

CHAPTER ELEVEN
INVESTMENT

Section A: Investment

ARTICLE 11.1: SCOPE AND COVERAGE

1. This Chapter applies to measures adopted or maintained by a Party relating to:
- (a) investors of the other Party;
 - (b) covered investments; and
 - (c) with respect to Articles 11.8 and 11.10, all investments in the territory of the Party.
2. For greater certainty, this Chapter does 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.
3. For purposes of this Chapter, **measures adopted or maintained by a Party** means measures adopted or maintained by:
- (a) central, regional, or local governments and authorities; and
 - (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.

ARTICLE 11.2: RELATION TO OTHER CHAPTERS

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Thirteen (Financial Services).

第十一章 投资

A节：投资

第11.1条：范围和覆盖范围

1. 本章适用于缔约方采取或维持的与以下方面相关的措施：
- (a) 另一方的投资者；(b) 涵盖投资；以及(c) 就第11.8条和第11.10条而言，缔约方领土内的所有投资。
2. 为更大的确定性，本章对任何在本协议生效日期之前发生的行为或事实或已不存在的情况，均不对任何缔约方产生约束力。
3. 就本章而言，缔约方采取或维持的措施指由以下主体采取或维持的措施：
- (a) 中央、地区或地方政府和当局；及 (b) 非政府机构在行使中央、地区或地方政府或当局授予的权力时采取的措施。

第11.2条：与其他章节的关系

1. 若本章与其他章节存在任何不一致，以其他章节的规定为准，不一致部分除外。
2. 缔约方要求另一方服务供应商以保证金或其他形式财务担保作为跨境供应服务的条件，其本身并不使本章适用于该缔约方采取或维持的与该项服务跨境供应相关的措施。本章适用于缔约方采取或维持的与所提交保证金或财务担保相关的措施，但以该保证金或财务担保属于涵盖投资为限。
3. 本章不适用于缔约方采取或维持的措施，只要这些措施属于第十三章（金融服务）的范畴。

ARTICLE 11.3: NATIONAL TREATMENT¹

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

ARTICLE 11.4: MOST-FAVORED-NATION TREATMENT

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, such as those included in Section B.

ARTICLE 11.5: MINIMUM STANDARD OF TREATMENT²

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered

¹ For greater certainty, whether treatment is accorded in “like circumstances” under Article 11.3 or Article 11.4 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

² Article 11.5 shall be interpreted in accordance with Annex 11-A.

第11.3条：国民待遇¹

1. 每一方应给予另一方投资者在设立、收购、扩展、管理、经营、运营及出售或其他处置其领土内投资方面，在类似情况下不低于其给予本国投资者的待遇。
2. 每一方应给予涵盖投资在设立、收购、扩展、管理、经营、运营及出售或其他处置投资方面，在类似情况下不低于其给予本国投资者在其领土内投资的待遇。
3. 一方根据第1款和第2款给予的待遇，对于地区政府层级而言，是指在类似情况下不低于该地区政府层级给予其所属缔约方投资者及投资者投资的最优惠待遇。

第11.4条：最惠国待遇

1. 每一方应给予另一方投资者在设立、收购、扩展、管理、经营、运营及出售或其他处置其领土内投资方面，在类似情况下不低于其给予任何非缔约方投资者的待遇。
2. 每一方在投资的设立、收购、扩展、管理、经营、运营及出售或其他处置方面，应给予涵盖投资的待遇，不低于在类似情况下其给予任何非缔约方投资者在其领土内投资的待遇。
3. 为明确起见，本条所指的待遇不包括国际争端解决程序或机制，例如B节中所包含的那些程序或机制。

第11.5条：最低待遇标准²

1. 每一方应按照习惯国际法，包括公平公正待遇和充分保护与安全，给予涵盖投资待遇。
2. 为求更大的确定性，第1款规定了外国人待遇的习惯国际法最低标准作为应给予涵盖投资的最低待遇标准。

¹ 为明确起见，是否根据第11.3条在“类似情况”下给予待遇，或第11.4条取决于整体情况，包括相关待遇是否基于合法的公共福利目标对投资者或投资进行区分。

² 第11.5条应按照附件11-A进行解释。

investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

- (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
- (b) “full protection and security” requires each Party to provide the level of police protection required under customary international law.

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

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

5. Notwithstanding Article 11.12.5(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to war or other armed conflict, or revolt, insurrection, riot, or other civil strife.

6. Notwithstanding paragraph 5, if an investor of a Party, in the situations referred to in paragraph 5, suffers a loss in the territory of the other Party resulting from:

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

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with paragraphs 2 through 4 of Article 11.6, *mutatis mutandis*.

7. Paragraph 5 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 11.3 but for Article 11.12.5(b).

ARTICLE 11.6: EXPROPRIATION AND COMPENSATION³

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

³ Article 11.6 shall be interpreted in accordance with Annexes 11-A and 11-B.

“公平公正待遇”和“充分保护与安全”的概念并不要求超出该标准所要求的待遇，也不创设额外的实质性权利。第1款中规定的义务包括：

- (a) “公平公正待遇”包括根据世界主要法律体系所体现的正当程序原则，在刑事、民事或行政裁决程序中不拒绝司法的义务；以及
- (b) “充分保护与安全”要求每一方提供习惯国际法所要求的警察保护水平。

3. 判定违反本协议其他条款或另一国际协议的行为，并不构成对本条的违反。

4. 为获得更大的确定性，缔约方采取或不采取可能与投资者预期不一致的行动这一单纯事实，即使因此导致涵盖投资遭受损失或损害，也不构成对本条的违反。

5. 尽管有第11.12.5(b)条的规定，每一缔约方对于其领土内因战争或其他武装冲突，或叛乱、暴动、骚乱或其他内乱而遭受损失的投资者，应给予另一方投资者及涵盖投资非歧视性待遇。

6. 尽管有第5款规定，如果一缔约方投资者在第5款所述情况下，在另一缔约方领土内因以下原因遭受损失：

- (a) 其涵盖投资或部分投资被后者的军队或当局征用；或
- (b) 其涵盖投资或部分投资被后者的军队或当局破坏，且该破坏并非情势所必需，

则后者缔约方应就该损失向投资者提供恢复原状、补偿或两者兼有，视情况而定。任何补偿应按照第11.6条第2至4款的规定，经必要修改后，做到迅速、充分和有效。

7. 第5款不适用于与补贴或赠款有关的现有措施，这些措施若非第11.12.5(b)条的规定则与第11.3条不一致。

ARTICLE 11.6： EXPROPRIATION 与COMPENSATION³

1. 任何缔约方均不得直接或通过等同于征收或国有化的措施（征收）间接征收或国有化涵盖投资，除非：

³ 第11.6条应按照附件11-A和11-B进行解释。

- (a) for a public purpose;
 - (b) in a non-discriminatory manner;
 - (c) on payment of prompt, adequate, and effective compensation; and
 - (d) in accordance with due process of law and Article 11.5.1 through 11.5.4.
2. The compensation referred to in paragraph 1(c) shall:
- (a) be paid without delay;
 - (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);
 - (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
 - (d) be fully realizable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:
- (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
 - (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Eighteen (Intellectual Property Rights).

ARTICLE 11.7: TRANSFERS⁴

⁴ For greater certainty, Annex 11-G applies to this Article.

- (a) 出于公共目的；(b) 以非歧视性方式；(c) 支付及时、充分和有效的补偿；以及(d) 依照法律正当程序和第11.5.1条至第11.5.4条。
2. 第1款(c)项所指的补偿应：
- (a) 毫不延迟地支付；(b) 等同于征收发生时（征收日期）被征收投资的公平市场价值；(c) 不反映因征收意图提前公开而导致的任何价值变化；且(d) 可完全实现并自由转让。
3. 若公平市场价值以自由使用货币计价，则第1款(c)项所指补偿不得低于征收日期的公平市场价值，外加自征收日期至支付日按该货币商业合理利率计算的利息。
4. 若公平市场价值以非自由使用货币计价，则第1款(c)项所指补偿——按支付日通行市场汇率折算为支付货币后——不得低于：
- (a) 征收当日的公平市场价值，按当日通行的市场汇率换算为自由使用货币，加上
 - (b) 自征收之日起至支付日止按该自由使用货币的商业合理利率计算的利息。
5. 本条不适用于根据TRIPS协议对知识产权颁发的强制许可，也不适用于知识产权的撤销、限制或创设，只要此类颁发、撤销、限制或创设与第十八章（知识产权）保持一致。

第十一章 投资ARTICLE 11.7: TRANSFERS⁴

⁴ 为提供更大的确定性，附件11-G适用于本条。

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

- (a) contributions to capital, including the initial contribution;
- (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- (c) interest, royalty payments, management fees, and technical assistance and other fees;
- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Article 11.5.5 and 11.5.6 and Article 11.6; and
- (f) payments arising out of a dispute.

