

CHAPTER 9
INVESTMENT

Section A: Investment

ARTICLE 9.1: DEFINITIONS

For the purposes of this Chapter:

- (a) **covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party in existence at the date of entry into force of this Agreement or established, acquired, or expanded thereafter and which, where applicable, has been admitted by the host Party, subject to its relevant laws, regulations and policies;
- (b) **enterprise** means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation; and a branch of an enterprise;
- (c) **enterprise of a Party** means an enterprise constituted or organised in accordance with the laws of a Party, and a branch located in the territory of a Party and carrying out business activities there;
- (d) **investment** means every kind of asset that an investor owns or controls, directly or indirectly, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that investments may take include:
 - (i) an enterprise and a branch of an enterprise;
 - (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
 - (iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
 - (iv) rights under contracts, including turnkey, construction, management, production or revenue sharing contracts;
 - (v) claims to money and claims to any performance under a contract associated with an investment and having a financial value;

第九章 投资

A: 投资

第九条第一款：定义

本章的目的在于：

- (a) 受保护投资是指，对于缔约方而言，在其领土内存在于一方投资者在本协议生效日期或之后设立、获得或扩大的投资，且在适用情况下，已由东道国根据其相关法律法规和政策予以承认的投资；
- (b) 企业是指根据适用法律成立或组织的任何实体，无论是否营利，以及无论是否为私营或国有，包括公司、信托、合伙企业、个体工商户、合资企业、协会或类似组织；以及企业的分支机构；
- (c) 缔约方企业是指根据缔约方法律成立或组织的企业，以及位于缔约方领土内并在该领土内开展业务活动的分支机构；
- (d) 投资是指投资者直接或间接拥有或控制的、具有投资特征的各种资产，例如资本或其他资源的投入、盈利预期或风险承担。投资可能采取的形式包括：
 - (i) 一个企业和企业分支机构；(ii) 企业中的股份、股票或其他形式的股权参与，包括由此产生的权利；(iii) 债券、公司债、贷款和其他形式的债务，包括由此产生的权利；(iv) 合同项下的权利，包括交钥匙、建设、管理、生产或收入分成合同；(v) 与投资相关的合同项下的金钱债权和履行请求权，且具有金融价值；

- (vi) intellectual property rights;
- (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorisations and permits; and
- (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

Note: Investments also include the amounts yielded by investments that are reinvested, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

- (e) **investor of a Party** means a Party, a natural person of a Party, or an enterprise of a Party, that seeks to make, is making or has made a covered investment;

ARTICLE 9.2: SCOPE

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party; and
 - (b) covered investments.
2. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 8 (Trade in Services) or Chapter 10 (Movement of Natural Persons).
3. This Chapter shall not apply to:
 - (a) government procurement; or
 - (b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.
4. For greater certainty, this Chapter shall not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

(vi) 知识产权； (vii) 根据法律、法规或合同授予的权利，如特许权、许可证、授权或许可；以及 (viii) 任何其他有形和无形、动产和不动产，以及任何相关财产权，如租赁权、抵押权、留置权和质押权；注意：投资也包括再投资的投资收益，特别是利润、利息、资本利得、股息、特许权使用费和费用。资产投资形式的变化不会影响其作为投资的性质。

- (e) 一方投资者是指寻求、正在或已经作出受保护投资的一方、一方自然人或一方企业；

第九条第二款：范围

1. 本章适用于一方采取或维持的与下列内容相关的措施：
 - (a) 他方投资者；以及
 - (b) 受保护的投资。
2. 本章规定不适用于第8章（服务贸易）或第10章（自然人流动）中已涵盖的一方采取或维持的措施。
3. 本章规定不适用于：
 - (a) 政府采购；或 (b) 一方提供的补贴或拨款，包括政府支持贷款、担保和保险。
4. 为进一步明确，本章不得约束任何缔约方，就本协议生效日期之前发生的行为或事实或已停止存在的情况产生约束力。

ARTICLE 9.3: NATIONAL TREATMENT

1. Australia shall accord to investors of China 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. China shall accord to investors of Australia treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the expansion,¹ management, conduct, operation and sale or other disposition of investments in its territory.
3. Australia shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
4. China shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the expansion, management, conduct, operation and sale or other disposition of investments in its territory.

ARTICLE 9.4: MOST-FAVOURED-NATION TREATMENT²

1. Each Party shall accord to investors of the other Party, and covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory, treatment no less favourable than that it accords, in like circumstances, to investors and investments in its territory of investors of any non-Party.
2. For greater certainty, the treatment referred to in this Article does not encompass Investor-State Dispute Settlement procedures or mechanisms.
3. Notwithstanding paragraph 1, each Party reserves the right to adopt or maintain any measure that accords more favourable treatment to investors of non-parties in

¹ For greater certainty, the concept of ‘expansion’ in Article 3 means the expansion of an existing investment and does not include the establishment or acquisition of a new, separate investment.

² For the purposes of this Article, the term “non-party” shall not include the following WTO members within the meaning of the General Agreement on Tariffs and Trade and the WTO Agreement: 1) Hong Kong, China; 2) Macao, China; and 3) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei).

第9.3条：国民待遇

1. 澳大利亚应给予中国投资者不低于其在本领土内，就设立、收购、扩张、管理、经营、运营及出售或其他处置投资方面，在类似情况下给予其本国投资者的待遇。
2. 中国应当给予澳大利亚投资者不低于其在本国投资者在类似情况下就其领土内的投资扩张、¹ 管理、经营、运营和出售或其他处置所给予的待遇。
3. 澳大利亚应当给予受保护投资不低于其在本国投资者在类似情况下就其领土内的投资设立、收购、扩张、管理、经营、运营和出售或其他处置所给予的待遇。
4. 中国应当给予受保护投资不低于其在本国投资者在类似情况下就其领土内的投资扩张、管理、经营、运营和出售或其他处置所给予的待遇。

第9.4条：最惠国待遇²

1. 每一方应给予另一方投资者及其受保护投资，在设立、收购、扩张、管理、经营、运营和出售或其他处置其领土内的投资方面，不低于其给予其领土内任何非缔约方投资者及其投资的待遇。
2. 为进一步明确起见，本条所指的待遇不包括投资者-国家争端解决程序或机制。
3. 不论第1段的规定如何，每一缔约方保留有权采取或维持任何给予非缔约方投资者更优惠待遇的措施，但该措施应符合在本协议生效日期之前已生效的任何双边或多边国际协议的规定。

¹ 为进一步明确起见，第3条中的“扩张”概念是指现有投资的扩张，不包括设立或收购新的、独立的投资。

² 就本条而言，“非缔约方”一词不包括以下世界贸易组织成员，根据关税及贸易总协定和世界贸易组织协定定义：1）中国香港；2）中国澳门；以及3）台湾澎湖金门马祖单独关税区（中华台北）。

accordance with any bilateral or multilateral international agreement in force prior to the date of entry into force of this Agreement.³

4. Notwithstanding paragraph 1, each Party reserves the right to adopt or maintain any measure that accords more favourable treatment to investors of non-parties in accordance with any bilateral or multilateral international agreement in force on, or signed after, the date of entry into force of this Agreement involving:

- (a) aviation;
- (b) fisheries; or
- (c) maritime matters, including salvage.

ARTICLE 9.5: NON-CONFORMING MEASURES⁴

1. For Australia, Article 9.3 and Article 9.4 shall not apply to:
- (a) any existing non-conforming measure that is maintained on the date of entry into force of this Agreement:
 - (i) at the central level of government, as set out by Australia in Section A of its Schedule of Non-Conforming Measures in Annex III;
 - (ii) by a State or Territory of Australia, as set out by Australia in Section A of its Schedule of Non-Conforming Measures in Annex III; or
 - (iii) at a local level of Australian government;
 - (b) the continuation of any non-conforming measure referred to in subparagraph (a); or

³ For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.

⁴ Until the entry into force of China’s investment commitments in the comprehensive Investment Chapter negotiated pursuant to Article 9.9, China’s commitments under Article 9.4 shall apply subject to any non-conforming measures scheduled by China against the most-favoured-nation (MFN) obligation in any negative list investment agreement with a non-party, *mutatis mutandis*. Until the entry into force of the comprehensive Investment Chapter negotiated pursuant to Article 9.9, and subject to the scope of this Chapter, if China concludes more than one such agreement with a non-party, the schedule of non-conforming measures against MFN most favourable to Australian investors and investments shall apply *mutatis mutandis*.

