Stewart and Stewart

The United States-Mexico-Canada Agreement, The North American Free Trade Agreement and the Trans-Pacific Partnership: Side-by-Side Comparison

USMCA Chapter 14:

Investment

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
CHAPTER 14 **INVESTMENT**	**Chapter Eleven: Investment** **Part Five: Investment, Services and Related Matters** **Section A - Investment** **Section C: Definitions**	**Chapter Nine: Investment** **Section A**
Article 14.1: Definitions For the purposes of this Chapter:	**Article 1139: Definitions** For purposes of this Chapter:	**Article 9.1: Definitions** For the purposes of this Chapter:
covered investment means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;		**covered investment** means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement for those Parties or established, acquired, or expanded thereafter;
	disputing investor means an investor that makes a claim under Section B; **disputing Party** means a Party against which a claim is made under Section B;	
enterprise means an enterprise as defined in Article 1.4 (General Definitions), and a branch of an enterprise;	**enterprise** means an "enterprise" as defined in Article 201 (Definitions of General Application), and a branch of an enterprise;	**enterprise** means an enterprise as defined in Article 1.3 (General Definitions), and a branch of an enterprise;
enterprise of a Party means an enterprise constituted or organized under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there;	**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.	**enterprise of a Party** means an enterprise constituted or organised under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there;[1] **Footnote 1** For greater certainty, the inclusion of a "branch" in the definitions of "enterprise" and "enterprise of a Party" is without prejudice to a Party's ability to treat a branch under its laws as an entity that has no independent legal existence and is not separately organised.
	equity or debt securities includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;	
freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its *Articles of Agreement* ;		**freely usable currency** means "freely usable currency" as determined by the International Monetary Fund under its *Articles of Agreement;*
	G7 Currency means the currency of Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland or the United States;	
		ICC Arbitration Rules means the arbitration rules of the International Chamber of Commerce;
	ICSID means the International Centre for Settlement of Investment Disputes;	
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. An investment may include:	**investment** means:	**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;[1]	(a) an enterprise; (b) an equity security of an enterprise; (c) a debt security of an enterprise (i) where the enterprise is an affiliate of the investor, or (ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a state enterprise; (d) a loan to an enterprise (i) where the enterprise is an affiliate of the investor, or (ii) where the original maturity of the loan is at least three years, but does not include a loan, regardless of original maturity, to a state enterprise;	(a) an enterprise; (b) shares, stock and other forms of equity participation in an enterprise; (c) bonds, debentures, other debt instruments and loans;[2, 3]
Footnote 1 Some forms of debt, such as bonds, debentures, and long-term notes or loans, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due, are less likely to have these characteristics.		**Footnote 2** Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics. **Footnote 3** A loan issued by one Party to another Party is not an investment.
(d) futures, options, and other derivatives;	(e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;	(d) futures, options and other derivatives;

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	(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);	
(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;	(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;	(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 a Party's law;[2] and **Footnote 2** 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 a Party's law. For greater certainty, among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.		(f) intellectual property rights; (g) licences, authorisations, permits and similar rights conferred pursuant to the Party's law;[4] and **Footnote 4** Whether a particular type of licence, authorisation, 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 Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.
(h) other tangible or intangible, movable or immovable property, and related property rights, such as liens, mortgages, pledges, and leases, but investment does not mean: (i) an order or judgment entered in a judicial or administrative action;	(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and but investment does not mean,	(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges, but investment does not mean an order or judgment entered in a judicial or administrative action.
(j) claims to money that arise solely from: (i) commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to an enterprise in the territory of another Party, or (ii) the extension of credit in connection with a commercial contract referred to in subparagraph (j)(i);	(i) claims to money that arise solely from (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or (j) any other claims to money, that do not involve the kinds of interests set out in subparagraphs (a) through (h);	
		investment agreement means a written agreement[5] that is concluded and takes effect after the date of entry into force of this Agreement[6] between an authority at the central level of government[7] of a Party and a covered investment or an investor of another Party and that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 9.25.2 (Governing Law), on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, and that grants rights to the covered investment or investor: **Footnote 5** "Written agreement" refers to an agreement in writing, negotiated and executed by both parties, whether in a single instrument or in multiple instruments. For greater certainty: (a) a unilateral act of an administrative or judicial authority, such as a permit, licence, authorisation, certificate, approval, or similar instrument issued by a Party in its regulatory capacity, or a subsidy or grant, 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.

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		Footnote 6 For greater certainty, a written agreement that is concluded and takes effect after the entry into force of this Agreement does not include the renewal or extension of an agreement in accordance with the provisions of the original agreement, and on the same or substantially the same terms and conditions as the original agreement, which has been concluded and entered in force prior to the entry into force of this Agreement. **Footnote 7** For the purposes of this definition, "authority at the central level of government" means, for unitary states, an authority at the ministerial level of government. Ministerial level of government means government departments, ministries or other similar authorities at the central level of government, but does not include: (a) a governmental agency or organ established by a Party's constitution or a particular legislation that has a separate legal personality from government departments, ministries or other similar authorities under a Party's law, unless the day to day operations of that agency or organ are directed or controlled by government departments, ministries or other similar authorities; or (b) a governmental agency or organ that acts exclusively with respect to a particular region or province.
		(a) with respect to natural resources that a national authority controls, such as oil, natural gas, rare earth minerals, timber, gold, iron ore and other similar resources,[8] including for their exploration, extraction, refining, transportation, distribution or sale; **Footnote 8** For the avoidance of doubt, this subparagraph does not include an investment agreement with respect to land, water or radio spectrum. (b) to supply services on behalf of the Party for consumption by the general public for: power generation or distribution, water treatment or distribution, telecommunications, or other similar services supplied on behalf of the Party for consumption by the general public;[9] or **Footnote 9** For the avoidance of doubt, this subparagraph does not cover correctional services, healthcare services, education services, childcare services, welfare services or other similar social services. (c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams or pipelines or other similar projects; provided, however, that the infrastructure is not for the exclusive or predominant use and benefit of the government; **investment authorisation**[10] means an authorisation that the foreign investment authority of a Party[11] grants to a covered investment or an investor of another Party; **Footnote 10** For greater certainty, the following are not encompassed within this definition: (i) actions taken by a Party to enforce laws of general application, such as competition, environmental, health or other regulatory laws; (ii) non-discriminatory licensing regimes; and (iii) a Party's decision to grant to a covered investment or an investor of another Party a particular investment incentive or other benefit, that is not provided by a foreign investment authority in an investment authorisation.

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		Footnote 11 For the purposes of this definition, "foreign investment authority" means, as of the date of entry into force of this Agreement: (a) for Australia, the Treasurer of the Commonwealth of Australia under Australia's foreign investment policy including the *Foreign Acquisitions and Takeovers Act 1975* ; (b) for Canada, the Minister of Industry, but only when issuing a notice under Section 21 or 22 of the *Investment Canada Act* ; (c) for Mexico, the National Commission of Foreign Investments (*Comisión Nacional de Inversiones Extranjeras*); and (d) for New Zealand, the Minister of Finance, the Minister of Fisheries or the Minister for Land Information, to the extent that they make a decision to grant consent under the *Overseas Investment Act 2005* .
	investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;	
investor of a non-Party means, with respect to a Party, an investor that attempts to make,[3] is making, or has made an investment in the territory of that Party, that is not an investor of a Party; and	**investor of a non-Party** means an investor other than an investor of a Party, that seeks to make, is making or has made an investment;	**investor of a non-Party** means, with respect to a Party, an investor that attempts to make,[12] is making, or has made an investment in the territory of that Party, that is not an investor of a Party;
Footnote 3 For greater certainty, the Parties understand that, for the 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 channelling resources or capital in order to set up a business, or applying for a permit or license.		**Footnote 12** For greater certainty, the Parties understand that, for the 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 channelling resources or capital in order to set up a business, or applying for a permit or licence.
investor of a Party means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party, provided however that: (a) a natural person who is a dual citizen is deemed to be exclusively a national of the State of his or her dominant and effective citizenship; and (b) a natural person who is a citizen of a Party and a permanent resident of another Party is deemed to be exclusively a national of the Party of which that natural person is a citizen.	**investor of a Party** means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;	**investor of a Party** means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party;
		LCIA Arbitration Rules means the arbitration rules of the London Court of International Arbitration; **negotiated restructuring** means the restructuring or rescheduling of a debt instrument that has been effected through (a) a modification or amendment of that debt instrument, as provided for under its terms, or (b) a comprehensive debt exchange or other similar process in which the holders of no less than 75 per cent of the aggregate principal amount of the outstanding debt under that debt instrument have consented to the debt exchange or other process;
	transfers means transfers and international payments; **Tribunal** means an arbitration tribunal established under Article 1120 or 1126; and	
Article 14.2: Scope 1. This Chapter applies to measures adopted or maintained by a Party relating to: (a) investors of another Party;	**Article 1101: Scope and Coverage** 1. This Chapter applies to measures adopted or maintained by a Party relating to: (a) investors of another Party; (b) investments of investors of another Party in the territory of the Party; and	**Article 9.2: Scope** 1. This Chapter shall apply to measures adopted or maintained by a Party relating to: (a) investors of another Party;
(b) covered investments; and (c) with respect to Article 14.10 (Performance Requirements) and Article 14.16 (Investment and Environmental, Health, Safety, and other Regulatory Objectives), all investments in the territory of that Party.	(c) with respect to Articles 1106 and 1114, all investments in the territory of the Party.	(b) covered investments; and (c) with respect to Article 9.10 (Performance Requirements) and Article 9.16 (Investment and Environmental, Health and other Regulatory Objectives), all investments in the territory of that Party.
2. A Party's obligations under this Chapter apply to measures adopted or maintained by: (a) the central, regional, or local governments or authorities of that Party;[4] and (b) a person, including a state enterprise or another body, when it exercises any governmental authority delegated to it by central, regional, or local governments or authorities of that Party.[5]		2. A Party's obligations under this Chapter shall apply to measures adopted or maintained by: (a) the central, regional or local governments or authorities of that Party; and (b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party.[13]

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Footnote 4 For greater certainty, the term "governments or authorities" means the organs of a Party, consistent with the principles of attribution under customary international law.		
Footnote 5 For greater certainty, governmental authority is delegated to any person under the Party's law, including through a legislative grant or a government order, directive, or other act transferring or authorizing the exercise of governmental authority.		**Footnote 13** For greater certainty, governmental authority is delegated under the Party's law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.
	2. A Party has the right to perform exclusively the economic activities set out in Annex III and to refuse to permit the establishment of investment in such activities.	
	3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Fourteen (Financial Services).	3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 11 (Financial Services).
	4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.	
3. For greater certainty, this Chapter, except as provided for in Annex 14-C (Legacy Investment Claims and Pending Claims) does not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement.		3. For greater certainty, this Chapter shall not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement for that Party.
4. For greater certainty, an investor may only submit a claim to arbitration under this Chapter as provided under Annex 14-C (Legacy Investment Claims and Pending Claims), Annex 14-D (Mexico-United States Investment Disputes), or Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts).		
Article 14.3: Relation to Other Chapters	**Article 1112: Relation to Other Chapters**	**Article 9.3: Relation to Other Chapters**
1. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.	1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.	1. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.
2. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 17 (Financial Services).		
3. A requirement of a Party that a service supplier of another Party post a bond or other form of financial security as a condition for 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 the 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 the bond or financial security is a covered investment.	2. A requirement by a Party that a service provider of another Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that crossborder service. This Chapter applies to that Party's treatment of the posted bond or financial security.	2. A requirement of a Party that a service supplier of another Party post a bond or other form of financial security as a condition for 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 shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.
4. For greater certainty, consistent with Article 15.2.2(a) (Scope), Article 15.5 (Market Access), and Article 15.8 (Development and Administration of Measures) apply to measures adopted or maintained by a Party relating to the supply of a service in its territory by a covered investment.		
Article 14.4: National Treatment	**Article 1102: National Treatment**	**Article 9.4: National Treatment[14]** **Footnote 14** For greater certainty, whether treatment is accorded in "like circumstances" under Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment) 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.
1. Each Party shall accord to investors of another 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.	1. Each Party shall accord to investors of another 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.	1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