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

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

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

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offenses;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

ARTICLE 11.8: PERFORMANCE REQUIREMENTS

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an

1. 每一方应允许所有与涵盖投资相关的转移自由且无延迟地进出其领土。此类转移包括：

- (a) 资本出资，包括初始出资；(b) 利润、股息、资本收益，以及出售涵盖投资全部或部分所得或涵盖投资部分或完全清算所得；(c) 利息、特许权使用费、管理费、技术援助费及其他费用；(d) 合同项下的付款，包括贷款协议；(e) 根据第11.5.5条、第11.5.6条及第11.6条作出的付款；以及(f) 争议产生的付款。

2. 每一方应允许以自由使用货币按转移时的市场汇率进行与涵盖投资相关的转移。

3. 每一方应允许按照该缔约方与涵盖投资或另一方投资者之间的书面协议授权或规定的方式，进行与涵盖投资相关的实物回报。

4. 尽管有第1款至第3款的规定，缔约方可公平、非歧视且善意地适用以下相关法律以阻止转移：

- (a) 破产、资不抵债或债权人权利保护；(b) 证券、期货、期权或衍生品的发行、交易或买卖；(c) 刑事或刑事犯罪；(d) 为协助执法或金融监管机构而必要的转移财务报告或记录保存；或(e) 确保司法或行政程序中命令或判决的遵守。

ARTICLE 11.8： PERFORMANCE REQUIREMENTS

1. 任何缔约方不得在其领土内就缔约方投资者或非缔约方投资者的投资设立、收购、扩展、管理、经营、运营或出售或其他处置方面，施加或强制执行任何要求或强制执行任何承诺或保证：{v1}

investor of a Party or of a non-Party, impose or enforce any requirement or enforce any commitment or undertaking:⁵

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or
- (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
- (d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

⁵ For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “commitment or undertaking” for purposes of paragraph 1.

缔约方投资者或非缔约方投资者，施加或强制执行任何要求，或强制执行任何承诺或保证：⁵

- (a) 出口特定水平或比例的商品或服务；(b) 达到特定水平或比例的国内含量；(c) 购买、使用或给予其领土内生产的商品优惠，或从其领土内人员处购买商品；(d) 以任何方式将进口量或价值与出口量或价值或与该投资相关的外汇流入量挂钩；(e) 通过以任何方式将其出口量或价值或外汇收入与销售挂钩，限制该投资在其领土内生产或供应的商品或服务的销售；(f) 向其领土内的个人转让特定技术、生产过程或其他专有知识；或(g) 将该投资生产的商品或供应的服务专门从缔约方领土供应给特定区域市场或世界市场。

2. 任何缔约方均不得以遵守任何要求为条件，将给予或继续给予缔约方或非缔约方投资者在其领土内设立、收购、扩展、管理、经营、运营或出售或其他处置投资的优惠与之挂钩。

- (a) 以达到特定的国内含量水平或比例；(b) 购买、使用或优先考虑其领土内生产的货物，或从其领土内人员处购买货物；(c) 以任何方式将进口量或价值与出口量或价值挂钩，或与该投资相关的外汇流入金额挂钩；或(d) 通过以任何方式将此类销售与其出口量或价值或外汇收入挂钩，限制该投资在其领土内生产或供应的商品或服务的销售。

⁵ 为获得更大的确定性，第2款所指优势的获取或持续获取条件不构成第1款目的下的“承诺或保证”。

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.⁶
- (b) Paragraph 1(f) does not apply:
- (i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or
- (ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party’s competition laws.⁷
- (c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:
- (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;
- (ii) necessary to protect human, animal, or plant life or health; or
- (iii) related to the conservation of living or non-living exhaustible natural resources.
- (d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

⁶ For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory, provided that such activity is consistent with paragraph 1(f).

⁷ The Parties recognize that a patent does not necessarily confer market power.

3. (a) 不得将第2款解释为阻止缔约方将获得或继续获得优惠的条件与以下要求挂钩：缔约方或非缔约方投资者在其领土内的投资需遵守在其领土内进行生产布局、提供服务、培训或雇佣工人、建造或扩建特定设施，或开展研发的要求。⁶

(b) 第1款(f)项不适用于：

- (i) 当一缔约方根据TRIPS协议第31条授权使用知识产权，或要求披露符合TRIPS协议第39条范围且与其一致的专有信息的措施时；或
- (ii) 当要求被施加或承诺或保证被由法院、行政法庭或竞争管理机构强制执行，以纠正经司法或行政程序裁定为违反缔约方竞争法的反竞争行为。⁷

(c) 只要此类措施不以任意或不合理的方式实施，且不构成对国际贸易或投资的变相限制，则第1款(b)项、(c)项和(f)项及第2款(a)项和(b)项不得解释为阻止缔约方采取或维持包括环境措施在内的措施：

- (i) 为确保遵守与本协议不相抵触的法律法规所必需；(ii) 为保护人类、动物或植物的生命或健康所必需；或(iii) 与保护可耗尽的生物或非生物自然资源相关。

(d) 第1款(a)、(b)和(c)项以及第2款(a)和(b)项不适用于与出口促进和外援计划有关的商品或服务的资格要求。

⁶ 为获得更大的确定性，不得将第1款任何内容解释为阻止缔约方在其领土内，就缔约方或非缔约方投资者的投资的设立、收购、扩展、管理、经营、运营或出售或其他处置，施加或执行要求，或执行承诺或保证，以在当地进行生产、提供服务、培训或雇佣工人、建造或扩展特定设施，或开展研发活动，前提是该等活动符合第1款(f)项的规定。

⁷ 缔约方认识到，专利并不必然赋予市场力量。

- (e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to government procurement.
- (f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

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

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

ARTICLE 11.9: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

ARTICLE 11.10: INVESTMENT AND ENVIRONMENT

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

ARTICLE 11.11: 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 such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:
 - (a) does not maintain normal economic relations with the non-Party; or
 - (b) 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

(e) 第1款(b)、(c)、(f)和(g)项以及第2款(a)和(b)项不适用于政府采购。(f) 第2款(a)和(b)项不适用于进口缔约方为获得优惠关税而对货物含量施加的要求

优惠配额。

4. 为获得更大的确定性，第1款和第2款不适用于除该两款所列之外的任何承诺、保证或要求。

5. 本条不妨碍私人团体之间对任何承诺、保证或要求的执行，前提是该承诺、保证或要求并非由缔约方强制或要求作出。就本条而言，私人团体包括指定垄断企业或国有企业，但这些实体不得行使授予的政府权力。

第十一条九款：高级管理职位与董事会

1. 任一缔约方均不得要求作为涵盖投资的该缔约方企业任命具有任何特定国籍的自然人担任高级管理职位。
2. 缔约方可要求作为涵盖投资的该缔约方企业的董事会或其任何委员会的多数成员具有特定国籍，或居住在该缔约方领土内，但该要求不得实质损害投资者对其投资行使控制的能力。

第十一条十款：投资与环境

本章的任何规定不得解释为阻止缔约方采取、维持或执行其认为适当的、符合本章规定的其他措施，以确保其领土内的投资活动以对环境问题敏感的方式进行。

第十一条：利益的拒绝

1. 缔约方可拒绝将本章的利益授予作为另一方企业的另一方投资者及其投资，如果非缔约方人员拥有或控制该企业且拒绝方：
 - (a) 未与非缔约方保持正常经济关系；或 (b) 针对非缔约方或非缔约方的个人采取或维持禁止与该企业交易的措施，或若本章的权益授予该企业或其投资则会被违反或

circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise. If, before denying the benefits of this Chapter, the denying Party knows that the enterprise has no substantial business activities in the territory of the other Party and that persons of a non-Party, or of the denying Party, own or control the enterprise, the denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the other Party’s request.

ARTICLE 11.12: NON-CONFORMING MEASURES

1. Articles 11.3, 11.4, 11.8, and 11.9 do not apply to:
- (a) any existing non-conforming measure that is maintained by a Party at

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

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I,⁸ or

(iii) a local level of government;⁹

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 11.3, 11.4, 11.8, or 11.9.
2. Articles 11.3, 11.4, 11.8, and 11.9 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.
3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

⁸ For greater certainty, Annex 12-C (Consultations Regarding Non-Conforming Measures Maintained by a Regional Level of Government) is incorporated into and made part of this Chapter.

⁹ For Korea, **local level of government** means a local government as defined in the *Local Autonomy Act*.

