall apply to an investment dispute between a Member State and an investor of another Member State that has incurred loss or damage by reason of an alleged breach of any rights conferred by this Agreement with respect to the investment of that investor.
2. A natural person possessing the nationality or citizenship of a Member State shall not pursue a claim against that Member State under this Section.
3. This Section shall not apply to claims arising out of events which occurred, or claims which have been raised prior to the entry into force of this Agreement.
4. Nothing in this Section shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement available within the country of a disputing Member State.

Article 30 Conciliation

1. The disputing parties may at any time agree to conciliation, which may begin at any time and be terminated at the request of the disputing investor at any time.

- (j) “联合国国际贸易法委员会仲裁规则”指由联合国大会于1976年12月15日批准的联合国国际贸易法委员会制定的仲裁规则。

第29条 适用范围

1. 本章节适用于一成员国与另一成员国投资者之间的投资争端，该投资者因声称本协议授予的与该投资者投资相关的权利受到违反而遭受损失或损害。
2. 拥有成员国国籍或公民身份的自然人不得根据本章节对该成员国提出索赔。
3. 本章节不适用于在本协议生效前发生的事件所引起的索赔，或在本协议生效前已提出的索赔。
4. 本章节中的任何规定均不得解释为阻止争议投资者寻求争议成员国国内提供的行政或司法解决。

第30条 调 解

1. 争议各方可随时同意进行调解，调解可随时开始，并可在争议投资者要求下随时终止。

2. If the disputing parties agree, procedures for conciliation may continue while procedures provided for in Article 33 (Submission of a Claim) are in progress.

3. Proceedings involving conciliation and positions taken by the disputing parties during these proceedings shall be without prejudice to the rights of either disputing parties in any further proceedings under this Section.

Article 31 Consultations

1. In the event of an investment dispute, the disputing parties shall initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures. Such consultations shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Member State.

2. Consultations shall commence within 30 days of receipt by the disputing Member State of the request for consultations, unless the disputing parties otherwise agree.

3. With the objective of resolving an investment dispute through consultations, a disputing investor shall make all reasonable efforts to provide the disputing Member State, prior to the commencement of consultations, with information regarding the legal and factual basis for the investment dispute.

Article 32 Claim by an Investor of a Member State

If an investment dispute has not been resolved within 180 days of the receipt by a disputing Member State of a request for consultations, the disputing investor may, subject to this Section, submit to arbitration a claim:

2. 若争议各方同意，调解程序可在第33条（提交索赔）规定的程序进行期间继续。

3. 涉及调解的程序以及争议各方在这些程序中采取的立场，不得损害争议各方在本章节下任何进一步程序中的权利。

第31条 磋商

1. 如发生投资争端，争议各方应首先通过磋商和谈判寻求解决争端，其中可包括使用非约束性第三方程序。此类磋商应由争议投资者向争议成员国提交书面磋商请求而启动。

2. 磋商应于争议成员国收到磋商请求后30天内开始，除非争议各方另有约定。

3. 为通过磋商解决投资争端的目标，争议投资者应在磋商开始前尽一切合理努力，向争议成员国提供有关投资争端的法律和事实依据的信息。

第32条 成员国投资者的索赔

若投资争端在争议成员国收到磋商请求后180天内未能解决，争议投资者可依据本章节规定将索赔提交仲裁：

- (a) that the disputing Member State has breached an obligation arising under Articles 5 (National Treatment), 6 (Most-Favoured-Nation Treatment), 8 (Senior Management and Board of Directors), 11 (Treatment of Investment), 12 (Compensation in Cases of Strife), 13 (Transfers) and 14 (Expropriation and Compensation) relating to the management, conduct, operation or sale or other disposition of a covered investment; and
- (b) that the disputing investor in relation to its covered investment has incurred loss or damage by reason of or arising out of that breach.

Article 33 Submission of a Claim

1. A disputing investor may submit a claim referred to in Article 32 (Claim by an Investor of a Member State) at the choice of the disputing investor:

- (a) to the courts or administrative tribunals of the disputing Member State, provided that such courts or tribunals have jurisdiction over such claims; or
- (b) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings,¹⁴ provided that both the disputing Member State and the non-disputing Member State are parties to the ICSID Convention; or

¹⁴ In the case of the Philippines, submission of a claim to ICSID and the ICSID Rules of Procedure for Arbitration Proceedings shall be subject to a written agreement between the disputing parties in the event that an investment dispute arises.

