

2. The functions of the Sub-Committee shall be:
- (a) reviewing the implementation and operation of this Chapter;
 - (b) reporting the findings of the Sub-Committee to the Joint Committee;
 - (c) identifying areas, relating to this Chapter, to be improved for facilitating trade between the Parties; and
 - (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.
3. The composition of the Sub-Committee shall be specified in the Implementing Agreement.
4. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

Chapter 5
Investment

Article 55
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
- (a) investors of the other Party; and
 - (b) investments of investors of the other Party in the Area of the former Party.
2. This Chapter shall not apply to:
- (a) government procurement; and
 - (b) services supplied in the exercise of governmental authority as defined in subparagraph (q) of Article 74.
3. In the event of any inconsistency between this Chapter and Chapter 6:
- (a) with respect to matters covered by Articles 57, 58 and 61, Chapter 6 shall prevail to the extent of inconsistency; and

2. 分委员会的职能应当是:

(a) 审查本章的实施和运营; (b) 将分委员会的调查结果报告给联合委员会; (c) 确定与本章相关的、为促进缔约方之间贸易而需要改进的区域; 以及(d) 根据第11条, 执行联合委员会可能授权的其他职能。

3. 分委员会的组成应当在实施协定中规定。

4. 分委员会应当在缔约方同意的场所和时间举行会议。

第五章 投
资 第55条 范
围

1. 本章适用于缔约方为以下方面所采纳或维持的措施:

(a) 另一方的投资者; 以及 (b) 另一方的投资者在前方区域的投资。

2. 本章不适用于:

(a) 政府采购; 以及 (b) 作为第74条分款 (q) 中定义的行使政府权威时提供的服务。

3. 如果本章与第6章之间存在任何不一致:

(a) 关于第57条、第58条和第61条所涵盖的事项, 第6章应优先适用, 直至存在不一致之处; 以及

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

4. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

Article 56 Definitions

For the purposes of this Chapter:

- (a) “enterprise” means any legal person or any other entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (b) an enterprise is:
 - (i) “owned” by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and
 - (ii) “controlled” by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;
- (c) “enterprise of a Party” means an enterprise constituted or organised under the applicable law of a Party;
- (d) “freely usable currency” means any currency designated as such by the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, as may be amended;
- (e) “ICSID” means the International Centre for Settlement of Investment Disputes;
- (f) “ICSID Additional Facility Rules” means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes, as may be amended;

- (b) 关于不属于小项(a)的事项，本章应优先适用，直至存在不一致之处。

4. 本章任何内容均不得对任何一方就移民法律和法规规定的措施施加义务。

第56条 定义

本章规定如下：

- (a) “企业”是指任何法人或根据适用法律合法成立或组织起来的其他实体，无论是否以营利为目的，无论是否为私人所有或受控，或政府所有或受控，包括任何公司、信托、合伙企业、合资企业、个体工商户或协会；
- (b) 企业是：
 - (i) 如果投资者实际拥有其50%以上的股权利益，则该企业为“被投资者拥有”；以及
 - (ii) 如果投资者有权任命其多数董事或以其他方式合法地指导其行为，则该企业为“被投资者控制”；
- (c) “一方的企业”是指根据一方适用法律成立或组织的企业；
- (d) “可自由使用货币”是指根据国际货币基金组织协定（可修订）指定为该类别货币的任何货币；
- (e) “ICSID”是指解决投资争端国际中心；
- (f) “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用的附加便利管理规则，并可进行修订；

- (g) “ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965, as may be amended;
- (h) “investments” means every kind of asset owned or controlled, directly or indirectly, by an investor, including:
- (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 securities, including rights derived therefrom;
 - (iv) futures, options and other derivatives;
 - (v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
 - (vi) claims to money or to any performance under contract having a financial value, which relate to a business activity;
 - (vii) intellectual property rights;
 - (viii) goodwill;
 - (ix) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits; and
 - (x) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

Note 1: Investments also include amounts yielded by investments, 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.

(g) “ICSID公约”是指1965年3月18日在华盛顿签署的解决国家与他国国民间投资争端公约，并可进行修订；

h) (“投资”是指投资者直接或间接拥有或控制的每一种资产，包括：(i) 企业及其分支机构；(ii) 企业在企业中的股份、股票或其他形式的股权参与，包括由此产生的权利；(iii) 债券、债券、贷款和其他形式的有价证券，包括由此产生的权利；(iv) 期货、期权和其他衍生品；(v) 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；(vi) 与商业活动相关的金钱要求或合同项下的任何具有财务价值的履约要求；(vii) 知识产权；(viii) 商誉；(ix) 根据法律、法规或合同授予的权利，如特许权、许可证、授权和许可证；以及(x) 任何其他有形和无形、动产和不动产，以及任何相关的财产权，如租赁、抵押、留置权和质押；注释1：投资还包括投资产生的金额，特别是利润、利息、资本利得、股息、特许权使用费和费用。资产投资形式的改变不影响其作为投资的性质。

Note 2: Investments do not include an order or judgment entered in a judicial or administrative action.