如果本章的优惠被授予该企业或其投资，则规避行为将得以实现。

2. 缔约方可拒绝将本章利益授予作为另一方企业的该另一方投资者及其投资，若该企业在另一方领土内无实质性商业活动，且该企业由非缔约方人员或拒绝方人员所有或控制。若拒绝方在拒绝授予本章利益前已知悉该企业在另一方领土内无实质性商业活动且由非缔约方人员或拒绝方人员所有或控制，则拒绝方应在可行范围内事先通知另一方。若拒绝方发出此类通知，则应另一方请求与其进行协商。

第11.12条：不符措施

1. 第11.3条、第11.4条、第11.8条和第11.9条不适用于：
- (a) 缔约方在以下层级维持的现有不符措施：(i) 中央政府层级（列于该缔约方附件一清单中），(ii) 地区政府层级（列于该缔约方附件一清单中），⁸ 或(iii) 地方政府层级；⁹(b) 对(a)项所述不符措施的延续或及时更新；或(c) 对(a)项所述不符措施的修正，只要该修正未降低措施在修正前与第11.3条、第11.4条、第11.8条或第11.9条的一致性。
2. 第11.3条、第11.4条、第11.8条和第11.9条不适用于缔约方就其附件二清单中列明的部门、分部门或活动所采取或维持的任何措施。
3. 任何一方不得根据本协议生效日期后采取且涵盖于其附件二清单中的任何措施，以另一方投资者国籍为由，要求其出售或以其他方式处置该措施生效时已存在的投资。

⁸ 为提供更大的确定性，附件12-C（关于地区政府层级维持的不符措施的协商）已纳入本章并构成本章的一部分。

⁹ 对韩国而言，地方政府层级指《地方自治法》定义的地方政府。

4. Articles 11.3 and 11.4 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 18.1.6 (General Provisions) as specifically provided in that Article.
5. Articles 11.3, 11.4, and 11.9 do not apply to:
- (a) government procurement; or
 - (b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

ARTICLE 11.13: SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

1. Nothing in Article 11.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.
2. Notwithstanding Articles 11.3 and 11.4, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

ARTICLE 11.14: SUBROGATION

1. If the Korea Export Insurance Corporation or the Overseas Private Investment Corporation makes a payment to an investor of the Party in which the respective Corporation is established under a guarantee or a contract of insurance it has entered into in respect of an investment, the Corporation shall be considered the subrogee of the investor and shall be entitled to the same rights that the investor would have possessed under this Chapter but for the subrogation, and the investor shall be precluded from pursuing such rights to the extent of the subrogation.
2. For greater certainty, nothing in this Article shall be construed to be incompatible with the rights and obligations of any Party under the *Investment Incentive Agreement Between the Government of the United States of America and the Government of the Republic of Korea* (July 30, 1998).

Section B: Investor-State Dispute Settlement

4. 第11.3条和第11.4条不适用于任何作为第18.1.6条（一般规定）义务例外或减损的措施，但该条另有具体规定的除外。
5. 第11.3条、第11.4条和第11.9条不适用于：
- (a) 政府采购；或 (b) 缔约方提供的补贴或赠款，包括政府支持的贷款、担保和保险。

第11.13条：特殊手续和信息要求

1. 不得将第11.3条的任何规定解释为阻止缔约方采取或维持与涵盖投资相关的特殊手续措施，例如要求涵盖投资根据其法律法规合法设立，但此类手续不得实质性损害缔约方根据本章给予另一方投资者及涵盖投资的保护。
2. 尽管有第11.3条和第11.4条的规定，缔约方可要求另一方投资者或其涵盖投资提供与该投资相关的信息，仅用于信息或统计目的。缔约方应保护任何机密商业信息免遭披露，以免损害投资者或涵盖投资的竞争地位。本款任何规定不得解释为阻止缔约方以其他方式获取或披露信息，以公平和善意适用其法律。

第11.14条：代位求偿

1. 如果韩国出口保险公司或海外私人投资公司根据其就一项投资所签署的担保或保险合同向该缔约方的投资者支付款项，则该机构应被视为该投资者的代位求偿人，并有权享有投资者在本章项下若无代位求偿本应享有的相同权利，且投资者在代位求偿范围内不得再主张此类权利。
2. 为获得更大的确定性，本条规定不得解释为与任何缔约方根据《美利坚合众国政府与大韩民国政府之间的投资激励协议》（1998年7月30日）所享有的权利和承担的义务相抵触。

B部分：投资者-国家争端解决

ARTICLE 11.15: CONSULTATION AND NEGOTIATION

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

ARTICLE 11.16: SUBMISSION OF A CLAIM TO ARBITRATION

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

- (a)

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

(i)

that the respondent has breached

(A)

an obligation under Section A,

(B)

an investment authorization, or

(C)

an investment agreement;

and

(ii)

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

(b)

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

(i)

that the respondent has breached

(A)

an obligation under Section A,

(B)

an investment authorization, or

(C)

an investment agreement;

and

(ii)

that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages

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第11.15条：磋商与谈判

如发生投资争端，申请人与被申请人应首先寻求通过磋商与谈判解决争议，其中可包括使用非约束性第三方程序。

第11.16条：提交仲裁申请

1. 如争议方认为投资争端无法通过磋商与谈判解决：

(a)

申请人可代表自身依据本节规定提交仲裁申请，主张：

(i)

被申请人违反(A) A节规定的义务、(B) 投资授权或(C) 投资协议；且(ii) 申请人因该违约行为遭受损失或损害，

且该违约行为；及

(b)

申请人可代表被申请人的企业（该企业为申请人直接或间接拥有或控制的法人），根据本节规定就以下事项提交仲裁索赔

(i)

被申请人违反

(A)

A节规定的义务、

(B)

投资授权、或

(C)

投资协议；

and

(ii)

且该企业因该违约行为遭受损失或损害

前提是申请人仅可根据(a)(i)(C)或(b)(i)(C)项提交关于投资协议违约的索赔，且索赔标的与所主张的损害赔偿

11月
11日

directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

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

- (a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;
- (b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;
- (c) the legal and factual basis for each claim; and
- (d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

- (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; or
- (d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.

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

- (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 with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or

直接关联于依据相关投资协议已设立或收购、或试图设立或收购的涵盖投资。

2. 在根据本节提交任何仲裁索赔前至少90天， 申请人应向被申请人送达其拟提交仲裁索赔的书面意向通知。该通知应具体说明：

- (a) 申请人的名称和地址， 以及当索赔代表企业提出时， 该企业的名称、 地址和注册地； (b) 对于每项索赔， 指称被违反的本协议条款、 投资授权或投资协议， 以及其他相关条款； (c) 每项索赔的法律和事实依据； 以及 (d) 寻求的救济和索赔的大致损害赔偿金额。

3. 只要自引发索赔的事件发生之日起已过去六个月， 申请人即可提交第1款所述的索赔：

- (a) 根据ICSID公约和ICSID仲裁程序规则， 前提是被申请人和非争议方均为ICSID公约缔约方； (b) 根据ICSID附加便利规则， 前提是被申请人或非争议方中有一方是ICSID公约缔约方； (c) 根据UNCITRAL仲裁规则； 或 (d) 如果申请人和被申请人同意， 提交至任何其他仲裁机构或根据任何其他仲裁规则。

4. 当申请人提交仲裁通知或仲裁请求（仲裁通知）时， 索赔应视为已根据本节提交仲裁：

- (a) ICSID公约第36条第1款所述的请求已由秘书长收到； (b) ICSID附加便利规则附录C第2条所述的请求已由秘书长收到； (c) UNCITRAL仲裁规则第3条所述的请求， 连同UNCITRAL仲裁规则第18条所述的索赔声明， 已由被申请人收到； 或

(d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

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

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

- (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.

ARTICLE 11.17: CONSENT OF EACH PARTY TO ARBITRATION

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

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

- (a) Chapter II (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
- (b) Article II of the New York Convention for an “agreement in writing.”

ARTICLE 11.18: CONDITIONS AND LIMITATIONS ON CONSENT OF EACH PARTY

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 11.16.1 and knowledge that the claimant (for claims brought under Article 11.16.1(a)) or the enterprise (for claims brought under Article 11.16.1(b)) has incurred loss or damage.

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

- (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
- (b) the notice of arbitration is accompanied,

(d) 根据第3(d)款选定的任何仲裁机构或仲裁规则所述的请求已由被申请人收到。

申请人于提交该仲裁通知后首次提出的索赔，应视为根据适用的仲裁规则于收到之日提交本节项下的仲裁。

5. 根据第3款适用且于索赔或多项索赔根据本节提交仲裁之日有效的仲裁规则，应管辖该仲裁，但以本协议修改部分为限。

6. 申请人应随仲裁通知提供：

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

第11.17条：每一方对仲裁的同意

1. 每一方同意根据本协议按照本节规定提交仲裁申请。

2. 第1款所述的同意及根据本节提交仲裁申请应满足以下要求：

- (a) ICSID公约第二章（中心的管辖权）和ICSID附加便利规则关于争议各方书面同意的要求；及(b) 纽约公约第二条关于“书面协议”的要求。

第11.18条：每一方同意的条件与限制

1. 若自申请人首次获悉或本应首次获悉第11.16.1条所指称的违约行为及知悉申请人（针对依据第11.16.1(a)条提出的索赔）或企业（针对依据第11.16.1(b)条提出的索赔）已遭受损失或损害之日起已逾三年，则不得根据本节提交仲裁申请。

2. 除非满足以下条件，否则不得根据本节规定提交仲裁索赔：

- (a) 申请人书面同意根据本协议规定的程序进行仲裁；以及(b) 仲裁通知须附有，

- (i) for claims submitted to arbitration under Article 11.16.1(a), by the claimant’s written waiver, and
- (ii) for claims submitted to arbitration under Article 11.16.1(b), by the claimant’s and the enterprise’s written waivers

of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 11.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 11.16.1(a)) and the claimant or the enterprise (for claims brought under Article 11.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant’s or the enterprise’s rights and interests during the pendency of the arbitration.

