

Chapter 5
Investment

Article 57
Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party; and
 - (b) investments of investors of the other Party in the Area of the former Party.
2. In the event of any inconsistency between this Chapter and Chapter 6:
 - (a) with respect to matters covered by Articles 59, 60 and 63, Chapter 6 shall prevail to the extent of inconsistency; and
 - (b) with respect to matters not falling under subparagraph (a), this Chapter shall prevail to the extent of inconsistency.
3. This Chapter shall not apply to measures affecting the movement of natural persons of a Party.

Article 58
Definitions

For the purposes of this Chapter:

- (a) the term "enterprise" means any legal person or any other entity duly constituted or organized under applicable laws and regulations, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, organization or company;
- (b) an enterprise is:
 - (i) "owned" by an investor if more than 50 percent of the equity interests in it is beneficially owned by the investor; and
 - (ii) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions;

- (c) the term "enterprise of the other Party" means an enterprise constituted or organized under the applicable laws and regulations of the other Party;
- (d) the term "financial services" means financial services as defined in subparagraph 2(a)(i) of Section 1 of Annex 7;
- (e) the term "freely convertible currencies" means currencies which are, in fact, widely used to make payments for international transactions and are widely traded in the principal exchange markets;
- (f) the term "investments" means every kind of asset invested by an investor, in accordance with applicable laws and regulations, including, though not exclusively:
 - (i) an enterprise and a branch of an enterprise;
 - (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
 - (iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
 - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
 - (v) claims to money and claims to any performance under contract having a financial value;
 - (vi) intellectual property rights, including copyrights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;
 - (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations and permits; and

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

Note 1: Investments also include amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

Note 2: For the purposes of subparagraphs (ii) and (iii), a Party may, on a non-discriminatory basis, exclude portfolio investments which are determined by the use of the non-discriminatory and objective criteria adopted by the Party.

(g) the term "investment activities" means establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments;

(h) the term "investor of the other Party" means a national or an enterprise of the other Party;

(i) the term "national of the other Party" means a natural person having the nationality of the other Party in accordance with the applicable laws and regulations of the other Party;

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

(k) the term "transfers" means transfers and international payments.

Article 59 National Treatment

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

2. Notwithstanding paragraph 1, each Party may prescribe special formalities in connection with investment activities of investors of the other Party in its Area, provided that such formalities do not materially impair the protection afforded by the former Party to investors of the other Party and to their investments pursuant to this Chapter.

Article 60
Most-Favoured-Nation Treatment

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

Article 61
General Treatment

Each Party shall accord to investments of investors of the other Party fair and equitable treatment and full protection and security.

Article 62
Access to the Courts of Justice

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

Article 63
Prohibition of Performance Requirements

1. Neither Party shall impose or enforce any of the following requirements, in connection with investment activities in its Area of an investor of the other Party:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services provided in its Area, or to purchase goods or services from natural or legal persons or any other entity in its Area;

- (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 investments of the investor;
- (e) to restrict sales of goods or services in its Area that investments of the investor produce or provide by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to appoint, as executives or members of board of directors, individuals of any particular nationality;
- (g) to locate the headquarters of the investor for a specific region or the world market in its Area;
- (h) to achieve a given level or value of research and development in its Area; or
- (i) to supply to a specific region or the world market exclusively from its Area, one or more of the goods that the investor produces or the services that the investor provides.

2. Paragraph 1 does not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with investment activities in its Area of an investor of the other Party, on compliance with any of the requirements set forth in subparagraphs 1 (g) through (i).

Article 64 Reservations and Exceptions

1. Articles 59, 60 and 63 shall not apply to:
 - (a) any non-conforming measure that is maintained by the following on the date of entry into force of this Agreement, with respect to the sectors or matters specified in Annex 4:
 - (i) the central government of a Party; or
 - (ii) a prefecture of Japan or a province of Indonesia;
 - (b) any non-conforming measure that is maintained by a local government other than a prefecture and a province referred to in subparagraph (a)(ii) on the date of entry into force of this Agreement;

- (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or
- (d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 59, 60 and 63.

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

- (a) the sector or matter, with respect to which the measure is maintained;
- (b) the domestic or international industry classification codes, where applicable, to which the measure relates;
- (c) the level of the government which maintains the measure;
- (d) the obligations under this Agreement with which the measure does not conform;
- (e) the legal source of the measure; and
- (f) the succinct description of the measure.