Note 3: Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.

- (i) “investment activities” means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;
- (j) “investor of a Party” means a Party or a natural person or an enterprise of a Party that seeks to make, is making, or has made, investments;
- (k) “measure” means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (l) “measure adopted or maintained by a Party” means any measure adopted or maintained by:
 - (i) central or local governments and authorities of a Party; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities of a Party;
- (m) “natural person of a Party” means a natural person who under the law of a Party:
 - (i) in respect of Brunei Darussalam, is a national of Brunei Darussalam or is a permanent resident in Brunei Darussalam; and
 - (ii) in respect of Japan, is a national of Japan;
- (n) “New York Convention” means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, as may be amended; and

注释2: 投资不包括司法或行政行为中作出的命令或判决。注释3: 如果一项资产缺乏特征

一项投资, 该资产并非投资, 无论其形式如何。投资的特性包括资本投入、收益或利润预期或风险承担。

(i) “投资活动”是指投资的设立、收购、扩张、管理、开展、运营、维护、使用、享受和销售或其他处置; (j) “一方投资者”是指一方或一方自然人或企业, 该方或该自然人或企业寻求进行、正在进行或已经进行投资; (k) “措施”是指任何形式的措施, 无论其形式为法律、法规、规则、程序、决定、行政行为或其他形式; (l) “一方采取或维持的措施”是指由以下机构采取或维持的任何措施: (i) 一方的中央或地方政府和机构; 以及 (ii) 在一方中央或地方政府或机构授予的权力范围内行使权力的非政府机构; (m) “一方自然人”是指根据一方法律: (i) 在文莱达鲁萨兰方面, 是文莱达鲁萨兰国民或文莱达鲁萨兰永久居民; 以及 (ii) 在日本方面, 是日本国民; (n) “纽约公约”是指联合国

承认和执行外国仲裁裁决公约, 于1958年6月10日在纽约签署, 并可修正; 以及

(o) “TRIPS Agreement” means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended.

Article 57 National Treatment

1. Each Party shall accord to investors of the other Party and to their investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to investment activities.

2. Notwithstanding paragraph 1, each Party may prescribe special formalities in connection with investment activities of investors of the other Party in its Area, such as compliance with registration requirements, provided that such special formalities do not impair the substance of the rights of such investors under this Chapter.

Article 58 Most-Favoured-Nation Treatment

Each Party shall accord to investors of the other Party and to their investments, treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities.

Article 59 Minimum Standard of Treatment

Each Party shall accord to investments of investors of the other Party, treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

Note: 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 customary international law minimum standard of treatment of aliens.

(o) “TRIPS协定”是指世界贸易组织协定附件1C中关于与贸易有关的知识产权协定，并可修正。

第57条 国民待遇

1. 每一方应给予另一方的投资者及其投资不低于其自身投资者及其投资在类似情况下所享有的待遇，就投资活动而言。

2. 尽管有第1款规定，每一方可以就其在区域内的另一方的投资者的投资活动规定特殊手续，例如遵守注册要求，但此类特殊手续不得损害该章节规定的此类投资者的权利的实质。

第58条 最惠国待遇

每一方应给予另一方的投资者及其投资不低于其给予非一方投资者及其投资在类似情况下所享有的待遇，就投资活动而言。

第59条 最低标准待遇

每一方应给予另一方的投资者的投资，符合习惯国际法的待遇，包括公平公正待遇和充分保护与安全。

注意：“公平公正待遇”和“充分保护与安全”的概念不需要在习惯国际法最低标准待遇之外或之外给予额外待遇。

Article 60
Access to the Courts of Justice

Each Party shall in its Area accord to investors of the other Party, treatment no less favourable than that it accords in like circumstances to its own investors or investors of a non-Party, with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defence of such investors' rights.

Article 61
Prohibition of Performance Requirements

1. For the purposes of this Chapter, the Annex to the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement, as may be amended, is incorporated into and forms part of this Agreement, *mutatis mutandis*.
2. The Parties shall enter into further consultations, at the earliest possible time. The aim of such consultations is to review issues pertaining to prohibition of performance requirements within five years from the date of entry into force of this Agreement.