- 4. (a) An investor of a Party may not initiate or continue a claim under this Section if a claim involving the same measure or measures alleged to constitute a breach under Article 11.16 and arising from the same events or circumstances is initiated or continued pursuant to an agreement between the respondent and a non-Party by:
 - (i) a person of a non-Party that owns or controls, directly or indirectly, the investor of a Party; or
 - (ii) a person of a non-Party that is owned or controlled, directly or indirectly, by the investor of a Party.
- (b) Notwithstanding subparagraph (a), the claim may proceed if the respondent agrees that the claim may proceed, or if the investor of a Party and the person of a non-Party agree to consolidate the claims under the respective agreements before a tribunal constituted under this Section.

ARTICLE 11.19: SELECTION OF ARBITRATORS

- 1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
- 2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
- 3. If a tribunal has not been constituted within 75 days of the date a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall

- (i) 对于根据第11.16.1(a)条提交仲裁的索赔，需附申请人的书面弃权声明；及(ii) 对于根据第11.16.1(b)条提交仲裁的索赔，需附申请人和企业的书面弃权声明

放弃在任何行政法庭或任一缔约方法律下的法院，或其他争端解决程序中，就任何被指称构成第11.16条所述违约的措施提起或继续任何诉讼程序的任何权利。

3. 尽管有第2(b)款的规定，申请人（对于根据第11.16.1(a)条提起的索赔）以及申请人或企业（对于根据第11.16.1(b)条提起的索赔）可以在被申请人的司法或行政法庭提起或继续一项仅寻求临时禁令救济且不涉及金钱损害赔偿的诉讼，前提是该诉讼的唯一目的是在仲裁期间保全申请人或企业的权利和利益。

- 4. (a) 缔约方投资者不得根据本节提起或继续索赔，如果涉及被指称构成第11.16条违约的相同措施或多项措施，并源于相同事件或情况的索赔，已根据被申请人与非缔约方之间的协议由以下方式提起或继续：
 - (i) 拥有或控制（直接或间接）缔约方投资者的非缔约方个人；或(ii) 被缔约方投资者拥有或控制（直接或间接）的非缔约方个人。(b) 尽管有(a)项规定，若被申请人同意索赔继续进行，或缔约方投资者与非缔约方个人同意根据各自协议在本节设立的仲裁庭合并索赔，则索赔可继续进行。

第十一章 投资ARTICLE 11.19: SELECTION 的ARBITRATORS

- 1. 除非争议各方另有约定，仲裁庭应由三名仲裁员组成，争议各方各指定一名仲裁员，第三名仲裁员（即首席仲裁员）由争议各方协商指定。
- 2. 秘书长应担任本节下仲裁的指定机构。
- 3. 若根据本节提交仲裁的索赔之日起75天内仲裁庭尚未组成，秘书长应争议方的请求，应

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.

4. 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 11.16.1(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 11.16.1(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 11.20: CONDUCT OF THE ARBITRATION

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 11.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. At the request of a disputing party, and unless the disputing parties otherwise agree, the tribunal may determine the place of meetings, including consultations and hearings, taking into consideration appropriate factors, including the convenience of the parties and the arbitrators, the location of the subject matter, and the proximity of evidence. The preceding sentence is without prejudice to any appropriate factors a tribunal may consider under paragraph 1.

3. Unless the disputing parties otherwise agree, English and Korean shall be the official languages to be used in the entire arbitration proceedings, including all hearings, submissions, decisions, and awards.

4. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement. On the request of a disputing party, the non-disputing Party should resubmit its oral submission in writing.

5. After consulting the disputing parties, the tribunal may allow a party or entity that is not a disputing party to file a written *amicus curiae* submission with the tribunal regarding a matter

酌情任命尚未任命的仲裁员。除非争议各方另有约定，秘书长不得任命任一缔约方的国民担任首席仲裁员。

4. 就《ICSID公约》第39条和《ICSID附加便利规则》附录C第7条而言，且在不影响基于国籍以外理由对仲裁员提出异议的情况下：

- (a) 被申请人同意任命根据《ICSID公约》或《ICSID附加便利规则》设立的仲裁庭的每一位成员；(b) 第11.16.1(a)条所指的申请人只有在同意以书面形式任命仲裁庭每一位成员的情况下，方可根据本节提交仲裁索赔或根据《ICSID公约》或《ICSID附加便利规则》继续索赔；以及(c) 第11.16.1(b)条所指的申请人只有在申请人和企业均同意以书面形式任命仲裁庭每一位成员的情况下，方可根据本节提交仲裁索赔或根据《ICSID公约》或《ICSID附加便利规则》继续索赔。

第11.20条：仲裁的进行

1. 争议各方可依据第11.16.3条适用的仲裁规则，就任何仲裁的法律地点达成一致。若争议各方未能达成一致，仲裁庭应根据适用的仲裁规则裁定地点，但该地点须位于《纽约公约》缔约方的领土内。

2. 应争议方的请求，且除非争议各方另有约定，仲裁庭在考虑包括各方及仲裁员的便利性、标的物所在地和证据邻近性等适当因素后，可裁定会议地点（包括协商和听证会）。前款规定不影响仲裁庭根据第1款可能考虑的任何适当因素。

3. 除非争议各方另有约定，英语和韩语应作为整个仲裁程序（包括所有听证会、提交材料、决定和裁决）使用的官方语言。

4. 非争议方可就本协议的解释向仲裁庭提交口头和书面陈述。应争议方请求，非争议方应以书面形式重新提交其口头陈述。

5. 经与争议各方协商后，仲裁庭可允许非争议方的缔约方或实体就争议范围内的事项向仲裁庭提交法庭之友书面意见。

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.

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.

6. 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 favor of the claimant may be made under Article 11.26 or that a claim is manifestly without legal merit.

- (a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.
- (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
- (c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 11.26, the tribunal shall assume to be true claimant’s factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.
- (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 7.

在决定是否允许此类提交时，仲裁庭应特别考虑以下因素：

- (a) 法庭之友意见书将通过提供不同于争议各方的视角、特定知识或见解，协助仲裁庭确定与诉讼程序相关的事实或法律问题；(b) 法庭之友意见书将涉及争议范围内的事项；以及(c) 法庭之友对诉讼程序具有重大利益。

仲裁庭应确保法庭之友意见书不会扰乱诉讼程序，或对任何争议方造成不当负担或不公正损害，并确保争议各方有机会就法庭之友意见书提出意见。

6. 在不影响仲裁庭作为初步问题处理其他异议的权限下，仲裁庭应作为初步问题处理并裁决被申请人提出的以下异议：根据法律，所提交的索赔不属于可根据第11.26条作出有利于申请人裁决的索赔，或该索赔明显缺乏法律依据。

- (a) 该异议应于仲裁庭组成后尽快提交，且无论如何不得晚于仲裁庭为被申请人提交答辩状所确定的日期，或在仲裁通知修正的情况下，不得晚于仲裁庭为被申请人提交对修正的回应所确定的日期。(b) 仲裁庭收到本款规定的异议后，应中止任何实体程序，制定审议异议的时间表（该时间表应与审议其他初步问题的时间表一致），并就异议作出决定或裁决，说明理由。(c) 在根据本款审议关于所提交索赔不属于第11.26条规定的可作出有利于申请人裁决之索赔的异议时，仲裁庭应推定申请人在仲裁通知（或其修正）中为支持索赔而提出的事实主张为真实；对于根据UNCITRAL仲裁规则提起的争议，还应推定该规则第18条所指索赔声明中的事实主张为真实。仲裁庭亦可考虑无争议的相关事实。(d) 被申请人不会仅因根据本款提出或未提出异议，或使用或不使用第7款规定的快速程序，而放弃对管辖权的任何异议或关于实体问题的任何论点。

7. In the event that the respondent so requests within 45 days of the date the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 6 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.

8. When it decides a respondent’s objection under paragraph 6 or 7, 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.

9. For greater certainty, if an investor of a Party submits a claim under Section B, including a claim alleging that a Party breached Article 11.5, the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.

10. A respondent may not assert as a defense, counterclaim, or right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract, except with respect to any subrogation as provided for in Article 11.14.

11. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal’s jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal’s jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 11.16. For purposes of this paragraph, an order includes a recommendation.

12. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Party. Within 60 days after the date the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the date the 60-day comment period expires.

(b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 13 or Annex 11-D.

