Chapter 10
Investment

Article 10.1: Definitions

For the purposes of this Chapter:

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

(b) **claimant** means an investor of a Party that is a party to an investment dispute with the other Party;

(c) **disputing parties** means the claimant and the respondent;

(d) **disputing party** means either the claimant or the respondent;

(e) **enterprise** means an enterprise as defined in Article 2.1(f) (Definitions of General Application – General Definitions), and a branch of an enterprise;

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

(g) **freely usable currency** means freely usable currency as determined by the International Monetary Fund under its *Articles of Agreement*;

(h) **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*;

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

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

(i) an enterprise;

(ii) shares, stock, and other forms of equity participation in an enterprise;

第十章 投资

第10.1条：定义

本章的目的：

(a) 中心是指由国际投资争端解决中心公约设立的 国际投资争端解决中心（ICSID）；(b) 申诉方是指在一方与另一方之间存在投资争端的 一方投资者；(c) 争议方是指申诉方和被诉方；(d) 争议方是指申诉方或被诉方；(e) 企业是指第2.1(f)条（通用定义的一般定义）中定义的企业，以及企业的分支机构；(f) 一方企业是指根据一方法律成立或组织的企业，以及位于一方领土并在该领土内从事业务活动的分支机构；(g) 自由使用货币是指国际货币基金组织根据其协定条款确定的自由使用货币；(h) 国际投资争端解决中心附加便利规则是指由国际投资争端解决中心秘书处管理程序的附加便利规则的规则；(i) 国际投资争端解决中心公约是指于1965年3月18日在华盛顿签署的国家与另一国国民之间投资争端解决公约；(j) 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所有资产，包括投资特征，如资本或其他资源的投入、获得收益或利润的预期或风险承担。投资可能采取的形式包括：(i) 企业；

(ii) 企业中的股份、股票和其他形式的股权参与；

(iii) bonds, debentures, loans and other debt instruments[10-1]; but do not include a debt instrument of a Party or of a state enterprise;

(iv) futures, options and other derivatives;

(v) rights under contract, including turnkey, construction, management, production, concession, or revenue-sharing contracts;

(vi) intellectual property rights;

(vii) rights conferred pursuant to domestic law, such as concessions, licences, authorisations, and permits;[10-2] and

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

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

(k) **investor of a non-Party** means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

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

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

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

(o) **Secretary-General** means the Secretary-General of ICSID;

(p) **tribunal** means an arbitration tribunal established under Article 10.19 or 10.26; and

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

[10-1] Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

[10-2] Whether a particular right conferred pursuant to domestic law, as referred to in subparagraph (vii), has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the domestic law of the Party. Among such rights that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such right has the characteristics of an investment.

(iii) 债券、债券、贷款和其他债务工具[10-1]；但不包括缔约方或国有企业的债务工具； (iv) 期货、期权和其他衍生品； (v) 合同权利，包括交钥匙、建设、管理、生产、特许权或收入分成合同； (vi) 知识产权； (vii) 根据国内法授予的权利，如特许权、许可证、授权和许可证；[10-2]

和（viii）其他有形或无形、动产或不动产，以及相关财产权，如租赁、抵押、留置权和质押；

但投资并不意味着在司法或行政行为中作出的命令或判决；

(k) 非当事方投资者是指，相对于缔约方，试图在、正在或已经在一个缔约方的领土内进行投资，且该投资者既不是缔约方投资者；

(l) 纽约公约是指1958年6月10日在纽约缔结的《承认和执行外国仲裁裁决公约》；

(m) 非争议方是指不是投资争端当事方的缔约方；

(n) 被诉方是指投资争端的当事方；

(o) 秘书长是指国际投资争端解决中心的秘书长；

(p) 仲裁庭是指根据第10.19条设立或 10.26；以及

(q) 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。

[10-1] 一些债务形式，如债券、债券和长期票据，更有可能具有投资的特性，而其他债务形式，如因货物或服务销售而产生的立即到期的付款要求，则不太可能具有此类特性。[10-2]根据国内法授予的特定权利（如第（vii）款所述）是否具有投资的特性，取决于持有人根据该国内法所拥有的权利的性质和范围。 缔约方的国内法 。不具有投资特性的此类权利包括那些不产生任何受国内法保护的权利。为明确起见，前述内容不影响与该权利相关的任何资产是否具有投资特性。

Section A - Investment

Article 10.2: Scope and Coverage[10-3]

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 Article 10.7 all investments in the territory of the Party.

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

3. 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 providing a service into its territory does not of itself make this Chapter applicable to measures adopted or maintained by a Party relating to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security to the extent that such bond or financial security is a covered investment.

4. This Chapter does not apply to:

(a) measures adopted or maintained by a Party to the extent that they are covered by Chapter 12 (Financial Services); and

(b) any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement, except as provided in Annex 10-E paragraph 2.

Article 10.3: 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 in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

[10-3] For greater certainty, this Chapter is subject to and shall be interpreted in accordance with Annexes 10-A through 10-D.

A部分 - 投资

Article 10.2: 范围和覆盖[10-3]

1. 本章适用于缔约方为以下方面采取或维持的措施：

(a) 另一方的投资者；(b) 受保护的投资；以及(c) 关于第10.7条，该缔约方领土内的所有投资。

2. 如果本章与其他章节之间有任何不一致之处，其他章节应优先适用不一致的部分。

3. 缔约方要求另一方的服务供应商在其领土内提供服务时提供保证金或其他形式财务担保，本身并不使本章适用于缔约方采取或维持的措施，这些措施与跨境服务的提供有关。本章适用于该缔约方对所提供的保证金或财务担保的处理，前提是该保证金或财务担保是受保护的投资。

4. 本章不适用于：

(a) 缔约方为第12章（金融服务）所涵盖而采取或维持的措施；以及
(b) 在本协议生效日期之前发生过的任何行为或事实，或已停止存在的任何情况，但第10-E附件第2段另有规定的除外。

第10.3条：国民待遇

1. 每一方应给予另一方的投资者不低于其在本国领土内设立、收购、扩张、管理、经营、运营及销售或处置投资方面给予其本国投资者的待遇。

2. 每一方应给予受保护的投资不低于其在本方领土内，就设立、收购、扩张、管理、经营、运营以及销售或其他处置投资，对其自身投资者所给予的待遇。

10-3 为进一步明确起见，本章受第10-A至10-D附件约束，并应根据该附件进行解释。

- 67 -

Article 10.4: Most-Favoured-Nation Treatment[10-4]

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 any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

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

Article 10.5: Minimum Standard of Treatment[10-5]

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 afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The 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 embodied in the principal legal systems of the world; and

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

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

Article 10.6: Treatment in Case of Strife

1. Notwithstanding Article 10.9.5(b), each Party shall accord to investors of the other Party, and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife treatment no less favourable than that it accords, in like circumstances, to:

[10-4] For greater certainty, Article 10.4 does not apply to the dispute settlement procedures set out in Section B of this Chapter, including requirements as to time.

[10-5] For greater certainty, Article 10.5 shall be interpreted in accordance with Annex 10-A.