Article 62
Reservations and Exceptions

1. Articles 57 and 58 shall not apply to:
 - (a) any non-conforming measure that is maintained by the central government or authorities of a Party, on the date of entry into force of this Agreement, with respect to the sectors or matters specified in Annex 4;
 - (b) any non-conforming measure that is maintained by local governments or authorities of a Party on the date of entry into force of this Agreement;
 - (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b);
 - (d) an amendment or modification to any non-conforming measure referred to in:
 - (i) subparagraph (a), unless the sectors or matters are indicated with an asterisk ("*") in Annex 4; and

第60条 法院诉讼途径

每一方在其区域内，应给予另一方的投资者不低于其自身投资者或非一方投资者的待遇，在类似情况下，包括在所有管辖级别的法院、行政法庭和机构中，就其权利的维护和辩护而言，均应确保其获得此类投资者的待遇。

第61条 禁止性能要求

1. 根据本章规定，世界贸易组织协定附件1A中的与贸易相关投资措施协定附件，经修订后，纳入本协定并构成本协定的组成部分，相应修改。
2. 各方应尽早进行进一步磋商。此类磋商的目的是审查与本协定生效之日起五年内禁止性能要求相关的问题。
本协议生效之日起五年内禁止性能要求相关的问题。

第62条 保留和例外

1. 第 57 和 58 条不适用：
 - (a) 任何中央政府或一方当局在本协议生效日期维持的、关于附件4中规定的部门或事项的不符合措施；
 - (b) 任何一方地方政府或当局在本协议生效日期维持的不符合措施；
 - (c) 分款(a)和(b)中提到的任何不符合措施的延续或迅速重新实施；
 - (d) 对任何不符合措施的修正或修改，包括：
 - (i) 分款(a)中提到的措施，除非附件4中用星号（“*”）标明了部门或事项；以及

(ii) subparagraph (b),

provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 57 and 58; and

(e) an amendment or modification to any non-conforming measure referred to in subparagraph (a), where the sectors or matters are indicated with an asterisk (“*”) in Annex 4, provided that the amendment or modification:

(i) does not decrease the conformity of that measure with Articles 57 and 58; and

(ii) is not more restrictive to existing investors and existing investments than the measure applied to such investors and investments immediately before the amendment or modification.

2. For the purposes of this Article:

(a) “existing investors” and “existing investments” mean respectively investors whose investments are present in the Area of a Party, and investments that are present in the Area of a Party, immediately before the amendment or modification of any non-conforming measure; and

(b) any expansion or diversification of existing investments by existing investors after the amendment or modification of any non-conforming measure shall not be regarded as existing investments to the extent of such expansion or diversification.

3. Each Party shall, on the date of entry into force of this Agreement, notify the other Party of the following information on any non-conforming measure referred to in subparagraph 1(a):

(a) the sector or matter, with respect to which the measure is maintained;

(b) the domestic or international industry classification codes, where applicable, to which the measure relates;

(c) the obligations under this Agreement with which the measure does not conform;

(ii) 第 (b) 款,

前提是该修正或修改不会降低该措施在修正或修改立即生效前的符合第 57 和 58 条的程度; 以及

(e) 对第 (a) 款中提到的任何不符合措施进行的修正或修改, 其中涉及的部门或事项在附件4中用星号 (“*”) 标明, 前提是该修正或修改:

(i) 不会降低该措施与第 57 和 58 条的一致性; 并且 (ii) 对现有投资者和现有投资的限制不比修正或修改前应用于此类投资者和投资的措施更严格。

2. 就本条款而言:

(a) “现有投资者”和“现有投资”分别指其投资存在于一方领土内的投资者, 以及存在于一方领土内的投资, 该投资存在于任何不符合措施修正或修改之前; 以及 (b) 现有投资者在不符措施修正或修改后进行的任何现有投资的扩张或多元化, 就其扩张或多元化的程度而言, 不应被视为现有投资。

3. 各方应在本协议生效日期, 就第1(a)款所述任何不符合措施, 通知另一方以下信息:

(a) 维持该措施的行业或事项; (b) 如适用, 与该措施相关的国内或国际行业分类代码; (c) 该措施不符合本协定项下的义务;

- (d) the source of the measure; and
 - (e) the succinct description of the measure.
4. Articles 57 and 58 shall not apply to any measure that a Party adopts or maintains with respect to the sectors or matters specified in Annex 5.
5. Where a Party maintains any non-conforming measure on the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, the Party shall, on the same date, notify the other Party of the following information on the measure:
- (a) the sector or matter, with respect to which the measure is maintained;
 - (b) the domestic or international industry classification codes, where applicable, to which the measure relates;
 - (c) the obligations under this Agreement with which the measure does not conform;
 - (d) the source of the measure; and
 - (e) the succinct description of the measure.
6. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authority.
7. In cases where a Party makes an amendment or a modification to any non-conforming measure notified pursuant to paragraph 3 or 5, or where a Party adopts any new measure with respect to the sectors or matters specified in Annex 5, after the date of entry into force of this Agreement, the Party shall, prior to the amendment or modification or the adoption of the new measure, or in exceptional circumstances, as soon as possible thereafter:
- (a) notify the other Party of detailed information on such amendment, modification or new measure; and
 - (b) respond, upon the request by the other Party, to specific questions from the other Party with respect to such amendment, modification or new measure.