符合在本协议生效日期之前已生效的任何双边或多边国际协议的规定。³

4. 不论第1段如何规定，每一缔约方保留根据在其生效日期或在本协议生效日期之后签署的涉及本协议生效日期或之后生效的任何双边或多边国际协议，对非缔约方投资者给予更优惠待遇的权利，该协议包括：

- (a) 航空；(b) 渔业；或 (c) 海事事项，包括救助。

ARTICLE 9.5: NON-CONFORMING MEASURES⁴

1. 对澳大利亚而言，第9.3条和第9.4条不适用于：

- (a) 本协议生效日期时维持的任何现有非一致性措施：(i) 在澳大利亚附件III中其非一致性措施清单第A节中规定的中央政府层面；(ii) 由澳大利亚州或领地规定的，在澳大利亚附件III中其非一致性措施清单第A节中规定的；或 (iii) 在澳大利亚地方政府层面；(b) 所称第(a)项中提到的任何非一致性措施的延续；或

³ 为明确起见，该权利延伸至根据相关双边或多边国际协议的后续审查或修订而给予的任何差别待遇。⁴ 在根据第9.9条谈判的全面投资章节中中国投资承诺生效之前，中国在第9.4条下的承诺应适用，但受中国针对任何与非缔约方签订的负面清单投资协议中的最惠国（MFN）义务的不符措施清单的约束，*mutatis mutandis*。在根据第9.9条谈判的全面投资章节生效之前，且在本章节范围内，如果中国与非缔约方签订了一个以上的此类协议，则对澳大利亚投资者和投资最有利的MFN不符措施清单应适用，*mutatis mutandis*。

- (c) an amendment or modification to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.3 and Article 9.4.
2. For China, Article 9.3 and Article 9.4 shall not apply to:
- (a) any existing non-conforming measures maintained within its territory;
 - (b) the continuation 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 increase the non-conformity of the measure, as it existed immediately before the amendment, with Article 9.3 and Article 9.4.
3. Article 9.3 and Article 9.4 shall not apply to any measure that Australia adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in Section B of its Schedule of Non-Conforming Measures in Annex III.
4. The Parties shall endeavour to progressively remove the non-conforming measures.

ARTICLE 9.6: DENIAL OF BENEFITS

1. 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) that has no substantive business operations in the territory of the other Party.
2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to investments of that investor if persons of a non-party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-party or a person of the non-party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or its investments.

(c) 所称第(a)项中提到的任何非一致性措施的修订或修改，只要该修订或修改不会降低该措施在修订前与第9.3条和第9.4条的一致性。

2. 对于中国，第9.3条和第9.4条不适用于：

(a) 其领土内维持的任何现有非一致性措施；(b) 第(a)款所述任何非一致性措施的继续；或(c) 对第(a)款所述任何非一致性措施的修订，只要该修订并未增加该措施在修订前与第9.3条和第9.4条的非一致性。

3. 第9.3条和第9.4条不适用于澳大利亚就附件III中其非一致性措施清单B部分所列的部门、子部门或活动所采取或维持的措施。

4. 缔约方应努力逐步取消非一致性措施。

第9.6条：拒绝利益

1. 缔约方可以拒绝向另一缔约方的投资者及其投资提供本章的利益，如果该投资者是企业：

(a) 由非缔约方或拒绝方的人员拥有或控制；以及 (b) 在另一缔约方领土内没有实质性业务经营的企业。

2. 缔约方可以拒绝给予另一缔约方的投资者（该投资者为另一缔约方的企业）及其投资的本章利益，如果非缔约方人员拥有或控制该企业，并且拒绝方针对非缔约方或非缔约方人员采取或维持禁止与该企业进行交易的措施，或者如果给予该企业或其投资的本章利益将导致这些措施被违反或规避。

ARTICLE 9.7: COMMITTEE ON INVESTMENT

1. The Parties hereby establish a Committee on Investment that shall meet on the request of either Party or the FTA Joint Commission to consider any matter arising under this Chapter.
2. The Committee's functions shall include:
 - (a) reviewing the implementation of this Chapter;
 - (b) identifying and recommending measures or initiatives to promote and increase investment flows between the Parties; and
 - (c) unless the Parties otherwise agree, conducting the review referred to in Article 9.9.
3. The Committee:
 - (a) shall establish and maintain a list of arbitrators pursuant to Article 9.15.5 and Article 9.15.6;
 - (b) may, pursuant to Article 9.18.2 or Article 9.19, adopt a joint decision of the Parties, declaring their interpretation of a provision of this Chapter and Annex 9-A;
 - (c) may propose amendments to Section B in the light of experience of its operation.

ARTICLE 9.8: GENERAL EXCEPTIONS

1. For the purposes of this Chapter and subject to the requirement that such measures are not applied in a manner which would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures:
 - (a) necessary to protect human, animal or plant life or health;
 - (b) necessary to ensure compliance with laws and regulations that are not inconsistent with this Agreement;
 - (c) imposed for the protection of national treasures of artistic, historic or archaeological value; or

第9.7条：投资委员会

1. 缔约方 **hereby** 建立 投资委员会，该委员会应根据任一缔约方或 自由贸易协定联合委员会 的要求召开会议，以审议本章项下出现的任何事项。
2. 投资委员会的职能应包括：
 - (a) 审查本章的实施情况；(b) 确定并建议促进和增加缔约方之间投资流动的措施或倡议；以及(c) 除非缔约方另有约定，开展第9.9条所述的审查。
3. 投资委员会：
 - (a) 应根据第9.15.5条和第9.15.6条建立并维护仲裁员名单；(b) 可根据第9.18.2条或第9.19条，通过缔约方的联合决定，声明其对本章条款及附件9-A的解释；(c) 可根据其运营经验，提议对B部分进行修订。

ARTICLE 9.8: GENERAL EXCEPTIONS

1. 对于本章的目的，并遵守要求此类措施不得以构成对投资或投资者之间任意或不合理的歧视，或对国际贸易或投资的伪装限制的方式实施，本协议的任何规定均不得解释为阻止缔约方采取或执行措施：
 - (a) 必要的以保护人类、动物或植物的生命或健康；(b) 必要的以确保遵守与本协议不一致的法律和法规；(c) 为保护具有艺术、历史或考古价值的国家宝藏而实施的；或

- (d) relating to the conservation of living or non-living exhaustible natural resources.

2. The Parties understand that the measures referred to in subparagraph 1(a) include environmental measures to protect human, animal or plant life or health, and that the measures referred to in subparagraph 1(d) include environmental measures relating to the conservation of living or non-living exhaustible natural resources.

ARTICLE 9.9: FUTURE WORK PROGRAM

1. Unless the Parties otherwise agree, the Parties shall conduct a review of the investment legal framework between them no later than three years after the date of entry into force of this Agreement.

2. The review shall include consideration of this Chapter and the *Agreement between the Government of Australia and the Government of the People's Republic of China on the Reciprocal Encouragement and Protection of Investments*.

3. Unless the Parties otherwise agree, the Parties shall commence negotiations on a comprehensive Investment Chapter, reflecting outcomes of the review referred to in paragraphs 1 and 2, immediately after such review is completed. The negotiations shall include, but are not limited to, the following:

- (a) amendments to Articles included in this Chapter;
- (b) the inclusion of additional Articles in this Chapter, including Articles addressing:
 - (i) Minimum Standard of Treatment;
 - (ii) Expropriation;
 - (iii) Transfers;
 - (iv) Performance Requirements;
 - (v) Senior Management and Board of Directors;
 - (vi) Investment-specific State to State Dispute Settlement; and
 - (vii) The application of investment protections and ISDS to services supplied through commercial presence; and
- (c) scheduling of investment commitments by China on a negative list basis.

- (d) 与可再生或不可再生自然资源的保护相关的。

2. 各缔约方理解，第1(a)段所指的措施包括保护人类、动物或植物的生命或健康的环境措施，以及第1(d)段所指的措施包括与环境措施相关的可再生或不可再生自然资源的保护措施。

第9.9条：未来工作计划

1. 除非各缔约方另有约定，否则各缔约方应在本协议生效之日起三年内对其之间的投资法律框架进行审查。

2. 审查应包括考虑本章节以及 协议，该协议由澳大利亚政府和中华人民共和国政府签署，关于相互鼓励和保护投资。.