第10.4条：最惠国待遇[10-4]

1. 每一方应给予另一方的投资者不低于其就其领土内设立、收购、扩张、管理、经营、运营以及销售或其他处置投资，对任何非缔约方的投资者所给予的待遇。

2. 每一方应给予受保护的投资不低于其在本国领土内给予任何非缔约方投资者的投资，在类似情况下，就设立、收购、扩张、管理、经营、运营以及销售或其他处置投资而言，所给予的待遇。

第10.5条：最低标准待遇[10-5]

1. 每一方应根据习惯国际法给予受保护的投资待遇，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段规定了习惯国际法对外国人最低标准待遇，即应给予受保护投资的最低标准待遇。'公平公正待遇'和'充分保护与安全'的概念并不要求超出该标准所要求的待遇，也不创造额外的实体权利。第1段规定的义务包括：

(a) '公平公正待遇'包括根据世界主要法律体系所体现的正当程序原则，在刑事、民事或行政司法程序中不得拒绝正义的义务；以及 (b) '充分保护与安全'要求每一方提供习惯国际法规定的警察保护水平。

3. 确定存在对本协议另一条款或单独国际协议的违反，并不构成对本条文的违反。

第10.6条：争端中的待遇

1. 不论第10.9.5(b)条如何规定，每一方应给予另一方的投资者和受保护的投资，就其为应对其领土内因武装冲突或内乱而遭受损失的投资所采取或维持的措施，以不低于其就下列情况给予其自身投资者及其投资或任何非方投资者及其投资的待遇：

[10-4] 为明确起见，第10.4条不适用于本章B部分规定的争端解决程序，包括有关时间的要求。[10-5] 为明确起见，第10.5条应根据第10-A附件进行解释。

(a) its own investors and their investments; or

(b) investors of any non-Party and their investments.

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

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

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

the latter Party shall provide the investor restitution, compensation or both in the event of a partial restitution, which in any case shall be prompt, adequate, and effective, and with respect to compensation, in accordance with paragraphs 2 to 4 of Article 10.11, *mutatis mutandis*.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.3 but for Article 10.9.5(b).

Article 10.7: Performance Requirements

Mandatory Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory:

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

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(a) 其自身投资者及其投资；或 (b) 任何非方投资者及其投资。

2. 不论第1段的规定如何，若一方投资者在第1段所述情况下，在另一方领土内遭受损失，其损失系因：

(a) 该投资者之受保护投资或其部分被后者之武装力量或当局征用；或 (b) 该投资者之受保护投资或其部分被后者之武装力量或当局毁坏，且该毁坏并非该情况之必要性所要求，

则后者缔约方应在该发生部分补偿的情况下，提供投资者补偿或补偿与补偿，在任何情况下均应迅速、充分且有效，且就补偿而言，应按照第10.11条第2至第4段的规定，作相应调整。

3. 第1段的规定不适用于与补贴或拨款有关的现有措施，除非该措施与第10.3条不一致，但与第10.9.5(b)条一致。

第10.7条：业绩要求

强制性业绩要求

1. 任何一方不得就一方投资者或非缔约方在其领土内的投资设立、收购、扩张、管理、经营、运营或销售或其他处置事宜强加或执行下列要求，或执行任何承诺或保证：

(a) 出口一定水平或百分比的货物或服务；(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的货物，或从其领土内的人购买货物；(d) 以任何方式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) 通过以任何方式将其销售与其出口或外汇收入联系起来，来限制其领土内由该投资生产或供应的货物或服务的销售；

(f) to transfer a particular 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 it produces or the services that it supplies to a specific regional market or to the world market.

Advantages Subject to Performance Requirements

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, 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 in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

Exceptions and Exclusions

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

(b) Paragraph 1(f) does not apply:

(i) when a Party authorises use of an intellectual property right in accordance with Article 31[10-6] of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) when 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

[10-6]The reference to Article 31 includes footnote 7 to Article 31.

(f) 将特定技术、生产流程或其他专有知识转移给其领土内的人；或 (g) 从该缔约方的领土独家供应其生产的货物或向特定区域市场或世界市场提供的服务的领土。

利益受业绩要求约束

2. 任何一方不得将一方投资者或非缔约方在其领土内设立、收购、扩张、管理、经营、运营或销售或处置投资的投资收益的获得或持续获得，以符合以下任何要求为条件：

(a) 实现给定的国内含量水平或百分比；(b) 购买、使用或优先考虑其领土内生产的货物，或从其领土内的人员购买货物；(c) 以任何方式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；或 (d) 通过以任何方式将此类销售与出口数量或外汇收入联系起来，来限制该投资在其领土内生产的或供应的货物或服务的销售。

例外和排除

3. (a) 第2段中的任何内容均不得解释为阻止一方
将一方投资者或非缔约方在其领土内的投资所获得的利益，与在其领土内满足生产选址要求、提供服务、培训或雇佣工人、建设或扩建特定设施或进行研发的条件相联系。

(b) 第1条(f)款不适用：(i) 当一方根据第31[10-6]条(ii)款授权使用知识产权时，(ii) 当要求被法院、行政法庭或竞争主管机关强制执行以纠正已确定的实践时，

与贸易有关的知识产权协定，或要求披露属于与贸易有关的知识产权协定第39条范围且与其一致的专有信息的措施；或

以纠正已确定的实践时，

[10-6]对第31条的引用包括第31条的脚注7。

judicial or administrative process to be anticompetitive under the Party's competition laws[10-7].

(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

(ii) necessary to protect human, animal, or plant life or health; or

(iii) related to the conservation of living or non-living exhaustible natural resources.

(d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to government procurement.

(f) Paragraphs 2(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.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

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

Article 10.8: Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions individuals of any particular nationality.

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

[10-7] The Parties recognise that a patent does not necessarily confer market power.

司法或行政程序在党的竞争法下具有反竞争性[10-7].

(c) 只要此类措施不是以任意或非歧视性方式实施，或不构成对国际贸易或投资的伪装限制，第1(b)、(c)和(f)段以及第2(a)和(b)段均不得解释为禁止缔约方采取或维持措施，包括环境措施：

(i) 为确保符合与本协议不一致的法律和法规； (ii) 为保护人类、动物或植物生命或健康；或 (iii) 与可再生自然资源的保护相关。

(d) 第1(a)、(b)和(c)段，以及第2(a)和(b)段，不适用于与出口促进和外国援助计划相关的货物或服务的资格要求。 (e) 第1(b)、(c)、(f)和(g)段，以及第2(a)和(b)段，不适用于政府采购。 (f) 第2(a)和(b)段不适用于进口方就符合优惠关税或优惠配额的货物内容所提出的资格要求。

4. 为进一步明确，第1段和第2段不适用于除该两段中规定的要求以外的任何要求。

5. 本条不排除缔约方之间未施加或要求的任何承诺、承诺或要求的执行。

第10.8条：高级管理层和董事会

1. 任何缔约方均不得要求其受保护投资的企业任命具有任何特定国籍的个人担任高级管理层职位。

2. 缔约方可以要求，某缔约方所属的受保护投资企业董事会或其任何委员会中的多数或少数成员具有特定国籍，或居住在该缔约方的领土上，但该要求不得实质性损害投资者对其投资行使控制权的能力。

[10-7] 缔约方认识到，专利并不必然授予市场力量。

Article 10.9: Non-Conforming Measures

1. Articles 10.3, 10.4, 10.7, and 10.8 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 10.3, 10.4, 10.7, and 10.8.

2. Articles 10.3, 10.4, 10.7, and 10.8 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by 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.

4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 17.5 (National Treatment – Intellectual Property Chapter) as specifically provided for in that Article.