- (d) 该措施的来源; 以及 (e) 该措施的简要描述。
4. 第 57 和 58 条不适用于任何一方针对附件5中规定的部门或事项所采取或维持的措施。
5. 如果一方在 本协议生效日期 针对附件5中规定的部门或事项维持任何不符合措施, 该方应在同一天向另一方通报以下关于该措施的信息:
- (a) 措施所维持的部门或事项; (b) 如适用, 措施相关的国内或国际行业分类代码;
 - (c) 措施不符合本协定项下的义务; (d) 措施的来源; 以及(e) 措施的简要描述。
6. 任何一方均不得在本协议生效日期后针对附件5中规定的部门或事项所采取的任何措施中, 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存在的投资, 除非相关机构在初始批准中另有规定。
7. 在一方根据第3段或第5段通知的不符合措施进行修正或修改, 或一方在协议生效日期后针对附件5中规定的部门或事项采取任何新措施的情况下, 该方应在修正或修改新措施之前, 或在特殊情况下, 尽快采取行动:
- (a) 通知另一方关于该修正、修改或新措施的详细信息; 以及 (b) 在另一方请求时, 就该修正、修改或新措施向另一方就具体问题作出答复。

8. Each Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures that it adopts or maintains with respect to the sectors or matters specified in Annexes 4 and 5 respectively.

9. Articles 57 and 58 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3, 4 and 5 of the TRIPS Agreement.

Article 63 Expropriation and Compensation

1. Neither Party shall expropriate or nationalise investments in its Area of investors of the other Party or take any measure tantamount to expropriation or nationalisation (hereinafter referred to in this Chapter as "expropriation") except:

- (a) for a public purpose;
- (b) on a non-discriminatory basis;
- (c) in accordance with law; and
- (d) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 2, 3 and 4.

2. The compensation shall be equivalent to the fair market value of the expropriated investments:

- (a) at the time when the expropriation was publicly announced; or
- (b) when the expropriation occurred,

whichever is the earlier.

3. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

4. The compensation shall:

- (a) be paid without undue delay;
- (b) include interest at a commercially reasonable rate taking into account the length of time from the time of expropriation to the time of payment; and

8. 各方应根据情况，努力减少或消除其分别就附件4和5中规定的部门或事项所采纳或维持的不符合措施。

9. 第 57 和 58 条不适用于根据与贸易有关的知识产权协定第 3 条和第 4 条所规定的例外或背离义务的措施，正如与贸易有关的知识产权协定第 3 条、第 4 条和第 5 条中特别规定的那样。

第 63 条 征收和补偿

1. 任何一方不得征收或国有化其在另一方的投资者区域内的投资，或采取任何等同于征收或国有化的措施（在本章中以下简称“征收”），但应遵守以下条件：

(a) 为公共利益；(b) 在非歧视性基础上；(c) 依照法律；以及(d) 根据第 2、3 和 4 段的规定支付及时、充分和有效的补偿。

2. 补偿应相当于被征收投资的公允价值：

(a) 在征收公开宣布时；或(b) 在征收发生时，

whichever是较早的。

3. 公允价值不应反映因征收在较早时已公开而发生的任何市场价值变化。

4. 补偿应：

(a) 无不当延迟支付；(b) 包括自征收之日起至支付之日止的合理商业利率的利息；以及

- (c) be effectively realisable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Party of the investors concerned and freely usable currencies.
5. (a) This Article shall apply to taxation measures, to the extent that such taxation measures constitute expropriation.
- (b) Where subparagraph (a) applies, Articles 60 and 67 shall also apply in respect of taxation measures.

Article 64
Protection from Strife

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party owing to war, armed conflict or state of emergency such as revolution, insurrection, civil disturbance, riot or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that it accords to its own investors or to investors of a non-Party.
2. Any payments as a means of settlement referred to in paragraph 1 shall be effectively realisable, freely transferable and freely convertible at the market exchange rate into the currency of the Party of the investors concerned and freely usable currencies.

Article 65
Transfers

1. Each Party shall allow all transfers relating to investments in its Area of an investor of the other Party to be made freely into and out of its Area without undue delay. Such transfers shall include those of:
- (a) the initial capital and additional amounts to maintain or expand investments;
- (b) net profits, capital gains, dividends, royalties, interest, fees, and other current incomes accruing from investments;
- (c) proceeds from the total or partial sale or liquidation of investments;

- (c) 应有效可执行且可自由转移，并且在征收之日适用的市场汇率下，可自由兑换为有关投资者方的货币和可自由使用货币。

5. (a) 本条款适用于税收措施，至其构成征收的程度，
the extent that such taxation measures constitute
征收。
- (b) 在小项(a)适用的情况下，第60条和第67条也
在税收措施方面适用。
措施。