3. 除非各缔约方另有约定，否则各缔约方应在完成上述审查后立即就全面投资章节开始谈判，该章节应反映第1条和第2条所述审查的结果。谈判应包括但不限于以下内容：

- (a) 本章所包含条文的修订；(b) 将其他条文纳入本章，包括涉及以下内容的条文：(i) 最低待遇标准；(ii) 征收；(iii) 转移；(iv) 业绩要求；(v) 高级管理人员和董事会；(vi) 投资特定国家间争端解决；以及 (vii) 将投资保护措施和投资特定争端解决机制应用于通过商业存在提供的服务；以及

- (c) 以负面清单方式安排中国的投资承诺。

4. Unless the Parties otherwise agree, the negotiations referred to in paragraph 3 shall be concluded and then incorporated into this Agreement in accordance with Article 17.3 (Amendments) of Chapter 17 (Final Provisions).

Section B: Investor-State Dispute Settlement

ARTICLE 9.10: DEFINITIONS

For the purposes of this Chapter:

- (a) **claimant** means an investor of a Party that is a party to an investment dispute with the other Party;
- (b) **disputing parties** means the claimant and the respondent;
- (c) **disputing Party** means a Party against which a claim is made under Section B (Investor-State Dispute Settlement);
- (d) **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*;
- (e) **ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, 18 March 1965*;
- (f) **non-disputing Party** means the Party that is not a party to an investment dispute;
- (g) **protected information** means confidential business information or information that is privileged or otherwise protected from disclosure under a Party’s law;
- (h) **respondent** means the Party that is a party to an investment dispute;
- (i) **Secretary-General** means the Secretary-General of ICSID; and
- (j) **UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law.

4. 除非缔约方另有约定，第3段所述的谈判应按照第17章（最终条款）第17.3条（修正案）的规定结束，并随后纳入本协议。

B部分：投资者-国家争端解决

第九条第十款：定义

本章的目的：

(a) 申请人是指一方投资者，该投资者与另一方存在投资争端；(b) 争议方是指申请人和被申请人；(c) 被诉方是指根据B部分（投资者-国家争端解决）提出索赔的一方；(d) ICSID附加便利规则是指国际中心解决投资争端秘书处管理程序附加便利的规则；(e) ICSID公约是指1965年3月18日在华盛顿签订的关于国家与他国国民间投资争端解决公约；(f) 非争议方是指不是投资争端一方的一方；(g) 受保护信息是指商业秘密或根据一方法律享有特权或受保护免于披露的信息；(h) 被申请人是指投资争端一方；(i) 秘书长是指ICSID秘书长；以及(j) 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。

ARTICLE 9.11: CONSULTATIONS

1. In the event of an investment dispute, after two months since the occurrence of the measure or event giving rise to the dispute, the claimant may deliver to the respondent a written request for consultations. The request shall:

- (a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;
- (b) for each claim, identify the provision of this Chapter alleged to have been breached and any other relevant provisions;
- (c) for each claim, identify the measures or events giving rise to the claim;
- (d) for each claim, indicate whether the claim is made on its own behalf or on behalf of the enterprise;
- (e) for each claim, provide a brief summary of the legal and factual basis sufficient to present the problem clearly; and
- (f) specify the relief sought, the approximate amount of damages claimed and its standard or basis for calculation.

2. After a request for consultations is made in accordance with this Section, the claimant and the respondent shall initially seek to resolve the dispute through consultations.

3. If the disputing parties reach a mutually agreed solution to a dispute, or certain claims thereof, formally raised under this Section, they shall abide by and comply with the mutually agreed solution reached under this Article without delay.

4. Measures of a Party that are non-discriminatory and for the legitimate public welfare objectives of public health, safety, the environment, public morals or public order shall not be the subject of a claim under this Section.

5. The respondent may, within 30 days of the date on which it receives a request for consultations (as provided for in paragraph 1), state that it considers that a measure alleged to be in breach of an obligation under Section A is of the kind described in paragraph 4, by delivering to the claimant and to the non-disputing Party a notice specifying the basis for its position (a 'public welfare notice').

第九条 磋商

1. 在发生导致争议的措施或事件后两个月内，如果发生投资争端，申请人可以向被申请人提交书面磋商请求。该请求应：

- (a) 写明申请人的名称和地址，并且，如果索赔是代表被申请人的一个企业提交的，而该企业是法人，且申请人直接或间接控制该企业，则写明该企业的名称、地址和注册地；(b) 对于每一项索赔，指明据称违反本条的条款以及任何其他相关条款；(c) 对于每一项索赔，指明产生索赔的措施或事件；(d) 对于每一项索赔，指明索赔是代表其自身还是代表该企业提出的；(e) 对于每一项索赔，提供法律和事实依据的简要总结，足以清楚地陈述问题；以及(f) 写明请求的救济、索赔的损害赔偿的近似金额及其计算标准或依据。

2. 根据本节规定提出磋商请求后，申请人与被申请人应首先通过磋商解决争议。

3. 如果争议方就一项争议或其中一部分争议达成双方同意的解决方案，该争议或部分争议根据本节正式提出，则应立即遵守并遵守根据本条达成的双方同意的解决方案。

4. 一方的非歧视性措施旨在实现公共卫生、安全、环境、公共道德或公共秩序的合法公共福利目标，不应根据本节成为索赔的对象。

5. 被申请人可以在收到磋商请求之日起30日内（如第1段所述），通过向申请人及非争议方送达载明其立场依据的通知（即“公共利益通知”），声明其认为被指控违反第A节义务的措施属于第4段所述类型。

6. The issuance of a public welfare notice shall trigger a 90 day period during which the respondent and the non-disputing Party shall consult. The dispute resolution procedure contemplated by this Section shall be automatically suspended for this 90 day period.

7. The issuance of a public welfare notice is without prejudice to the respondent's right to invoke the procedures described in Article 9.16.5 or Article 9.16.6. The respondent shall promptly inform the claimant, and make available to the public, the outcome of any consultations.

8. In any proceeding brought pursuant to this Section, the tribunal shall not draw any adverse inference from the non-issuance of a public welfare notice by the respondent, or from the absence of any decision between the respondent and the non-disputing Party as to whether a measure is of a kind described in paragraph 4.

ARTICLE 9.12: SUBMISSION OF A CLAIM TO ARBITRATION

1. This Section applies where there is a dispute between a Party and an investor of the other Party relating to a covered investment made in accordance with the Party's laws, regulations and investment policies.⁵

2. In the event that an investment dispute cannot be settled by consultations under Article 9.11 within 120 days after the date of receipt of the request for consultations,

- (a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:
 - (i) that the respondent has breached an obligation in Article 9.3; and
 - (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach;⁶ or
- (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:

⁵ For greater certainty, the State to State Dispute Settlement mechanism in Chapter 15 (Dispute Settlement) of this Agreement applies to this Chapter including pre-establishment obligations under Article 9.3.
⁶ For greater certainty, the loss or damage incurred by the claimant that forms the subject matter of a claim under sub-paragraph (a) shall not include loss or damage suffered by the claimant which is a result of loss or damage caused to an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly by reason of, or arising out of, the alleged breach by the respondent.