7. 若被申请人在仲裁庭组成后45日内提出请求，仲裁庭应通过快速程序对第6款规定的异议及关于争议不属仲裁庭管辖权的异议作出裁决。仲裁庭应中止任何实体程序，并于请求提出后150日内就异议作出决定或裁决并说明理由。但若争议方要求举行听证会，仲裁庭可额外延长30日作出决定或裁决。无论是否要求听证会，仲裁庭在证明存在特殊原因的情况下，可再短暂延迟作出决定或裁决，延迟期不得超过30日。

8. 仲裁庭在根据第6款或第7款裁定被申请人的异议时，如认为适当，可裁决胜诉争议方因提出或反对该异议而产生的合理费用和律师费。在判定是否作出此类裁决时，仲裁庭应考虑申请人索赔或被申请人异议是否轻率，并应为争议各方提供合理机会发表意见。

9. 为提供更大的确定性，如缔约方投资者根据B节提出索赔，包括指控缔约方违反第11.5条的索赔，该投资者须按照适用于国际仲裁的国际法一般原则，对其索赔的所有要素承担举证责任。

10. 被申请人不得以申请人已获得或将根据保险或担保合同就全部或部分所指控损害获得赔偿或其他补偿为由提出抗辩、反诉或抵销权，或以任何其他理由提出主张，但第11.14条规定的代位求偿除外。

11. 仲裁庭可命令采取临时保护措施，以保全争议方的权利，或确保仲裁庭的管辖权得到充分有效行使，包括命令保全争议方占有或控制的证据，或保护仲裁庭的管辖权。仲裁庭不得命令扣押或禁止实施被指控构成第11.16条所指违约的措施。就本款而言，命令包括建议。

12. (a) 在本节项下进行的任何仲裁中，应争议方的请求，仲裁庭应在就责任问题作出决定或裁决前，将其拟议的决定或裁决发送给争议各方和非争议方。在仲裁庭发送其拟议的决定或裁决之日起60天内，争议各方可就其拟议的决定或裁决的任何方面向仲裁庭提交书面意见。仲裁庭应考虑此类意见，并在60天评论期届满之日起不超过45天内作出决定或裁决。

(b) 第(a)项不适用于根据本节进行的任何仲裁，前提是该仲裁已根据第13款或附件11-D规定提供了上诉机制。

13. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 11.26 in arbitrations commenced after the multilateral agreement enters into force between the Parties.

ARTICLE 11.21: TRANSPARENCY OF ARBITRAL PROCEEDINGS

1. Subject to paragraphs 2, 3, and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:
- (a) the notice of intent;
 - (b) the notice of arbitration;
 - (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 11.20.4 and 11.20.5 and Article 11.25;
 - (d) minutes or transcripts of hearings of the tribunal, where available; and
 - (e) orders, awards, and decisions of the tribunal.
2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.
3. 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 23.2 (Essential Security) or Article 23.4 (Disclosure of Information).
4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:
- (a) Subject to subparagraph (d), 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);

13. 若缔约方之间另行生效的多边协议设立了上诉机构，旨在审查根据国际贸易或投资安排设立的法庭就投资争端所作裁决，则缔约方应努力达成协议，使该上诉机构能够对第11.26条项下仲裁（自多边协议在缔约方间生效后启动者）所作裁决进行审查。

第11.21条：仲裁程序的透明度

1. 在遵守第2款、第3款和第4款的前提下，被申请人在收到下列文件后，应立即将其转交给非争议方并向公众公开：
- (a) 意向通知；(b) 仲裁通知；(c) 争议方向仲裁庭提交的诉状、备忘录和摘要，以及根据第11.20.4条、第11.20.5条和第11.25条提交的任何书面陈述；(d) 仲裁庭听证会的会议记录或笔录（如有）；以及(e) 仲裁庭的命令、裁决和决定。
2. 仲裁庭应举行对公众公开的听证会，并应与争议各方协商后裁定适当的后勤安排。但任何争议方如拟在听证会上使用被指定为受保护信息的信息，应就此通知仲裁庭。仲裁庭应作出适当安排以防止该信息被披露。
3. 本节任何规定均不要求被申请人披露受保护信息，或提供或允许获取其可根据第23.2条（基本安全）或第23.4条（信息披露）拒绝披露的信息。
4. 任何提交至仲裁庭的受保护信息均应按照下列程序予以保密，防止披露：
- (a) 在遵守(d)项的前提下，争议各方或仲裁庭均不得向非争议方或公众披露任何受保护信息，前提是提供该信息的争议方已根据(b)项明确予以标注；

- (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, at the time 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 shall be provided to the non-disputing Party and made public in accordance with paragraph 1;
- (d) The tribunal shall decide any objection by a disputing party regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal’s determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information; and
- (e) At the request of a disputing Party, the Joint Committee shall consider issuing a decision in writing regarding a determination by the tribunal that information claimed to be protected was not properly designated. If the Joint Committee issues a decision within 60 days of such a request, it shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Committee does not issue a decision within 60 days, the tribunal’s determination shall remain in effect only if the non-disputing Party submits a written statement to the Joint Committee within that period that it agrees with the tribunal’s determination.

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

ARTICLE 11.22: GOVERNING LAW

- 1. Subject to paragraph 3, when a claim is submitted under Article 11.16.1(a)(i)(A) or Article 11.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
- 2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 11.16.1(a)(i)(B) or (C), or Article 11.16.1(b)(i)(B) or (C), the tribunal shall apply:
 - (a) the rules of law specified in the pertinent investment authorization or investment

- (b) 任何主张特定信息构成受保护的争议方信息应在提交至仲裁庭时明确标注其性质；
- (c) 争议方在提交包含声称属于受保护信息的文件时，应同时提交不包含该信息的文件删节版本。仅删节版本应按第1款规定提供给非争议方并予以公开；
- (d) 仲裁庭应就争议方提出的任何异议作出裁决对声称属于受保护信息的资料进行指定。若仲裁庭裁定该资料未被适当指定，提交该资料的争议方可：（i）撤回包含该资料的呈件之全部或部分内 容；或（ii）同意根据仲裁庭的裁定及（c）项之规定，重新提交经完整修 订并修正指定标识的文件。无论采用何种方式，另一争议方均应在必要时 重新提交完整修订的文件：若前一争议方依据（i）项撤回资料，则删除被 撤回信息；若前一争议方依据（ii）项重新指定资料，则同步更新信息标识。
- (e) 应争议方的请求，联合委员会应考虑发布一项仲裁庭认定某项声称受保护的信息未被适当指定的书面决定。若联合委员 会在此类请求提出后60天内作出决定，则该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决定保持一致。若联合委员会未在60 天内作出决定，则仅当非争议方在该期限内向联合委员会提交书面声明表 示同意仲裁庭的认定时，仲裁庭的认定方可继续有效。

5. 本节任何规定均不要求被申请人向公众隐瞒其法律要求披露的信息。

第十一条第二十二款：适用法律

- 1. 在第3款的约束下，当根据第11.16.1(a)(i)(A)条或第11.16.1(b)(i)(A)条提交索赔时，仲 裁庭应依照本协议及适用的国际法规则对争议事项作出裁决。
- 2. 在第3款及本节其他条款的约束下，当根据第11.16.1(a)条(i)(B)或(C)项、或第11.16.1(b)条(i)(B)或(C) 项提交索赔时，仲裁庭应适用：
 - (a) 相关投资授权或投资中指定的法律规则，

agreement, or as the disputing parties may otherwise agree; or

- (b) if the rules of law have not been specified or otherwise agreed,
 - (i) the law of the respondent, including its rules on the conflict of laws;¹⁰ and
 - (ii) such rules of international law as may be applicable.

3 A decision of the Joint Committee declaring its interpretation of a provision of this Agreement under Article 22.2.3(d) (Joint Committee) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

ARTICLE 11.23: INTERPRETATION OF ANNEXES

- 1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint Committee on the issue. The Joint Committee shall submit in writing any decision declaring its interpretation under Article 22.2.3(d) (Joint Committee) to the tribunal within 60 days of delivery of the request.
- 2. A decision issued by the Joint Committee under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Committee fails to issue such a decision within 60 days, the tribunal shall decide the issue.

ARTICLE 11.24: EXPERT REPORTS

Without prejudice to the appointment of other kinds of experts where authorized 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.

ARTICLE 11.25: CONSOLIDATION

- 1. Where two or more claims have been submitted separately to arbitration under Article 11.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

¹⁰ For purposes of clause (i), the **law of the respondent** means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

协议，或争议各方可能另行约定的其他规则；或

(b) 如未指明或另行约定法律规则，则适用：(i) 被申请人所在国法律，包括其关于法律冲突的规则；¹⁰ 及(ii) 可能适用的国际法规则。

3 联合委员会根据第22.2.3(d)条（联合委员会）作出的关于本协议条款解释的决定对仲裁庭具有约束力，仲裁庭作出的任何决定或裁决必须与该决定保持一致。

第11.23条：附件的解释

- 1. 如被申请人以被指控违约的措施属于附件一或附件二所列范围为由提出抗辩，仲裁庭应被申请人请求，应要求联合委员会就该问题作出解释。联合委员会应在收到请求后60天内，向仲裁庭提交根据第22.2.3(d)条（联合委员会）作出的阐明其解释的书面决定。
- 2. 联合委员会根据第1款作出的决定对仲裁庭具有约束力，仲裁庭作出的任何决定或裁决必须与该决定一致。若联合委员会未能在60天内作出此类决定，则由仲裁庭裁定该事项。

第十一条第二十四款：专家报告

在不影响根据适用的仲裁规则委派其他类型专家的情况下，仲裁庭可应争议方请求，或在争议方不反对时主动委派一名或多名专家，就争议方在诉讼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提交书面报告，具体条款和条件由争议各方商定。

第十一条 投资合并

- 1. 如根据第11.16.1条分别提交了两项或多项仲裁索赔，且这些索赔存在共同的法律或事实问题，并源于相同的事件或情况，任何争议方可依据所有拟受该命令约束的争议方达成的协议，或根据第2款至第10款的规定，寻求合并令。

¹⁰ 就第(i)项而言，被申请人法律系指具有适当管辖权的国内法院或仲裁庭在同一案件中适用的法律。

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, provided, however, that the presiding arbitrator shall not be a national of either Party.