(a) 争议成员国违反了下述条款产生的义务：条款5（国民待遇）、条款6（最惠国待遇）、条款8（高级管理层和董事会）、条款11（投资待遇）、条款12（冲突情况下的补偿）、条款13（转移）及条款14（征收与补偿），上述义务涉及涵盖投资的管理、经营、运营或出售或其他处置；且

(b) 争议投资者就其涵盖投资因该违反行为而遭受损失或损害。

第33条 提交索赔

1. 争议投资者可选择将第32条（成员国投资者的索赔）所述的索赔提交至：

- (a) 争议成员国的法院或行政法庭，前提是该院或法庭对此类索赔具有管辖权；或
- (b) 根据《ICSID公约》和《ICSID仲裁程序规则》，¹⁴ 前提是争议成员国和非争议成员国均为《ICSID公约》缔约方；或

¹⁴ 对于菲律宾，若发生投资争端，向国际投资争端解决中心及ICSID仲裁程序规则提交索赔需以争议各方达成书面协议为前提。

- (c) under the ICSID Additional Facility Rules, provided that either of the disputing Member State or the non-disputing Member State is a party to the ICSID Convention; or
- (d) under the UNCITRAL Arbitration Rules; or
- (e) to the Regional Centre for Arbitration at Kuala Lumpur or any other regional centre for arbitration in ASEAN; or
- (f) if the disputing parties agree, to any other arbitration institution,

provided that resort to any arbitration rules or fora under sub-paragraphs (a) to (f) shall exclude resort to the other.

2. A claim shall be deemed submitted to arbitration under this Section when the disputing investor's notice of or request for arbitration ("notice of arbitration") is received under the applicable arbitration rules.

3. The arbitration rules applicable under paragraph 1, as in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

4. In relation to a specific investment dispute or class of disputes, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant tribunal or tribunals established under this Section, and on individual arbitrators serving on such tribunals.

5. The disputing investor shall provide with the notice of arbitration:

(c) 根据《ICSID附加便利规则》，前提是争议成员国或非争议成员国中任一方为《ICSID公约》缔约方；或

(d) 根据《联合国国际贸易法委员会仲裁规则》；或 (e) 提交至吉隆坡区域仲裁中心或东盟任何其他区域仲裁中心；或 (f) 若争议各方同意，提交至任何其他仲裁机构，

但选择(a)至(f)项下任何仲裁规则或仲裁地应排除对其他规则或仲裁地的选择。

2. 当争议投资者的仲裁通知或仲裁请求（“仲裁通知”）根据适用的仲裁规则被接收时，索赔应被视为已根据本章节提交仲裁。

3. 第1款中适用的仲裁规则（以索赔或多项索赔根据本章节提交仲裁之日生效的版本为准）应管辖该仲裁，除非本协议另有修改。

4. 对于特定投资争端或某类争端，争议各方可通过书面协议放弃、变更或修改适用的仲裁规则。此类规则对根据本章节设立的相关仲裁庭及担任该仲裁庭成员的仲裁员具有约束力。

5. 争议投资者应在仲裁通知中提供：

- (a) the name of the arbitrator that the disputing investor appoints; or
- (b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

Article 34

Conditions and Limitations on Submission of a Claim

1. The dispute shall be submitted to arbitration under Article 33(1)(b) to (f) in accordance with this Section, and shall be conditional upon:

- (a) the submission of the investment dispute to such arbitration taking place within 3 years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement causing loss or damage to the disputing investor or a covered investment; and
- (b) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Member State of its intent to submit the investment dispute to such arbitration and which briefly summarises the alleged breach of the disputing Member State under this Agreement (including the provisions alleged to have been breached) and the loss or damage allegedly caused to the disputing investor or a covered investment; and
- (c) the notice of arbitration under Article 33(2) being accompanied by the disputing investor's written waiver of the disputing investor's right to initiate or continue any proceedings before the courts or administrative tribunals of the disputing Member State, or other dispute settlement procedures, of