第64条 防止纷争

1. 各方应根据另一方投资者因在前方区域进行的投资而遭受的损失或损害，包括因战争、武装冲突或紧急状态（如革命、起义、内乱、暴乱或该前方区域发生的任何其他类似事件）而遭受的损失或损害，就恢复、赔偿、补偿或任何其他结算，给予另一方投资者不低于其给予自身投资者或非方投资者待遇的待遇。
2. 第1段所述作为结算手段的任何付款应能够有效实现、自由转移和自由兑换，并以市场汇率为兑换率兑换成有关投资者所在方的货币和自由使用货币。

第65条 转移

1. 各方应允许另一方投资者在其区域内的所有与投资相关的转移自由地流入和流出其区域，且不得无故延迟。此类转移应包括以下转移：
- (a) 初始资本和为维持或扩大投资而追加的金额；(b) 来自投资的净收益、资本利得、股息、特许权使用费、利息、费用和其他经常性收入；(c) 投资全部或部分出售或清算所得的收入；

- (d) payments made under a contract, including loan payments in connection with investments;
- (e) net earnings and remuneration of personnel from the other Party who are employed and allowed to work in connection with investments in the Area of the former Party;
- (f) payments made pursuant to Articles 63 and 64; and
- (g) payments arising out of the settlement of a dispute under Article 67.

2. Each Party shall further ensure that such transfers may be made in a freely usable currency at the market exchange rate prevailing on the date of each transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent such transfers 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, options or other derivatives;
- (c) criminal or penal offences;
- (d) ensuring compliance with orders or judgments in judicial proceedings or administrative rulings; and
- (e) obligations of investors arising from social security, and public retirement or compulsory savings scheme.

Article 66 Subrogation

1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, pertaining to an investment of that investor within the Area of the other Party, the other Party shall:

- (a) recognise the assignment, to the former Party or its designated agency, of any right or claim of the investor that formed the basis of such payment; and

(d) 根据合同支付的款项，包括与投资相关的贷款支付；(e) 来自另一方且在区域的前方区域从事与投资相关工作的雇员的净收益和报酬；(f) 根据第63条和第64条支付的款项；以及 (g) 根据第67条解决争议所产生的款项。

2. 每一方应进一步确保此类转移可在每次转移的日期适用的市场汇率下以可自由使用货币进行。

3. 尽管有第1款和第2款的规定，一方可以通过对其有关以下事项的公平、非歧视和善意适用法律来延迟或阻止此类转移：

(a) 破产、无力偿债或债权人权利保护；(b) 发行、交易或处理证券、期货、期权或其他衍生品；(c) 刑事或刑罚犯罪；(d) 确保在司法程序或行政裁决中遵守命令或判决；以及(e) 投资者因社会保障、公共退休或强制储蓄计划而产生的义务。

第66条 代位求 偿权

1. 如果一方或其指定机构根据赔偿、担保或保险合同向其任何投资者支付款项，该投资者的投资位于另一方区域，则另一方应：

(a) 确认投资者原始权利或请求权，该权利或请求权构成了付款的基础，已转让给另一方或其指定代理机构；以及

- (b) recognise the right of the former Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.
2. Articles 63, 64 and 65 shall apply *mutatis mutandis* as regards payment to be made to the Party or its designated agency mentioned in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment.
- Article 67
Settlement of Investment Disputes
between a Party and an Investor of the Other Party
1. For the purposes of this Chapter, an “investment dispute” is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation under this Chapter with respect to the investor and its investments.
2. Nothing in this Article shall be construed so as to prevent an investor who is a party to an investment dispute (hereinafter referred to in this Article as “disputing investor”) from seeking administrative or judicial settlement within the Party that is a party to the investment dispute (hereinafter referred to in this Article as “disputing Party”).
3. An investment dispute shall, as far as possible, be settled amicably through consultation or negotiation between the disputing investor and the disputing Party (hereinafter referred to in this Article as “the disputing parties”).
4. If the investment dispute cannot be settled through such consultation or negotiation within five months from the date on which the disputing investor requested for the consultation or negotiation in writing and if the disputing investor has not submitted the investment dispute for resolution under courts of justice or administrative tribunals or agencies, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations:
- (a) conciliation or arbitration in accordance with the ICSID Convention, so long as the ICSID Convention is in force between the Parties;

- (b)确认另一方或其指定代理机构根据代位求偿权行使该权利或请求权, 其行使范围与投资者的原始权利或请求权相同。
2. 第63条、第64条和第65条应作相应调整, 以规定根据权利或请求权的转让, 应向第1段中提到的方或其指定代理人支付款项, 以及该款项的转让。
- 第67条
of Investment Disputes
一方与另一方投资者之间的争议
1. 本章规定, “投资争端”是指一方与另一方投资者之间因该投资者及其投资违反本章规定的任何义务而遭受损失或损害的争议。
2. 本条款的任何规定均不得解释为阻止作为投资争端一方 (以下简称本条款中为“争议投资者”) 的投资者在作为投资争端一方的该方内寻求行政或司法解决。
3. 投资争端应尽可能通过争议投资者与争议方 (以下简称本条款中为“争议方”) 之间的磋商或谈判友好解决。
4. 如果投资争端自争议投资者书面请求磋商或谈判之日起五个月内无法通过此种磋商或谈判解决, 并且争议投资者未将投资争端提交给法院、行政法庭或机构进行解决, 则争议投资者可以将投资争端提交至以下国际调解或仲裁之一:

(a) 根据《ICSID公约》进行的调解或仲裁, 只要《ICSID公约》在当事方之间有效;

- (b) conciliation or arbitration under the ICSID Additional Facility Rules, so long as the ICSID Convention is not in force between the Parties;
- (c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976, as may be amended; and
- (d) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules.