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. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 11.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
- (c) instruct a tribunal previously established under Article 11.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:

2. 根据本条寻求合并令的争议方应以书面形式向秘书长及所有拟受该命令约束的争议方提交请求，并在请求中具体说明：

- (a) 命令所涉所有争议方的名称和地址；(b) 所寻求命令的性质；以及(c) 寻求该命令的理由。

3. 除非秘书长在收到根据第2款提出的请求后30天内认定该请求明显缺乏依据，否则应根据本条设立仲裁庭。

4. 除非命令所涉所有争议方另有约定，根据本条设立的仲裁庭应由三名仲裁员组成：

- (a) 一名由申请人共同协议任命的仲裁员；(b) 一名由被申请人任命的仲裁员；以及(c) 由秘书长任命的首席仲裁员，但首席仲裁员不得为任一缔约方的国民。

5. 若秘书长收到根据第2款提出的请求后60天内，被申请人或申请人未能根据第4款任命仲裁员，则秘书长应根据命令所涉任一争议方的请求，任命尚未任命的仲裁员。若被申请人未能任命仲裁员，秘书长应任命争议方缔约方的国民；若申请人未能任命仲裁员，秘书长应任命非争议方的国民。

6. 如果根据本条设立的仲裁庭认定，根据第11.16.1条提交仲裁的两项或多项索赔存在共同的法律或事实问题，且源于相同的事件或情况，则仲裁庭可在公平高效解决索赔的利益考量下，并在听取争议各方意见后，通过命令：

- (a) 对全部或部分索赔行使管辖权，并一并审理和裁定；(b) 对一项或多项索赔行使管辖权并审理裁定，且仲裁庭认为该裁定有助于解决其他索赔；或(c) 指示根据第11.19条先前设立的仲裁庭对全部或部分索赔行使管辖权并一并审理裁定，但须满足以下条件：

- (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) and 5; and
- (ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 11.16.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

- (a) the name and address of the claimant;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

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

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.
9. A tribunal established under Article 11.19 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.
10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 11.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

ARTICLE 11.26: AWARDS

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:
- (a) monetary damages and any applicable interest; 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.

- (i) 该仲裁庭应此前非争议方的任一申请人请求在该仲裁庭之前，应重新组建其原有成员，除申请人的仲裁员应按照第4(a)款和第5款任命；且(ii)仲裁庭应决定是否重复之前的任何听证会。

7. 如已根据本条设立仲裁庭，根据第11.16.1条提交仲裁索赔且未在第2款所述请求中被列名的申请人，可向仲裁庭提出书面请求，要求其被纳入根据第6款作出的任何命令中，并应在请求中明确：

- (a) 申请人的名称和地址；(b) 所寻求命令的性质；及(c) 寻求该命令的理由。

申请人应向秘书长提交其请求的副本。

8. 根据本条设立的仲裁庭应按照UNCITRAL仲裁规则进行其诉讼程序，但本节修改的部分除外。
9. 根据第11.19条设立的仲裁庭无权决定一项索赔或索赔的一部分，如果根据本条设立或指示的仲裁庭已对该索赔或部分索赔行使管辖权。
10. 应争议方的申请，根据本条设立的仲裁庭在根据第6款作出决定前，可命令根据第11.19条设立的仲裁庭暂停诉讼程序，除非后者仲裁庭已休庭。

第11.26条：裁决

1. 如仲裁庭作出对被申请人不利的最终裁决，仲裁庭可单独或合并裁定以下一项或多项：
- (a) 金钱损害赔偿及任何适用利息；及 (b) 财产归还，在此情况下，裁决应规定被申请人可支付金钱损害赔偿及任何适用利息以代替财产归还。
2. 仲裁庭还可根据A节及适用的仲裁规则裁决费用和律师费。

3. Subject to paragraph 1, where a claim is submitted to arbitration under Article 11.16.1(b):
- (a) an award of restitution of property shall provide that restitution be made to the enterprise;
 - (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
 - (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.
4. A tribunal may not award punitive damages.
5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
6. Subject to paragraph 7 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
7. A disputing party may not seek enforcement of a final award until:
- (a) in the case of a final award made under the ICSID Convention,
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) revision or annulment proceedings have been completed; and
 - (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 11.16.3(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.
9. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 22.9 (Establishment of Panel). The requesting Party may seek in such proceedings:

3. 在第1款的前提下，根据第11.16.1(b)条提交仲裁的索赔：
- (a) 财产归还裁决应规定将财产归还给企业；(b) 金钱损害赔偿及任何适用利息的裁决应规定将该款项支付给企业；且(c) 裁决应规定其作出不影响任何个人根据适用国内法可能对救济享有的任何权利。
4. 仲裁庭不得作出惩罚性赔偿裁决。
5. 仲裁庭作出的裁决除对争议各方及特定案件外，不具有约束力。
6. 在第7款及对临时裁决适用审查程序的约束下，争议方应立即遵守并履行裁决。
7. 争议方在下列情形发生前不得寻求执行最终裁决：(a) 对于根据ICSID公约作出的最终裁决，(i) 裁决作出之日起120天已过且无争议方请求修订或撤销裁决；或(ii) 修订或撤销诉讼程序已完成；且(b) 对于根据ICSID附加便利规则、UNCITRAL仲裁规则或依据第11.16.3(d)条选定规则作出的最终裁决，(i) 裁决作出之日起90天已过且无争议方启动修订、搁置或撤销裁决的诉讼程序；或(ii) 法院已驳回或准许修订、搁置或撤销裁决的申请且无进一步上诉。
8. 每一方应在其领土内提供裁决的执行。
9. 如被申请人未能遵守或执行最终裁决，经非争议方缔约方提出请求后，应根据第22.9条（专家组的设立）设立专家组。请求方可在该诉讼程序中寻求：

- (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
- (b) in accordance with Article 22.11 (Panel Report), a recommendation that the respondent abide by or comply with the final award.

10. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 9.

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

ARTICLE 11.27: SERVICE OF DOCUMENTS

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 11-C.

Section C: Definitions

ARTICLE 11.28: DEFINITIONS

For purposes of this Chapter:

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

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

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means an enterprise as defined in Article 1.4 (Definitions), and a branch of an enterprise;

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

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*;

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

(a) 裁定未遵守或执行最终裁决的行为违反本协议义务；及 (b) 根据第22.11条（小组报告），建议被申请人遵守或执行最终裁决。

10. 争议方可依据ICSID公约或纽约公约寻求仲裁裁决的执行，无论是否已根据第9款采取诉讼程序。

11. 根据本部分提交仲裁的索赔，就纽约公约第一条而言，应视为产生于商业关系或交易。

第11.27条：文件送达

向缔约方送达通知及其他文件应递送至附件11-C中为该缔约方指定的地点。

C部分：定义

第11.28条：定义

就本章而言：

中心指依据《ICSID公约》设立的国际投资争端解决中心（ICSID）；

申请人指作为投资争端一方的缔约方投资者；

争议各方指申请人与被申请人；

争议方指申请人或被申请人；

企业指第1.4条（定义）中定义的企业，以及企业的分支机构；

一方的企业指根据一方的法律组建或组织的企业，以及位于一方领土并在该领土开展商业活动的分支机构；

ICSID附加便利规则指国际投资争端解决中心秘书处管理附加便利诉讼程序的规则；

ICSID公约系指1965年3月18日在华盛顿签订的《解决国家与他国国民间投资争端公约》；

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

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;¹¹
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;^{12 13} and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.¹⁴

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

investment agreement means a written agreement¹⁵ between a national authority¹⁶ of a Party and

¹¹ Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics.

¹² Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

¹³ The term “investment” does not include an order or judgment entered in a judicial or administrative action.

¹⁴ For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

¹⁵ “Written agreement” refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law

投资系指投资者直接或间接拥有或控制的、具有投资特征的各类资产，包括诸如资本或其他资源的投入、预期获得收益或利润、或承担风险等特征。投资可采取的形式包括：

- (a) 企业；(b) 企业中的股份、股票及其他股权参与形式；(c) 债券、公司债券、其他债务工具及贷款；¹¹(d) 期货、期权及其他衍生品；(e) 交钥匙、建设、管理、生产、特许权、收入分成及其他类似合同；(f) 知识产权；(g) 根据国内法授予的许可证、授权、许可及类似权利；^{12 13} 以及 (h) 其他有形或无形、动产或不动产，以及相关财产权，如租赁、抵押、留置权和质押。¹⁴

就本协议而言，仅因商品和服务的商业销售而产生的付款索赔不构成投资，除非该贷款具有投资的特征。

投资协议 指 缔约方 的 国家当局¹⁶ 与

¹¹ 某些形式的债务，如债券、公司债券和长期票据，更可能具有投资的特征，而其他形式的债务则不太可能具有此类特征。¹² 特定类型的许可证、授权、许可或类似文书（包括特许权，只要其具有此类文书的性质）是否具有投资的特征，取决于诸如持有者根据缔约方法律所享有权利的性质和范围等因素。那些未在国内法下创设任何受保护权利的许可证、授权、许可及类似文书，不具备投资的特征。为更大的确定性，前述内容不影响与许可证、授权、许可或类似文书相关的任何资产是否具有投资的特征。¹³ “投资”一词不包括在司法或行政行为中作出的命令或判决。¹⁴ 为更大的确定性，市场份额、市场准入、预期收益及盈利机会本身并不构成投资。¹⁵ “书面协议”指由双方签署的书面协议，无论是以单一文件还是多份文件形式存在，该协议创设了权利和义务的交换，并在法律上对双方具有约束力

a covered investment or an investor of the other Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

- (a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;
- (b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or
- (c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

investment authorization means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of the other Party;^{17 18}

investor of a non-Party means, with respect to a Party, an investor that attempts to make¹⁹, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

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

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

applicable under Article 11.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

¹⁶ For purposes of this definition, **national authority** means an authority at the central level of government.