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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.	2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.	2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to investors, and to investments of investors, of the Party of which it forms a part.	3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.	3. For greater certainty, 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 favourable than the most favourable 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.
4. For greater certainty, whether treatment is accorded in "like circumstances" under this Article 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.		
	4. For greater certainty, no Party may: (a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or (b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.	
Article 14.5: Most-Favored-Nation Treatment	**Article 1103: Most-Favored-Nation Treatment**	**Article 9.5: Most-Favoured-Nation Treatment**
1. Each Party shall accord to investors of another Party treatment no less favorable than the treatment it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.	1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.	1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or 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 other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.	2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.	2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a government other than at the central level, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that government to investors in its territory, and to investments of those investors, of any other Party or of any non-Party.		
4. For greater certainty, whether treatment is accorded in "like circumstances" under this Article 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.		
		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 (Investor-State Dispute Settlement).
	Article 1104: Standard of Treatment Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.	
Article 14.6: Minimum Standard of Treatment[6] **Footnote 6** This Article shall be interpreted in accordance with Annex 14-A (Customary International Law).	**Article 1105: Minimum Standard of Treatment**	**Article 9.6: Minimum Standard of Treatment[15]** **Footnote 15** Article 9.6 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 9-A (Customary International Law).
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.	1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.	1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.

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2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligations in paragraph 1 to provide:		2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligations 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		(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.		(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.		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.		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. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.
Article 14.7: Treatment in Case of Armed Conflict or Civil Strife		**Article 9.7: Treatment in Case of Armed Conflict or Civil Strife**
1. Notwithstanding Article 14.12.5(b) (Non-Conforming Measures), each Party shall accord to investors of another 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 armed conflict or civil strife.	2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.	1. Notwithstanding Article 9.12.6(b) (Non-Conforming Measures), each Party shall accord to investors of another Party and to covered investments nondiscriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of another 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 that loss.		2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of another 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 that loss.
3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 14.4 (National Treatment) but for Article 14.12.5(b) (Non-Conforming Measures).	3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).	3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 9.4 (National Treatment) but for Article 9.12.6(b) (Non-Conforming Measures).
Article 14.8: Expropriation and Compensation[7] **Footnote 7** This Article shall be interpreted in accordance with Annex 14-B (Expropriation).	**Article 1110: Expropriation and Compensation**	**Article 9.8: Expropriation and Compensation**[16] **Footnote 16** Article 9.8 (Expropriation and Compensation) shall be interpreted in accordance with Annex 9-B (Expropriation) and is subject to Annex 9-C (Expropriation Relating to Land).
1. No Party shall expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (expropriation), except:	1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:	1. No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:
(a) for a public purpose;	(a) for a public purpose;	(a) for a public purpose;[17, 18] **Footnote 17** For greater certainty, for the purposes of this Article, the term "public purpose" refers to a concept in customary international law. Domestic law may express this or a similar concept by using different terms, such as "public necessity", "public interest" or "public use".

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		Footnote 18 For the avoidance of doubt: (i) if Brunei Darussalam is the expropriating Party, any measure of direct expropriation relating to land shall be for the purposes as set out in the *Land Code* (Cap. 40) and the *Land Acquisition Act* (Cap. 41), as of the date of entry into force of the Agreement for it; and (ii) if Malaysia is the expropriating Party, any measure of direct expropriation relating to land shall be for the purposes as set out in the *Land Acquisitions Act 1960* , *Land Acquisition Ordinance 1950* of the State of Sabah and the *Land Code 1958* of the State of Sarawak, as of the date of entry into force of the Agreement for it.
(b) in a non-discriminatory manner; (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2, 3, and 4; and	(b) on a non-discriminatory basis; (d) on payment of compensation in accordance with paragraphs 2 through 6.	(b) in a non-discriminatory manner; (c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and
(d) in accordance with due process of law.	(c) in accordance with due process of law and Article 1105(1); and	(d) in accordance with due process of law.
2. Compensation shall: (a) be paid without delay; (d) be fully realizable and freely transferable. (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	2. Compensation shall 3. Compensation shall be paid without delay and be fully realizable. be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.	2. Compensation shall: (a) be paid without delay; (d) be fully realisable and freely transferable. (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
3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.	4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.	3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment[8] – 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. **Footnote 8** For greater certainty, for the purposes of this paragraph, the currency of payment may be the same as the currency in which the fair market value is denominated.	5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.	4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than: (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. For greater certainty, whether an action or series of actions by a Party constitutes an expropriation shall be determined in accordance with paragraph 1 of this Article and Annex 14-B (Expropriation).		
	6. On payment, compensation shall be freely transferable as provided in Article 1109.	
6. 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 the issuance, revocation, limitation, or creation is consistent with Chapter 20 (Intellectual Property) and the TRIPS Agreement.[9]	7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, 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 Seventeen (Intellectual Property).	5. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that the issuance, revocation, limitation or creation is consistent with Chapter 18 (Intellectual Property) and the TRIPS Agreement.[19]
Footnote 9 For greater certainty, the Parties recognize that, for the purposes of this Article, the term “revocation” of an intellectual property right includes the cancellation or nullification of that right, and the term “limitation” of an intellectual property right includes exceptions to that right.		**Footnote 19** For greater certainty, the Parties recognise that, for the purposes of this Article, the term “revocation” of intellectual property rights includes the cancellation or nullification of those rights, and the term “limitation” of intellectual property rights includes exceptions to those rights.

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	8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.	
		6. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant, (a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or (b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant, standing alone, does not constitute an expropriation.
Article 14.9: Transfers	**Article 1109: Transfers**	**Article 9.9: Transfers[20]** **Footnote 20** For greater certainty, this Article is subject to Annex 9-E (Transfers).
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. These transfers include:	1. Each Party shall permit all transfers relating to an investment of an investor of another Party in the territory of the Party to be made freely and without delay. Such transfers include:	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;[10] Footnote 10 For greater certainty, contributions to capital include the initial contribution.		(a) contributions to capital;[21] **Footnote 21** For greater certainty, contributions to capital include the initial contribution.
(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance, and other fees;	(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;	(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;
(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;	(b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;	(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
(d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement or employment contract; and	(c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;	(d) payments made under a contract, including a loan agreement;
(e) payments made pursuant to Article 14.7 (Treatment in Case of Armed Conflict or Civil Strife) and Article 14.8 (Expropriation and Compensation).	(d) payments made pursuant to Article 1110; and	(e) payments made pursuant to Article 9.7 (Treatment in Case of Armed Conflict or Civil Strife) and Article 9.8 (Expropriation and Compensation); and
	(e) payments arising under Section B.	(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.	2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.	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. A Party shall not require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits, or other amounts derived from, or attributable to, investments in the territory of another Party.	3. No Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of another Party.	
4. 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 another Party.		3. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of another Party.
5. Notwithstanding paragraphs 1, 2, and 4, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws[11] relating to:	4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:	4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws[22] relating to:
Footnote 11 For greater certainty, this Article does not preclude the equitable, non-discriminatory, and good faith application of a Party's laws relating to its social security, public retirement, or compulsory savings programs.		**Footnote 22** For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programmes.
(a) bankruptcy, insolvency, or the protection of the rights of creditors;	(a) bankruptcy, insolvency or the protection of the rights of creditors;	(a) bankruptcy, insolvency or the protection of the rights of creditors;
(b) issuing, trading, or dealing in securities or derivatives;	(b) issuing, trading or dealing in securities;	(b) issuing, trading or dealing in securities, futures, options or derivatives;
(c) criminal or penal offenses;	(c) criminal or penal offenses;	(c) criminal or penal offences;
(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or	(d) reports of transfers of currency or other monetary instruments; or	(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.	(e) ensuring the satisfaction of judgments in adjudicatory proceedings.	(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

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	5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.	
6. Notwithstanding paragraph 4, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict those transfers under this Agreement, including as set out in paragraph 5.	6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.	5. Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.
Article 14.10: Performance Requirements	**Article 1106: Performance Requirements**	**Article 9.10: Performance Requirements**
1. No Party shall, 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, impose or enforce any requirement, or enforce any commitment or undertaking:[12]	1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:	1. No Party shall, 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, impose or enforce any requirement, or enforce any commitment or undertaking:[23]
Footnote 12 For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.		**Footnote 23** For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.
(a) to export a given level or percentage of goods or services;	(a) to export a given level or percentage of goods or services;	(a) to export a given level or percentage of goods or services;
(b) to achieve a given level or percentage of domestic content;	(b) to achieve a given level or percentage of domestic content;	(b) to achieve a given level or percentage of domestic content;
(c) to purchase, use, or accord a preference to a good produced or a service supplied in its territory, or to purchase a good or a service from a person in its territory;	(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;	(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 the investment;	(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;	(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 the investment;
(e) to restrict sales of a good or a service in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;	(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;	(e) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;
(f) to transfer a technology, a production process, or other proprietary knowledge to a person in its territory;	(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or	(f) to transfer a particular technology, a production process or other proprietary knowledge to a person in its territory;
(g) to supply exclusively from the territory of the Party a good that the investment produces or a service that it supplies to a specific regional market or to the world market;	(g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.	(g) to supply exclusively from the territory of the Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market;
(h) (i) to purchase, use, or accord a preference to, in its territory, technology of the Party or of a person of the Party,[13] or (ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a technology; or		(h) (i) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party;[24] or (ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a particular technology; or
Footnote 13 For the purposes of this Article, the term "technology of the Party or of a person of the Party" includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive license.		**Footnote 24** For the purposes of this Article, the term "technology of the Party or of a person of the Party" includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive licence.
(i) to adopt: (i) a given rate or amount of royalty under a license contract, or (ii) a given duration of the term of a license contract, in regard to any license contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future license contract[14] freely entered into between the investor and a person in its territory, provided that the requirement is imposed or the commitment or undertaking is enforced in a manner that constitutes direct interference with that license contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, paragraph 1(i) does not apply when the license contract is concluded between the investor and a Party.		(i) to adopt: (i) a given rate or amount of royalty under a licence contract; or (ii) a given duration of the term of a licence contract, in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future licence contract[25] freely entered into between the investor and a person in its territory, provided that the requirement is imposed or the commitment or undertaking is enforced in a manner that constitutes direct interference with that licence contract by an exercise of nonjudicial governmental authority of a Party. For greater certainty, paragraph 1(i) does not apply when the licence contract is concluded between the investor and a Party.