5. For greater certainty, an investor of a Party may not submit to conciliation or arbitration referred to in paragraph 4 a dispute arising out of events which occurred, or a dispute which had been settled, prior to the date of entry into force of this Agreement.

6. A disputing investor may not submit to conciliation or arbitration referred to in paragraph 4 an investment dispute with respect to the establishment, acquisition or expansion of its investments.

7. The applicable arbitration rules shall govern the arbitration set forth in paragraph 4 except to the extent modified in this Article.

8. A disputing investor who intends to submit an investment dispute to conciliation or arbitration pursuant to paragraph 4 shall give to the disputing Party written notice of intent to do so at least 90 days before the investment dispute is submitted. The notice of intent shall specify:

- (a) the name and address of the disputing investor;
- (b) the specific measures of the disputing Party at issue and a brief summary of the factual and legal basis of the investment dispute sufficient to present the problem clearly, including the obligations under this Chapter alleged to have been breached;
- (c) conciliation or arbitration set forth in paragraph 4 which the disputing investor will choose; and
- (d) the relief sought and the approximate amount of damages claimed.

(b) 根据《ICSID附加便利规则》进行的调解或仲裁，只要《ICSID公约》在当事方之间无效；(c) 根据《联合国国际贸易法委员会仲裁规则》进行的仲裁，该规则由联合国国际贸易法委员会于1976年4月28日通过，作为ma

可修订；以及(d) 如果与争议方达成一致，则根据其他仲裁规则进行的任何仲裁。

5. 为进一步明确，一方投资者不得提交第4段所述的调解或仲裁，该争议源于本协议生效日期之前发生的事件，或已解决的争议。

6. 争议投资者不得提交第4段所述的调解或仲裁，就其投资的设立、收购或扩张相关的投资争端。

7. 适用的仲裁规则应 govern 第4段所述的仲裁，但除本条款修改的以外。

8. 争议投资者如果打算根据第4段将投资争端提交调解或仲裁，应在投资争端提交前至少90天向争议方发出书面意向通知。意向通知应具体说明：

(a) 争议投资者的名称和地址；(b) 争议方所采取的具体措施以及关于投资争端的事实和法律依据的简要概述，足以清楚地陈述问题，包括本章节下据称被违约的义务；(c) 第4段中规定的调解或仲裁，争议投资者将选择；以及(d) 寻求的救济和索赔的损害赔偿的近似金额。

9. (a) Each Party hereby consents to the submission of investment disputes by a disputing investor to conciliation or arbitration set forth in paragraph 4 chosen by the disputing investor.
- (b) The consent given by subparagraph (a) and the submission by a disputing investor of an investment dispute to arbitration shall satisfy the requirements of:
- (i) Chapter II of the ICSID Convention or the ICSID Additional Facility Rules, for written consent of the parties to a dispute; and
- (ii) Article II of the New York Convention for an agreement in writing.

10. Notwithstanding paragraph 9, no investment dispute may be submitted to conciliation or arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1.

11. Notwithstanding paragraph 4, a disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of damages before an administrative tribunal or agency or a court of justice under the applicable laws of the disputing Party.

12. Unless the disputing parties agree otherwise, an arbitral tribunal established under paragraph 4 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. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within 60 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the ICSID may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraphs 13 and 14.

13. Unless the disputing parties agree otherwise, the third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either of the disputing parties, nor have dealt with the investment dispute in any capacity.

9. (a) 各方兹同意将争议投资者的投资争端提交第4段中争议投资者选择规定的调解或仲裁。(b) 第(a)小项中给予的同意以及争议投资者将投资争端提交仲裁, 应满足以下要求: (i) ICSID公约第II章或ICSID附加便利规则, 对于书面

争议各方同意; 以及 (ii) 纽约公约第II条的书面协定。

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10. 不论第9段的规定如何, 如果争议投资者自第1段所述争议投资者遭受第1段所指损失或损害之日起超过三年, 且争议投资者已知晓或应知晓该损失或损害, 无论何者时间较早, 则不得将投资争端提交第4段规定的调解或仲裁。