6. 公共利益通知的发布应触发一个90日的期限，在此期间，被申请人与非争议方应进行磋商。本节所设想的争议解决程序在此90日期间应自动中止。

7. 发布公共利益通知不影响被申请人援引第9.16.5条或第9.16.6条所述的程序。被申请人应立即通知申请人，并将任何磋商的结果向公众公开。

8. 在根据本节提起的任何程序中，仲裁庭不得因被申请人未发布公共利益通知，或因被申请人与非争议当事方之间未就一项措施是否属于第4段所述类型作出决定而作出任何不利推论。

第9.12条：提交仲裁索赔

1. 本节适用于缔约方与另一缔约方的投资者之间就根据缔约方法律、法规和投资政策进行的受保护投资发生的争议。⁵

2. 如果投资争端在收到磋商请求之日起120天内不能根据第9.11条通过磋商解决，

- (a) 申请人可就其自身提起本第X节项下的仲裁索赔：(i) 声称被申请人违反了第9.3条项下的义务；以及 (ii) 声称申请人因该违反行为遭受了损失或损害；⁶ 或
- (b) 申请人，代表被申请人为法人的企业（该企业为申请人直接或间接拥有或控制），可依据本第X节提交仲裁索赔：

⁵ 为明确起见，本协议第15章（争端解决）中的国家间争端解决机制适用于本章，包括第9.3条项下的设立前义务。⁶ 为明确起见，申请人根据第(a)项下子段提出的索赔所遭受的损失或损害，不应包括因被申请人据称的违反行为导致对被申请人所属的法人企业造成的损失或损害，而该法人企业是由申请人直接或间接地因该据称的违反行为而拥有或控制的。

- (i) that the respondent has breached an obligation under Article 9.3; and
- (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

3. A claimant cannot submit or continue to pursue a claim under this Section where the investment of the claimant in the territory of the respondent is owned or controlled indirectly by an investor of a non-party, and the investor of the non-party submits or has submitted a claim with respect to the same measure or event under any agreement between the respondent and that non-party.

4. A claimant may submit a claim referred to in paragraph 2:

- (a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;
- (b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;
- (c) under the UNCITRAL Arbitration Rules, except as modified by this Agreement and the Side Letter on Transparency Rules Applicable to ISDS; or
- (d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

5. Where a claim is submitted to arbitration under paragraph 4(b), (c) and (d) (except where a claim is submitted to any other arbitration institution under paragraph 4(d)), the disputing parties and the tribunal constituted thereunder shall request ICSID to provide administrative services for the arbitration proceedings. Both Parties shall endeavour to make proper institutional arrangements with ICSID to accommodate such requests following the entry into force of this Agreement.

6. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):

- (a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
- (b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
- (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together

(i) 被申请人违反了第9.3条项下的义务；以及 (ii) 该企业因该违反行为遭受了损失或损害。

3. 申请人不得在本节下提交或继续追索索赔，其中申请人在被申请人领土内的投资由非缔约方投资者间接拥有或控制，并且该非缔约方投资者就同一措施或事件根据被申请人与该非缔约方之间的任何协议提交或已提交索赔。

4. 申请人可以提交第2段所述的索赔：

- (a) 根据《国际投资争端解决中心公约》和《国际投资争端解决中心仲裁程序规则》，前提是被申请人和非争议方均为《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》，前提是被申请人或非争议方为《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》，但根据本协议和适用于ISDS的透明度规则备忘录进行修改；或
- (d) 如果申请人和被申请人同意，向任何其他仲裁机构或根据任何其他仲裁规则。

5. 当根据第4(b)、(c)和(d)段提交索赔至仲裁机构时（除根据第4(d)段提交至任何其他仲裁机构的情况外），争议方和据此组成的仲裁庭应请求国际投资争端解决中心（ICSID）为仲裁程序提供行政服务。双方应努力在《本协议》生效后与ICSID做出适当的机构安排，以适应此类请求。

6. 当申请人的仲裁通知或仲裁请求（“仲裁通知”）满足以下条件时，该索赔应被视为根据本节提交至仲裁机构：

- (a) 在《国际投资争端解决中心公约》第36条第1款中所述的，由秘书长接收；
- (b) 在《国际投资争端解决中心附加便利规则》附件 C 第 2 款中所述的，由秘书长接收；
- (c) 在《联合国国际贸易法委员会仲裁规则》第3款中所述的，连同

with the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules, are received by the respondent; or

- (d) referred to under any arbitral institution or arbitral rules selected under paragraph 4(d) is received by the respondent,

provided that no claim shall be deemed submitted under this Section if that claim is asserted by the claimant for the first time after such notice of arbitration is submitted.

7. A notice of arbitration shall:

- (a) specify the name and address of the claimant and, where a claim is submitted on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, the name, address, and place of incorporation of the enterprise;
- (b) for each claim, identify the provision of this Chapter alleged to have been breached and any other relevant provisions;
- (c) for each claim, identify the measure or event giving rise to the claim;
- (d) for each claim, indicate whether the claim is made on the claimant's own behalf or on behalf of an enterprise;
- (e) for each claim, provide a brief summary of the legal and factual basis sufficient to present the problem clearly; and
- (f) specify the relief sought, the approximate amount of damages claimed and its standard or basis for calculation.

8. The claimant shall provide with the notice of arbitration:

- (a) the name of the arbitrator that the claimant appoints; or
- (b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

9. The arbitration rules applicable under paragraph 4, 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 and the Side Letter on Transparency Rules Applicable to ISDS.

ARTICLE 9.13: CONSENT OF EACH PARTY TO ARBITRATION

在《联合国国际贸易法委员会仲裁规则》第20款中所述的索赔声明, 均由被申请人接收; 或

- (d) 任何根据第4(d)段选定的仲裁机构或仲裁规则提交的仲裁通知被被申请人收到,

但若该索赔是在仲裁通知提交后, 申请人首次提出该索赔, 则不得视为根据本节提交的索赔。

7. 仲裁通知应:

- (a) 载明申请人的名称和地址; 若索赔是为被申请人控制的企业(该企业为法人且申请人直接或间接控制)提出的, 则还应载明该企业的名称、地址和注册地;
- (b) 就每项索赔, 指明据称违反的本章条款及任何其他相关条款;
- (c) 就每项索赔, 指明产生索赔的措施或事件;
- (d) 就每项索赔, 指明索赔是为申请人本人提出的还是为某企业提出的;
- (e) 就每项索赔, 提供足以清晰陈述问题的法律和事实依据的简要摘要; 以及
- (f) 载明请求的救济、索赔的损害赔偿金额的近似值及其计算标准或依据。

8. 申请人应当在仲裁通知中提供:

- (a) 申请人指定的仲裁员姓名; 或
- (b) 申请人书面同意秘书长指定该仲裁员。

9. 第4段适用的仲裁规则, 以及在本第X节下提交索赔或索赔时生效的仲裁规则, 应 govern the arbitration 除非根据本协议和适用于ISDS的透明度规则备忘录进行修改。

第9.13条: 各缔约方同意根据本协议在本节下将索赔提交仲裁

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement. Failure to meet any of the conditions and limitations provided for in Article 9.12.4 shall nullify that consent.

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

ARTICLE 9.14: 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 9.12.2 and knowledge that the claimant (for claims brought under Article 9.12.2(a)) or the enterprise (for claims brought under Article 9.12.2(b)) has incurred loss or damage. In no event may a claim be submitted to arbitration under this Section after four years since the occurrence of the measures and/or events giving rise to the breach alleged under Article 9.12.2.

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

- (a) the claimant has complied with the rules and procedures set forth in Articles 9.12.1 and 9.12.2;
- (b) the claim has been explicitly included in the request for consultations submitted by the claimant in accordance with Article 9.11.1;
- (c) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and,
- (d) the notice of arbitration is accompanied,
 - (i) for claims submitted to arbitration under Article 9.12.2(a), by the claimant's written waiver, and
 - (ii) for claims submitted to arbitration under Article 9.12.2(b), by the claimant's and the enterprise's written waivers, and written waiver by all persons through which the claimant owns or controls the enterprise,

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 any measure or event alleged to constitute a breach referred to in Article 9.12.2.

1. 各缔约方同意根据本协议在本节下将索赔提交仲裁。未能满足第9.12.4条中规定的任何条件和限制将使该同意无效。

2. 第1段项下的同意以及根据本节提交的仲裁索赔应满足《国际投资争端解决中心公约》第II章（中心的管辖权）和ICSID附加便利规则中关于争议双方书面同意的要求。

第9.14条：各缔约方同意的条件和限制

1. 如果自申请人首次获得或应首次获得关于第9.12.2条项下所述违约的知识之日起已超过三年，或者自申请人（根据第9.12.2(a)条提交的索赔）或企业（根据第9.12.2(b)条提交的索赔）遭受损失或损害之日起已超过三年，则不得根据本节提交仲裁索赔。在任何情况下，均不得在自第9.12.2条项下所述违约发生的措施和/或事件发生之日起四年后，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索赔至仲裁：

- (a) 申请人已遵守第9.12.1条和第9.12.2条中规定的事项；(b) 申请人已根据第9.11.1条提交磋商请求，且该请求中明确包含该索赔；(c) 申请人已根据本协议规定的程序书面同意仲裁；以及，(d) 仲裁通知应附带，(i) 对于根据第9.12.2(a)条提交至仲裁的索赔，应附有申请人的书面放弃，以及(ii) 对于根据第9.12.2(b)条提交至仲裁的索赔，应附有申请人和企业的书面放弃，以及通过申请人对企业拥有或控制的所有人进行的书面放弃，

在任何缔约方法律规定的行政机构或法院，或任何其他争议解决程序中，不得提起或继续进行任何有关第9.12.2条所述措施或事件构成违约的诉讼或程序的权利。

3. Notwithstanding paragraph 2(d)(ii), a waiver from the enterprise shall not be required only if the respondent has deprived the claimant of its control of the enterprise and the claimant is unable to provide such a waiver as a result.