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Footnote 14 A "license contract" referred to in this subparagraph means a contract concerning the licensing of technology, a production process, or other proprietary knowledge.		**Footnote 25** A "licence contract" referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.
	2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 1102 and 1103 apply to the measure.	
2. No Party shall 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 of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:	3. No Party may condition 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 any of the following requirements:	2. No Party shall 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 of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:
(a) to achieve a given level or percentage of domestic content;	(a) to achieve a given level or percentage of domestic content;	(a) to achieve a given level or percentage of domestic content;
(b) to purchase, use, or accord a preference to a good produced in its territory, or to purchase a good from a person in its territory;	(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;	(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 the investment; (d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings; or (e) (i) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party, or	(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 provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.	(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 the investment; or (d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings.
(ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a technology.		
3. In relation to paragraphs 1 and 2: (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 of an investor of a Party or of a non-Party in its territory, 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.	4. Nothing in paragraph 3 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, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.	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 of an investor of a Party or of a non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
(b) Paragraphs 1(f), 1(h), 1(i), and 2(e) do not apply: (i) if a Party authorizes use of an intellectual property right in accordance with Article 31[15] of the TRIPS Agreement, or to a measure requiring the disclosure of proprietary information that fall within the scope of, and is consistent with, Article 39 of the TRIPS Agreement, or (ii) if the requirement is imposed or the commitment or undertaking[16] is enforced by a court, administrative tribunal, or competition authority, after judicial or administrative process, to remedy an alleged violation of competition laws.[17]		(b) Paragraphs 1(f), 1(h) and 1(i) shall not apply: (i) if a Party authorises use of an intellectual property right in accordance with Article 31 [26] 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) if 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.[27, 28]
Footnote 15 The reference to "Article 31" includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the *Doha Declaration on the TRIPS Agreement and Public Health* (WT/MIN (01)/DEC/2).		**Footnote 26** The reference to "Article 31" includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the *Doha Declaration on the TRIPS Agreement and Public Health* (WT/MIN (01)/DEC/2).
Footnote 16 For greater certainty, for the purposes of this subparagraph, a commitment or undertaking includes a consent agreement.		
Footnote 17 The Parties recognize that a patent does not necessarily confer market power.		**Footnote 27** The Parties recognise that a patent does not necessarily confer market power. **Footnote 28** In the case of Brunei Darussalam, for a period of 10 years after the entry into force of this Agreement for it or until it establishes a competition authority or authorities, whichever occurs earlier, the reference to the Party's competition laws includes competition regulations.

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		(c) Paragraph 1(i) shall not apply if the requirement is imposed or the commitment or undertaking is enforced by a tribunal as equitable remuneration under the Party's copyright laws.
(c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), 1(c), 1(f), 2(a), and 2(b) shall not be construed to prevent a Party from adopting or maintaining 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.	6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures: (a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; (b) necessary to protect human, animal or plant life or health; or (c) necessary for the conservation of living or non-living exhaustible natural resources.	(d) Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), 1(c), 1(f), 2(a) and 2(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), 1(b), 1(c), 2(a), and 2(b) do not apply to qualification requirements for a good or a service with respect to export promotion and foreign aid programs.		(e) Paragraphs 1(a), 1(b), 1(c), 2(a) and 2(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
(e) Paragraphs 1(b), 1(c), 1(f), 1(g), 1(h), 1(i), 2(a), 2(b), and 2(e) do not apply to government procurement. (f) Paragraphs 2(a) and 2(b) do not apply to requirements imposed by an importing Party relating to the content of a good necessary to qualify for preferential tariffs or preferential quotas.		(f) Paragraphs 1(b), 1(c), 1(f), 1(g), 1(h), 1(i), 2(a) and 2(b) shall not apply to government procurement. (g) Paragraphs 2(a) and 2(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
(g) Paragraphs 1(h), 1(i), and 2(e) shall not be construed to prevent a Party from adopting or maintaining measures to protect legitimate public welfare objectives, provided that such measures are not applied in an arbitrary or unjustifiable manner, or in a manner that constitutes a disguised restriction on international trade or investment.		(h) Paragraphs (1)(h) and (1)(i) shall not be construed to prevent a Party from adopting or maintaining measures to protect legitimate public welfare objectives, provided that such measures are not applied in an arbitrary or unjustifiable manner, or in a manner that constitutes a disguised restriction on international trade or investment.
		4. 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 employ or train workers in its territory provided that the employment or training does not require the transfer of a particular technology, production process or other proprietary knowledge to a person in its territory.
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, if a Party did not impose or require the commitment, undertaking, or requirement.	5. Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.	5. For greater certainty, paragraphs 1 and 2 shall not apply to any commitment, undertaking or requirement other than those set out in those paragraphs 6. This Article does not preclude enforcement of any commitment, undertaking or requirement between private parties, if a Party did not impose or require the commitment, undertaking or requirement.
Article 14.11: Senior Management and Boards of Directors 1. No Party shall require that an enterprise of that Party that is a covered investment appoint to senior management positions a natural person of a particular nationality.	**Article 1107: Senior Management and Boards of Directors** 1. No Party may require that an enterprise of that Party that is an investment of an investor of another Party appoint to senior management positions individuals of any particular nationality.	**Article 9.11: Senior Management and Boards of Directors** 1. No Party shall require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person 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.	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 an investment of an investor of another Party, 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.	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 14.12: Non-Conforming Measures 1. Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), Article 14.10 (Performance Requirements), and Article 14.11 (Senior Management and Boards of Directors) do not apply to:	**Article 1108: Reservations and Exceptions** 1. Articles 1102, 1103, 1106 and 1107 do not apply to:	**Article 9.12: Non-Conforming Measures** 1. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to:
(a) any existing non-conforming measure that is maintained by a Party at:	(a) any existing non-conforming measure that is maintained by	(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,	(i) a Party at the federal level, as set out in its Schedule to Annex I or III,	(i) the central level of government, as set out by that Party in its Schedule to Annex I;

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(ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or	(ii) a state or province, for two years after the date of entry into force of this Agreement, and thereafter as set out by a Party in its Schedule to Annex I in accordance with paragraph 2, or	(ii) a regional level of government, as set out by that Party in its Schedule to Annex I;
(iii) a local level of government; (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), Article 14.10 (Performance Requirements), or Article 14.11 (Senior Management and Boards of Directors).	(iii) a local government; (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1102, 1103, 1106 and 1107.	or (iii) a local level of government; (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) or Article 9.11 (Senior Management and Boards of Directors).[29]
		Footnote 29 With respect to Viet Nam, Annex 9-I (Non-Conforming Measures Ratchet Mechanism) applies.
	2. Each Party may set out in its Schedule to Annex I, within two years of the date of entry into force of this Agreement, any existing nonconforming measure maintained by a state or province, not including a local government.	
2. Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), Article 14.10 (Performance Requirements), and Article 14.11 (Senior Management and Boards of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out by that Party in its Schedule to Annex II.	3. Articles 1102, 1103, 1106 and 1107 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.	2. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in its Schedule to Annex II.
		3. If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in paragraph 1(a)(ii), creates a material impediment to investment in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and ppropriate.[30]
		Footnote 30 For greater certainty, any Party may request consultations with another Party regarding a nonconforming measure applied by a central level of government, as referred to in paragraph 1(a)(i).
3. No Party shall, 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 another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.	4. No 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 another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.	4. No Party shall, under any measure adopted after the date of entry into force of this Agreement for that Party and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. (a) Article 14.4 (National Treatment) does not apply to any measure that falls within an exception to, or derogation from, the obligations imposed by: (i) Article 20.8 (National Treatment), or (ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 20 (Intellectual Property Rights); (b) Article 14.5 (Most-Favored-Nation Treatment) does not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, an obligation imposed by: (i) Article 20.8 (National Treatment), or (ii) Article 4 of the TRIPS Agreement.	5. Articles 1102 and 1103 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 1703 (Intellectual Property National Treatment) as specifically provided for in that Article.	5. (a) Article 9.4 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by: (i) Article 18.8 (National Treatment); or (ii) Article 3 of the TRIPS Agreement, if the exception or derogation relates to matters not addressed by Chapter 18 (Intellectual Property). (b) Article 9.5 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by: (i) Article 18.8 (National Treatment); or (ii) Article 4 of the TRIPS Agreement.
	6. Article 1103 does not apply to treatment accorded by a Party pursuant to agreements, or with respect to sectors, set out in its Schedule to Annex IV.	
5. Article 14.4 (National Treatment), Article 14.5 (Most-Favored-Nation Treatment), and Article 14.11 (Senior Management and Boards of Directors) do not apply to: (a) government procurement; or (b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.	7. Articles 1102, 1103 and 1107 do not apply to: (a) procurement by a Party or a state enterprise; or (b) subsidies or grants provided by a Party or a state enterprise, including government supported loans, guarantees and insurance.	6. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to: (a) government procurement; or (b) subsidies or grants provided by a Party, including government supported loans, guarantees and insurance.
	8. The provisions of:	

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	(a) Article 1106(1)(a), (b) and (c), and (3)(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs; (b) Article 1106(1)(b), (c), (f) and (g), and (3)(a) and (b) do not apply to procurement by a Party or a state enterprise; and (c) Article 1106(3)(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.	
		7. For greater certainty, any amendments or modifications to a Party's Schedules to Annex I or Annex II, pursuant to this Article, shall be made in accordance with Article 30.2 (Amendments).
Article 14.13: Special Formalities and Information Requirements	**Article 1111: Special Formalities and Information Requirements**	**Article 9.14: Special Formalities and Information Requirements**
1. Nothing in Article 14.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of another Party and covered investments pursuant to this Chapter.	1. Nothing in Article 1102 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of another Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and investments of investors of another Party pursuant to this Chapter.	1. Nothing in Article 9.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of another Party and covered investments pursuant to this Chapter.
2. Notwithstanding Article 14.4 (National Treatment) and Article 14.5 (Most-Favored-Nation Treatment), a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or its 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.	2. Notwithstanding Articles 1102 or 1103, a Party may require an investor of another Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the 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.	2. Notwithstanding Article 9.4 (National Treatment) and Article 9.5 (Most-Favoured-Nation Treatment), a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.
Article 14.14: Denial of Benefits 1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if the enterprise:	**Article 1113: Denial of Benefits** 1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investor if investors of a non-Party own or control the enterprise and the denying Party: (a) does not maintain diplomatic relations with the non-Party; or	**Article 9.15: Denial of Benefits** 1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if the enterprise:
(a) is owned or controlled by a person of a non-Party or of the denying Party; and (b) has no substantial business activities in the territory of any Party other than the denying Party.	2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.	(a) is owned or controlled by a person of a non-Party or of the denying Party; and (b) has no substantial business activities in the territory of any Party other than the denying Party.
2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.	(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.	2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.
Article 14.15: Subrogation		**Article 9.13: Subrogation**

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If a Party, or an agency of a Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance, or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognize the subrogation or transfer of any right the investor would have possessed with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing that right to the extent of the subrogation, unless a Party or an agency of a Party authorizes the investor to act on its behalf.		If a Party, or any agency, institution, statutory body or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.
Article 14.16: Investment and Environmental, Health, Safety, and other Regulatory Objectives 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, health, safety, or other regulatory objectives.	**Article 1114: Environmental Measures** 1. 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. 2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.	**Article 9.16: Investment and Environmental, Health and other Regulatory Objectives** 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, health or other regulatory objectives.
Article 14.17: Corporate Social Responsibility The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party, which may include the OECD Guidelines for Multinational Enterprises. These standards, guidelines, and principles may address areas such as labor, environment, gender equality, human rights, indigenous and aboriginal peoples' rights, and corruption.		**Article 9.17: Corporate Social Responsibility** The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.
ANNEX 14-A **CUSTOMARY INTERNATIONAL LAW** The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 14.6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.		**Annex 9-A: Customary International Law** The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 9.6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.
ANNEX 14-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[18] or property interest in an investment. **Footnote 18** For greater certainty, the existence of a property right is determined with reference to a Party's law. 2. Article 14.8.1 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure. 3. The second situation addressed by Article 14.8.1 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.		**Annex 9-B: Expropriation** The Parties confirm their shared understanding that: 1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment. 2. Article 9.8.1 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure. 3. The second situation addressed by Article 9.8.1 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