11. 不论第4段的规定如何, 争议投资者可以在适用法律的行政法庭或机构或法院之前提起或继续寻求临时禁令救济的行动, 该行动不涉及损害赔偿。

12. 除非争议各方另有约定, 根据第4段设立的仲裁庭应由三名仲裁员组成, 每位争议方各任命一名仲裁员, 第三名仲裁员(首席仲裁员)由争议各方协议任命。如果争议投资者或争议方未能在投资争端提交仲裁之日起60天内任命仲裁员或仲裁员, 任何争议方均可请求国际投资争端解决中心秘书长, 根据第13段和第14段的规定, 从ICSID仲裁员小组中任命尚未任命的仲裁员或仲裁员。

13. 除非争议方另有约定, 第三名仲裁员不得是任何一方国家的国民, 也不得在任何一方通常居住, 不得受雇于任何一方争议方, 也不得以任何身份处理该投资争端。

14. In the case of arbitration referred to in paragraph 4, each of the disputing parties may indicate up to three nationalities, the appointment of arbitrators of which is unacceptable to it. In this event, the Secretary-General of the ICSID may be requested not to appoint as arbitrator any person whose nationality is indicated by either of the disputing parties.

15. Unless the disputing parties agree otherwise, an arbitration shall be held in a country that is a party to the New York Convention.

16. An arbitral tribunal established under paragraph 4 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

17. The disputing Party shall deliver to the other Party:

(a) written notice of the investment dispute submitted to the arbitration no later than 30 days after the date on which the investment dispute was submitted; and

(b) copies of all pleadings filed in the arbitration.

18. On written notice to the disputing parties, the Party which is not the disputing Party may make submissions to the arbitral tribunal on a question of interpretation of this Agreement.

19. The arbitral tribunal may order an interim measure of protection to preserve the rights of the disputing investor, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of either of the disputing parties. The arbitral tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1.

20. The award rendered by the arbitral tribunal shall include:

(a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Chapter with respect to the disputing investor and its investments; and

(b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:

(i) payment of monetary damages and applicable interest; and

14. 在第4段所指的仲裁情况下，每争议方可指明最多三个国籍，其中仲裁员国籍若对其不可接受。在这种情况下，国际投资争端解决中心秘书长可被要求不任命任何一方指明的国籍人员为仲裁员。

15. 除非争议方另有约定，仲裁应在一个为《纽约公约》缔约国的国家举行。

16. 根据第4段设立的仲裁庭应根据本协定及适用国际法规则裁决争议问题。

17. 争议方应向另一方提交：

(a) 书面通知，说明提交至仲裁的投资争端，且不得迟于投资争端提交之日起30天；以及 (b) 提交至仲裁的所有诉讼文书副本

18. 向争议方发出书面通知后，非争议方可就本协定解释问题向仲裁庭提交意见。

19. 仲裁庭可以采取临时保护措施以维护争议投资者的权利，或促进仲裁程序进行，包括下令保全争议方一方持有的证据。仲裁庭不得采取扣押措施或禁止采取据称构成第1段所述违约行为的措施。

20. 仲裁庭作出的裁决应包括：

(a) 判断争议方是否违约
根据本章规定，就争议投资者及其投资所负义务而言，争议方是否违约；以及

(b) 如果存在违约行为，应提供补救措施。补救措施应限于以下一项或两项：(i) 支付货币损害赔偿及适用

利息；和

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

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

21. The award rendered in accordance with paragraph 20 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations.

22. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Party and an investor of the former Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Party shall have failed to abide by and comply with the award rendered in such investment 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 investment dispute.

Article 68 Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Article 57 relating to cross-border capital transactions and Article 65:

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

2. The measures referred to in paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;
- (b) not exceed those necessary to deal with the circumstances set out in paragraph 1;

- (ii) 财产返还，在这种情况下，裁决应规定争议方可以支付货币损害赔偿和任何适用的利息，以代替财产返还。

费用也可能根据适用的仲裁规则予以裁决。

21. 根据第20段作出的裁决对争议方应具有终局且具有约束力。争议方应立即履行裁决的规定，并根据其相关法律和法规在其区域为裁决的执行提供保障。

22. 任何一方不得就另一方及前一方投资者已同意提交或已提交仲裁的第4段所述的投资争端给予外交保护或提起国际索赔，除非另一方未能遵守并履行在该投资争端中作出的裁决。本段所称外交保护不包括仅为促进投资争端结算而进行的非正式外交交涉。

第68条 临时保障措施

1. 一方可采用或维持与其根据第57条关于跨境资本交易及第65条所负义务不符的措施：

- (a) 在发生严重国际收支和外部金融困难或存在此类威胁的情况下；或 (b) 在特殊情况下，资本流动导致或威胁导致宏观经济管理（尤其是货币、财政和汇率政策）发生严重困难的情况下。

2. 第1段所述的措施应：

- (a) 与国际货币基金组织协定条款（可修订）保持一致； (b) 不得超过处理第1段所述情况所需的范围；

- (c) be temporary and eliminated as soon as conditions permit;
- (d) be promptly notified to the other Party;
- (e) avoid unnecessary damages to the commercial, economic and financial interests of the other Party; and
- (f) ensure that the other Party is treated as favourably as any non-Party.