5. Articles 10.3, 10.4, and 10.8 do not apply to:

(a) government procurement; or

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

第10.9条：非符合措施

1. 第10.3条、第10.4条、第10.7条和第10.8条不适用于：

(a) 任何缔约方维持的现有非符合措施，包括：

(i) 该缔约方在附件I的附件表中规定的中央政府层面的非符合措施； (ii) 该缔约方在附件I的附件表中规定的地区政府层面的非符合措施；或 (iii) 地方政府层面的非符合措施； (b) 按照第(a)款所述的非符合措施的延续或及时更新；或 (c) 对按照第(a)款所述的非符合措施进行的修订，只要该修订不会降低该措施在修订前与第10.3条、第10.4条、第10.7条和第10.8条符合性,

2. 第10.3条、第10.4条、第10.7条和第10.8条不适用于任何缔约方就附件II的附件表中规定的部门、子部门或活动所采纳或维持的措施。

3. 任何一方不得，在生效日期之后采取的、并包含在本协议附件II的附件表中的任何措施下，以该方的国籍为由，要求另一方投资者出售或以其他方式处置在措施生效时已存在的投资。

4. 第10.3条和第10.4条不适用于任何对第17.5条（国民待遇——知识产权章节）项下的义务构成例外或背离的措施，而该条对此有具体规定。

5. 第10.3条、第10.4条和第10.8条不适用于：

(a) 政府采购；或 (b) 由缔约方提供的补贴或拨款，包括政府支持贷款、担保和保险。

Article 10.10: Transfers[10-8]

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

(a) contributions to capital;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, and technical assistance and other fees;

(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement;

(e) payments made pursuant to paragraphs 1 and 2 of Article 10.6 and Article 10.11; and

(f) payments arising under Section B.

2. 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.

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

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

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures or derivatives;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

[10-8] For greater certainty, Article 10.10 is subject to Annex 10-C.

第10.10条：转移[10-8]

1. 每一方应允许所有与受保护投资相关的转移自由且无延迟地在其领土内和领土外进行。此类转移包括：

(a) 资本贡献；(b) 利润、股息、利息、资本收益、特许权使用费、管理费以及技术援助和其他费用；(c) 出售全部或部分受保护投资所得或受保护投资的部分或完全清算所得；(d) 投资者或受保护投资根据其签订的合同支付的款项，包括根据贷款协议支付的款项；(e) 根据第10.6条和第10.11条第1款和第2款支付的款项；以及(f) 根据B部分产生的款项。

2. 每一方应允许与受保护投资相关的实物返还，根据缔约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。

3. 每一方应允许与受保护投资相关的转移以自由使用货币进行，汇率按转移日期的市场汇率计算。

4. 不论第1至3段的规定如何，缔约方可以通过对其与下列事项相关的法律进行公平的、非歧视性的和善意的适用，来阻止或延迟转让：

(a) 破产、无力偿债或保护债权人权利； (b) 发行、交易或处理证券、期货或衍生品； (c) 刑事或刑事犯罪； (d) 在协助执法或金融监管机构时，进行转移的财务报告或记录保存；或 (e) 确保在司法或行政程序中遵守命令或判决。

[10-8] 为进一步明确，第10.10条受附件10-C约束。

5. Notwithstanding paragraph 2, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

Article 10.11: Expropriation and Compensation[10-9]

1. Neither Party may expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation ("expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 to 4; and

(d) in accordance with due process of law.

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realisable and freely transferable.

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

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

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus

[10-9] For greater certainty, Article 10.11 shall be interpreted in accordance with Annex 10-B.

5. 尽管有第2段的规定，缔约方可以在本协议规定可以限制此类转移的情况下，限制实物返还的转移，包括第4段中规定的情况。

第10.11条：征收与赔偿[10-9]

1. 任何一方不得直接或间接通过征收或国有化等效措施征收或国有化受保护的投资（"征收"），但除以下情况外：

(a) 为公共利益；(b) 以非歧视性方式；(c) 根据第2至4段支付及时、充分和有效的赔偿；以及 (d) 依照正当法律程序。

2. 赔偿应：

(a) 无延迟支付；(b) 等于征收发生前被征收投资的公允价值（"征收之日"）；(c) 不反映因预期征收提前公开而发生的任何价值变化；并且 (d) 可完全实现且可自由转让。

3. 如果公允价值以自由使用货币计价，则支付的赔偿金不得低于征收之日的公允价值，加上自征收之日起至付款之日按商业合理利率计算的该货币的利息。

4. 如果公允价值以非自由使用货币计价，则支付的赔偿金——按付款之日的市场汇率折算成支付货币——不得低于：

(a) 征收之日公允价值，按该日市场汇率折算成自由使用货币；加上

[10-9] 为明确起见，第10.11条应根据附件10-B进行解释。

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such revocation, limitation, or creation is consistent with Chapter 17 (Intellectual Property).

Article 10.12: Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 10.3 and 10.4, a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its domestic law.

Article 10.13: Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party and to investments of that investor if the investor is an enterprise:

(a) owned or controlled either by persons of a non-Party or of the denying Party; and

(b) has no substantive business operations in the territory of the other Party.

(b) 利息，按该自由使用货币的商业合理利率计算，自征收之日起至付款之日止。

5. 本条不适用于根据与贸易有关的知识产权协定授予的与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，只要这种撤销、限制或创设与第17章（知识产权）一致。

第10.12条：特殊程序和信息要求

1. 第10.3条中的任何内容均不得解释为阻止缔约方采用或维持一项与受保护投资相关的特殊程序规定，例如要求投资者为该缔约方居民，或要求受保护投资根据该缔约方的法律或法规合法设立，前提是这些程序不会实质性损害该缔约方对另一方的投资者和受保护投资根据本章提供的保护。

2. 不论第10.3条和第10.4条如何规定，缔约方可以要求另一方的投资者或受保护投资提供仅用于信息或统计目的的投资信息。该缔约方应当保护机密信息，防止其披露损害投资者的竞争地位或受保护投资。本段中的任何内容均不得解释为阻止缔约方在根据其国内法公平善意地适用时，以其他方式获取或披露与该投资相关的信息。

第10.13条：拒绝给予利益

经事先通知和协商，缔约方可以拒绝给予另一缔约方的投资者及该投资者的投资的本章利益，如果该投资者为企业：

(a) 为非缔约方或拒绝给予利益的缔约方人员所拥有或控制；以及 (b) 在另一方领土内没有实质性业务经营。

Section B - Investor-State Dispute Settlement

Article 10.14: Scope of Investor-State Dispute Settlement

Section B applies where there is a dispute between a Party and an investor of the other Party relating to a covered investment made in the territory of a Party in accordance with its laws, regulations and investment policies**.**

Article 10.15: Consultations and Negotiations

1. In the event of an investment dispute, the claimant and the respondent shall initially seek to resolve the dispute through consultations and negotiations, 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 claimant to the respondent.

2. The parties shall endeavour to commence consultations within 30 days of receipt by the respondent of the request for consultations, unless the disputing parties otherwise agree.