(a) 争议投资者指定的仲裁员姓名；或 (b) 争议投资者书面同意由指定机构任命该仲裁员。

第34条 提交索赔的条件和限制

1. 争端应根据本章节规定提交至第三十三条第一款第二项至第六项下的仲裁，且须满足以下条件：

- (a) 投资争端提交至上述仲裁的时限为争议投资者知晓或理应知晓本协议项下义务违反导致其自身或涵盖投资遭受损失或损害之日起3年内；且
- (b) 争议投资者须在提交索赔前至少90日向争议成员国送达书面通知，表明其拟将投资争端提交至上述仲裁的意向，并简要概述争议成员国涉嫌违反本协议的行为（包括被指控违反的具体条款）及对争议投资者或涵盖投资造成的所谓损失或损害；且
- (c) 根据第33条(2)款提交的仲裁通知须附有争议投资者书面放弃其争议投资者在争议成员国法院或行政法庭或其他争议解决程序中启动或继续任何程序的权利，

any proceeding with respect to any measure alleged to constitute a breach referred to in Article 32 (Claim by an Investor of a Member State).

2. Notwithstanding sub-paragraph 1(c), the disputing investor shall not be prevented from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving the disputing investor's rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Member State.

3. A Member State shall not give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Member State have consented to submit or have submitted to arbitration under this Section, unless such other Member State has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

4. A disputing Member State shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the disputing investor in relation to the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Article 35 Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators:

针对任何被指构成第32条（成员国投资者的索赔）所述违反行为的措施的程序。

2. 尽管有第1款(c)项的规定，争议投资者不应被阻止启动或继续一项仅旨在保全争议投资者权益且不涉及损害赔偿或争议事项实质解决的临时保护措施诉讼，该诉讼可在争议成员国的法院或行政法庭进行。

3. 成员国不得就其投资者与另一成员国已同意根据本章节提交或已提交仲裁的争议提供外交保护或提起国际索赔，除非该另一成员国未能遵守并执行该争议中作出的裁决。就本款而言，外交保护不包括仅为促进争议解决而进行的非正式外交交流。

4. 争议成员国不得以争议投资者已根据保险或担保合同就涵盖投资获得或将获得全部或部分声称损失的赔偿或其他补偿为由，提出抗辩、反诉、抵销权或其他主张。

第35条 仲裁员的选择

1. 除非争议各方另有约定，仲裁庭应由三名仲裁员组成：

- (a) one arbitrator appointed by each of the disputing parties; and
- (b) the third arbitrator, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. The third arbitrator shall be a national of a non-Member State which has diplomatic relations with the disputing Member State and non-disputing Member State, and shall not have permanent residence in either the disputing Member State or non-disputing Member State.

2. Any person appointed as an arbitrator shall have expertise or experience in public international law, international trade or international investment rules. An arbitrator shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same basis throughout the course of the arbitral proceedings.

3. Subject to Article 36 (Conduct of the Arbitration), if a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators who have not been appointed.

4. The tribunal shall reach its decisions by a majority of votes and its decisions shall be binding.

5. The parties to the dispute shall bear the cost of their respective arbitrators to the tribunal and share equally the cost of the presiding arbitrator and other relevant costs. In all other respects, the tribunal shall determine its own procedures.

(a) 争议各方各自指定一名仲裁员；及

(b) 第三名仲裁员，即首席仲裁员，应由争议各方协议任命。该第三名仲裁员应为与争议成员国及非争议成员国有外交关系的非成员国国民，且不得在争议成员国或非争议成员国拥有永久居留权。

2. 任何被任命为仲裁员的人士应具备国际公法、国际贸易或国际投资规则方面的专业知识或经验。仲裁员的选任必须严格基于客观性、可靠性、合理判断及独立性标准，且在整个仲裁程序期间均须以此标准行事。

3. 在遵循第36条（仲裁的进行）的前提下，若仲裁庭未能在根据本章节提交仲裁索赔之日起75日内组成，则指定机构应争议方的请求，可自行决定任命尚未选任的仲裁员。

4. 仲裁庭应以多数票作出决定，且其决定应具有约束力。

5. 争议各方应各自承担其指定仲裁员的费用，并平均分担首席仲裁员及其他相关费用。在所有其他方面，仲裁庭应自行确定其程序。

6. The disputing parties may establish rules relating to expenses incurred by the tribunal, including remuneration of the arbitrators.