¹⁷ For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

¹⁸ The Parties recognize that, as of the date of signature of this Agreement, neither Party has a foreign investment authority that grants investment authorizations.

¹⁹ For greater certainty, the Parties understand that, for purposes of the definitions of “investor of a non-Party” and “investor of a Party,” an investor “attempts to make” an investment when that investor has taken concrete action or actions to make an investment, such as channeling resources or capital in order to set up a business, or applying for a permit or license.

另一方的 涵盖投资 或 投资者 之间的 书面协议{v1}, 该协议（书面协议本身除外）授予 涵盖投资 或 投资者 权利，且 涵盖投资 或 投资者 依赖该协议设立或获取 涵盖投资：

- (a) 对于国家当局控制的自然资源，例如其勘探、开采、提炼、运输、分销或出售；
- (b) 代表缔约方向公众提供服务，例如发电或配电、水处理或分配，或电信；或
- (c) 承担基础设施项目，例如建设道路、桥梁、运河、水坝或管道，这些项目并非专供或主要供政府使用和受益；

投资授权指一方的外国投资机构向另一方的涵盖投资或投资者授予的授权；^{17 18}

非缔约方投资者就一方而言，指试图在该方领土内进行¹⁹, 正在或已经进行投资，且非任何一方投资者的投资者；

缔约方投资者指一方或其国有企业，或一方的国民或企业，试图在另一方领土内进行、正在或已经进行投资；但具有双重国籍的自然人应仅视为其具有主要和有效国籍的国家的国民；

纽约公约指1958年6月10日在纽约签订的《联合国承认及执行外国仲裁裁决公约》；

非争议方指非投资争端一方的缔约方；

根据第11.22.2条适用。为获得更大的确定性，(a)行政或司法机构的单方面行为，例如缔约方仅以其监管职能颁发的许可证、执照或授权，或单独存在的法令、命令或判决；以及(b)行政或司法同意法令或命令，均不应视为书面协议。

¹⁶ 就本定义而言,国家当局指中央政府层面的机构 t.

¹⁷ 为获得更大的确定性，缔约方为执行普遍适用的法律（如竞争法）而采取的行动不包含在此定义内。

¹⁸ 缔约方认识到，截至本协议签署之日，任何缔约方均未设立可授予投资授权的外国投资机构。

¹⁹ 为获得更大的确定性，缔约方理解，就“非缔约方投资者”和“缔约方投资者”的定义而言，当投资者已采取具体行动进行投资时，例如为设立企业而调配资源或资本，或申请许可证或执照，该投资者即“试图作出”投资。

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

respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID; and

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

受保护信息指机密商业信息或根据缔约方法律享有特权或以其他方式免于披露的信息；

被申请人指作为投资争端一方的缔约方；

秘书长指ICSID的秘书长； 且

UNCITRAL仲裁规则指联合国国际贸易法委员会的仲裁规则。

ANNEX 11-A
CUSTOMARY INTERNATIONAL LAW

附件11-A 习惯国际法

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 11.5 and Annex 11-B results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 11.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

缔约方确认其共同理解：“习惯国际法”总体上及如第11.5条和附件11-B中具体提及的那样，源于国家出于法律义务感而遵循的一般且一致的实践。关于第11.5条， 外国人待遇的习惯国际法最低标准指保护外国人经济权益的所有习惯国际法原则。

ANNEX 11-B
EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment.
2. Article 11.6.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article 11.6.1 is indirect expropriation, where an action or a series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - (a) The determination of whether an action or a series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including:
 - (i) the economic impact of the government action, although the fact that an action or a series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
 - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;²⁰ and
 - (iii) the character of the government action, including its objectives and context. Relevant considerations could include whether the government action imposes a special sacrifice on the particular investor or investment that exceeds what the investor or investment should be expected to endure for the public interest.
 - (b) Except in rare circumstances, such as, for example, when an action or a series of actions is extremely severe or disproportionate in light of its purpose or effect, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the

²⁰ For greater certainty, whether an investor’s investment-backed expectations are reasonable depends in part on the nature and extent of governmental regulation in the relevant sector. For example, an investor’s expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.

附件11-B 征收

缔约方确认其共同理解如下：

1. 缔约方的一项或一系列行动，除非干涉投资中的有形或无形财产权，否则不构成征收。
2. 第11.6.1条规定了两种情形。第一种是直接征收，即通过正式所有权转移或彻底没收将投资国有化或以其他方式直接征收。
3. 第11.6.1条规定的第二种情形是间接征收，即缔约方的一项或一系列行动虽未实行正式所有权转移或彻底没收，但产生与直接征收等效的效果。
 - (a) 判定一缔约方在特定事实情况下的某项行为或一系列行为是否构成间接征收，需要进行个案事实调查，考虑与投资相关的所有因素，包括：
 - (i) 政府行为的经济影响，尽管缔约方的某项行为或一系列行为对投资的经济价值产生不利影响这一事实本身，并不构成间接征收；
 - (ii) 政府行为对明确、合理的投资预期造成干预的程度，²⁰ 以及
 - (iii) 政府行为的性质，包括其目标和背景。相关考量因素可能包括政府行为是否对特定投资者或投资施加了超出其为公共利益应承受范围的特殊牺牲。
 - (b) 除特殊情况外（例如当某一行动或一系列行动就其目的或效果而言极为严苛或不成比例时），缔约方为保护公共卫生、安全、

²⁰ 为进一步明确，投资者基于投资的预期是否合理，部分取决于相关行业中政府监管的性质和范围。例如，在高度监管的行业中，投资者预期监管不会变化的合理性，低于监管较少的行业。

environment, and real estate price stabilization (through, for example, measures to improve the housing conditions for low-income households), do not constitute indirect expropriations.²¹

环境及房地产价格稳定（例如通过改善低收入家庭住房条件的措施）等合法的公共福利目标而设计并实施的非歧视性监管措施，不构成间接征收。²¹

²¹ For greater certainty, the list of “legitimate public welfare objectives” in subparagraph (b) is not exhaustive.

²¹ 为进一步明确起见，(b)项中“合法的公共福利目标”清单并非详尽无遗。

ANNEX 11-C
SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B

附件11-C B节下向一方当事人送达文件

Korea

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

Office of International Legal Affairs
Ministry of Justice of the Republic of Korea
Government Complex, Gwacheon
Korea

United States

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

Executive Director (L/EX)
Office of the Legal Adviser
Department of State
Washington, D.C. 20520
United States of America

韩国

根据B节规定，争议中的通知及其他文件应通过以下地址送达韩国：

大韩民国法务部国际法律事务办公室 韩
国果川政府大楼

美国

根据B节产生的争议所涉通知及其他文件应通过以下地址送达美国：

执行主任（L/EX）法律
顾问办公室国务院华盛顿
特区20520美利坚合众国

ANNEX 11-D
POSSIBILITY OF A BILATERAL APPELLATE MECHANISM

附件11-D 双边上诉机制的可能性

Within three years after the date this Agreement enters into force, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 11.26 in arbitrations commenced after they establish the appellate body or similar mechanism.

本协议生效之日起三年内，缔约方应考虑是否设立双边上诉机构或类似机制，以审查在其设立上诉机构或类似机制后启动的仲裁中根据第11.26条作出的裁决。

ANNEX 11-E
SUBMISSION OF A CLAIM TO ARBITRATION

Korea

1. Notwithstanding Article 11.18.2, an investor of the United States may not submit to arbitration under Section B a claim that Korea has breached an obligation under Section A either:
- (a) on its own behalf under Article 11.16.1(a); or
 - (b) on behalf of an enterprise of Korea that is a juridical person that the investor owns or controls directly or indirectly under Article 11.16.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in any proceedings before a court or administrative tribunal of Korea.

2. For greater certainty, where an investor of the United States or an enterprise of Korea that is a juridical person that the investor owns or controls directly or indirectly makes an allegation that Korea has breached an obligation under Section A before a court or administrative tribunal of Korea, that election shall be final, and the investor may not thereafter allege that breach, on its own behalf or on behalf of the enterprise, in an arbitration under Section B.