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

Article 69 Prudential Measures

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system.

2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

Note: For the purposes of this Article, "financial services" shall have the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the GATS.

Article 70 Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or

(c) 具有临时性，并在条件允许时予以消除；(d) 及时通知另一方；(e) 避免对另一方的商业、经济和金融利益造成不必要的损害；以及 (f) 确保另一方受到与非一方同等的优待。

3. 本条款任何内容均不得被视为改变一方作为国际货币基金组织协定缔约方的权利和所承担的义务，即使该协定可能已作修订。

Article 69 审慎措施

1. 尽管本章有任何其他规定，一方因审慎理由采取与金融服务相关的措施，包括为保护投资者、存款人、保单持有人或由提供金融服务的企业提供信托责任的人所采取的措施，或为确保金融体系的完整性和稳定性而采取的措施，不应受到阻碍。

2. 如果此类措施不符合本章的规定，则不得将其用作规避本章下承诺或义务的手段。

注意：根据本条款，'金融服务'在本条款中的含义与GATS金融服务附录第5(a)项分款中的含义相同。

Article 70 拒绝利益

1. 一方可拒绝给予另一方投资者（该投资者为另一方的企业）及其投资的此章节的益处，前提是拒绝方证明该企业为非一方投资者的所有或控制，且拒绝方：

- (a) 与非一方不保持外交关系；或

- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its investments, where the denying Party establishes that the enterprise is owned or controlled by an investor of a non-Party and the enterprise has no substantial business activities in the Area of the other Party.

Article 71 Environmental Measures

Each Party recognises that it is inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion of investments in its Area.

Article 72 Sub-Committee on Investment

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as "Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

- (a) exchanging information on any matters related to this Chapter;
- (b) reviewing the implementation and operation of this Chapter;
- (c) discussing any issues related to this Chapter;
- (d) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and
- (e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.

- (b) 对非一方采取或维持禁止与该企业进行交易的措施，或若给予该企业或其投资本章的利益，则该措施将被违反或规避。

2. 经事先通知和磋商，一方可否认本章节给予另一方投资者（该投资者为另一方的企业）及其投资的利益，前提是拒绝方证明该企业为非一方投资者的所有或控制，且该企业在另一方的区域内没有实质性的业务活动。

第71条 环境措施

每一方承认，通过放宽其环境措施来鼓励另一方的投资者进行投资是不适当的。为此，每一方均不应放弃或以其他方式损害此类环境措施，作为鼓励在其区域内设立、收购或扩张投资的一种激励。

第72条 投资分委员会

1. 为有效实施和运营本章节，应在本协议生效日期设立投资分委员会（以下简称本条中称“分委员会”）。

2. 分委员会的职能如下：

- (a) 交流与本章相关的任何事项的信息；(b) 审查本章的实施和运营；(c) 讨论与本章相关的任何问题；(d) 向联合委员会报告分委员会的调查结果和讨论结果；以及(e) 根据第11条，执行联合委员会可能委托的其他职能。

3. The Sub-Committee shall be:
 - (a) composed of representatives of the Governments of the Parties; and
 - (b) co-chaired by officials of the Governments of the Parties.
4. The Sub-Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed.
5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

Chapter 6
Trade in Services

Article 73
Scope

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. This Chapter shall not apply to:
 - (a) in respect of air transport services, measures affecting traffic rights, however granted or services directly related to the exercise of traffic rights except measures affecting:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system (CRS) services;
 - (b) laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;
 - (c) cabotage in maritime transport services;
 - (d) measures affecting natural persons of a Party seeking access to the employment market of the other Party, or measures regarding nationality, or residence or employment on a permanent basis; and

3. 分委员会应:
 - (a) 由各方的政府代表组成; 以及 (b) 由各方的政府官员共同主持。

4. 分委员会可以邀请除各方的政府以外的、具有与将要讨论的问题相关的必要专业知识的有关实体代表。

5. 分委员会应在各方同意的地点和时间举行会议。

第6章 服务贸易 条
款73 范围

1. 本章适用于一方影响服务贸易的措施。
2. 本章不适用于:
 - (a) 就航空运输服务而言, 影响运输权的措施, 无论其授予方式如何, 或与行使运输权直接相关的服务, 但影响以下措施除外: (i) 飞机维修保养服务; (ii) 航空运输服务的销售和营销; 以及 (iii) 计算机预订系统 (CRS) 服务;
 - (b) 政府机构为政府目的采购服务, 且并非旨在商业转售或旨在为商业销售提供服务的服务的法律、法规或要求;
 - (c) 海上运输服务中的沿海航运;
 - (d) 影响一方寻求进入另一方就业市场的自然人的措施, 或关于国籍、居住或永久性就业的措施; 以及