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

4. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal**.**

Article 10.16: Submission of a Claim to Arbitration

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a request for consultations:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim that:

(i) the respondent has breached an obligation under Section A; and

(ii) the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim that:

(i) the respondent has breached an obligation under Section A; and

B部分 - 投资者-国家争端解决

Article 10.14: 投资者-国家争端解决的适用范围

B部分适用于缔约方与另一方投资者之间就根据一方法律、法规和投资政策在其领土内进行的受保护的投资所产生的争议。

Article 10.15: 磋商与谈判

1. 发生投资争端时，申诉方和被诉方应首先通过磋商和谈判解决争端，这可能包括使用非约束性第三方程序。此类磋商应由申诉方向被诉方提交书面磋商请求来启动。

2. 各方应努力在收到磋商请求之日起30天内开始磋商，除非争议方另有约定。

3. 以通过磋商解决投资争端为目标，申诉方应在磋商开始前，尽一切合理努力向被诉方提供有关投资争端法律和事实依据的信息。

4. 为明确起见，磋商和谈判的启动不应被视为对仲裁庭管辖权的承认。

Article 10.16: 提交仲裁索赔

1. 如果投资争端在被诉方收到磋商请求之日起六个月内未能解决：

(a) 申诉方，以自己的名义，可以根据本节提交仲裁一项索赔，该索赔包括：(i) 被诉方违反了A部分的一项义务；以及 (ii) 申诉方因该违约行为遭受了损失或损害；以及 (b) 申诉方，代表被诉方的一个企业（该企业是法人，且申诉方直接或间接拥有或控制该企业），可以根据本节提交仲裁一项索赔，该索赔包括：(i) 被诉方违反了A部分的一项义务；以及

(ii) the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent"). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

3. A claimant may submit a claim referred to in paragraph 1:

(a) under the ICSID Convention, provided that both the non-disputing Party and the respondent are parties to the ICSID Convention;

(b) under the ICSID Additional Facility Rules, provided that either the non-disputing Party or the respondent, but not both, 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.

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

5. The arbitration rules applicable under paragraph 3, and 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.

6. The claimant shall provide with the notice of arbitration referred to in paragraph 4:

(a) the name of the arbitrator that the claimant appoints; or

(b) the claimant's written consent for the Secretary-General to appoint the claimant's arbitrator.

(ii) 该企业因该违约行为遭受了损失或损害。

2. 在根据本节提交任何仲裁索赔前至少90天，申诉方应向被诉方提交一份书面意向通知，表明其打算将索赔提交仲裁（"意向通知"）。通知应具体说明：

(a) 申诉方的名称和地址；如果代表企业提交索赔，则还应提供企业的名称、地址和注册地；(b) 对于每一项索赔，被指控违反的本协议的规定以及任何其他相关规定；(c) 每项索赔的法律和事实依据；以及(d) 寻求的救济措施和索赔的损害赔偿金额的近似值。

3. 申诉方可提交第1段所述的索赔：

(a) 根据《国际投资争端解决中心公约》，前提是非争议方和被诉方均为《国际投资争端解决中心公约》的缔约方；(b) 根据《国际投资争端解决中心附加便利规则》，前提是非争议方或被诉方中只有一方是《国际投资争端解决中心公约》的缔约方；(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。

4. 当申诉方的仲裁通知（仲裁通知）根据适用仲裁规则收到时，本节规定的索赔应被视为已提交仲裁。

5. 第3段适用的仲裁规则，以及在本节规定的索赔或索赔提交仲裁之日生效的仲裁规则，应 govern 仲裁，除非本协议另有修改。

6. 申诉方应在第4段所述的仲裁通知中提供：

(a) 申诉方任命的仲裁员的姓名；或 (b) 申诉方书面同意秘书长任命其仲裁员。

- 77 -

Article 10.17: Consent of each Party to Arbitration

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

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

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article II of the New York Convention for an “agreement in writing”; and

(c) Article 1 of the UNCITRAL Arbitration Rules.

Article 10.18: Conditions and Limitations on Consent of each Party

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 causing loss or damage to a claimant or covered investment.

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

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

(b) the notice of arbitration referred to in Article 10.16.6 is accompanied:

(i) for claims submitted to arbitration under Article 10.16.1(a), by the claimant’s written waiver; and

(ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimant’s and the enterprise’s written waivers,

of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to the events alleged to give rise to the claimed breach.

3. No claim may be submitted to arbitration, if the claimant referred to in Article 10.16.1(a) or 10.16.1(b), has alleged the breach of an obligation under Section A in proceedings before a court or an administrative tribunal of a Party, or other binding dispute settlement procedure. For greater certainty, if an investor elects to submit a claim, of the type previously described to a court or administrative tribunal of the Party, that election shall be definitive and the investor may not thereafter submit the claim to arbitration under this Section.

第10.17条：各方的仲裁同意

1. 每一方同意根据本协议在本节下提交索赔以进行仲裁。

2. 第1段项下的同意以及根据本节提交的仲裁索赔应被视为满足以下要求：

(a) 国际投资争端解决中心公约（中心的管辖权）第II章以及国际投资争端解决中心附加便利规则，用于书面同意争议的各方法；(b) 纽约公约第II条，用于“书面协议”；以及(c) 联合国国际贸易法委员会仲裁规则第1条。

第10.18条：各方法定同意的条件和限制

1. 如果申诉方首次获得或应首次获得第10.16.1条项下导致对申诉方或受保护投资造成损失或损害的违约通知之日起已超过三年，则不得根据本节提交仲裁索赔。

2. 除非满足以下条件，否则不得根据本节提交任何仲裁索赔：

(a) 申诉方根据本协议规定的程序书面同意仲裁；并且 (b) 根据第10.16.6条所述的仲裁通知： (i) 对于根据第10.16.1(a)条提交的仲裁索赔，须附有申诉方的书面放弃；以及 (ii) 对于根据第10.16.1(b)条提交的仲裁索赔，须附有申诉方和企业的书面放弃，

在任何行政法庭或仲裁庭提起或继续任何权利之前或采用其他争端解决程序，与据称导致所声称违约的事件有关的任何诉讼。

3. 不得向仲裁提交索赔，如果第10.16.1(a)条或10.16.1(b)条中提到的申诉方，在缔约方法院或行政法庭或其他具有约束力的争议解决程序中，已经声称违反了A部分的一项义务，则不得向仲裁提交索赔。为明确起见，如果投资者选择将索赔提交给缔约方的法院或行政法庭，该选择应是最终决定性的，并且投资者此后不得根据本部分将索赔提交给仲裁。

4. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16.1(a)) and the claimant or the enterprise (for claims brought under Article 10.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

5. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to conciliation or arbitration under Article 10.17, unless such other Party 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.

Article 10.19: Selection of Arbitrators

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

2. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, and be independent of, and not be affiliated with or take instructions from, either Party or the claimant.

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

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

5. Pursuant to paragraph 1, where the disputing parties have agreed on a sole arbitrator or each individual member of the tribunal and one or more of those arbitrators has the nationality of one of the disputing parties, the appointment shall be in writing.

6. Subject to paragraph 7:

(a) the costs of arbitration shall be born equally by the disputing parties unless the tribunal decides otherwise; and

(b) the prevailing ICSID rate for arbitrators shall apply.