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(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors: (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred, (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations,[19] and **Footnote 19** For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector. (iii) the character of the government action, including its object, context, and intent. (b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations, except in rare circumstances.		(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors: (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred; (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;[36] and **Footnote 36** For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector. (iii) the character of the government action. (b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health,[37] safety and the environment, do not constitute indirect expropriations, except in rare circumstances. **Footnote 37** For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances and blood and blood-related products. **Annex 9-C: Expropriation Relating to Land** 1. Notwithstanding the obligations under Article 9.8 (Expropriation and Compensation), where Singapore is the expropriating Party, any measure of direct expropriation relating to land shall be for a purpose and upon payment of compensation at market value, in accordance with the applicable domestic legislation[38] and any subsequent amendments thereto relating to the amount of compensation where such amendments provide for the method of determination of the compensation which is no less favourable to the investor for its expropriated investment than such method of determination in the applicable domestic legislation as at the time of entry into force of this Agreement for Singapore. **Footnote 38** The applicable domestic legislation is the *Land Acquisition Act* (Cap. 152) as at the date of entry into force of this Agreement for Singapore. 2. Notwithstanding the obligations under Article 9.8 (Expropriation and Compensation), where Viet Nam is the expropriating Party, any measure of direct expropriation relating to land shall be: (i) for a purpose in accordance with the applicable domestic legislation;[39] and (ii) upon payment of compensation equivalent to the market value, while recognising the applicable domestic legislation. **Footnote 39** The applicable domestic legislation is Viet Nam's *Land Law* , Law No. 45/2013/QH13 and *Decree 44/2014/ND-CP Regulating Land Prices* , as at the date of entry into force of this Agreement for Viet Nam.
ANNEX 14-C **LEGACY INVESTMENT CLAIMS AND PENDING CLAIMS** 1. Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under: (a) Section A of Chapter 11 (Investment) of NAFTA 1994;		

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(b) Article 1503(2) (State Enterprises) of NAFTA 1994; and (c) Article 1502(3)(a) (Monopolies and State Enterprises) of NAFTA 1994 where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A of Chapter 11 (Investment) of NAFTA 1994.[20], [21] **Footnote 20** For greater certainty, the relevant provisions in Chapter 2 (General Definitions), Chapter 11 (Section A) (Investment), Chapter 14 (Financial Services), Chapter 15 (Competition Policy, Monopolies and State Enterprises), Chapter 17 (Intellectual Property), Chapter 21 (Exceptions), and Annexes I-VII (Reservations and Exceptions to Investment, Cross-Border Trade in Services and Financial Services Chapters) of NAFTA 1994 apply with respect to such a claim. **Footnote 21** Mexico and the United States do not consent under paragraph 1 with respect to an investor of the other Party that is eligible to submit claims to arbitration under paragraph 2 of Annex 14-E (Mexico-United States Investment Disputes Related to Covered Government Contracts). 2. The consent under paragraph 1 and the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex shall satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; (b) Article II of the New York Convention for an "agreement in writing"; and (c) Article I of the Inter-American Convention for an "agreement". 3. A Party's consent under paragraph 1 shall expire three years after the termination of NAFTA 1994. 4. For greater certainty, an arbitration initiated pursuant to the submission of a claim under paragraph 1 may proceed to its conclusion in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994, the Tribunal's jurisdiction with respect to such a claim is not affected by the expiration of consent referenced in paragraph 3, and Article 1136 (Finality and Enforcement of an Award) of NAFTA 1994 (excluding paragraph 5) applies with respect to any award made by the Tribunal. 5. For greater certainty, an arbitration initiated pursuant to the submission of a claim under Section B of Chapter 11 (Investment) of NAFTA 1994 while NAFTA 1994 is in force may proceed to its conclusion in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994, the Tribunal's jurisdiction with respect to such a claim is not affected by the termination of NAFTA 1994, and Article 1136 of NAFTA 1994 (excluding paragraph 5) applies with respect to any award made by the Tribunal. 6. For the purposes of this Annex: (a) "legacy investment" means an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA 1994, and in existence on the date of entry into force of this Agreement; (b) "investment", "investor", and "Tribunal" have the meanings accorded in Chapter 11 (Investment) of NAFTA 1994; and (c) "ICSID Convention", "ICSID Additional Facility Rules", "New York Convention", and "Inter-American Convention" have the meanings accorded in Article 14.D.1 (Definitions). **ANNEX 14-D** **MEXICO-UNITED STATES INVESTMENT DISPUTES**	**Section B: Settlement of Disputes between a Party and an Investor of Another Party** **Article 1115: Purpose**	**Section B: Investor-State Dispute Settlement**

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	Without prejudice to the rights and obligations of the Parties under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.	
Article 14.D.1: Definitions For the purposes of this Annex:		
Annex Party means Mexico or the United States;		
Centre means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;		**Centre** means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;
claimant means an investor of an Annex Party that is a party to a qualifying investment dispute, excluding an investor that is owned or controlled by a person of a non-Annex Party that, on the date of signature of this Agreement, the other Annex Party has determined to be a non-market economy for purposes of its trade remedy laws and with which no Party has a free trade agreement;		**claimant** means an investor of a Party that is a party to an investment dispute with another Party. If that investor is a natural person, who is a permanent resident of a Party and a national of another Party, that natural person may not submit a claim to arbitration against that latter Party;
disputing parties means the claimant and the respondent;	**disputing parties** means the disputing investor and the disputing Party;	**disputing parties** means the claimant and the respondent;
disputing party means either the claimant or the respondent;	**disputing party** means the disputing investor or the disputing Party;	**disputing party** means either the claimant or the respondent;
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 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;	**ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and Nationals of other States* , done at Washington, March 18, 1965;	**ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and Nationals of other States,* done at Washington, March 18, 1965;
Inter-American Convention means the *Inter-American Convention on International Commercial Arbitration* , done at Panama, January 30, 1975;	**InterAmerican Convention** means the *InterAmerican Convention on International Commercial Arbitration* , done at Panama, January 30, 1975;	**Inter-American Convention** means the *Inter-American Convention on International Commercial Arbitration* , done at Panama, January 30, 1975;
New York Convention means the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* , done at New York, June 10, 1958;	N**ew York Convention** means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* , done at New York, June 10, 1958;	**New York Convention** means the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* , done at New York, June 10, 1958;
non-disputing Annex Party means the Annex Party that is not a party to a qualifying investment dispute;		**non-disputing Party** means a Party that is not a party to an investment dispute;
protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, including classified government information;		**protected information** means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, including classified government information;
qualifying investment dispute means an investment dispute between an investor of an Annex Party and the other Annex Party;		
respondent means the Annex Party that is a party to a qualifying investment dispute;		**respondent** means the Party that is a party to an investment dispute;
Secretary-General means the Secretary-General of ICSID; and	**Secretary-General** means the Secretary-General of ICSID;	**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.	**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.	**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law.
Article 14.D.2: Consultation and Negotiation	**Article 1118: Settlement of a Claim through Consultation and Negotiation**	**Article 9.18: Consultation and Negotiation**
1. In the event of a qualifying 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, such as good offices, conciliation, or mediation.	The disputing parties should first attempt to settle a claim through consultation or negotiation.	1. 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, such as good offices, conciliation or mediation.
		2. The claimant shall deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue.
2. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.		3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.
	Article 1116: Claim by an Investor of a Party on Its Own Behalf	
	1. An investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under:	

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	(a) Section A or Article 1503(2) (State Enterprises), or (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, and that the investor has incurred loss or damage by reason of, or arising out of, that breach. 2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage. **Article 1117: Claim by an Investor of a Party on Behalf of an Enterprise** 1. An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under: (a) Section A or Article 1503(2) (State Enterprises), or (b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach. 2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage. 3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 1116 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 1120, the claims should be heard together by a Tribunal established under Article 1126, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby. 4. An investment may not make a claim under this Section.	
Article 14.D.3: Submission of a Claim to Arbitration 1. In the event that a disputing party considers that a qualifying investment dispute cannot be settled by consultation and negotiation:	**Article 1120: Submission of a Claim to Arbitration** 1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:	**Article 9.19: Submission of a Claim to Arbitration** 1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation):
(a) the claimant, on its own behalf, may submit to arbitration under this Annex a claim: (i) that the respondent has breached: (A) Article 14.4 (National Treatment) or Article 14.5 (Most-Favored-Nation Treatment),22 except with respect to the establishment or acquisition of an investment, or (B) Article 14.8 (Expropriation and Compensation), except with respect to indirect expropriation, and (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and **Footnote 22** For the purposes of this paragraph: (i) the "treatment" referred to in Article 14.5 (Most-Favored-Nation Treatment) excludes provisions in other international trade or investment agreements that establish international dispute resolution procedures or impose substantive obligations; and (ii) the "treatment" referred to in Article 14.5 only encompasses measures adopted or maintained by the other Annex Party, which for greater clarity may include measures adopted in connection with the implementation of substantive obligations in other international trade or investment agreements.		(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 authorisation;[31] 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

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		Footnote 31 Without prejudice to a claimant's right to submit to arbitration other claims under this Article, a claimant shall not submit to arbitration a claim under subparagraph (a)(i)(B) or subparagraph (b)(i)(B) that a Party covered by Annex 9-H has breached an investment authorisation by enforcing conditions or requirements under which the investment authorisation was granted.
(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 Annex a claim:		(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) Article 14.4 (National Treatment) or Article 14.5 (Most-Favored-Nation Treatment), except with respect to the establishment or acquisition of an investment, or (B) Article 14.8 (Expropriation and Compensation), except with respect to indirect expropriation, and (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.[23]		(i) that the respondent has breached: (A) an obligation under Section A; (B) an investment authorisation; or (C) an investment agreement; and (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,
Footnote 23 For greater certainty, in order for a claim to be submitted to arbitration under subparagraph (b), an investor of the Party of the claimant must own or control the enterprise on the date of the alleged breach and the date on which the claim is submitted to arbitration.		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 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. When the claimant submits a claim pursuant to paragraph 1(a)(i)(B), 1(a)(i)(C), 1(b)(i)(B) or 1(b)(i)(C), the respondent may make a counterclaim in connection with the factual and legal basis of the claim or rely on a claim for the purpose of a set off against the claimant.[32]
		Footnote 32 In the case of investment authorisations, this paragraph shall apply only to the extent that the investment authorisation, including instruments executed after the date the authorisation was granted, creates rights and obligations for the disputing parties.
	Article 1119: Notice of Intent to Submit a Claim to Arbitration	
2. At least 90 days before submitting any claim to arbitration under this Annex, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (notice of intent). The notice shall specify:	The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:	3. At least 90 days before submitting any claim to arbitration under this Section, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (notice of intent). The notice shall specify:
(a) the name and address of the claimant and, if a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;	(a) the name and address of the disputing investor and, where a claim is made under Article 1117, the name and address of the enterprise;	(a) the name and address of the claimant and, if a claim is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;
(b) for each claim, the provision of this Agreement alleged to have been breached and any other relevant provisions;	(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;	(b) for each claim, the provision of this Agreement, investment authorisation or investment agreement alleged to have been breached and any other relevant provisions;
(c) the legal and factual basis for each claim; and	(c) the issues and the factual basis for the claim; and	(c) the legal and factual basis for each claim; and
(d) the relief sought and the approximate amount of damages claimed.	(d) the relief sought and the approximate amount of damages claimed.	(d) the relief sought and the approximate amount of damages claimed.
3. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:		4. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:
(a) the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings* , provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;[24]	(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;	(a) the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings* , provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;
Footnote 24 For greater certainty, if a claimant submits a claim under this subparagraph, any award made by the tribunal under Article 14.D.13 (Awards) constitutes an award under Chapter IV of the ICSID Convention (Arbitration).		
(b) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;	(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or	(b) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;
(c) the UNCITRAL Arbitration Rules; or	(c) the UNCITRAL Arbitration Rules.	(c) the UNCITRAL Arbitration Rules; or
(d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.		(d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.