附件11-E 提交仲裁申请

韩国

1. 尽管有第11.18.2条的规定，美国投资者不得根据B节将韩国违反A节义务的索赔提交仲裁，如果该投资者：

- (a) 根据第11.16.1(a)条代表自身；或 (b) 根据第11.16.1(b)条代表其直接或间接拥有或控制的韩国企业法人，

且该投资者或企业（视情况而定）已在韩国法院或行政法庭的任何诉讼程序中指控该A节义务的违约行为。

2. 为提供更大的确定性，若美国投资者或该投资者直接或间接拥有或控制的韩国企业（作为法人）向韩国法院或行政法庭指控韩国违反A节下的义务，则该选择应为最终决定，且此后该投资者不得在B节下的仲裁中代表自身或代表企业就该违约行为提出指控。

ANNEX 11-F
TAXATION AND EXPROPRIATION

附件11-F 税收与征收

The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex 11-B and the following considerations:

- (a) The imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of a taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;
- (b) A taxation measure that is consistent with internationally recognized tax policies, principles, and practices should not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;
- (c) A taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and
- (d) A taxation measure generally does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.

判定一项税收措施在特定事实情况下是否构成征收，需要进行个案事实调查，综合考虑与投资相关的所有因素，包括附件11-B所列因素及以下考量：

- (a) 征税通常不构成征收。单纯引入新的税收措施或在多个管辖权范围内对一项投资实施税收措施，其本身通常不构成征收；
- (b) 符合国际公认的税收政策、原则和实践的税收措施不应构成征收。特别是旨在防止避税或逃税措施的税收措施通常不构成征收；
- (c) 与非歧视性基础实施的税收措施相比，针对特定国籍的投资者或特定纳税人的税收措施更不可能构成征收；以及
- (d) 如果税收措施在投资时已生效且相关信息已公开可用，则该措施通常不构成征收。

ANNEX 11-G
TRANSFERS

1. Nothing in this Chapter, Chapter Twelve (Cross-Border Trade in Services), or Chapter Thirteen (Financial Services) shall be construed to prevent Korea from applying measures pursuant to Article 6 of the *Foreign Exchange Transactions Act*, provided that such measures:²²

- (a) are in effect for a period not to exceed one year; however, if extremely exceptional circumstances arise such that Korea seeks to extend such measures, Korea will coordinate in advance with the United States concerning the implementation of any proposed extension;
- (b) are not confiscatory;
- (c) do not constitute a dual or multiple exchange rate practice;
- (d) do not otherwise interfere with investors’ ability to earn a market rate of return in the territory of Korea on any restricted assets;²³
- (e) avoid unnecessary damage to the commercial, economic, or financial interests of the United States;
- (f) are temporary and phased out progressively as the situation calling for imposition of such measures improves;
- (g) are applied in a manner consistent with Articles 11.3, 12.2, and 13.2 (National Treatment) and Articles 11.4, 12.3, and 13.3 (Most-Favored-Nation Treatment) subject to the Schedules of Korea to Annex I, Annex II, and Annex III; and
- (h) are promptly published by the Ministry of Finance and Economy or the Bank of Korea.

2. Paragraph 1 does not apply to measures that restrict:

- (a) payments or transfers for current transactions, unless:

²² Korea shall endeavor to provide that such measures will be price-based.

²³ For greater certainty, the term “restricted assets” in subparagraph (d) refers only to assets invested in the territory of Korea by an investor of the United States that are restricted from being transferred out of the territory of Korea.

附件11-G 转移

1. 本章、第十二章（跨境服务贸易）或第十三章（金融服务）中的任何规定均不得解释为阻止韩国根据《外汇交易法》第6条适用措施，前提是该等措施：²²

- (a) 有效期不超过一年；但如果出现极端特殊情况，韩国需延长此类措施，将事先与美国协调任何拟议延期的实施；(b) 不具有没收性质；(c) 不构成双重或多重汇率做法；(d) 不妨碍投资者在韩国领土上就任何受限资产获得市场回报率的能力；²³(e) 避免对美国商业、经济或金融利益造成不必要的损害；(f) 具有临时性，并随实施此类措施的情况改善而逐步取消；(g) 实施方式符合第11.3条、第12.2条和第13.2条（国民待遇）以及第11.4条、第12.3条和第13.3条（最惠国待遇），并受限于韩国在附件一、附件二和附件三中的减让表；(h) 由财政经济部或韩国银行及时公布。

2. 第1款不适用于限制以下内容的措施：

- (a) 用于经常性交易的支付或转移，除非：

²² 韩国应努力确保此类措施将以价格为基础。

²³ 为提供更大的确定性，第(d)项中的“受限资产”一词仅指美国投资者在韩国领土内投资且被限制从韩国领土转让出去的资产。

- (i) the imposition of such measures complies with the procedures stipulated in the *Articles of Agreement of the International Monetary Fund*;²⁴ and
 - (ii) Korea coordinates any such measures in advance with the United States; or
- (b) payments or transfers associated with foreign direct investment.

²⁴ **Current transactions** shall have the meaning set forth in Article 30(d) of the *Articles of Agreement of the International Monetary Fund* and, for greater certainty, shall include interest pursuant to a loan or bond on any restricted amortization payments coming due during the period that controls on capital transactions are applied.

- (i) 实施此类措施符合《国际货币基金组织协定条款》规定的程序；²⁴ 且 (ii) 韩国事先与美国协调此类措施； 或

- (b) 与外国直接投资相关的支付或转移。

²⁴ 经常性交易应具有《国际货币基金组织协定条款》第三十条(d)款规定的含义， 且为获得更大的确定性， 应包括贷款或保证金利息以及资本交易管制期间到期的任何限制性分期付款。

ANNEX 11-H
JOINT COMMITTEE

Consistent with Article 22.2, the Joint Committee shall, as appropriate, initiate discussions regarding the operation of this Chapter, and consider any potential improvements, to ensure that this Chapter continues to meet the objectives of the Parties, including providing meaningful procedures for resolving investment disputes and effective mechanisms to eliminate frivolous claims and to deter the filing of frivolous claims.

附件11-H 联合委
员会

根据第22.2条，联合委员会应适时启动关于本章运营的讨论，并考虑任何潜在的改进，以确保本章继续符合缔约方的目标，包括提供解决投资争端的有意义程序以及消除轻率索赔和阻止提交轻率索赔的有效机制。

[TRANSLATION]

June 30, 2007

The Honorable Susan C. Schwab
United States Trade Representative
Washington, D.C.

Dear Ambassador Schwab:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Annex 11-B (Expropriation) of Chapter Eleven (Investment) of the Free Trade Agreement between our two Governments signed this day:

For purposes of the Agreement, the term “tangible or intangible property right” in paragraph 1 of Annex 11-B (Expropriation) includes rights under contract and all other property rights in an investment, as that term is defined in Article 11.28 (Definitions).

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

Sincerely,

[SGN/]
Hyun Chong Kim

[翻译]

2007年6月30日

尊敬的苏珊·C·施瓦布 美国贸易
代表 华盛顿特区

尊敬的施瓦布大使：

我荣幸地确认，大韩民国与美利坚合众国代表团在就今日签署的两国政府间《自由贸易协定》第十一章（投资）附件11-B（征收）进行谈判过程中达成如下谅解：

就本协议而言，附件11-B（征收）第1段中所述“有形或无形财产权”包括合同项下权利及投资所涉所有其他财产权，该术语定义见第11.28条（定义）。

我荣幸地提议，本函及贵方复函确认贵国政府认同此理解，应构成自由贸易协定的组成部分。

此致，

[SGN/]金铉宗

June 30, 2007

The Honorable Hyun Chong Kim
Minister for Trade
Seoul, Republic of Korea

Dear Minister Kim:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

I have the honor to confirm the following understanding reached between the delegations of the Republic of Korea and the United States of America during the course of negotiations regarding Annex 11-B (Expropriation) of Chapter Eleven (Investment) of the Free Trade Agreement between our two Governments signed this day:

For purposes of the Agreement, the term “tangible or intangible property right” in paragraph 1 of Annex 11-B (Expropriation) includes rights under contract and all other property rights in an investment, as that term is defined in Article 11.28 (Definitions).

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Free Trade Agreement.

I have the further honor to confirm that my Government shares this understanding and that your letter and this letter in reply shall constitute an integral part of the Free Trade Agreement.

Sincerely,

Susan C. Schwab

2007年6月30日

尊敬的金玄忠 贸易部长 首尔,
大韩民国

尊敬的金部长:

我荣幸地确认收到您今日的来信, 内容如下:

我荣幸地确认大韩民国与美利坚合众国代表团在谈判过程中就今日签署的两国政府间《自由贸易协定》第十一章(投资)附件11-B(征收)达成的如下谅解:

就本协议而言, 附件11-B(征收)第1段中所述“有形或无形财产权”包括合同项下权利及投资中所有其他财产权, 该术语定义见第11.28条(定义)。

我谨提议, 本函及贵方回函确认贵政府认同此谅解, 应构成《自由贸易协定》不可分割的组成部分。

我谨进一步确认, 我国政府认同这一理解, 并且您的来信和本复函将构成自由贸易协定的组成部分。

此致

Susan C. Schwab