3. Articles 59, 60 and 63 shall not apply to any measure that a Party adopts or maintains with respect to the sectors or matters specified in Annex 5.

4. Where a Party maintains any non-conforming measure on the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, the Party shall, on the same date, notify the other Party of the following information on the measure:

- (a) the sector or matter, with respect to which the measure is maintained;
- (b) the domestic or international industry classification codes, where applicable, to which the measure relates;

- (c) the obligations under this Agreement with which the measure does not conform;
- (d) the legal source of the measure; and
- (e) the succinct description of the measure.

5. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement with respect to the sectors or matters specified in Annex 5, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authority.

6. In cases where a Party makes an amendment or a modification to any non-conforming measure notified pursuant to paragraph 2 or 4, or where a Party adopts any new measure with respect to the sectors or matters specified in Annex 5, after the date of entry into force of this Agreement, the Party shall, as soon as possible:

- (a) notify the other Party of detailed information on such amendment, modification or new measure; and
- (b) respond, upon the request by the other Party, to specific questions from the other Party with respect to such amendment, modification or new measure.

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

8. Articles 59 and 60 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the TRIPS Agreement, as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

9. Articles 59, 60 and 63 shall not apply to any measure that a Party adopts or maintains with respect to government procurement.

Article 65
Expropriation and Compensation

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

- (a) for a public purpose;
- (b) on a non-discriminatory basis;
- (c) in accordance with due process of law and Article 61; and
- (d) upon payment of prompt, adequate and effective compensation pursuant to paragraphs 2 through 4.

2. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate taking into account the length of time from the time of expropriation to the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Party of the investors concerned and freely convertible currencies.

4. Without prejudice to Article 69, the investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investors' case and the amount of compensation in accordance with the principles set out in this Article.

Article 66
Protection from Strife

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the Area of the former Party due to armed conflict or state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the Area of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that it accords to its own investors or to investors of a non-Party.

2. Any payments as a means of settlement referred to in paragraph 1 shall be effectively realizable, freely transferable and freely convertible at the market exchange rate into the currency of the Party of the investors concerned and freely convertible currencies.

Article 67
Transfers

1. Each Party shall ensure that all transfers relating to investments in its Area of an investor of the other Party may be made freely into and out of its Area without delay. Such transfers shall include those of:

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) profits, capital gains, dividends, royalties, interests, fees and other current incomes accruing from investments;
- (c) proceeds from the total or partial sale or liquidation of investments;
- (d) payments made under a contract including loan payments in connection with investments;
- (e) earnings and remuneration of personnel from the other Party who work in connection with investments in the Area of the former Party;
- (f) payments made in accordance with Articles 65 and 66; and
- (g) payments arising out of the settlement of a dispute under Article 69.

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

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent such transfers through the equitable, non-discriminatory and good-faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offenses; or
- (d) ensuring compliance with orders or judgments in adjudicatory proceedings.

Article 68
Subrogation

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

- (a) recognize the assignment, to the former Party or its designated agency, of any right or claim of the investor that formed the basis of such payment; and
- (b) recognize the right of the former Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.

2. Articles 65 through 67 shall apply *mutatis mutandis* as regards payment to be made to the Party or its designated agency mentioned in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment.

Article 69
Settlement of Investment Disputes
between a Party and an Investor of the Other Party

1. For the purposes of this Chapter, an "investment dispute" is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation under this Agreement with respect to the investor and its investments.
2. An investment dispute shall, as far as possible, be settled amicably through consultation or negotiation between an investor who is a party to the investment dispute (hereinafter referred to in this Article as "disputing investor") and the Party that is a party to the investment dispute (hereinafter referred to in this Article as "disputing Party").
3. Nothing in this Article shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement within the disputing Party in accordance with the laws and regulations of the disputing Party.
4. If the investment dispute cannot be settled through consultation or negotiation referred to in paragraph 2 within five months from the date on which the disputing investor requested for the consultation or negotiation in writing and if the disputing investor has not submitted the investment dispute for resolution under courts of justice or administrative tribunals or agencies, the disputing investor may submit the investment dispute to one of the following international conciliations or arbitrations:
 - (a) conciliation or arbitration in accordance with the Convention on the Settlement of Investment Dispute between States and Nationals of Other States (hereinafter referred to in this Article as "the ICSID Convention"), so long as the ICSID Convention is in force between the Parties;
 - (b) conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes, so long as the ICSID Convention is not in force between the Parties;
 - (c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976; and

- (d) if agreed with the disputing Party, any arbitration in accordance with other arbitration rules.