7. Where any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

Article 36 Conduct of the Arbitration

1. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, the tribunal shall decide the matter before proceeding to the merits.

2. A disputing Member State may, no later than 30 days after the constitution of the tribunal, file an objection that a claim is manifestly without merit. A disputing Member State may also file an objection that a claim is otherwise outside the jurisdiction or competence of the tribunal. The disputing Member State shall specify as precisely as possible the basis for the objection.

3. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.

4. The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without

6. 争议各方可制定与仲裁庭产生的费用相关的规则，包括仲裁员的报酬。

7. 若根据本条任命的任何仲裁员辞职或无法履职，应以任命原仲裁员的相同方式任命继任者，且继任者应享有原仲裁员的所有权力与职责。

第36条 仲裁的进行

1. 若与管辖权或可受理性相关的问题被作为初步异议提出，仲裁庭应在处理实体问题之前对该事项作出决定。

2. 争议成员国可在仲裁庭组成后30天内提出异议，主张某项索赔明显缺乏依据。争议成员国亦可提出异议，主张某项索赔超出仲裁庭的管辖权或权限范围。争议成员国应尽可能精确地说明异议的依据。

3. 仲裁庭应将该类异议作为独立于索赔实体问题的初步问题进行审理。争议各方应被给予向仲裁庭陈述其意见和陈述的合理机会。若仲裁庭认定索赔明显缺乏依据，或超出其管辖权或权限范围，则应作出相应裁决。

4. 仲裁庭可在有正当理由的情况下，裁决胜诉方因提出或反对异议而产生的合理费用和开支。在判定是否作出此类裁决时，仲裁庭应考虑索赔或异议是否属于轻率之举或明显缺乏依据，并应

merit, and shall provide the disputing parties a reasonable opportunity to comment.

5. Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

6. Where an investment dispute relate to a measure which may be a taxation measure, the disputing Member State and the non-disputing Member State, including representatives of their tax administrations, shall hold consultations to determine whether the measure in question is a taxation measure.

7. Where a disputing investor claims that the disputing Member State has breached Article 14 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the disputing Member State and the non-disputing Member State shall, upon request from the disputing Member State, hold consultations with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation.

8. Any tribunal that may be established under this Section shall accord serious consideration to the decision of both Member States under paragraphs 6 and 7.

9. If both Member States fail either to initiate such consultations referred to paragraphs 6 and 7, or to make such joint decisions, within the period of 180 days from the date of the receipt of request for consultation referred to in Article 31 (Consultations), the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Section.

为争议各方提供发表意见的合理机会。

5. 除非争议各方另有约定，仲裁庭应依据适用的仲裁规则确定仲裁地点，但该地点须位于《纽约公约》缔约国的领土内。

6. 若投资争端涉及可能构成税收措施的措施，争议成员国与非争议成员国（包括其税务主管部门代表）应进行磋商，以确定相关措施是否属于税收措施。

7. 当争议投资者主张争议成员国通过采取或实施税收措施违反了第14条（征收与补偿）时，应争议成员国请求，争议成员国与非争议成员国应进行磋商，以判定相关税收措施是否产生等同于征收或国有化的效果。

8. 根据本章节可能设立的任何仲裁庭，均应认真考虑两国根据第6款和第7款所作出的决定。

9. 若两个成员国均未在第31条（磋商）所指磋商请求收到之日起180天内启动第6款和第7款所述磋商，或未作出此类联合决定，则争议投资者不应被阻止根据本章节规定将其索赔提交仲裁。

Article 37
Consolidation

Where two or more claims have been submitted separately to arbitration under Article 32 (Claim by an Investor of a Member State) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

Article 38
Expert Reports

Without prejudice to the appointment of other kinds of experts where authorised by the applicable arbitration rules, the tribunal, at the request of the disputing parties, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, public 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 39
Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 3, the disputing Member State may make publicly available all awards, and decisions produced by the tribunal.
2. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

第37条 合并

若两项或多项索赔已根据第32条（成员国投资者的索赔）分别提交仲裁，且这些索赔存在共同的法律或事实问题，并源于相同或类似事件或情形，则所有相关争议各方可协商以他们认为适当的任何方式合并这些索赔。