4. 尽管有第2段(b)款的规定，对于根据第10.16.1(a)条提出的索赔，申诉方（对于根据第10.16.1(b)条提出的索赔，申诉方或企业）可以在被诉方的司法或行政法庭上提起或继续寻求临时禁令救济的行动，该行动不涉及金钱损害赔偿，前提是该行动的唯一目的是在仲裁进行期间维护申诉方或企业的权利和利益。

5. 任何一方不得就其投资者与另一方已同意根据第10.17条提交或已提交调解或仲裁的争议给予外交保护，或提起国际索赔，除非该另一方未能遵守并执行该争议的裁决。根据本段，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。

第10.19条：仲裁员的选定

1. 除非争议方另有约定，仲裁庭应由三名仲裁员组成，每方各任命一名仲裁员，第三名仲裁员，即首席仲裁员，由争议方协议任命，且应为第三国国民。

2. 仲裁员应具备国际公法、国际贸易或国际投资规则方面的专业知识或经验，并独立于任何一方或申请人，且不与任何一方或申请人有关联或接受其指示。

3. 秘书长应作为本节项下仲裁的指定机构。

4. 如果在本节项下提交索赔之日起75天内未成立仲裁庭，秘书长应根据争议方的请求，在其自由裁量权范围内，任命尚未任命的仲裁员或仲裁员。

5. 根据第1段，如果争议方已就独任仲裁员或仲裁庭的每个成员达成一致，并且其中一名或多名仲裁员具有争议方之一的国籍，则任命应以书面形式进行。

6. 除非第7段另有规定：

(a) 仲裁费用应由争议方平均承担，除非仲裁庭决定 otherwise；以及 (b) 应适用 ICSID 仲裁员现行费率。

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

8. Even without the consent of the tribunal that he or she was a member, where any arbitrator appointed as provided for in this Section 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 10.20: Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.16.3(b), (c) or (d). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. The tribunal shall have the authority to accept and consider *amicus curiae* written submissions that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party (the "submitter"). The submissions shall be provided in both Spanish and English, and shall identify the submitter and any Party, other government, person, or organisation, other than the submitter, that has provided, or will provide, any financial or other assistance in preparing the submission. Where such submissions are admitted by the tribunal, the tribunal shall provide to the parties an opportunity to respond to such written submissions.

3. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the jurisdiction or the competence of the tribunal, a tribunal shall address and decide as a preliminary question any objection by the respondent that the claim is manifestly without legal merit.

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration referred to in Article 10.16.4, the date the tribunal fixes for the respondent to submit its response to the amendment).

(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

(c) The respondent does not waive any objection as to the jurisdiction or competence of the tribunal or any argument on the merits merely because the respondent did or did not raise an objection under this

7. 争议方可以建立与仲裁庭产生的费用相关的规则，包括仲裁员的报酬。

8. 即使未经其所属的仲裁庭同意，如果本节规定的仲裁员辞职或无法履行职责，也应当以原仲裁员任命的方式任命继任者，继任者应享有原仲裁员的所有权力和职责。

第10.20条：仲裁的进行

1. 争议方可以就第10.16.3(b)、(c)或(d)条规定的适用仲裁规则下的任何仲裁的法律地点达成协议。如果争议方未能达成协议，仲裁庭应根据适用的仲裁规则确定地点，但地点应在《纽约公约》缔约方的领土内。

2. 仲裁庭有权接受和考虑可能有助于仲裁庭评估争议方（"提交者"）提交的书面材料和论点的法庭之友书面提交。提交的材料应以西班牙语和英语提供，并应标明提交者和任何其他提供或将为提交准备提供任何财务或其他协助的缔约方、其他政府、个人或组织（不包括提交者）。如果仲裁庭接受此类提交，仲裁庭应给予各方机会对书面提交进行答复。

3. 不影响仲裁庭作为初步问题处理其他异议的权力，例如异议仲裁庭对争议没有管辖权或没有管辖权，仲裁庭应当作为初步问题处理被诉方提出的任何异议，即索赔明显缺乏法律依据。

(a) 该异议应尽快提交给仲裁庭
仲裁庭成立后，并且不迟于仲裁庭为被诉方提交反诉状（或，根据第10.16.4条修订的仲裁通知，仲裁庭为被诉方提交对修订的回复）确定的日期。

(b) 收到本段规定的异议后，仲裁庭应当
暂停实体程序，建立考虑该异议的日程，并就该异议作出裁决，说明理由。

(c) 被诉方并未放弃就管辖权或
仲裁庭的管辖权或任何关于实体问题的论点，仅仅因为被诉方在本节下是否提出了异议

- 80 -

paragraph or make use of the expedited procedure set out in the following paragraph.

4. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 3 or any objection that the dispute is not within the tribunal's jurisdiction or competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period of time, which may not exceed 30 days.

5. When it decides a respondent's objection under paragraph 3 or 4, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

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

7. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 10.16. For the purposes of this paragraph, an order includes a recommendation.

8. At the request of a disputing party, a tribunal shall, before issuing an award on liability, transmit its proposed award to the disputing parties and to the non-disputing Party. Within 60 days after the tribunal transmits its proposed award, only the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed award. The tribunal shall consider any such comments and issue its award not later than 45 days after the expiration of the 60 day comment period.

Article 10.21: The non-disputing Party

1. No later than 30 days after the date that such documents have been delivered to the respondent, the respondent shall deliver to the non-disputing Party a copy of:

(a) the notice of intent referred to in Article 10.16.2;

(b) the notice of arbitration referred to in Article 10.16.4;

或在本段中提出，或利用以下段落中规定的加速程序。

4. 如果被诉方在仲裁庭成立后45天内提出请求，仲裁庭应以加速方式决定第3段下的异议或任何关于争议不属于仲裁庭管辖权或管辖权的异议。仲裁庭应暂停实体程序，并在请求之日起150天内就异议作出裁决，说明理由。但是，如果争议方要求举行听证，仲裁庭可以额外30天作出裁决。无论是否要求举行听证，仲裁庭在特殊情况证明下，可以延迟作出裁决或裁决一个额外短暂的时间，但不得超过30天。

5. 当仲裁庭决定被诉方的第3段或第4段的异议时，如果合理，仲裁庭可以裁决胜诉争议方因提交或反对异议而产生的合理费用和律师费。在确定是否应作出此类裁决时，仲裁庭应考虑申诉方的索赔或被诉方的异议是否不合理，并应给予争议方合理的机会进行评论。

6. 被诉方不得作为抗辩、反诉、抵销权或其他方式主张申诉方已获得或将要获得根据保险或担保合同对全部或部分所述损失或损害的赔偿或其他补偿。

7. 仲裁庭可以采取临时保护措施以保护争议方的权利，或确保仲裁庭的管辖权得到充分有效行使，包括命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。仲裁庭不得下令扣押或禁止实施据称构成第10.16条所述违约的措施。就本段而言，命令包括建议。

8. 应争议方的请求，仲裁庭在就责任问题作出裁决前，应将其拟作出的裁决传送给争议方和非争议方。仲裁庭将其拟作出的裁决传送给争议方后60日内，仅争议方可以就其拟作出的裁决的任何方面向仲裁庭提交书面意见。仲裁庭应考虑任何此类意见，并在60天意见期届满后45天内作出其裁决。

第10.21条：非争议方

1. 自此类文件交付给被诉方之日起30日内，被诉方应向非争议方交付以下文件的副本：

(a) 第10.16.2条所述的意向通知；

(b) 第10.16.4条中提到的仲裁通知；

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to paragraphs 2 and 3 of Article 10.20 and Article 10.26;

(d) minutes or transcripts of hearings of the tribunal, where available;

(e) orders, awards, and decisions of the tribunal; and

(f) any other document submitted to the tribunal, including redacted versions of confidential documents submitted in accordance with Article 10.22.

2. On written notice to the disputing parties, the non-disputing Party may make a submission to a tribunal on any question of interpretation of this Agreement.

3. The non-disputing Party receiving confidential information pursuant to paragraph 1 shall treat the information as if it were a disputing party.