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4. A claim shall be deemed submitted to arbitration under this Annex when the claimant's notice of or request for arbitration (notice of arbitration): (a) referred to in the ICSID Convention is received by the Secretary-General; (b) referred to in the ICSID Additional Facility Rules is received by the Secretary-General; (c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or (d) referred to under any arbitral institution or arbitration rules selected under paragraph 3(d) is received by the respondent.		5. 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 the ICSID Convention is received by the Secretary-General; (b) referred to in the ICSID Additional Facility Rules is received by the Secretary-General; (c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or (d) referred to under any arbitral institution or arbitration rules selected under paragraph 4(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 Annex on the date of its receipt under the applicable arbitration rules.		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 arbitration rules.
5. The arbitration rules applicable under paragraph 3 that are in effect on the date the claim or claims were submitted to arbitration under this Annex shall govern the arbitration except to the extent modified by this Agreement.	2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.	6. The arbitration rules applicable under paragraph 4 that are 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.		7. 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 14.D.4: Consent to Arbitration	**Article 1122: Consent to Arbitration**	**Article 9.20: Consent of Each Party to Arbitration**
1. Each Annex Party consents to the submission of a claim to arbitration under this Annex in accordance with this Agreement.	1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.	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 Annex shall be deemed to satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; (b) Article II of the New York Convention for an "agreement in writing"; and (c) Article I of the Inter-American Convention for an "agreement".	2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties; (b) Article II of the New York Convention for an agreement in writing; and (c) Article I of the InterAmerican Convention for an agreement.	2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of: (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; (b) Article II of the New York Convention for an "agreement in writing"; and (c) Article I of the Inter-American Convention for an "agreement".
Article 14.D.5: Conditions and Limitations on Consent	**Article 1121: Conditions Precedent to Submission of a Claim to Arbitration**	**Article 9.21: Conditions and Limitations on Consent of Each Party**
1. No claim shall be submitted to arbitration under this Annex unless: (a) the claimant (for claims brought under Article 14.D.3.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 14.D.3.1(b)) first initiated a proceeding before a competent court or administrative tribunal of the respondent with respect to the measures alleged to constitute a breach referred to in Article 14.D.3;	1. A disputing investor may submit a claim under Article 1116 to arbitration only if:	2. No claim shall be submitted to arbitration under this Section unless:
(b) the claimant or the enterprise obtained a final decision from a court of last resort of the respondent or 30 months have elapsed from the date the proceeding in subparagraph (a) was initiated;[25]		
Footnote 25 The provisions in subparagraphs (a) and (b) do not apply to the extent recourse to domestic remedies was obviously futile.		
(c) no more than four years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 14.D.3.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 14.D.3.1(a)) or the enterprise (for claims brought under Article 14.D.3.1(b)) has incurred loss or damage;		1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.19.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 9.19.1(a)) or the enterprise (for claims brought under Article 9.19.1(b)) has incurred loss or damage.
(d) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and	(a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and	(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
(e) the notice of arbitration is accompanied: (i) for claims submitted to arbitration under Article 14.D.3.1(a) (Submission of a Claim to Arbitration), by the claimant's written waiver, and		(b) the notice of arbitration is accompanied: (i) for claims submitted to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), by the claimant's written waiver; and

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(ii) for claims submitted to arbitration under Article 14.D.3.1(b) (Submission of a Claim to Arbitration), by the claimant's and the enterprise's written waivers, of any right to initiate or continue before any court or administrative tribunal under the law of an Annex Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 14.D.3 (Submission of a Claim to Arbitration).	(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party. 2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise: (a) consent to arbitration in accordance with the procedures set out in this Agreement; and (b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party. 3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration. 4. Only where a disputing Party has deprived a disputing investor of control of an enterprise: (a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and (b) Annex 1120.1(b) shall not apply.	(ii) for claims submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration), by the claimant's and the enterprise's written waivers, of any right to initiate or continue before any court or administrative tribunal under the law of a Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to Arbitration).
2. Notwithstanding paragraph 1(e), the claimant (for claims brought under Article 14.D.3.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 14.D.3.1(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.		3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 9.19.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 9.19.1(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.
Article 14.D.6: Selection of Arbitrators	**Article 1123: Number of Arbitrators and Method of Appointment**	**Article 9.22: Selection of Arbitrators**
1. Unless the disputing parties agree otherwise, 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.	Except in respect of a Tribunal established under Article 1126, and 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. **Article 1124: Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator**	1. Unless the disputing parties agree otherwise, 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 Annex. 3. If a tribunal has not been constituted within a period of 75 days after the date that a claim is submitted to arbitration under this Annex, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either the respondent or the Party of the claimant as the presiding arbitrator unless the disputing parties agree otherwise.	1. The Secretary-General shall serve as appointing authority for an arbitration under this Section. 2. If a Tribunal, other than a Tribunal established under Article 1126, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.	2. The Secretary-General shall serve as appointing authority for an arbitration under this Section. 3. If a tribunal has not been constituted within a period of 75 days after the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either the respondent or the Party of the claimant as the presiding arbitrator unless the disputing parties agree otherwise.

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	3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties. 4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 45 presiding arbitrators meeting the qualifications of the Convention and rules referred to in Article 1120 and experienced in international law and investment matters. The roster members shall be appointed by consensus and without regard to nationality.	
4. For the 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 14.D.3.1(a) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Annex, 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 14.D.3.1(b) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Annex, 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. 5. Arbitrators appointed to a tribunal for claims submitted under Article 14.D.3.1 shall: (a) comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration, including guidelines regarding direct or indirect conflicts of interest, or any supplemental guidelines or rules adopted by the Annex Parties; (b) not take instructions from any organization or government regarding the dispute; and (c) not, for the duration of the proceedings, act as counsel or as party-appointed expert or witness in any pending arbitration under the annexes to this Chapter. 6. Challenges to arbitrators shall be governed by the procedures in the UNCITRAL Arbitration Rules.	**Article 1125: Agreement to Appointment of Arbitrators** 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 based on Article 1124(3) or on a ground other than nationality: (a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules; (b) a disputing investor referred to in Article 1116 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and (c) a disputing investor referred to in Article 1117(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.	4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality: (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules; (b) a claimant referred to in Article 9.19.1(a) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and (c) a claimant referred to in Article 9.19.1(b) (Submission of a Claim to Arbitration) 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. 5. In the appointment of arbitrators to a tribunal for claims submitted under Article 9.19.1(a)(i)(B) (Submission of a Claim to Arbitration), Article 9.19.1(b)(i)(B), Article 9.19.1(a)(i)(C) or Article 9.19.1(b)(i)(C), each disputing party shall take into account the expertise or relevant experience of particular candidates with respect to the relevant governing law under Article 9.25.2 (Governing Law). If the parties fail to agree on the appointment of the presiding arbitrator, the Secretary-General shall also take into account the expertise or relevant experience of particular candidates with respect to the relevant governing law under Article 9.25.2.

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		6. The Parties shall, prior to the entry into force of this Agreement, provide guidance on the application of the Code of Conduct for Dispute Settlement Proceedings under Chapter 28 (Dispute Settlement) to arbitrators selected to serve on investor-State dispute settlement tribunals pursuant to this Article, including any necessary modifications to the Code of Conduct to conform to the context of investor-State dispute settlement. The Parties shall also provide guidance on the application of other relevant rules or guidelines on conflicts of interest in international arbitration. Arbitrators shall comply with that guidance in addition to the applicable arbitral rules regarding independence and impartiality of arbitrators.
	Article 1127: Notice A disputing Party shall deliver to the other Parties: (a) written notice of a claim that has been submitted to arbitration no later than 30 days after the date that the claim is submitted; and (b) copies of all pleadings filed in the arbitration. **Article 1128: Participation by a Party** On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement. **Article 1129: Documents** 1. A Party shall be entitled to receive from the disputing Party, at the cost of the requesting Party a copy of: (a) the evidence that has been tendered to the Tribunal; and (b) the written argument of the disputing parties. 2. A Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.	
Article 14.D.7: Conduct of the Arbitration 1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 14.D.3.3 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.	**Article 1130: Place of Arbitration** Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with: (a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or (b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.	**Article 9.23: Conduct of the Arbitration** 1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 9.19.4 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.
2. The non-disputing Annex Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.		2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.
3. After consultation with the disputing parties, the tribunal may accept and consider written *amicus curiae* submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government, or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.		3. After consultation with the disputing parties, the tribunal may accept and consider written *amicus curiae* submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.
4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, 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 14.D.13 (Awards) or that a claim is manifestly without legal merit.		4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards) or that a claim is manifestly without legal merit.

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(a) An objection under this paragraph 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.		(a) An objection under this paragraph 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.		(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 14.D.13 (Awards), the tribunal shall assume to be true the 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 the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.		(c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards), the tribunal shall assume to be true the 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 the relevant article 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, including an objection to jurisdiction, 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 5.		(d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, 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 5.
5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, 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.		5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, 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.
6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it 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.		6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it 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.
7. For greater certainty, if an investor of an Annex Party submits a claim under this Annex, the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.		7. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 9.6 (Minimum Standard of Treatment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.
8. A respondent may not assert as a defense, counterclaim, 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.		8. A respondent may not assert as a defence, counterclaim, 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.

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9. 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 14.D.3 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.		9. 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 9.19 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.
10. The tribunal and the disputing parties shall endeavor to conduct the arbitration in an expeditious and cost-effective manner.		
11. Following the submission of a claim to arbitration under this Annex, if the disputing parties fail to take any steps in the proceedings for more than 150 days, or such period as they may agree with the approval of the tribunal, the tribunal shall notify the disputing parties that they shall be deemed to have discontinued the proceedings if the parties fail to take any steps within 30 days after the notice is received. If the parties fail to take any steps within that time period, the tribunal shall take note of the discontinuance in an order. If a tribunal has not yet been constituted, the Secretary-General shall assume these responsibilities.		
12. In any arbitration conducted under this Annex, 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. Within 60 days after 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 comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.		10. 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. Within 60 days after 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 comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period. 11. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 9.29 (Awards) should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 9.24 (Transparency of Arbitral Proceedings).
Article 14.D.8: Transparency of Arbitral Proceedings 1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Annex 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 14.D.7.2 and 14.D.7.3 (Conduct of the Arbitration), , and Article 14.D.12 (Consolidation); (d) minutes or transcripts of hearings of the tribunal, if 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. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.		**Article 9.24: Transparency of Arbitral Proceedings** 1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties 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 9.23.2 (Conduct of the Arbitration) and Article 9.23.3 and Article 9.28 (Consolidation); (d) minutes or transcripts of hearings of the tribunal, if 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. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.