4. Notwithstanding paragraph 2(d), the claimant (for claims brought under Article 9.12.2(a)) and the claimant or the enterprise (for claims brought under Article 9.12.2(b)) may, in accordance with the laws of the respondent, 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.

ARTICLE 9.15: CONSTITUTION OF THE TRIBUNAL

1. Unless the disputing parties have agreed to appoint a sole arbitrator, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the chairperson, appointed by agreement of the disputing parties.

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

3. If the disputing parties agree to appoint a sole arbitrator, the disputing parties shall seek to agree on the sole arbitrator. If they fail to do so within 90 days of the day on which the respondent gave its agreement to submit the dispute to a sole arbitrator, the sole arbitrator shall be drawn by the appointing authority on the request of a disputing party from the list of chairpersons established pursuant to paragraph 5 below.

4. If a tribunal has not been constituted within 90 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 remaining arbitrators from the list established pursuant to paragraph 5 below.

5. The Committee on Investment shall, no later than 2 years after the entry into force of this Agreement, establish a list of individuals who are willing and able to serve as arbitrators. The Committee on Investment shall ensure that at all times the list includes at least 20 individuals.

6. For purpose of the list referred to in paragraph 5, each Party shall select at least five individuals to serve as arbitrators. The Parties shall also jointly select at least 10 individuals who are not nationals of either Party to act as chairperson of the tribunals.

7. In the event that the Secretary-General is required to appoint an arbitrator or arbitrators under paragraph 3 or 4, and the list referred to in paragraph 5 has not been established, the Secretary-General shall appoint, in his or her discretion, the arbitrator or

3. 尽管有第2(d)(ii)段的规定，如果被申请人剥夺了申请人对企业控制权，并且申请人因此无法提供放弃，则企业无需放弃。

4. 不论第2(d)款如何规定，对于根据第9.12.2(a)条提出的索赔，申请人，以及对于根据第9.12.2(b)条提出的索赔，申请人或企业，均可根据被申请人的法律，在司法或行政法庭面前提起或继续一项寻求临时禁令救济且不涉及金钱损害赔偿的行动，前提是该行动的唯一目的是在仲裁进行期间维护申请人或企业的权利和利益。

第9.15条：仲裁庭的组成

1. 除非争议方同意任命一名独任仲裁员，否则仲裁庭应由三名仲裁员组成，每位争议方任命一名仲裁员，第三名仲裁员（即主席）由争议方协议任命。

2. 秘书长应作为本节的仲裁指定机构。

3. 如果争议方同意任命一名独任仲裁员，争议方应努力就独任仲裁员达成一致。如果他们在被申请人同意将争议提交给独任仲裁员之日起90天内未能达成一致，则独任仲裁员应由争议方请求指定机构从根据第5段下方确定的主席名单中选出。

4. 如果在本第X节规定的仲裁程序中，仲裁庭在索赔提交之日起90天内未能成立，则指定机构应根据争议方的请求，在其自由裁量权范围内，从根据第5段下方确定的名单中任命其余仲裁员。

5. 投资委员会应在本协议生效之日起2年内，建立一份愿意且有能力的个人名单，以作为仲裁员。投资委员会应确保该名单始终至少包含20名个人。

6. 对于第5段中提到的名单，每个缔约方应至少选出五名个人担任仲裁员。缔约方还应共同选出至少10名既非缔约方任何一方国民的个人担任仲裁庭主席。

7. 如果秘书长根据第3段或第4段被要求任命仲裁员或仲裁员，并且第5段提到的名单尚未建立，则秘书长应在其自由裁量权范围内任命尚未任命的仲裁员或

arbitrators not yet appointed. The Secretary-General shall not appoint a national of either Party as the presiding arbitrator unless the disputing parties otherwise agree.

8. All arbitrators appointed pursuant to this Section shall have expertise or experience in public international law, international trade or international investment rules, or the resolution of disputes arising under international trade or international investment agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute, or be affiliated with the government of either Party or any disputing party, and shall comply with Annex 9-A. Arbitrators who serve on the list established pursuant to paragraph 5 shall not, for that reason alone, be deemed to be affiliated with the government of either Party.

9. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

- (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a claimant referred to in Article 9.12.2(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and
- (c) a claimant referred to in Article 9.12.2(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

ARTICLE 9.16: CONDUCT OF THE ARBITRATION

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 9.12.4. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Chapter.

3. With the written agreement of the disputing parties, the tribunal may allow a party or entity that is not a disputing party to file a written *amicus curiae* submission

仲裁员。除非争议方另行同意，否则秘书长不得任命任何一方国家的国民为首席仲裁员。

8. 根据本节任命的仲裁员应具备国际公法、国际贸易或国际投资规则或国际贸易或国际投资协议项下争议解决方面的专业知识或经验。他们应当独立，以个人身份任职，不得就与争议相关的事项接受任何组织或政府的指示，也不得隶属于任何一方的政府或任何被诉方，并应遵守附件9-A。根据第5段设立的名单上任职的仲裁员，仅因该原因本身，不应被视为隶属于任何一方的政府。

9. 为《国际投资争端解决中心公约》第39条和《国际投资争端解决中心附加便利规则》附件C第7条之目的，且不妨碍就国籍以外的理由提出对仲裁员的异议：

(a) 被申请人同意根据《国际投资争端解决中心公约》或《国际投资争端解决中心附加便利规则》设立的仲裁庭的每个成员的任命；(b) 第9.12.2(a)条所述的申请人只有在书面同意仲裁庭的每个成员的任命的情况下，才能根据本节根据《国际投资争端解决中心公约》或《国际投资争端解决中心附加便利规则》提交仲裁申请或继续仲裁申请；以及 (c) 第9.12.2(b)条所述的申请人只有在书面同意仲裁庭的每个成员的任命的情况下，才能根据本节根据《国际投资争端解决中心公约》或《国际投资争端解决中心附加便利规则》提交仲裁申请或继续仲裁申请。

第9.16条：仲裁行为

1. 争议方可以就根据第9.12.4条适用的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。

2. 非争议方可以就本章的解释向仲裁庭提出口头和书面陈述。

3. 经争议方书面协议，仲裁庭可允许非争议方提交书面法庭之友提交

with the tribunal regarding a matter within the scope of the dispute. In determining whether to allow such a filing, the tribunal shall consider, among other things, the extent to which:

- (a) the *amicus curiae* submission would assist the tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge, or insight that is different from that of the disputing parties;
- (b) the *amicus curiae* submission would address a matter within the scope of the dispute; and
- (c) the *amicus curiae* has a significant interest in the proceeding.

4. Each submission in accordance with paragraph 3 of this Article shall identify the author, disclose any affiliation, direct or indirect, with any disputing party, and identify any person, government, or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration, and comply with any page limits and deadlines set by the tribunal. The tribunal shall ensure that the *amicus curiae* submission does not disrupt the proceeding or unduly burden or unfairly prejudice either disputing party, and that the disputing parties are given an opportunity to present their observations on the *amicus curiae* submission.

5. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.12.

- (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.
- (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) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

与仲裁庭就争议范围内的相关事项。在决定是否允许此类提交时，仲裁庭应考虑，但不限于以下因素：

- (a) 法庭之友的提交将通过对争议方不同的视角、特别知识或见解的引入，协助仲裁庭就与程序相关的事实或法律问题作出裁决；(b) 法庭之友的提交将涉及争议的范围；以及(c) 法庭之友对程序有重大利益。

4. 根据本条第3段的规定，每一提交应指明作者、披露与任何争议方直接或间接的任何关系，并指明为准备提交提供或将要提供任何财务或其他协助的任何人、政府或其他实体。每一提交应以仲裁语言提交，并遵守仲裁庭设定的任何页数限制和截止日期。仲裁庭应确保法庭之友的提交不会干扰程序，或不当负担或不公平地偏袒任何争议方，并确保争议方有机会就法庭之友的提交提出意见。

5. 不影响仲裁庭以初步问题形式处理其他异议的权力，仲裁庭应当将申请人的异议作为初步问题予以审理和裁决，该异议依据法律认为提交的索赔并非第9.12条规定的可以作出有利于申请人的裁决的索赔。

- (a) 该异议应在仲裁庭成立后尽快提交仲裁庭，且不得迟于仲裁庭为被申请人提交反诉状指定的日期。(b) 仲裁庭收到本段规定的异议后，应暂停实体问题的审理，根据其已为审理任何其他初步问题制定的日程安排，建立审理该异议的日程，并对该异议作出决定或裁决，并说明理由。(c) 在决定本段规定的异议时，仲裁庭应假定申请人就仲裁通知中任何索赔所提出的事实主张为真实，并在根据联合国国际贸易法委员会仲裁规则提出的争议中，假定第20条所述的索赔声明为真实。仲裁庭还可以考虑任何未争议的相关事实。

- (d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 6.

6. 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 5 and any objection that the dispute is not within the tribunal's 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, which may not exceed 30 days.

7. When it decides a respondent's objection under paragraph 5 or 6, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's 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.

8. A respondent may not assert as a defence, counterclaim, right of set-off, or for any other reason that the claimant or the enterprise referred to in Article 9.12.2(b) has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an indemnity, guarantee or insurance contract.

ARTICLE 9.17: TRANSPARENCY OF ARBITRAL PROCEEDINGS

1. Subject to paragraphs 3, 4 and 5, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party:

- (a) the request for consultations;
- (b) the notice of arbitration;
- (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 9.21;
- (d) minutes or transcripts of hearings of the tribunal, where available; and
- (e) orders, awards, and decisions of the tribunal.

2. Subject to paragraphs 3, 4 and 5, the respondent:

- (d) 被申请人仅因未根据本段规定提出异议或未使用第6段规定的简易程序, 并不放弃管辖权异议或实体问题的任何论点。

6. 如果被申请人自仲裁庭成立之日起45日内提出请求, 仲裁庭应当对第5段的异议以及异议所提出的争议不属于仲裁庭管辖权的事项进行快速审理。仲裁庭应当自收到请求之日起150日内对异议作出决定或裁决, 并说明理由。但是, 如果争议方请求举行听证会, 仲裁庭可以额外延长30天作出决定或裁决。无论是否请求举行听证会, 仲裁庭在证明存在特殊情况的情况下, 可以额外短暂延迟作出决定或裁决, 但延长时间不得超过30天。

7. 当仲裁庭决定第5段或第6段的被申请人的异议时, 如果情况属实, 仲裁庭可以裁决胜诉的争议方因提交或反对异议而支出的合理费用和律师费。在确定是否作出此类裁决时, 仲裁庭应当考虑申请人提出的索赔或被申请人的异议是否滥用程序, 并应当给予争议方合理的机会进行陈述。

8. 被申请人不得以抗辩、反诉、抵销权或任何其他理由主张, 申请人或第9.12.2(b)条所述企业已根据赔偿条款、担保或保险合同获得或将要获得全部或部分所谓损害赔偿的赔偿或其他补偿。

ARTICLE 9.17: 仲裁程序的透明度

1. 除第3、4和5款规定外, 被申请人收到下列文件后, 应立即将其传送给非争议方:

- (a) 磋商请求; (b) 仲裁通知; (c) 争议方提交给仲裁庭的诉讼文书、答辩状和简报, 以及根据第9.21条提交的任何书面陈述; (d) 仲裁庭听证会的会议记录或庭审记录(如有); 以及(e) 仲裁庭的裁决、命令和裁决。

2. 根据第3条、第4条和第5条的规定, 被申请人:

- (a) shall make the documents referred to in paragraph 1 (a), (b) and (e) available to the public;
- (b) may make the documents referred to in paragraph 1(c) and (d) available to the public;
- (c) may make any written submissions submitted pursuant to Article 9.16.2 available to the public provided that prior consent is obtained from the non-disputing Party.

3. With the agreement of the respondent, 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 protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

4. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 16.1 (Disclosure and Confidentiality of Information) or Article 16.3 (Security Exceptions) of Chapter 16 (General Provisions and Exceptions).

5. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

- (a) Neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information 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 protected information shall clearly designate the information at the time it is submitted to the tribunal;
- (c) A disputing party shall, within 7 days after it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version may be provided to the non-disputing Party and made public in accordance with paragraphs 1 and 2.

ARTICLE 9.18: GOVERNING LAW

1. Subject to paragraphs 2 and 3, when a claim is submitted under Article 9.12, the tribunal shall decide the issues in dispute in accordance with this Agreement as interpreted in accordance with customary rules of treaty interpretation of public

(a) 应当向公众提供第1条(a款)、(b款)和(e款)中提到的文件；(b) 可以向公众提供第1条(c款)和(d款)中提到的文件；(c) 可以向公众提供根据第9.16.2条提交的任何书面陈述，但前提是必须获得非争议方的同意。

3. 经被申请人同意，仲裁庭应举行公开听证，并与争议方协商确定适当的后勤安排。但是，任何意图在听证中使用被指定为受保护信息的争议方应当通知仲裁庭。仲裁庭应采取适当安排以保护信息免于披露。

4. 本节中的任何规定均不要求被申请人披露受保护信息，也不要求其根据第16章（总则和例外）的第16.1条（信息披露和保密）或第16.3条（安全例外）提供或允许非争议方或公众访问其可能保留的信息。

5. 任何提交给仲裁庭的受保护信息应根据以下程序予以保护，以防止披露：

(a) 争议方或仲裁庭均不得向非争议方或公众披露受保护信息，前提是提供该信息的争议方根据第(b)项下的小项明确指定了该信息；(b) 任何声称某信息构成受保护信息的争议方应在提交给仲裁庭时明确指定该信息；(c) 争议方应在提交包含据称为受保护信息的文件的7天内，提交不包含该信息的文件删节版本。只有删节版本才能提供给非争议方并按照第1款和第2款的规定公开。

ARTICLE 9.18: GOVERNING LAW

1. 除第2、3款规定外，当根据第9.12条提交索赔时，仲裁庭应依照本协议作出裁决，该协议的解释应符合维也纳条约法公约（1969年5月23日在维也纳签署）所编纂的公法习惯解释规则，以解决争议问题。

international law, as codified in the *Vienna Convention on the Law of Treaties* done at Vienna on 23 May 1969. Where relevant and appropriate, the tribunal shall also take into consideration the law of the respondent.

2. A joint decision of the Parties, acting through the Committee on Investment, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision.

3. A decision between the respondent and the non-disputing Party that a measure is of the kind described in Article 9.11.4 shall be binding on a tribunal and any decision or award issued by a tribunal must be consistent with that decision.

ARTICLE 9.19: INTERPRETATION OF ANNEXES

1. Where a respondent asserts as a defence that the measure alleged to be a breach is within the scope of an entry set out in Section A or B of its Schedule of Non-Conforming Measures in Annex III, the tribunal shall, on request of the respondent, request the interpretation of the Parties on the issue. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 90 days of delivery of the tribunal's request.

2. A joint decision issued under paragraph 1 by the Parties, acting through the Committee on Investment, shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that joint decision. If the Parties fail to issue such a decision within 90 days, the tribunal shall decide the issue. In such a case, the tribunal shall draw no inference from the fact that the Parties fail to issue such a decision.

3. A joint decision issued under paragraph 1 by the Parties shall also be binding on the tribunal of any dispute subsequent to the date of the joint decision to the extent applicable and not modified by another joint decision issued pursuant to paragraph 1 subsequent to the first said joint decision.

ARTICLE 9.20: 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.