Article 10.22: Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, make them available to the public at their cost:

(a) the notice of intent referred to in Article 10.16.2;

(b) the notice of arbitration referred to in Article 10.16.4;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to paragraphs 2 and 3 of Article 10.20, Article 10.21.2 and Article 10.26;

(d) minutes or transcripts of hearings of the tribunal, where 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, any disputing party that intends to use information designated as confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure including closing the hearing for the duration of any discussion of confidential information.

3. Nothing in this Section requires a respondent to disclose information which would impede law enforcement or information that is privileged or otherwise protected from disclosure under a Party's law or to furnish or allow access to information that it may withhold in accordance with Article 22.2 (Security Exceptions

(c) 争议方提交给仲裁庭的诉讼文书、备忘录和简报，以及根据第10.20条和第10.26条第2、3段提交的任何书面提交；(d) 仲裁庭庭审的会议记录或庭审记录（如有）；(e) 仲裁庭的裁决、裁决和决定；以及(f) 提交给仲裁庭的任何其他文件，包括根据第10.22条提交的保密文件的修订版本。

2. 向争议方发出书面通知后，非争议方可以就本协议的解释性问题向仲裁庭提交意见。

3. 根据第1段收到机密信息的非争议方应当将其视为争议方处理。

第10.22条：仲裁程序透明度

1. 除第2段和第4段的规定外，被诉方在收到下列文件后，应当以自己的费用将其向公众公开：

(a) 第10.16.2条所述的意向通知；(b) 第10.16.4条所述的仲裁通知；(c) 争议方向仲裁庭提交的诉讼文书、备忘录和简报，以及根据第10.20条第2段和第3段、第10.21.2条和第10.26条提交的任何书面提交；(d) 仲裁庭庭审的会议记录或庭审记录，如可用；以及(e) 仲裁庭的裁决、裁决和决定。

2. 仲裁庭应举行向公众开放的庭审，并与争议方协商确定适当的后勤安排。然而，任何意图在庭审中使用被指定为商业机密的信息，或根据一方缔约方的法律被认定为特权或受保护而不予披露的信息的争议方，均应向仲裁庭作出此种通知。仲裁庭应采取适当安排以保护信息免予披露，包括在讨论机密信息期间闭庭。

3. 本节中的任何内容均未要求被诉方披露会妨碍执法或根据缔约方法律享有特权或受其他保护而不予披露的信息，或提供或允许访问其根据第22.2条（安全例外^{（总则和例外章节）}）可能保留的信息。

– General Provisions and Exceptions Chapter) or Article 22.5 (Disclosure of Information – General Provisions and Exceptions Chapter).

4. Information that may be designated as confidential information is limited to any sensitive factual information that is not available in the public domain.

5. Confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law shall, if such information is submitted to the tribunal, be protected from disclosure in accordance with the following procedures:

(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) Any disputing party claiming that certain information constitutes confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law shall clearly designate the information at the time it is submitted to the tribunal;

(c) A disputing party shall, at the same time that it submits a document containing information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, submit a redacted version of the document that does not contain the information. Only the redacted version shall be made public in accordance with paragraph 1; and

(d) The tribunal shall decide any objection regarding the designation of information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law. 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, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

– 总则和例外章节）或第22.5条（信息披露^{（总则和例外章节）}）。

4. 可被指定为机密信息的范围仅限于任何不属于公共领域的敏感事实信息。

5. 根据缔约方法律享有特权或受其他保护不得披露的机密商业信息或信息，如果提交给仲裁庭，应按照以下程序予以保护，不得披露：

(a) 除第(d)项另有规定外，争议方或仲裁庭均不得向非争议方或公众披露根据第(b)项第(b)项规定明确指定的机密商业信息或根据缔约方法律享有特权或受其他保护不得披露的信息；

(b) 任何主张某项信息构成机密商业信息或根据缔约方法律享有特权或受其他保护不得披露的信息的争议方，应在提交给仲裁庭时明确指定该信息；

(c) 争议方在提交包含据称为机密商业信息或根据缔约方法律享有特权或受其他保护不得披露的信息的文件时，应同时提交不包含该信息的文件修订版本。根据第1段的规定，仅应公开修订版本；和

(d) 仲裁庭应当决定关于被主张为商业机密或根据一方法律享有特权或受其他保护不得披露的信息的指定提出的任何异议。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) 撤回其包含该信息的全部或部分提交；或 (ii) 同意根据仲裁庭的认定和第 (c) 段的规定，重新提交完整且经过删减的文件，并附有更正的指定。

在两种情况下，另一方争议方都应在必要时重新提交完整且经过编辑的文件，这些文件要么移除了首先提交信息的争议方根据第 (d)(i) 款撤回的信息，要么重新指定了与首先提交信息的争议方根据第 (d)(ii) 款指定的信息一致的信息。

6. A disputing party may disclose to other persons in connection with the arbitral proceedings such confidential documents as it considers necessary for the preparation of its case, but it shall require that any confidential information in such documents is protected.

7. Nothing in this Section authorises a respondent to withhold from the public information required to be disclosed by its laws.

Article 10.23: Governing Law

1. Subject to paragraph 2, when a claim is submitted under Article 10.16.1(a) or Article 10.16.1(b), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. A decision of the Joint FTA Committee issuing its interpretation of a provision of this Agreement under Article 20.1.3(f) (Joint FTA Committee – Institutional Arrangements Chapter) shall be binding on a tribunal established under this Section, and any award must be consistent with that decision.

Article 10.24: Interpretation of Annexes

1. Where a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint FTA Committee on the issue. The Joint FTA Committee shall submit in writing any decision issuing its interpretation under Article 20.1.3(f) (Joint FTA Committee – Institutional Arrangements Chapter) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Joint FTA Committee under paragraph 1 shall be binding on the tribunal, and any award must be consistent with that decision. If the Joint FTA Committee fails to issue such a decision within 60 days, the tribunal shall decide the issue.

Article 10.25: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorised by the applicable arbitration rules, a 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 any 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.

6. 争议方可以就仲裁程序向其他人披露其认为对其案件准备必要的保密文件，但它应要求此类文件中的任何机密信息都受到保护。

7. 本节任何内容均未授权被诉方向公众隐瞒其法律要求披露的信息。

第10.23条：适用法律

1. 除第2段规定外，当根据第10.16.1(a)条或第10.16.1(b)条提交索赔时，仲裁庭应根据本协议和适用的国际法规则裁决争议事项。

2. 联合FTA委员会根据第20.1.3(f)条（联合FTA委员会——机构安排章节）对本协议某项规定的解释作出的决定，对根据本节设立的仲裁庭具有约束力，任何裁决必须与该决定一致。

第10.24条：附件的解释

1. 当被诉方以抗辩主张据称构成违约的措施属于附件I或附件II中规定的非符合措施范围时，仲裁庭应根据被诉方的请求，请求联合FTA委员会对相关问题作出解释。联合FTA委员会应自收到请求之日起60日内，以书面形式将根据第20.1.3(f)条（联合FTA委员会——机构安排章节）作出的解释决定提交给仲裁庭。

2. 根据第1段作出的联合FTA委员会的决定对仲裁庭具有约束力，并且任何裁决必须与该决定一致。如果联合FTA委员会在60日内未能作出此类决定，仲裁庭应就相关问题作出决定。

第10.25条：专家报告

在不影响适用仲裁规则授权任命其他类型专家的情况下，仲裁庭应争议方请求或，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书面报告，具体条款和条件由争议方自行商定。

- 84 -

Article 10.26: Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order with the agreement of all the disputing parties sought to be covered by the order or in accordance with the terms of paragraphs 2 to 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