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3. Nothing in this Annex, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 32.2 (Essential Security) or Article 32.5 (Disclosure of Information).[26]		3. Nothing in this Section, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information).[33]
Footnote 26 For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 32.2 (Essential Security) or Article 32.5 (Disclosure of Information), the respondent may still withhold that information from disclosure to the public.		**Footnote 33** For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information), the respondent may still withhold that information from disclosure to the public.
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 Annex Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b); (b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;		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 any non-disputing Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b); (a) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;
(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and		(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and
(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:		(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:
(i) withdraw all or part of its submission containing that information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information. 5. Nothing in this Annex requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavor to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.		(i) withdraw all or part of its submission containing that information; or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information. 5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavour to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.
Article 14.D.9: Governing Law 1. Subject to paragraph 2, when a claim is submitted under Article 14.D.3.1 (Submission of a Claim to Arbitration), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.	**Article 1131: Governing Law** 1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.	**Article 9.25: Governing Law** 1. Subject to paragraph 3, when a claim is submitted under Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.[34] **Footnote 34** For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent when it is relevant to the claim as a matter of fact.

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		2. Subject to paragraph 3 and the other provisions of this Section, when a claim is submitted under Article 9.19.1(a)(i)(B) (Submission of a Claim to Arbitration), Article 9.19.1(a)(i)(C), Article 9.19.1(b)(i)(B) or Article 9.19.1(b)(i)(C), the tribunal shall apply: (a) the rules of law applicable to the pertinent investment authorisation or specified in the pertinent investment authorisation or investment agreement, or as the disputing parties may agree otherwise; or (b) if, in the pertinent investment agreement 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;[35] and (ii) such rules of international law as may be applicable. **Footnote 35** The "law of the respondent" means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case. For greater certainty, the law of the respondent includes the relevant law governing the investment agreement, including law on damages, mitigation, interest and estoppel.
2. A decision of the Commission on the interpretation of a provision of this Agreement under Article 30.2 (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.	2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.	3. A decision of the Commission on the interpretation of a provision of this Agreement under Article 27.2.2(f) (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.
Article 14.D.10: Interpretation of Annexes 1. If a respondent asserts as a defense that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision on its interpretation under Article 30.2 (Functions of the Commission) to the tribunal within 90 days of delivery of the request.	**Article 1132: Interpretation of Annexes** 1. Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I, Annex II, Annex III or Annex IV, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.	**Article 9.26: Interpretation of Annexes** 1. If a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision on its interpretation under Article 27.2.2(f) (Functions of the Commission) to the tribunal within 90 days of delivery of the request.
2. A decision issued by the Commission 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 Commission fails to issue such a decision within 90 days, the tribunal shall decide the issue.	2. Further to Article 1131(2), a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.	2. A decision issued by the Commission 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 Commission fails to issue such a decision within 90 days, the tribunal shall decide the issue.
Article 14.D.11: Expert Reports Without prejudice to the appointment of other kinds of experts when authorized by the applicable arbitration rules, a tribunal, on 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 scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions that the disputing parties may agree.	**Article 1133: 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 9.27: Expert Reports** Without prejudice to the appointment of other kinds of experts when authorised by the applicable arbitration rules, a tribunal, on 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 scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions that the disputing parties may agree.
Article 14.D.12: Consolidation	**Article 1126: Consolidation** 1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.	**Article 9.28: Consolidation** 8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.
1. If two or more claims have been submitted separately to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration) 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.		1. If two or more claims have been submitted separately to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) 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.

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	2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 1120 that have a question of law or fact in common, the Tribunal may, in the interests 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; or (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.	6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order: (a) assume jurisdiction over, and hear and determine together, all or part of the claims; (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or (c) instruct a tribunal previously established under Article 9.22 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that: (i) that tribunal, on request of a claimant that was 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 a prior hearing shall be repeated.
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. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request: (a) the name of the disputing Party or disputing investors against which the order is sought; (b) the nature of the order sought; and (c) the grounds on which the order is sought. 4. The disputing party shall deliver to the disputing Party or disputing investors against which the order is sought a copy of the request.	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 a period of 30 days after the date of receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.		3. Unless the Secretary-General finds within a period of 30 days after the date of 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 agree otherwise, 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 that the presiding arbitrator is not a national of the respondent or of the Party of the claimants.	5. Within 60 days of receipt of the request, the Secretary-General shall establish a Tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in Article 1124(4). In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties. The Secretary-General shall appoint the two other members from the roster referred to in Article 1124(4), and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of a Party of the disputing investors.	4. Unless all the disputing parties sought to be covered by the order agree otherwise, 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 that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.
5. If, within a period of 60 days after the date when 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 request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.		5. If, within a period of 60 days after the date when 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 request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.
6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration) 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		

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(c) instruct a tribunal previously established under Article 14.D.6 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that: (i) that tribunal, on request of a claimant that was 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 a prior hearing shall be repeated.		
7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration) 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. The request shall specify: (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.	6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 1116 or 1117 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request: (a) the name and address of the disputing investor; (b) the nature of the order sought; and (c) the grounds on which the order is sought.	7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) 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. The request shall specify: (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.
	7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.	
8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Annex.		
9. A tribunal established under Article 14.D.6 (Selection of Arbitrators) 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.	8. A Tribunal established under Article 1120 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.	9. A tribunal established under Article 9.22 (Selection of Arbitrators) 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 the 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 14.D.6 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.	9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 1120 be stayed, unless the latter Tribunal has already adjourned its proceedings.	10. On the 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 9.22 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.
	10. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of: (a) a request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention; (b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules; or (c) a notice of arbitration given under the UNCITRAL Arbitration Rules. 11. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3: (a) within 15 days of receipt of the request, in the case of a request made by a disputing investor; (b) within 15 days of making the request, in the case of a request made by the disputing Party. 12. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 within 15 days of receipt of the request. 13. The Secretariat shall maintain a public register of the documents referred to in paragraphs 10, 11 and 12. **Article 1134: Interim Measures of Protection** 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 the measure alleged to constitute a breach referred to in Article 1116 or 1117. For purposes of this paragraph, an order includes a recommendation.	
Article 14.D.13: Awards 1. When a tribunal makes a final award, 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.[27]	**Article 1135: Final Award** 1. Where a Tribunal makes a final award against a Party, the Tribunal may award, separately or in combination, only: (a) monetary damages and any applicable interest; (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.	**Article 9.29: Awards** 1. When a tribunal makes a final award, 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.

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Footnote 27 For greater certainty, in the final award the tribunal may not order the respondent to take or not to take other actions, including the amendment, repeal, adoption, or implementation of a law or regulation. 2. For greater certainty, if an investor of an Annex Party submits a claim to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration), it may recover only for loss or damage that is established on the basis of satisfactory evidence and that is not inherently speculative.		
3. For greater certainty, if an investor of an Annex Party submits a claim to arbitration under Article 14.D.3.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage incurred in its capacity as an investor of an Annex Party.		2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.
4. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceedings, and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance with this Annex and the applicable arbitration rules.	A tribunal may also award costs in accordance with the applicable arbitration rules.	3. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance with this Section and the applicable arbitration rules. 4. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award to the respondent reasonable costs and attorney's fees.
5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 14.D.3.1(b) (Submission of a Claim to Arbitration) and an award is made in favor of the enterprise:	2. Subject to paragraph 1, where a claim is made under Article 1117(1):	5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration) and an award is made in favour of the enterprise:
(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	(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	(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 under applicable domestic law with respect to the relief provided in the award.	(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.	(c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.
6. A tribunal shall not award punitive damages.	3. A Tribunal may not order a Party to pay punitive damages.	6. A tribunal shall not award punitive damages.
	Article 1136: Finality and Enforcement of an Award	
7. An award made by a tribunal has no binding force except between the disputing parties and in respect of the particular case.	1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of the particular case.	7. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
8. Subject to paragraph 9 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay. 9. A disputing party shall not seek enforcement of a final award until: (a) in the case of a final award made under the ICSID Convention:	2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay. 3. 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	8. Subject to paragraph 9 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay. 9. A disputing party shall 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	(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	(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 14.D.3.3(d) (Submission of a Claim to Arbitration): (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.	(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules (i) three months 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.	(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 9.19.4(d) (Submission of a Claim to Arbitration): (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.
10. Each Annex Party shall provide for the enforcement of an award in its territory.	4. Each Party shall provide for the enforcement of an award in its territory.	10. Each Party shall provide for the enforcement of an award in its territory.

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11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 31.6 (Establishment of a Panel). The requesting Party may seek in those proceedings:	5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 2008 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:	11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 28.7 (Establishment of a Panel). The requesting Party may seek in those proceedings:
(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 31.17 (Panel Report), a recommendation that the respondent abide by or comply with the final award.	(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) a recommendation that the Party abide by or comply with the final award.	(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 28.17 (Initial Report), a recommendation that the respondent abide by or comply with the final award.
12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention, or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 11.	6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the InterAmerican Convention regardless of whether proceedings have been taken under paragraph 5.	12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 11.
13. A claim that is submitted to arbitration under this Annex shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention and Article I of the Inter-American Convention.	7. 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 and Article I of the InterAmerican Convention.	13. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention and Article I of the Inter- American Convention.
Article 14.D.14: Service of Documents Delivery of notice and other documents to an Annex Party shall be made to the place named for that Annex Party in Appendix 1 (Service of Documents on an Annex Party). An Annex Party shall promptly make publicly available and notify the other Annex Party of any change to the place referred to in that Appendix.		**Article 9.30: Service of Documents** Delivery of notice and other documents to a Party shall be made to the place named for that Party in Annex 9-D (Service of Documents on a Party Under Section B). A Party shall promptly make publicly available and notify the other Parties of any change to the place referred to in that Annex.
	Article 1137: General *Time when a Claim is Submitted to Arbitration* 1. A claim is submitted to arbitration under this Section when: (a) the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention has been received by the Secretary-General; (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General; or (c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party. *Service of Documents* 2. Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 1137.2. *Receipts under Insurance or Guarantee Contracts* 3. In an arbitration under this Section, a Party shall not assert, as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages. *Publication of an Award* 4. Annex 1137.4 applies to the Parties specified in that Annex with respect to publication of an award. **Article 1138: Exclusions** 1. Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Section or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) to other actions taken by a Party pursuant to Article 2102 (National Security), a decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of another Party, or its investment, pursuant to that Article shall not be subject to such provisions. 2. The dispute settlement provisions of this Section and of Chapter Twenty shall not apply to the matters referred to in Annex 1138.2. **Annex 1120.1: Submission of a Claim to Arbitration Mexico** With respect to the submission of a claim to arbitration: (a) an investor of another Party may not allege that Mexico has breached an obligation under: (i) Section A or Article 1503(2) (State Enterprises), or (ii) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,	