第38条 专家
报告

在不影响根据适用的仲裁规则任命其他类型专家的情况下，仲裁庭可应争议各方的请求，任命一名或多名专家，就争议方在程序中提出的有关环境、公共卫生、安全或其他科学事项的任何事实问题向其提交书面报告，但须遵守争议各方可能同意的条款和条件。

第39条 仲裁程序的透明度

1. 在遵守第2款和第3款规定的前提下，争议成员国可公开仲裁庭作出的所有裁决和决定。
2. 任何争议各方若拟在听证会上使用被指定为机密信息的信息，应就此通知仲裁庭。仲裁庭应作出适当安排以防止该信息被披露。

3. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.
4. A disputing party may disclose to persons directly connected with the arbitral proceedings such confidential information as it considers necessary for the preparation of its case, but it shall require that such confidential information is protected.
5. The tribunal shall not require a Member State to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Member State's law protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.
6. The non-disputing Member State shall be entitled, at its cost, to receive from the disputing Member State a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing Member State. The disputing Member State shall notify all other Member States of the receipt of the notice of arbitration within 30 days thereof.

Article 40 Governing Law

1. Subject to paragraphs 2 and 3, when a claim is submitted under Article 33 (Submission of a Claim), the tribunal shall decide the issues in dispute in accordance with this Agreement, any other applicable agreements between the Member States, and the applicable rules of international law and where applicable, any relevant domestic law of the disputing Member State.

3. 任何被特别指定为机密的信息，如提交给仲裁庭或争议各方，应受到保护，不得向公众披露。
4. 争议方可向与仲裁程序直接相关的人员披露其认为案件准备所必需的机密信息，但应要求此类机密信息得到保护。
5. 仲裁庭不得要求成员国提供或允许获取以下信息：披露该信息将妨碍执法、违反成员国保护内阁机密或个人隐私的法律，或涉及金融机构个人客户的财务事务及账户，或仲裁庭认定该信息违反其基本安全。
6. 非争议成员国有权自费在仲裁通知送达争议成员国之日起30天内，从争议成员国处获取该通知副本。争议成员国应在收到仲裁通知后30天内通知所有其他成员国。

第40条 适用 法律

1. 在第2段和第3段的约束下，当根据第33条（提交索赔）提交索赔时，仲裁庭应依据本协议、成员国之间任何其他适用协议、国际法的适用规则以及（如适用）争议成员国相关国内法对争议事项作出裁决。

2. The tribunal shall, on its own account or at the request of a disputing party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Member States shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of the delivery of the request. Without prejudice to paragraph 3, if the Member States fail to issue such a decision within 60 days, any interpretation submitted by a Member State shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account.

3. A joint decision of the Member States, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.

Article 41 Awards

1. The disputing parties may agree on a resolution of the dispute at any time before the tribunal issues its final award.

2. Where a tribunal makes a final award against either of the disputing parties, the tribunal may award, separately or in combination, only:

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

3. A tribunal may also award costs and attorney's fees in accordance with this Agreement and the applicable arbitration rules.

2. 仲裁庭应主动或应争议方请求，就本协议争议条款请求联合解释。成员国应在收到请求后60天内以书面形式向仲裁庭提交阐明其解释的联合决定。在不影响第3段的前提下，若成员国未能在60天内作出此类决定，则任一成员国提交的解释应转发给争议各方及仲裁庭，由仲裁庭自行裁决该事项。

3. 成员国对本协议条款解释的联合决定对仲裁庭具有约束力，仲裁庭作出的任何决定或裁决必须与该联合决定保持一致。

条款41 裁 决

1. 争议各方可在仲裁庭作出最终裁决前的任何时间就争议解决达成一致。

2. 若仲裁庭针对任一争议方作出最终裁决，则仲裁庭可单独或合并裁定以下内容：

- (a) 金钱赔偿及任何适用利息；及 (b) 财产归还，在此情况下，裁决应规定争议成员国可以支付金钱赔偿及任何适用利息以替代财产归还。

3. 仲裁庭还可根据本协议和适用的仲裁规则裁决费用和律师费。

4. A tribunal may not award punitive damages.
5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
6. Subject to paragraph 7 and the applicable review procedure for an interim award, the disputing party shall abide by and comply with an award without delay.¹⁵
7. The disputing party may not seek enforcement of a final award until:
 - (a) in the case of a final award under the ICSID Convention:
 - (i) 120 days has 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;
 - (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 33(1)(e):
 - (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

¹⁵ The Parties understand that there may be domestic legal and administrative processes that need to be observed before an award can be complied with.

4. 仲裁庭不得裁决惩罚性赔偿。
5. 仲裁庭作出的裁决除对争议各方及特定案件外，不具有约束力。
6. 在第7段及针对临时裁决的适用审查程序约束下，争议方应立即遵守并执行裁决。¹⁵
7. 争议方在下列情形出现前不得寻求执行最终裁决：
 - (a) 对于依据ICSID公约作出的最终裁决：(i) 裁决作出之日起120天届满且无争议方提出裁决修订或废止请求；或(ii) 修订或废止程序已完成；
 - (b) 对于依据ICSID附加便利规则、联合国国际贸易法委员会仲裁规则或根据第33条第1款第(e)项所选规则作出的最终裁决：
 - (i) 自裁决作出之日起已过去90天，且无争议方提出修订、搁置或撤销裁决的申请；或

¹⁵ 缔约方理解，在裁决得以执行前可能需要遵守国内法律和行政程序。

- (ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

8. A claim that is submitted for arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article 1 of the New York Convention.

9. Each Member State shall provide for the enforcement of an award in its territory.

SECTION C

Article 42 Institutional Arrangements

1. The AIA Council, as established by the AEM under the AIA Agreement, shall be responsible for the implementation of this Agreement.

2. The ASEAN Coordinating Committee on Investment (“CCI”) as established by the AIA Council and comprising senior officials responsible for investment and other senior officials from relevant government agencies, shall assist the AIA Council in the performance of its functions. The CCI shall report to the AIA Council through the Senior Economic Officials Meeting (“SEOM”). The ASEAN Secretariat shall be the secretariat for the AIA Council and the CCI.

3. The functions of the AIA Council shall be to:

- (a) provide policy guidance on global and regional investment matters concerning promotion, facilitation, protection, and liberalisation;
- (b) oversee, coordinate and review the implementation of this Agreement;

- (ii) 法院已驳回或准许修订、搁置或撤销裁决的申请，且无进一步上诉。

8. 根据本章节提交仲裁的索赔，应视为出于商业关系或交易目的，适用《纽约公约》第1条的规定。

9. 各成员国应在其领土内提供裁决的执行。

C章节

第42条 机构安排

1. 根据《东盟投资区协议》由AEM设立的AIA理事会，应负责本协议的实施。

2. 由AIA理事会设立并由负责投资的高级官员及其他相关政府机构高级官员组成的东盟投资协调委员会（“CCI”），应协助AIA理事会履行其职能。CCI应通过高级经济官员会议（“SEOM”）向AIA理事会报告。东盟秘书处应作为AIA理事会和CCI的秘书处。

3. AIA理事会的职能应包括：

- (a) 就涉及促进、便利化、保护和自由化的全球和区域投资事务提供政策指导；
- (b) 监督、协调并审查本协议的实施；

- (c) update the AEM on the implementation and operation of this Agreement;
- (d) consider and recommend to the AEM any amendments to this Agreement;
- (e) facilitate the avoidance and settlement of disputes arising from this Agreement;
- (f) supervise and coordinate the work of the CCI;
- (g) adopt any necessary decisions; and
- (h) carry out any other functions as the AEM may agree.

Article 43 Consultations by Member States

The Member States agree to consult each other at the request of any Member State on any matter relating to investments covered by this Agreement, or otherwise affecting the implementation of this Agreement.

Article 44 Relation to Other Agreements

Nothing in this Agreement shall derogate from the existing rights and obligations of a Member State under any other international agreements to which it is a party.

(c) 向AEM汇报本协议的实施和运营情况；(d) 审议并向AEM提出对本协议的任何修正建议；(e) 促进避免和解决因本协议引起的争端；(f) 监督并协调CCI的工作；(g) 通过任何必要的决定；以及(h) 执行AEM可能同意的任何其他职能。

条款43 成员国间的磋商

成员国同意应任一成员国请求，就本协议所涵盖的投资相关事项或影响本协议实施的其他事项进行相互磋商。

条款44 与其他协议的关系

本协议中的任何内容均不得减损成员国作为缔约方的任何其他国际协议下的现有权利和义务。

Article 45
Annexes, Schedule and Future Instruments

This Agreement shall include the Annexes, the Schedule and the contents therein, which shall form an integral part of this Agreement, and all future legal instruments agreed pursuant to this Agreement.