在相关且适当的情况下，仲裁庭也应考虑被申请人的法律。

2. 缔约方通过投资委员会作出的联合决定，声明对本协定条款的解释，对任何正在进行或后续的争议中的仲裁庭具有约束力，并且该仲裁庭作出的任何决定或裁决必须与该联合决定一致。

3. 被申请人与非争议方之间关于一项措施属于附件III中第9.11.4条所述类型的决定，对仲裁庭具有约束力，并且仲裁庭作出的任何决定或裁决必须与该决定一致。

第9.19条：附件的解释

1. 当被申请人以抗辩方式主张被指控违反的措施属于附件III中其不符措施清单第X节A部分或B部分所列条目之范围时，仲裁庭应根据被申请人的要求，请求缔约方对该问题作出解释。缔约方应在仲裁庭发出请求之日起90天内，以书面形式向仲裁庭提交声明其解释的联合决定。

2. 由缔约方通过投资委员会根据第1段发布的联合决定对仲裁庭具有约束力，仲裁庭发布的任何决定或裁决必须与该联合决定一致。如果缔约方在90天内未能发布此类决定，仲裁庭应决定该问题。在这种情况下，仲裁庭不得从缔约方未能发布此类决定这一事实上得出任何推论。

3. 由缔约方根据第1段发布的联合决定也应对自联合决定之日起至根据第1段发布的另一联合决定修改之前，与该联合决定相关的任何争议的仲裁庭具有约束力。

ARTICLE 9.20: EXPERT REPORTS

在不损害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任何事实问题向其书面报告，具体条款由争议方自行商定。

ARTICLE 9.21: CONSOLIDATION

1. Where two or more claims have been submitted separately to arbitration under Article 9.12.2 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 in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 11.
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. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:
 - (a) one arbitrator appointed by agreement of the claimants;
 - (b) one arbitrator appointed by the respondent; and
 - (c) the presiding arbitrator appointed by the Secretary-General from the list of chairpersons established pursuant to Article 9.15.5.
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, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed from the list of arbitrations established pursuant to Article 9.15.5.
6. In the event that the Secretary-General is required to appoint an arbitrator or arbitrators under paragraph 4 or 5, and the list referred to in Article 9.15.5 has not been established, the Secretary-General shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either Party as the presiding arbitrator unless the disputing parties otherwise agree.
7. Where a tribunal established under this Article is satisfied that two or more

第9.21条：合并

1. 当根据第9.12.2条分别提交两项或多项索赔，且这些索赔具有共同的法律或事实问题，并源于相同的事件或情况时，任何争议方均可根据所有被该命令涵盖的争议方或第2至第11段条款的协议，寻求合并令。
2. 依据本条寻求合并令的应诉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，并在请求中说明：
 - (a) 所有被寻求纳入该令的应诉方的姓名和地址；(b) 寻求的令的性质；以及
 - (c) 寻求该令的理由。
3. 秘书长在收到第2段规定的请求后30天内，若未发现该请求明显缺乏依据，则应依据本条设立仲裁庭。
4. 除非所有被寻求纳入该令的争议方另行同意，否则依据本条设立的仲裁庭应由三名仲裁员组成：
 - (a) 由申请人协议指定的仲裁员；(b) 由被申请人指定的仲裁员；以及(c) 由秘书长根据第9.15.5条设立的主席名单从指定的仲裁员名单中任命的首席仲裁员。
5. 如果秘书长收到第2段规定的请求后60天内，被申请人未履行或申请人未根据第4段规定指定仲裁员，则秘书长应根据任何争议方请求的裁决所涵盖的请求，根据第9.15.5条设立的仲裁员名单，任命尚未指定的仲裁员或仲裁员。
6. 如果秘书长根据第4段或第5段被要求任命仲裁员或仲裁员，并且第9.15.5条提到的名单尚未建立，则秘书长应根据其自由裁量权任命尚未指定的仲裁员或仲裁员。除非争议方另行同意，否则秘书长不得任命任何一方国家的国民为首席仲裁员。
7. 根据本章设立的仲裁庭，如果认为存在两个或更多

e

claims that have been submitted to arbitration under Article 9.12.2 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
- (c) instruct a tribunal previously established under Article 9.15 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(a), 5 and 6; and
 - (ii) that tribunal shall decide whether any prior hearing shall be repeated.

8. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 9.12.2 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 7, 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.

9. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Agreement and the Side Letter on Transparency Rules Applicable to ISDS.

10. A tribunal established under Article 9.15 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.

11. On application of a disputing party, a tribunal established under this Article,

根据第9.12.2条提交仲裁的索赔具有共同的法律或事实问题，并源于相同的事件或情况，仲裁庭可出于公平高效解决索赔的利益，在听取争议方后，通过命令：

- (a) 对全部或部分的索赔拥有管辖权并共同审理和裁决；(b) 对一个或多个索赔拥有管辖权并审理和裁决，其认为其裁决将有助于解决其他索赔；或
- (c) 指示根据第9.15条设立的仲裁庭对全部或部分的索赔拥有管辖权并共同审理和裁决，前提是(i) 该仲裁庭应根据任何先前未在该仲裁庭作为被诉方之前提交索赔的申请人的请求，使用其原有成员进行重组，但申请人的仲裁员应根据第4(a)段、第5条和第6条进行任命；以及(ii) 该仲裁庭应决定是否应重复任何先前的听证会。

8. 如果根据本条设立了仲裁庭，根据第9.12.2条提交了索赔并未被第2段请求中提及的申请人可以向仲裁庭提交书面请求，要求将其包括在第7段作出的任何命令中，并在请求中说明：

- (a) 申请人姓名和地址；(b) 所寻求的命令的性质；以及(c) 所寻求的命令的理由。申请人应将其请求的副本提交给秘书长

9. 根据本条设立的仲裁庭应根据联合国国际贸易法委员会仲裁规则进行其程序，但本协议和适用于ISDS的透明度规则备忘录所做的修改除外。

10. 根据第9.15条设立的仲裁庭无权对根据本条设立或指示设立的仲裁庭已假定管辖权的索赔，或索赔的一部分，作出裁决。

11. 根据被诉方的申请，根据本条设立的仲裁庭 e,

pending its decision under paragraph 7, may order that the proceedings of a tribunal established under Article 9.15 be stayed, unless the latter tribunal has already adjourned its proceedings.

ARTICLE 9.22: AWARDS

1. Where a tribunal makes an award against a respondent, 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 respondent may pay monetary damages and any applicable interest in lieu of restitution.

2. A tribunal may also award costs and attorney’s fees in accordance with this Section and the applicable arbitration rules.

3. Subject to paragraph 1, where a claim is submitted to arbitration under Article 9.12.2(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 laws and regulations provided that such relief does not grant or result in duplicated remedies to any person in light of the award rendered.

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, a disputing party shall abide by and comply with an award without delay.

7. A disputing party may not seek enforcement of an 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

在根据第7段作出决定前，可以命令暂停根据第9.15条设立之仲裁庭的程序，除非后者仲裁庭已休庭。

第9.22条：裁决

1. 当仲裁庭对被申请人作出裁决时，仲裁庭可以单独或结合只裁决以下内容：

- (a) 金钱损害赔偿和适用利息；以及 (b) 财产返还，在这种情况下，裁决应规定被申请人可以用金钱损害赔偿和适用利息代替财产返还。

2. 仲裁庭也可以根据本节和适用仲裁规则裁决费用和律师费。

3. 除第1段规定外，当根据第9.12.2(b)条提交索赔进行仲裁时：

- (a) 财产返还裁决应当规定向企业进行返还；(b) 金钱损害赔偿裁决及适用利息裁决应当规定将款项支付给企业；以及(c) 裁决应当规定其作出不损害任何人在适用法律和法规项下的救济权，但该救济权不授予或导致任何人在裁决作出方面获得重复救济。

4. 仲裁庭不得裁决惩罚性损害赔偿。

5. 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。

6. 除非第7段另有规定，争议方应当及时遵守并执行裁决。

7. 争议方不得在以下情况下寻求裁决的执行：

- (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) 120天已从裁决作出之日起经过，且

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 an award made under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 9.12.4(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.

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

ARTICLE 9.23: APPELLATE REVIEW

Within three years after the date of entry into force of this Agreement, the Parties shall commence negotiations with a view to establishing an appellate mechanism to review awards rendered under Article 9.22 in arbitrations commenced after any such appellate mechanism is established. Any such appellate mechanism would hear appeals on questions of law.