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	both in an arbitration under this Section and in proceedings before a Mexican court or administrative tribunal; and (b) where an enterprise of Mexico that is a juridical person that an investor of another Party owns or controls directly or indirectly alleges in proceedings before a Mexican court or administrative tribunal that Mexico has breached an obligation under: (i) Section A or Article 1503(2) (State Enterprises), or (ii) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A, the investor may not allege the breach in an arbitration under this Section. **Annex 1137.2: Service of Documents on a Party Under Section B** Each Party shall set out in this Annex and publish in its official journal by January 1, 1994, the place for delivery of notice and other documents under this Section. **Annex 1137.4: Publication of an Award** **Canada** Where Canada is the disputing Party, either Canada or a disputing investor that is a party to the arbitration may make an award public. **Mexico** Where Mexico is the disputing Party, the applicable arbitration rules apply to the publication of an award. **United States** Where the United States is the disputing Party, either the United States or a disputing investor that is a party to the arbitration may make an award public. **Annex 1138.2: Exclusions from Dispute Settlement** **Canada** A decision by Canada following a review under the *Investment Canada Act* , with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures). **Mexico** A decision by the National Commission on Foreign Investment ("Comisión Nacional de Inversiones Extranjeras") following a review pursuant to Annex I, page IM4, with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).	
APPENDIX 1 **SERVICE OF DOCUMENTS ON AN ANNEX PARTY**		**Annex 9-D: Service of Documents on a Party Under Section B (Investor-State Dispute Settlement)** **Australia** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Australia by delivery to: Department of Foreign Affairs and Trade R.G. Casey Building John McEwen Crescent Barton ACT 0221 Australia **Brunei Darussalam** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Brunei Darussalam by delivery to: The Permanent Secretary (Trade) Ministry of Foreign Affairs and Trade Jalan Subok Bandar Seri Begawan, BD 2710 Brunei Darussalam **Canada** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Canada by delivery to:

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		Office of the Deputy Attorney General of Canada Justice Building 239 Wellington Street Ottawa, Ontario K1A 0H8 Canada **Chile** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Chile by delivery to: Dirección de Asuntos Jurídicos del Ministerio de Relaciones Exteriores de la República de Chile Teatinos 180 Santiago Chile **Japan** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Japan by delivery to: Economic Affairs Bureau Ministry of Foreign Affairs 2-2-1 Kasumigaseki, Chiyoda-ku Tokyo Japan **Malaysia** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Malaysia by delivery to: Attorney General's Chambers Level 16, No. 45 Persiaran Perdana Precint 4 Federal Government Administrative Centre 62100 Putrajaya Malaysia
Mexico Notices and other documents in disputes under this Annex shall be served on Mexico by delivery to: Dirección General de Consultoría Jurídica de Comercio Internacional Secretaría de Economía Pachuca #189, piso 19 Col. Condesa Demarcación Territorial Cuauhtémoc Ciudad de México C.P. 06140		**Mexico** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Mexico by delivery to: Dirección General de Consultoría Jurídica de Comercio Internacional Secretaría de Economía Alfonso Reyes #30, piso 17 Col. Hipódromo Condesa Del. Cuauhtémoc México D.F. C.P. 06140 **New Zealand** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on New Zealand by delivery to: The Secretary Ministry of Foreign Affairs and Trade 195 Lambton Quay Wellington 6011 New Zealand **Peru** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Peru by delivery to: Dirección General de Asuntos de Economía Internacional, Competencia y Productividad Ministerio de Economía y Finanzas Jirón Lampa 277, piso 5 Lima, Perú **Singapore** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Singapore by delivery to: Permanent Secretary Ministry of Trade & Industry 100 High Street #09-01 Singapore 179434 Singapore

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United States Notices and other documents in disputes under this Annex shall be served on the United States by delivery to: Executive Director (L/H-EX) Office of the Legal Adviser & Bureau of Legislative Affairs U.S. Department of State 600 19th Street, NW Washington, D.C. 20552		**United States** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) 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 **Viet Nam** Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Viet Nam by delivery to: General Director Department of International Law Ministry of Justice 60 Tran Phu Street Ba Dinh District Ha Noi Viet Nam **Annex 9-E: Transfers [40]** **Footnote 40** For greater certainty, this Annex shall apply to transfers covered by Article 9.9 (Transfers) and payments and transfers covered by Article 10.12 (Payments and Transfers). **Chile** 1. Notwithstanding Article 9.9 (Transfers), Chile reserves the right of the Central Bank of Chile *(Banco Central de Chile)* to maintain or adopt measures in conformity with Law 18.840, Constitutional Organic Law of the Central Bank of Chile *(Ley 18.840, Ley Orgánica Constitucional del Banco Central de Chile), and Decreto con Fuerza de Ley No3 de 1997, Ley General de Bancos (General Banking Act) and Ley 18.045, Ley de Mercado de Valores* (Securities Market Law), in order to ensure currency stability and the normal operation of domestic and foreign payments. Such measures include, *inter alia* , the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement *(encaje).* 2. Notwithstanding paragraph 1, the reserve requirements that the Central Bank of Chile can apply pursuant to Article 49 No. 2 of Law 18.840, shall not exceed 30 per cent of the amount transferred and shall not be imposed for a period which exceeds two years. **Annex 9-F: DL600** **Chile** 1. The obligations and commitments contained in this Chapter do not apply to Decree Law 600, Foreign Investment Statute (*Decreto Ley 600, Estatuto de la Inversión Extranjera*) (hereinafter referred to in this Annex as "DL 600"), or its successors, and to Law 18.657, Foreign Capital Investment Fund Law (*Ley 18.657, Ley de Fondos de Inversión de Capital Extranjero*), with respect to: (a) The right of the Foreign Investment Committee of Chile (*Comité de Inversiones Extranjeras*) or its successor to accept or reject applications to invest through an investment contract under DL 600[41] and the right to regulate the terms and conditions of foreign investment under DL 600 and Law 18.657. **Footnote 41** The authorisation and execution of an investment contract under DL 600 by an investor of a Party or a covered investment does not create any right on the part of the investor or the covered investment to engage in particular activities in Chile.

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		(b) The right to maintain existing requirements that transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of a Party or from the partial or complete liquidation of the investment which may not take place until a period not to exceed: (i) in the case of an investment made pursuant to DL 600, one year from the date of transfer to Chile; or (ii) in the case of an investment made pursuant to Law 18.657,[42] five years from the date of transfer to Chile. **Footnote 42** Law 18.657 was derogated on May 1, 2014 by law 20.712. The transfer requirement established under subparagraph (b)(ii) will only be applicable to investments made pursuant to Law 18.657 prior to May 1, 2014 and not to investments made pursuant to Law 20.712. (c) The right to adopt measures, consistent with this Annex, establishing future special voluntary investment programmes in addition to the general regime for foreign investment in Chile, except that any such measures may restrict transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of another Party or from the partial or complete liquidation of the investment for a period not to exceed five years from the date of transfer to Chile. 2. For greater certainty, except to the extent that paragraph 1(b) or (c) provides an exception to Article 9.9 (Transfers), the investment entered through an investment contract under DL 600, through Law 18.657 or through any future special voluntary investment programme, will be subject to the obligations and commitments of this Chapter, to the extent that the investment is a covered investment under Chapter 9 (Investment).
APPENDIX 2 **PUBLIC DEBT** 1. For greater certainty, no award shall be made in favor of a claimant for a claim under Article 14.D.3.1 (Submission of a Claim to Arbitration) with respect to default or non-payment of debt issued by a Party[28] unless the claimant meets its burden of proving that such default or non-payment constitutes a breach of a relevant obligation in the Chapter. **Footnote 28** For purposes of this Annex, "debt issued by a Party" includes, in the case of Mexico, "public debt" of Mexico as defined in Article 1 of the Federal Law on Public Debt *(Ley Federal de Deuda Pública).*		**Annex 9-G: Public Debt** 1. The Parties recognise that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award shall be made in favour of a claimant for a claim under Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A) with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non-payment constitutes a breach of an obligation under Section A, including an uncompensated expropriation pursuant to Article 9.8 (Expropriation and Compensation).
2. No claim that a restructuring of debt issued by a Party, standing alone, breaches an obligation in this Chapter shall be submitted to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration), provided that the restructuring is effected as provided for under the debt instrument's terms, including the debt instrument's governing law.		2. No claim that a restructuring of debt issued by a Party breaches an obligation under Section A shall be submitted to, or if already submitted continue in, arbitration under Section B (Investor-State Dispute Settlement) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after that submission, except for a claim that the restructuring violates Article 9.4 (National Treatment) or Article 9.5 (Most- Favoured-Nation Treatment). 3. Notwithstanding Article 9.19.4 (Submission of a Claim to Arbitration), and subject to paragraph 2, an investor of another Party shall not submit a claim under Section B (Investor-State Dispute Settlement) that a restructuring of debt issued by a Party breaches an obligation under Section A, other than Article 9.4 (National Treatment) or Article 9.5 (Most-Favoured-Nation Treatment), unless 270 days have elapsed from the date of receipt by the respondent of the written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation).[43] **Footnote 43** Paragraphs 2 and 3 of this Annex do not apply to any claim under Section B (Investor-State Dispute Settlement) against Singapore or the United States.

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		ANNEX 9-H 1. A decision under Australia's foreign investment policy, which consists of the *Foreign Acquisitions and Takeovers Act 1975* , *Foreign Acquisitions and Takeovers Regulations 1989* , *Financial Sector (Shareholdings) Act 1998* and associated Ministerial Statements by the Treasurer of the Commonwealth of Australia or a minister acting on his or her behalf, on whether or not to approve a foreign investment proposal, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement). 2. A decision by Canada following a review under the *Investment Canada Act* (R.S.C. 1985, c.28 (1st Supp.)), with respect to whether or not to permit an investment that is subject to review, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement). 3. A decision by the National Commission on Foreign Investment (*Comisión Nacional de Inversiones Extranjeras*) following a review pursuant to the entry at Annex I – Mexico – 6 with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement). 4. A decision under New Zealand's *Overseas Investment Act 2005* to grant consent, or to decline to grant consent, to an overseas investment transaction that requires prior consent under that Act shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement). **Annex 9-I: Non-Conforming Measures Ratchet Mechanism** Notwithstanding Article 9.12.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it: (a) Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) and Article 9.11 (Senior Management and Boards of Directors) shall not apply to an amendment to any non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of this Agreement for Viet Nam, with Article 9.4 (National Treatment), Article 9.5 (Most-Favoured-Nation Treatment), Article 9.10 (Performance Requirements) or Article 9.11 (Senior Management and Boards of Directors); (b) Viet Nam shall not withdraw a right or benefit from an investor or covered investment of another Party, in reliance on which the investor or covered investment has taken any concrete action,[44] through an amendment to any non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and **Footnote 44** Concrete action includes the channelling of resources or capital in order to establish or expand a business and applying for permits and licences. (c) Viet Nam shall provide to the other Parties the details of any amendment to a non-conforming measure referred to in Article 9.12.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.
APPENDIX 3 **SUBMISSION OF A CLAIM TO ARBITRATION** An investor of the United States may not submit to arbitration a claim that Mexico has breached an obligation under this Chapter either: (a) on its own behalf under Article 14.D.3.1(a) (Submission of a Claim to Arbitration); or		**Annex 9-J: Submission of a Claim to Arbitration** 1. An investor of a Party may not submit to arbitration under Section B (Investor-State Dispute Settlement) a claim that Chile, Mexico, Peru or Viet Nam has breached an obligation under Section A either: (a) on its own behalf under Article 9.19.1(a) (Submission of a Claim to Arbitration); or