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

4. Subject to paragraph 5, unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall be constituted in accordance with Article 10.19 except that, for the purpose of Article 10.19.1, the claimants shall appoint a single arbitrator by agreement.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General may be requested by any disputing party sought to be covered by the order, to appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the arbitrator to be appointed by the Secretary-General may be a national of the respondent, and if the claimants fail to appoint an arbitrator, the arbitrator to be appointed by the Secretary-General may be a national of the Party other than the respondent.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims;

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or

第10.26条：合并审理

1. 如根据第10.16.1条分别提交了两个或多个仲裁申请，且这些申请具有共同的法律或事实问题，并源于相同的事件或情况，任何争议方均可在与拟受令所涵盖的所有争议方达成协议的情况下，或根据第2至第10段的规定，寻求合并审理令。

2. 依据本条寻求合并审理令的争议方应当以书面形式向秘书长以及所有被寻求纳入该令的争议方提交请求，并在请求中明确以下内容：

(a) 被寻求纳入该令的所有争议方的姓名和地址；(b) 寻求的令的性质；以及(c) 寻求该令的理由。

3. 秘书长在收到依据第2段提交的请求后30日内，若未发现该请求明显缺乏依据，则应当依据本条设立仲裁庭。

4. 除第5段另有规定外，除非所有被寻求纳入该令的争议方另行同意，依据本条设立的仲裁庭应当按照第10.19条的规定组成，但就第10.19.1条而言，申诉方应当通过协议任命一名仲裁员。

5. 如果，在秘书长收到根据第2段提出的请求后60天内，被诉方未能任命仲裁员或申诉方未能按照第4段的规定任命仲裁员，则任何寻求受该裁决约束的争议方可以请求秘书长任命尚未任命的仲裁员或仲裁员。如果被诉方未能任命仲裁员，则秘书长任命的仲裁员可以是被诉方的本国公民，如果申诉方未能任命仲裁员，则秘书长任命的仲裁员可以是除被诉方以外的缔约方的本国公民。

6. 如果根据本条设立的仲裁庭确认，根据第10.16.1条提交仲裁的两个或多个索赔在法律或事实问题上具有共同点，并且源于相同的事件或情况，则仲裁庭可以为了公平有效地解决索赔，并在听取争议方后，通过裁决：

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

(c) instruct a tribunal previously established under Article 10.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

(i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4 and 5; and

(ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

(a) the name and address of the claimant;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

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

8. A tribunal established under this Article shall conduct its proceedings in accordance with Section B of this Agreement.

9. A tribunal established under Article 10.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 10.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.27: Awards

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

(a) monetary damages and any applicable interest;

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

(c) 指示根据第10.19条先前设立的仲裁庭行使管辖权，并共同审理和裁决全部或部分索赔，但须满足以下条件：

(i) 该仲裁庭应任何先前未争议方在仲裁庭面前，应使用其原始成员重新组建，但申诉方的仲裁员应根据第4段和第5段任命；并且 (ii) 该仲裁庭应决定是否应重复任何先前的听证会。

7. 当根据本条设立仲裁庭时，已根据第10.16.1条提交仲裁索赔且未被列入第2段项下请求的申诉方，可向仲裁庭提交书面请求，要求将其包含在第6段项下作出的任何裁决中，并在请求中说明：

(a) 申诉方的姓名和地址； (b) 所寻求的命令的性质；以及 (c) 寻求该命令的理由。

申诉方应当将其请求的副本提交给秘书长。

8. 根据本条设立的仲裁庭应当按照本协议B部分的规定进行审理。

9. 根据第10.19条设立的仲裁庭无权对根据本条设立或受命设立的仲裁庭已取得管辖权的索赔或索赔的一部分作出裁决。

10. 在争议方申请的情况下，根据本条设立的仲裁庭在根据第6段作出裁决之前，可以命令根据第10.19条设立的仲裁庭暂停审理，除非后者仲裁庭已经休庭。

第10.27条：裁决

1. 当仲裁庭对被诉方作出最终裁决时，仲裁庭可以单独或结合方式裁决，但仅限于：

(a) 金钱损害赔偿和任何适用利息； (b) 财产返还，在这种情况下，裁决应当规定被诉方可以用金钱损害赔偿和任何适用利息代替财产返还。

- 86 -

A tribunal may also award costs and attorneys' fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.16.1(b):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

3. A tribunal may not award punitive damages.

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

5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

6. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention:

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.16.5(d):

(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.

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

8. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, or the New York Convention regardless of whether actions have been taken under Article 10.18.5.

仲裁庭也可根据本部分和适用仲裁规则裁决费用和律师费。

2. 根据第1段，若根据第10.16.1(b)条提交索赔进行仲裁：

(a) 财产返还裁决应规定向企业进行返还；(b) 金钱损害赔偿裁决及适用利息应规定将款项支付给企业；以及(c) 裁决应规定其作出不损害任何人在适用国内法救济中可能拥有的任何权利。

3. 仲裁庭不得裁决惩罚性损害赔偿。

4. 仲裁庭作出的裁决除在争议方之间及针对特定案件外，不具有约束力。

5. 根据第6段及临时裁决的适用审查程序，争议方应立即遵守并履行裁决。

6. 争议方在最终裁决的执行之前，不得寻求执行该最终裁决，除非：(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) 自裁决作出之日起120天已过，且没有任何争议方请求对该裁决进行复审或撤销；或 (ii) 复审或撤销程序已经完成；以及 (b) 在根据《国际投资争端解决中心附加便利规则》、联合国国际贸易法委员会仲裁规则或根据第10.16.5(d)条选定的其他规则作出的最终裁决的情况下：(i) 自裁决作出之日起90天已过，且没有任何争议方已开始对该裁决进行复审、撤销或撤销的诉讼；或 (ii) 法院已驳回或允许对该裁决进行复审、撤销或撤销的申请，且没有进一步的上诉。

7. 每一方应在其领土内提供裁决的执行。

8. 争议方可以根据国际投资争端解决中心公约或纽约公约寻求仲裁裁决的执行，无论是否已采取第10.18.5条规定的行动。

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

Article 10.28: Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-F.

9. 根据本节提交仲裁的索赔应被视为源于纽约公约第I条所指的商业关系或交易。

第10条28款：文书送达

缔约方应将通知和其他文件送达附件10-F中为该缔约方指定的地点。

Annex 10-A
Customary International Law

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers, for the purposes of this Agreement, to all customary international law principles that protect the economic rights and interests of aliens.