Article 46
Amendments

The provisions of this Agreement may be modified through amendments mutually agreed upon in writing by the Member States.

Article 47
Transitional Arrangements Relating to the
ASEAN IGA and the AIA Agreement

1. Upon the entry into force of this Agreement, the ASEAN IGA and the AIA Agreement shall be terminated.
2. Notwithstanding the termination of the AIA Agreement, the Temporary Exclusion List and the Sensitive List to the AIA Agreement shall apply to the liberalisation provisions of the ACIA, *mutatis mutandis*, until such time that the Reservation List of ACIA comes into force.
3. With respect to investments falling within the ambit of this Agreement as well as under the ASEAN IGA, or within the ambit of this Agreement and the AIA Agreement, investors of these investments may choose to apply the provisions, but only in its entirety, of either this Agreement or the ASEAN IGA or the AIA Agreement, as the case may be, for a period of 3 years after the date of termination of the ASEAN IGA and the AIA Agreement.

第45条 附件、附表及未来法律文件

本协议应包括附件、附表及其内容，这些内容构成本协议的组成部分，以及根据本协议商定的所有未来法律文书。

第46条 修
正案

本协议的条款可通过成员国书面共同商定的修正进行修改。

第47条 与东盟投资保障协议及东盟投资区
协议相关的过渡安排

1. 本协议生效后，东盟投资保障协议及东盟投资区协议即告终止。
2. 尽管东盟投资区协议终止，其临时排除清单和敏感清单仍将根据必要修改后适用于东盟全面投资协议的自由化条款，直至东盟全面投资协议的保留清单生效为止。
3. 对于既属于本协议范围又属于东盟投资保障协议范围的投资，或属于本协议与东盟投资区协议范围的投资，相关投资者可选择在东盟投资保障协议和东盟投资区协议终止之日起3年内，整体适用本协议、东盟投资保障协议或东盟投资区协议（视情况而定）的条款。

Article 48
Entry into Force

1. This Agreement shall enter into force after all Member States have notified or, where necessary, deposited instruments of ratification with the Secretary-General of ASEAN, which shall not take more than 180 days after the signing of this Agreement.

2. The Secretary-General of ASEAN shall promptly notify all Member States of the notifications or deposit of each instrument of ratification referred to in paragraph 1.

Article 49
Depositary

This Agreement shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof to each Member State.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this ASEAN Comprehensive Investment Agreement.

DONE at Cha-am, Thailand, this 26th Day of February in the Year Two Thousand and Nine, in a single original copy in the English language.

For Brunei Darussalam:

LIM JOCK SENG
Second Minister of Foreign Affairs and Trade

第48条 生效

1. 本协议应在所有成员国通知东盟秘书长或（必要时）向其交存批准书后生效，此过程不得超过本协议签署后180天。

2. 东盟秘书长应立即将第1款所述的批准书交存或通知情况通报所有成员国。

第49条
保存人

本协议应交存东盟秘书长，秘书长应立即向各成员国提供一份经核证的副本。

兹证明，下列签署人经各自政府正式授权，已签署本《东盟全面投资协定》。

本协议定于二〇〇九年二月26th日在泰国差安签订，一式一份，以英文写成。

对于文莱达鲁萨兰国：

林玉成 外交与贸易第二部长

For the Kingdom of Cambodia:

CHAM PRASIDH
Senior Minister and Minister of Commerce

For the Republic of Indonesia:

MARI ELKA PANGESTU
Minister of Trade

For the Lao People’s Democratic Republic:

NAM VIYAKETH
Minister of Industry and Commerce

For Malaysia:

TAN SRI MUHYIDDIN YASSIN
Minister of International Trade and Industry

对于柬埔寨王国：

占蒲拉西 高级部长兼商业部长

印度尼西亚共和国代表：

玛丽·埃尔卡·庞格斯图 贸易部
长

For the 老挝人民民主共和国代表：

南·维亚凯 工业和商业部长

马来西亚代表：

丹斯里·慕尤丁·亚辛 国际贸易和工业部长

For the Union of Myanmar:

U SOE THA
Minister for National Planning and Economic Development

For the Republic of the Philippines:

PETER B. FAVILA
Secretary of Trade and Industry

For the Republic of Singapore:

LIM HNG KIANG
Minister for Trade and Industry

For the Kingdom of Thailand:

PORNTIVA NAKASAI
Minister of Commerce

缅甸联邦代表:

吴梭达
国家计划与经济发展部长

菲律宾共和国代表:

彼得·B·法维拉 贸易与工业部长

新加坡共和国代表:

林勋强 贸易与工业部长

泰王国代表:

蓬提瓦·纳卡赛 商业部长

For the Socialist Republic of Viet Nam:

VU HUY HOANG
Minister of Industry and Trade

越南社会主义共和国代表：

武辉煌 工商部部长

ANNEX 1
Approval in Writing

Where specific approval in writing is required for covered investments by a Member State's domestic laws, regulations and national policies, that Member State shall:

- (a) inform all the other Member States through the ASEAN Secretariat of the contact details of its competent authority responsible for granting such approval;
- (b) in the case of an incomplete application, identify and notify the applicant in writing within 1 month from the date of receipt of such application of all the additional information that is required;
- (c) inform the applicant in writing that the investment has been specifically approved or denied within 4 months from the date of receipt of complete application by the competent authority; and
- (d) in the case an application is denied, inform the applicant in writing of the reasons for such denial. The applicant shall have the opportunity of submitting, at that applicant's discretion, a new application.

附件1 书面批准

若一成员国的国内法、法规和国家政策要求对涵盖投资进行特定书面批准，则该成员国应：

- (a) 通过东盟秘书处向所有其他成员国通报其负责批准此类申请的主管部门的联系方式；(b) 对于不完整的申请，应在收到申请之日起1个月内以书面形式向申请人指明并通知所需的所有补充信息；(c) 自主管当局收到完整的申请之日起4个月内，以书面形式通知申请人该投资已获特别批准或被拒绝；以及(d) 如果申请被拒绝，应以书面形式告知申请人拒绝的理由。申请人应有机会根据该申请人的意愿提交新的申请。

ANNEX 2 Expropriation and Compensation

1. An action or a series of related actions by a Member State cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in a covered investment.
2. Article 14(1) addresses two situations:
 - (a) the first situation is where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
 - (b) the second situation is where an action or series of related actions by a Member State has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
3. The determination of whether an action or series of actions by a Member State, in a specific fact situation, constitutes an expropriation of the type referred to in subparagraph 2(b), requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (a) the economic impact of the government action, although the fact that an action or series of actions by a Member State has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;
 - (b) whether the government action breaches the government's prior binding written commitment to the investor whether by contract, licence or other legal document; and

附件2 征收与补偿

1. 成员国的一项行动或一系列相关行动，除非干涉涵盖投资中的有形或无形财产权或财产权益，否则不构成征收。
2. 第14条第1款涉及两种情形：
 - (a) 第一种情形是投资被国有化或以其他方式通过正式所有权转移或彻底没收直接征收；及 (b) 第二种情形是成员国的一项或一系列相关行动产生等同于直接征收的效果，但未发生正式所有权转移或彻底没收。
3. 在具体事实情况下，判定成员国的一项或一系列行动是否构成第2款(b)项所述类型的征收，需要进行逐案事实调查，并考虑以下因素（包括但不限于）：
 - (a) 政府行为的经济影响，尽管成员国的一项或一系列行为对投资的经济价值产生不利影响这一事实本身，并不构成征收的发生；(b) 政府行为是否违反了政府先前对投资者具有约束力的书面承诺，无论该承诺是通过合同、许可证还是其他法律文件作出；以及

(c) the character of the government action, including, its objective and whether the action is disproportionate to the public purpose referred to in Article 14(1).

4. Non-discriminatory measures of a Member State that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute an expropriation of the type referred to in sub-paragraph 2(b).

(c) 政府行为的性质，包括其目标以及该行为是否与第14条第1款所述的公共目的不成比例。

4. 成员国为保护合法的公共福利目标（如公共卫生、安全和环境）而设计和应用的非歧视性措施，不构成第2款(b)项所述类型的征收。