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(b) on behalf of an enterprise of Mexico that is a juridical person that the investor owns or controls directly or indirectly under Article 14.D.3.1(b) (Submission of a Claim to Arbitration), if the investor or the enterprise, respectively, has alleged that breach of an obligation under this Chapter, as distinguished from breach of other obligations under Mexican law, in proceedings before a court or administrative tribunal of Mexico.		(b) on behalf of an enterprise of Chile, Mexico, Peru, or Viet Nam, that is a juridical person that the investor owns or controls directly or indirectly under 9.19.1(b) (Submission of a Claim to Arbitration), if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of Chile, Mexico, Peru or Viet Nam. 2. For greater certainty, if an investor of a Party elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of Chile, Mexico, Peru or Viet Nam, that election shall be definitive and exclusive, and the investor may not thereafter submit the claim to arbitration under Section B (Investor-State Dispute Settlement).
ANNEX 14-E **MEXICO-UNITED STATES INVESTMENT DISPUTES RELATED TO COVERED GOVERNMENT CONTRACTS** 1. Annex 14-D (Mexico-United States Investment Disputes) applies as modified by this Annex to the settlement of a qualifying investment dispute under this Chapter in the circumstances set out in paragraph 2.[29] **Footnote 29** For greater certainty, Annex 14-D (Mexico-United States Investment Disputes) includes its appendices. 2. In the event that a disputing party considers that a qualifying investment dispute cannot be settled by consultation and negotiation: (a) the claimant, on its own behalf, may submit to arbitration under Annex 14-D (Mexico-United States Investment Disputes) a claim: (i) that the respondent has breached any obligation under this Chapter,[30] provided that: **Footnote 30** For the purposes of this paragraph: (i) the “treatment” referred to in Article 14.5 (Most-Favored-Nation Treatment) excludes provisions in other international trade or investment agreements that establish international dispute resolution procedures or impose substantive obligations; (ii) the “treatment” referred to in Article 14.5 only encompasses measures adopted or maintained by the other Annex Party, which for greater clarity may include measures adopted in connection with the implementation of substantive obligations in other international trade or investment agreements. (A) the claimant is: (1) a party to a covered government contract, or (2) engaged in activities in the same covered sector in the territory of the respondent as an enterprise of the respondent that the claimant owns or controls directly or indirectly and that is a party to a covered government contract, and (B) the respondent is a party to another international trade or investment agreement that permits investors to initiate dispute settlement procedures to resolve an investment dispute with a government, and (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; (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 Annex 14-D (Mexico-United States Investment Disputes) a claim: (i) that the respondent has breached any obligation under this Chapter, provided that: (A) the enterprise is: (1) a party to a covered government contract, (2) engaged in activities in the same covered sector in the territory of the respondent as the claimant and the claimant is a party to a covered government contract, or		

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(3) engaged in activities in the same covered sector in the territory of the respondent as another enterprise of the respondent that the claimant owns or controls directly or indirectly and that is a party to a covered government contract, and (B) the respondent is a party to another international trade or investment agreement that permits investors to initiate dispute settlement procedures to resolve an investment dispute with a government, and (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.[31] **Footnote 31** For greater certainty, in order for a claim to be submitted to arbitration under subparagraph (b), an investor of the Party of the claimant must own or control the enterprise on the date of the alleged breach and the date on which the claim is submitted to arbitration. 3. For the purposes of paragraph 2, if a covered government contract is terminated in a manner inconsistent with an obligation under this Chapter, the claimant or enterprise that was previously a party to the contract shall be deemed to remain a party for the duration of the contract, as if it had not been terminated. 4. No claim shall be submitted to arbitration under paragraph 2 if: (a) less than six months have elapsed from the events giving rise to the claim; and (b) more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under paragraph 2 and knowledge that the claimant (for claims brought under paragraph 2(a)) or the enterprise (for claims brought under paragraph 2(b)) has incurred loss or damage.[32] **Footnote 32** For greater certainty, Article 14.D.5.1(a)-(c) does not apply to claims under paragraph 2. 5. For greater certainty, the Annex Parties may agree to modify or eliminate this Annex. 6. For the purposes of this Annex: (a) “covered government contract” means a written agreement between a national authority of an Annex Party and a covered investment or investor of the other Annex Party, on which the covered investment or investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor in a covered sector; (b) “covered sector” means: (i) activities with respect to oil and natural gas that a national authority of an Annex Party controls, such as exploration, extraction, refining, transportation, distribution, or sale, (ii) the supply of power generation services to the public on behalf of an Annex Party, (iii) the supply of telecommunications services to the public on behalf of an Annex Party, (iv) the supply of transportation services to the public on behalf of an Annex Party, or (v) the ownership or management of roads, railways, bridges, or canals that are not for the exclusive or predominant use and benefit of the government of an Annex Party; (c) “national authority” means an authority at the central level of government;[33] and **Footnote 33** For greater certainty, an authority at the central level of government includes any person, including a state enterprise or another body, when it exercises governmental authority delegated to it by an authority at the central level of government. (d) “written agreement” means an agreement in writing, negotiated, and executed by two or more parties, whether in a single instrument or in multiple instruments.[34]		

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Footnote 34 For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, certificate, approval, or similar instrument issued by an Annex Party in its regulatory capacity, or a subsidy or grant, 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.		**Annex 9-K: Submission of Certain Claims for Three Years After Entry Into Force** **Malaysia** Without prejudice to a claimant's right to submit other claims to arbitration pursuant to Article 9.19 (Submission of a Claim to Arbitration), Malaysia does not consent to the submission of a claim that Malaysia has breached a government procurement contract with a covered investment, below the specified contract value, for a period of three years after the date of entry into force of this Agreement for Malaysia. The specified contract values are: (a) for goods, SDR 1,500,000; (b) for services, SDR 2,000,000; and (c) for construction, SDR 63,000,000. **Annex 9-L: Investment Agreements** **A. Agreements with selected international arbitration clauses** 1. An investor of a Party may not submit to arbitration a claim for breach of an investment agreement under Article 9.19.1(a)(i)(C) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(C) if the investment agreement provides the respondent's consent for the investor to arbitrate the alleged breach of the investment agreement and further provides that: (a) a claim may be submitted for breach of the investment agreement under at least one of the following alternatives: (i) the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings* , provided that both the respondent and the Party of the investor are parties to the ICSID Convention; (ii) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the investor is a party to the ICSID Convention; (iii) the UNCITRAL Arbitration Rules; (iv) the ICC Arbitration Rules; or (v) the LCIA Arbitration Rules; and (b) in the case of arbitration not under the ICSID Convention, the legal place of the arbitration shall be: (i) in the territory of a State that is party to the New York Convention; and (ii) outside the territory of the respondent. 2. Notwithstanding Article 9.21.2(b) (Conditions and Limitations on Consent of Each Party), if a claimant submits to arbitration a claim that the respondent has breached: (a) an obligation under Section A pursuant to Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A); or (b) an investment authorisation pursuant to Article 9.19.1(a)(i)(B) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(B), the claimant's submission of a written waiver shall not preclude its right to initiate or continue an arbitration under an investment agreement, if that investment agreement meets the criteria in paragraph 1, with respect to any measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to Arbitration). 3. If a claimant: (a) submits to arbitration a claim that the respondent has breached an obligation under Section A pursuant to Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A) or an investment authorisation pursuant to Article 9.19.1(a)(i)(B) or Article 9.19.1(b)(i)(B); and

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		(a) submits to arbitration a claim that the respondent has breached an obligation under Section A pursuant to Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A) or an investment authorisation pursuant to Article 9.19.1(a)(i)(B) or Article 9.19.1(b)(i)(B); and 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 of Article 9.28 (Consolidation). **B. Certain agreements between Peru and covered investments or investors[45]** **Footnote 45** The fact that this Annex addresses only agreements entered into by Peru shall not prejudice the determination by a tribunal established under Section B (Investor-State Dispute Settlement) regarding whether an agreement entered into by the government of another Party meets the definition of "investment agreement" in Article 9.1 (Definitions). 1. Pursuant to Legislative Decrees 662 and 757, Peru may enter into agreements known as "stability agreements" with covered investments or investors of another Party. 2. As part of a stability agreement referred to in paragraph 1, Peru accords certain benefits to the covered investment or the investor that is a party to the agreement. These benefits typically include a commitment to maintain the existing income tax regime applicable to such covered investment or investor during a specified period of time. 3. A stability agreement referred to in paragraph 1 may constitute one of multiple written instruments that make up an "investment agreement", as defined in Article 9.1 (Definitions).[46] If that is the case, a breach of such a stability agreement by Peru may constitute a breach of the investment agreement of which it is a part. **Footnote 46** For greater certainty, for multiple written instruments to make up an "investment agreement", as defined in Article 9.1 (Definitions), one or more of those instruments must grant rights to the covered investment or the investor as defined in subparagraph (a), (b) or (c) of that definition. A stability agreement may constitute one of multiple written instruments that make up an "investment agreement" even if the stability agreement is not itself the instrument in which such rights are granted. 4. If a stability agreement does not constitute one of multiple instruments that make up an "investment agreement", as defined in Article 9.1 (Definitions), a breach of such a stability agreement by Peru shall not constitute a breach of an investment agreement. **C. Limitation of Mexico's consent to arbitration** 1. Without prejudice to a claimant's right to submit other claims pursuant to Article 9.19 (Submission of a Claim to Arbitration), Mexico does not consent to the submission of any claim to arbitration under Article 9.19.1(a)(i)(C) or 9.19.1(b)(i)(C) if the submission to arbitration of that claim would be inconsistent with the following laws with respect to the relevant acts of authority[47]: **Footnote 47** For greater certainty, the term "act of authority" includes omissions. (a) *Hydrocarbons Law* , Articles 20 and 21; (b) *Law on Public Works and Related Services* , Article 98, paragraph 2; (c) *Public Private Partnerships Law* , Article 139, paragraph 3; (d) *Law on Roads, Bridges, and Federal Motor Carriers* , Article 80; (e) *Ports Law* , Article 3, paragraph 2; (f) *Airports Law* , Article 3, paragraph 2; (g) R*egulatory Law of the Railway Service* , Article 4, paragraph 2; (h) *Commercial and Navigation Maritimes Law* , Article 264, paragraph 2;

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		(i) *Civil Aviation Law* , Article 3, paragraph 2; and (j) *Political Constitution of the United Mexican States* , Article 28, paragraph 20, subparagraph VII, and *Federal Telecommunications and Broadcasting Law* , Article 312, provided, however, that the application of the provisions referred to in subparagraphs (a) through (i) shall not be used as a disguised means to repudiate or breach the investment agreement. 2. If any law referred to in paragraph 1 is amended to permit the submission to arbitration of such a claim after the entry into force of this Agreement for Mexico, the limitation of Mexico's consent specified in paragraph 1 shall not apply with respect to that law.[48] **Footnote 48** For greater certainty, when any law referred to in paragraph 1 is amended consistent with paragraph 2, any subsequent amendment of that law may not re-establish the applicability of paragraph 1. **D. Specific Canadian entities under subpart (c) of definition** For Canada, authority at the central level of government includes entities listed under Schedule III of the *Financial Administration Act* (R.S.C. 1985, c. F- 11), and port or bridge authorities, that have concluded an investment agreement under subpart (c) of the definition of "investment agreement" only if the government directs or controls the day to day operations or activities of the entity or authority in carrying out its obligations under the investment agreement.