第10-A附件 习惯国际法

缔约方确认其共同理解，即“习惯国际法”通常且在具体引用于第10.5条时，源于国家普遍且一致的实践，而国家遵循这些实践是出于法律义务感。本协议所称“习惯国际法最低标准待遇”是指所有保护外国人经济权利和利益的习惯国际法原则。

Annex 10-B
Expropriation

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Article 10.11.1 addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 10.11.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

附件10-B
征收

缔约方确认其共同理解如下:

1. 一方采取的行动或一系列行动不能构成征收，除非它干扰了投资中的有形或无形财产权或财产权益。

2. 第10.11.1条涉及两种情况。第一种是直接征收，即投资被国有化或通过正式转移所有权或直接没收而直接征收。

3. 第10.11.1条涉及的第二种情况是间接征收，即一方采取的行动或一系列行动在未进行正式转移所有权或直接没收的情况下，产生了等同于直接征收的效果。

(a) 判断缔约方在特定事实上采取的一项行动或一系列行动是否构成间接征收，需要进行个案的、基于事实的调查，该调查需考虑其他因素:

(i) 政府行为的经济影响，尽管
缔约方采取的一项行动或一系列行动对投资经济价值产生不利影响这一事实本身，
单独来看，
并不能证明发生了间接征收；

(ii) 政府行为干预的程度，
明确的、合理的投资预期；以及

(iii) 政府行为的性质。

(b) 除特殊情况外，缔约方采取的非歧视性监管措施，旨在保护合法的公共利益目标，如公共卫生、安全和环境，不构成间接征收。

Annex 10-C
Transfers

Chile

1. Chile reserves the right of the Central Bank of Chile *(Banco Central de Chile)* to maintain or adopt measures in conformity with Law 18.840, Constitutional Organic Law of the Central Bank of Chile *(Ley 18.840, Ley Orgánica Constitucional del Banco Central de Chile)* or other legislation, in order to ensure currency stability and the normal operation of domestic and foreign payments. For this purpose, the Central Bank of Chile is empowered to regulate the supply of money and credit in circulation and international credit and foreign exchange operations. The Central Bank of Chile is empowered as well to issue regulations governing monetary, credit, financial, and foreign exchange matters. Such measures include, *inter alia*, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement *(encaje)*.

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

3. When applying measures under this Annex, Chile, as established in its legislation, shall not discriminate between Australia and any third country with respect to transactions of the same nature.

附件10-C 转移

智利

1. 智利保留智利中央银行（Banco Central de Chile）根据第18.840号法律、智利中央银行宪法有机法（Ley 18.840, Ley Orgánica Constitucional del Banco Central de Chile）或其他立法维持或采取符合性措施的权力，以确保货币稳定和国内及国外支付的正常运作。为此，智利中央银行被授权监管流通中的货币和信用供应以及国际信贷和外汇交易。智利中央银行还被授权发布规范货币、信贷、金融和外汇事务的法规。此类措施包括但不限于，对向智利或从智利进行的当前支付和转账（资本流动）的设立限制或限制，以及与之相关的交易，例如要求来自或送往外国的存款、投资或信贷受储备要求（encaje）的约束。

2. 不论第1段如何，智利中央银行根据第18.840号法律第49条第2款可适用的储备要求，不得超过转移金额的30%，且不得适用于超过两年的期限。

3. 在适用本附件规定的措施时，智利根据其立法规定，不得在性质相同的交易方面将澳大利亚与任何第三国区别对待。

Annex 10-D
DL 600

Chile

1. The obligations and commitments contained in this Chapter do not apply to Decree Law 600, Foreign Investment Statute (*Decreto Ley 600, Estatuto de la Inversión Extranjera*) (hereinafter referred to in this Annex as "DL 600"), and to Law 18.657, Foreign Capital Investment Fund Law (*Ley 18.657, Ley de Fondos de Inversión de Capital Extranjero*), to the continuation or prompt renewal of such laws, to amendments to those laws or to any special and/or voluntary investment regime that may be adopted in the future by Chile.

2. For greater certainty, it is understood that the Foreign Investment Committee of Chile has the right to accept and reject applications to invest through DL 600 and Law 18.657. Additionally, the Foreign Investment Committee has the right to regulate the terms and conditions of foreign investment under DL 600 and Law 18.657.

3. Nowithstanding paragraphs 1 and 2, Chile shall accord to an investor of Australia or its investment that is a party to an investment contract under DL 600, the better of the treatment required under Section A of this Chapter or the treatment under the investment contract.

4. Chile shall permit an investor of Australia or its investment that has entered into an investment contract under DL 600 to amend the investment contract to make it consistent with the obligation referred to in paragraph 3.

5. Notwithstanding any other provision in this Agreement, Chile may prohibit an investor of Australia or a covered investment from transferring from Chile proceeds of the sale of all or any part of an investment made pursuant to a contract under DL 600 for up to one year after the date that the investor or covered investment transferred funds to Chile to establish the investment.

附件10-D
DL 600

智利

1. 本章包含的义务和承诺不适用于第600号法令，外国投资法（Decreto Ley 600, Estatuto de la Inversión Extranjera）（以下简称“DL 600”）以及第18.657号法律，外国资本投资基金法（Ley 18.657, Ley de Fondos de Inversión de Capital Extranjero），也不适用于这些法律的延续或及时更新、对这些法律的修订或智利未来可能采用任何特殊和/或自愿投资制度。

2. 为进一步明确，理解智利外国投资委员会有权通过DL 600和法律18.657接受和拒绝投资申请。此外，智利外国投资委员会有权规范DL 600和法律18.657项下的外国投资条款和条件。

3. 尽管有第1段和第2段的规定，智利应给予澳大利亚投资者或其投资（作为附件10-D DL 600项下投资合同的缔约方）比本章A部分规定的待遇或投资合同规定的待遇更好的待遇。

4. 智利应允许澳大利亚投资者或其投资（已签订附件10-D DL 600项下投资合同）修改投资合同，使其与第3段所述的义务一致。

5. 不论本协议中是否有其他规定，智利可以禁止澳大利亚投资者或受保护的投资，在投资者或受保护的投资向智利转移资金以建立投资之日起一年内，将其出售全部或部分投资根据DL 600合同所得的款项转移到智利。

Annex 10-E
Termination of the Bilateral Investment Agreement

1. Without prejudice to paragraph 2, the Parties agree that the "Agreement between the Government of Australia and the Government of the Republic of Chile on the Reciprocal Promotion and Protection of Investments", and its Protocol, signed in Canberra on 9 July 1996, (hereafter the "IPPA"), will terminate on the date of entry into force of the present Agreement.

2. The IPPA shall continue to apply to any investment (as defined in the IPPA) which was made before the entry into force of this Agreement with respect to any act, fact or situation which originated before the entry into force of this Agreement.

3. Notwithstanding paragraph 2, an investor may only submit a claim under Article 11 of the IPPA (Settlement of disputes between a Contracting Party and an investor of the other Contracting Party) within three years from the date of entry into force of this Agreement.

4. The Parties agree that this Annex constitutes an amendment to Article 12 of the IPPA and is effective to terminate the IPPA.

第10-E附件 双边投资协定终止

1. 不损害第2段的规定，缔约方同意，澳大利亚政府和智利共和国政府于1996年7月9日在堪培拉签署的《澳大利亚政府和智利共和国政府关于相互促进和保护投资的协议》及其议定书（以下简称"IPPA"）将在本协议生效之日终止。

2. IPPA 应继续适用于任何在 本协议 生效前进行的投资（根据 IPPA 定义），且该投资与任何在本协议生效前产生的行为、事实或情况相关。

3. 尽管有第2段规定，投资者只能在 本协议 生效之日起三年内，根据 IPPA 第11条（缔约方与另一缔约方投资者之间的争端解决）提交索赔。

4. 缔约方同意，本附件构成对IPPAA第12条的修订，并自终止IPPAA之日起生效。

Annex 10-F
Service of Documents on a Party under Section B

Australia

Notices and other documents in disputes under Section B shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade

Chile

Notices and other documents in disputes under Section B shall be served on Chile by delivery to:

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

附件10-F 根据B部分对一方送达文件

澳大利亚

B部分项下的通知及其他文件应通过以下方式送达澳大利亚:

外交贸易部

智利

根据B部分在争议中通知和其他文件应通过以下方式送达智利:

智利共和国外交部法律事务司 智利圣地亚哥特埃蒂诺街180号