ARTICLE 9.24: ANNEXES AND FOOTNOTES

The Annexes and footnotes shall form an integral part of this Agreement.

ARTICLE 9.25: SERVICE OF DOCUMENTS

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 9-B.

没有被诉方请求修改或撤销裁决；或

(ii) 修改或撤销程序已经完成；并且

(b) 在根据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9.12.4(d)条选定的规则作出的裁决的情况下，

(i) 自裁决作出之日起90天已过去且没有任何被诉方开始修改、撤销或撤销裁决的程序；或 (ii) 法院已驳回或允许修改、撤销或撤销裁决的申请且没有进一步上诉。

8. 每一方应在其领土内提供裁决的执行。

第9.23条：上诉审查

在本协议生效日期后三年内，缔约方应开始谈判，旨在建立上诉机制，以审查在建立任何此类上诉机制之后根据第9.22条启动的仲裁中颁发的裁决。任何此类上诉机制将就法律问题进行审理。

第9.24条：附件和脚注

附件和脚注应构成本协议的组成部分。

第9.25条：文件的送达

缔约方交付通知和其他文件应发送至附件9-B中为该缔约方指定的地点。

ANNEX 9-A
CODE OF CONDUCT

附件9-A 行为准则

Responsibilities to the Process

1. Every arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process are preserved. Former arbitrators shall comply with the obligations established in paragraphs 16, 17, 18 and 19.

Disclosure Obligations

2. Prior to confirmation of his or her selection as an arbitrator under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

3. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in paragraph 2 and shall disclose them by communicating them in writing to the disputing parties. The obligation to disclose is a continuing duty, which requires an arbitrator to disclose any such interests, relationships and matters that may arise during any stage of the proceeding.

Performance of Duties by Arbitrators

4. An arbitrator shall comply with the provisions of this Chapter and the applicable rules of procedure.

5. On selection, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

6. An arbitrator shall not deny other arbitrators the opportunity to participate in all aspects of the proceeding.

7. An arbitrator shall consider only those issues raised in the proceeding and necessary to rendering a decision and shall not delegate the duty to decide to any other person.

8. An arbitrator shall take all appropriate steps to ensure that the arbitrator's assistant and staff are aware of, and comply with, paragraphs 1, 2, 3, 18, 19 and 20.

9. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.

对流程的责任

1. 每位仲裁员应避免不当行为及不当行为的表象，应保持独立且公正，应避免直接或间接的利益冲突，并应遵守高标准的经营行为，以维护争议解决程序的完整性和公正性。前任仲裁员应遵守第16、17、18和19条中规定的义务。

披露义务

2. 在根据本协议确认其被选为仲裁员之前，候选人应披露任何可能影响其独立或公正性的利益、关系或事项，或可能合理地在该程序中造成不正当行为或偏见的印象。为此，候选人应尽一切合理努力了解任何此类利益、关系和事项。

3. 一旦被选为仲裁员，仲裁员应继续尽一切合理努力了解第2条中提到的任何利益、关系和事项，并通过书面通知争议方披露它们。披露义务是一项持续的义务，要求仲裁员披露在任何程序阶段可能出现的任何此类利益、关系和事项。

仲裁员履行职责

4. 仲裁员应遵守本章规定和适用程序规则。

5. 在选定后，仲裁员应在整个程序过程中彻底而迅速地履行其职责，并公平勤勉。

6. 仲裁员不得剥夺其他仲裁员参与程序所有方面的机会。

7. 仲裁员应仅考虑程序中提出且作出裁决所必需的问题，不得将裁决的职责委托给任何其他人。

8. 仲裁员应采取所有适当措施以确保仲裁员' s 助手和员工都了解并遵守第1、2、3、18、19和20条。

9. 仲裁员不得就程序进行单方面接触。

10. An arbitrator shall not communicate matters concerning actual or potential violations by another arbitrator unless the communication is to both disputing parties or is necessary to ascertain whether that arbitrator has violated or may violate this Annex.

Independence and Impartiality of Arbitrators

11. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall avoid creating an appearance of impropriety or bias.

12. An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or a disputing party or fear of criticism.

13. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of the arbitrator's duties.

14. An arbitrator shall not use his or her position on the arbitral tribunal to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator. An arbitrator shall make every effort to prevent or discourage others from representing themselves as being in such a position.

15. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the arbitrator's conduct or judgment.

16. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the arbitrator's impartiality or that might reasonably create an appearance of impropriety or bias.

Duties in Certain Situations

17. An arbitrator or former arbitrator shall avoid actions that may create the appearance that the arbitrator was biased in carrying out the arbitrator's duties or would benefit from the decision or award of the arbitral tribunal.

Maintenance of Confidentiality

18. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others.

19. An arbitrator shall not disclose an arbitral tribunal award or parts thereof prior to its publication.

10. 仲裁员不得就另一名仲裁员实际或潜在的违反行为进行沟通，除非该沟通同时向争议双方进行，或有必要确定该仲裁员是否违反或可能违反本附件。

仲裁员的独立性和公正性

11. 仲裁员应当独立且公正。仲裁员应当以公平的方式行事，并避免造成不当行为或偏见的印象。

12. 仲裁员不得受自身利益、外部压力、政治因素、公众喧嚣、对一方或争议方的忠诚或害怕批评的影响。

13. 仲裁员不得直接或间接地承担任何义务或接受任何利益，这些义务或利益在任何方面都可能干扰或看似干扰仲裁员职责的适当履行。

14. 仲裁员不得利用其在仲裁庭的职位来谋取任何个人或私人利益。仲裁员应当避免采取可能造成他人被认为处于特殊地位以影响仲裁员的行为。仲裁员应当尽一切努力防止或阻止他人声称处于此种地位。

15. 仲裁员不得允许过去的或现有的财务、商业、专业、家庭或社会关系或责任影响仲裁员的经营或判断。

16. 仲裁员应避免进入任何关系，或获得任何财务利益，该关系或利益可能会影响仲裁员的公正性，或可能合理地造成不当行为的表象或偏见。

特定情况下的职责

17. 仲裁员或前任仲裁员应避免采取可能造成仲裁员在履行职责时存在偏见的表象，或从仲裁庭的裁决或判决中获益的行为。

保密的维护

18. 仲裁员或前任仲裁员在任何时候不得披露或使用与程序有关的任何非公开信息，或程序期间获得的信息，除非出于程序的目的，并且在任何情况下，不得披露或使用此类信息以获得个人优势或他人优势，或不利地影响他人的利益。

19. 仲裁员不得在裁决公布前披露仲裁庭裁决或其部分。

20. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitral tribunal, or any arbitrator’s view, except as required by legal or constitutional requirements.

Definitions

21. For the purposes of this Annex:

assistant means a person who, under the terms of appointment of an arbitrator, conducts research or provides support for the arbitrator;

arbitrator means a member of an arbitral tribunal established under Section B of this Chapter;

proceeding, unless otherwise specified, means the proceeding of an arbitral tribunal under Section B of this Chapter; and

staff, in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.

20. 仲裁员或前仲裁员在任何时候均不得披露仲裁庭的审理情况，或任何仲裁员的意见，除非根据法律或宪法要求。

定义

21. 根据本附件的规定：

助手是指根据仲裁员的任命条款，进行研究或为仲裁员提供支持的人员；

仲裁员是指根据本章B部分设立的仲裁庭的成员；

程序，除非另有规定，是指根据本章B部分设立的仲裁庭的程序；和

员工，关于仲裁员，是指处于仲裁员指导和控制之下的人员，不包括助手。

ANNEX 9-B
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
RG Casey Building
John McEwen Crescent
Barton ACT 0221 Australia

China

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

Ministry of Commerce
NO.2 Dongchangan Street, Dongcheng District
Beijing, China, 100731

附件9-B B部分缔约方的文件送达

澳大利亚

第B部分的争议中的通知和其他文件应通过以下方式送达澳大利亚：

外交贸易部RG凯西大楼约翰·麦克尤恩
弯道巴顿澳大利亚ACT 0221澳大利亚

中国

B部分争议下的通知和其他文件应通过以下方式送达中国：

商务部 东长安街2号，东城区 北京，中国，
100731