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

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

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

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

8. Notwithstanding paragraph 7, no investment dispute may be submitted to conciliation or arbitration set forth in paragraph 4, if more than three years have elapsed since the date on which the disputing investor acquired or should have first acquired, whichever is the earlier, the knowledge that the disputing investor had incurred loss or damage referred to in paragraph 1.

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

10. Unless the disputing investor and the disputing Party (hereinafter referred to in this Article as "the disputing parties") agree otherwise, an arbitral tribunal established under paragraph 4 shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint an arbitrator or arbitrators within 60 days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Article as "ICSID"), may be requested by either of the disputing parties, to appoint the arbitrator or arbitrators not yet appointed from the ICSID Panel of Arbitrators subject to the requirements of paragraphs 11 and 12.

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

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

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

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

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

- (a) written notice of the investment dispute submitted to the arbitration no later than 30 days after the date on which the investment dispute was submitted; and
- (b) copies of all pleadings filed in the arbitration.

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

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

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

- (a) a judgment whether or not there has been a breach by the disputing Party of any obligation under this Agreement with respect to the disputing investor and its investments; and
- (b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:
 - (i) payment of monetary damages and applicable interest; and
 - (ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

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

19. The award rendered in accordance with paragraph 18 shall be final and binding upon the disputing parties. The disputing Party shall carry out without delay the provisions of the award and provide in its Area for the enforcement of the award in accordance with its relevant laws and regulations.

20. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which the other Party and an investor of the former Party have consented to submit or submitted to arbitration set forth in paragraph 4, unless the other Party shall have failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

21. Annex 6 provides additional provisions with respect to the settlement of investment disputes.

Article 70
Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Article 59 relating to cross-border capital transactions and Article 67:

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

2. Measures referred to in paragraph 1:

- (a) shall be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1;
- (c) shall be temporary and eliminated as soon as conditions permit; and
- (d) shall be promptly notified to the other Party.

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

Article 71
Prudential Measures

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

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

Article 72
Denial of Benefits

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

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

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

Article 73
Taxation Measures as Expropriation

1. Article 65 shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 1 of Article 65.

2. Where Article 65 applies to taxation measures in accordance with paragraph 1, Articles 62 and 69 shall also apply in respect of taxation measures.

3. Notwithstanding paragraph 2, no investor may invoke Article 65 as the basis for an investment dispute under Article 69, where it has been determined pursuant to paragraph 4 that the taxation measure is not an expropriation.

4. The investor shall refer the issue, at the time that it gives a written notice of intent under paragraph 6 of Article 69, to the competent authorities of both Parties, through the contact points referred to in Article 16, to determine whether such measure is not an expropriation. If the competent authorities of both Parties do not consider the issue or, having considered it, fail to determine that the measure is not an expropriation within a period of five months of such referral, the investor may submit the investment dispute to conciliation or arbitration under Article 69.

5. Paragraphs 2 through 4 shall apply only to taxation measure taken in the form of or in the applications of the laws and regulations which are enacted or amended after the entry into force of this Agreement.

Note: With respect to Indonesia, taxation measures referred to in this paragraph do not include those taken by tax administrative authorities in the applications of the relevant laws and regulations.

6. For the purposes of paragraph 4, the term "competent authorities" means:

- (a) with respect to Japan, the Minister of Finance or his or her authorized representative, who shall consider the issue in consultation with the Minister of Foreign Affairs or his or her authorized representative; and
- (b) with respect to Indonesia, the Minister of Finance or his or her authorized representative.

Article 74
Environmental Measures

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

Article 75
Sub-Committee on Investment

For the purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee on Investment (hereinafter referred to in this Article as "the Sub-Committee") established in accordance with Article 15 shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) reviewing the specific reservations and exceptions under Article 64;
- (c) discussing any issues related to this Chapter;
- (d) reporting the findings of the Sub-Committee to the Joint Committee; and
- (e) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 14.

Chapter 6
Trade in Services

Article 76
Scope

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. This Chapter shall not apply to:
 - (a) in respect of air transport services, measures affecting traffic rights, however granted; or to measures affecting services directly related to the exercise of traffic rights, other than measures affecting: