

**CHAPTER TEN
INVESTMENT**

Section A: Definitions

ARTICLE 10.1: DEFINITIONS

For the purposes of this Chapter:

Disputing investor means an investor that makes a claim under Section C;

Disputing Party means a Party against which a claim is made under Section C;

Enterprise means any entity constituted or organised under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association and a branch of an enterprise;

Freely usable currency means any currency designated as such by the International Monetary Fund and any amendments thereto;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of other States*, done at Washington, 18 March 1965, as may be amended;

Investment means every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gains or profits or the assumption of risk;

- (a) Forms that an investment may take include, but are not limited to:
 - (i) an enterprise¹;
 - (ii) shares, stocks and other forms of equity participation of an enterprise;
 - (iii) bonds, debentures, loans, and other debt instruments of an enterprise;
 - (iv) rights under contracts, including turnkey, construction, management, production, concession or revenue-sharing contracts;
 - (v) claims to money established and maintained in connection with the conduct of commercial activities;

¹ The Parties understand that in order for an enterprise in the territory of a host Party to qualify as an “investment” under this Chapter, it must have a place of business and assets used to carry out business activities in the territory of that Party.

- (vi) intellectual property rights;
- (vii) rights conferred pursuant to domestic law or contract, such as licences, authorisations and permits, except for those that do not create any rights protected by domestic law; and
- (viii) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges;

For subparagraph (a), returns that are invested in accordance with prevailing law shall be treated as investments and any alteration in the form in which assets are invested or reinvested shall not affect their character as investments.

(b) Investment does not mean:

- (i) claims to money that arise solely from:
 - (A) 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 the other Party; or
 - (B) the extension of credit in connection with a commercial transaction, such as trade financing; or
- (ii) any other claims to money, that do not involve the kinds of interests set out in subparagraphs (a)(i) through (viii);

Returns means monetary returns yielded by or derived from an investment including, but not limited to, any profits, interests, capital gains, dividends, royalties, fees, or payments in connection with intellectual property rights;

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 Party means a Party or a national or an enterprise of a Party that is seeking to make, is making, or has made, investments in the territory of the other Party;

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

UNCITRAL Arbitration Rules means the Arbitration Rules of the United Nations Commission on International Trade Law, 1976.

Section B: Investment

ARTICLE 10.2: SCOPE AND COVERAGE

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party;
 - (b) investments of investors of the other Party in the territory of the former Party; and
 - (c) with respect to Article 10.16, all investments in the territory of the former Party.
2. This Chapter applies to the existing investments on the date of entry into force of this Agreement, as well as to the investments made or acquired after this date.
3. The provisions of this Chapter do not bind a Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement for that Party.
4. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
5. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of the cross-border supply of services does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security.
6. This Chapter shall not apply to subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants except for Articles 10.5 and 10.21, whether or not such subsidies or grants are offered exclusively to domestic investors and investments.
7. This Chapter shall not apply to measures adopted or maintained by a Party with respect to financial services.
8. This Chapter shall not apply to any taxation measures.

ARTICLE 10.3: NATIONAL TREATMENT

1. Each Party shall accord to investors of the other 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.

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

3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional or local government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional or local government to investors, and to investments of investors, of the Party of which it forms a part.

ARTICLE 10.4: MINIMUM STANDARD OF TREATMENT

1. Each Party shall accord to an investment of an investor of the other Party in its territory “fair and equitable treatment” and “full protection and security.” 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 the customary international law minimum standard of treatment of aliens.

2. The obligation in paragraph 1 includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process.

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.

ARTICLE 10.5: PERFORMANCE REQUIREMENTS

1. Neither 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, operation or sale or other disposition of an investment of an investor of the other Party in its territory:

- (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 territory, or to purchase goods or services from natural or legal persons or any other entity in its territory;
- (d) to relate 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 that investor;
- (e) to restrict sales of goods or services in its territory that an investment of that investor produces or provides by relating such sales to the volume or value of its exports or foreign exchange earnings;

- (f) to transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its territory, except when the requirement
 - (i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws, or
 - (ii) concerns the transfer of intellectual property and is undertaken in a manner not inconsistent with the TRIPS Agreement; or
- (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

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

3. Nothing in this Article shall be construed so as to derogate from the rights and obligations of the Parties under the *Agreement on Trade-Related Investment Measures*, contained in Annex 1A of the Marrakech Agreement Establishing the World Trade Organization.

ARTICLE 10.6: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

1. Neither Party may require that an investor of the other Party appoint to senior management positions individuals 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 the Party that is an investment of an investor of the other 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.

ARTICLE 10.7: TRANSPARENCY

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect any matter covered by this Chapter.

2. Each Party shall, upon request by the other Party, promptly respond to specific questions and provide that other Party with information on matters set out in paragraph 1.

3. Paragraphs 1 and 2 shall not be construed so as to oblige either Party to disclose confidential information, the disclosure of which would impede law

enforcement or otherwise be contrary to the public interest, or which would prejudice privacy or legitimate commercial interests.

ARTICLE 10.8: NON-CONFORMING MEASURES

1. Articles 10.3, 10.5 and 10.6 shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at
 - (i) the central or a regional level of government, set out in its Schedule to Annex I; or
 - (ii) a local government²;
 - (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 10.3, 10.5 and 10.6.
2. Articles 10.3, 10.5 and 10.6 shall not apply to any reservation for measures that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.
3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Articles 10.3 and 10.6 shall not apply to government procurement by a Party.
5. Nothing in this Chapter shall be construed so as to derogate from rights and obligations under international agreements in respect of protection of intellectual property rights to which both Parties are party, including the TRIPS Agreement and other treaties concluded under the auspices of the World Intellectual Property Organization.
6. For the avoidance of doubt, in relation to supply of services through commercial presence, the parties agree that the Schedule of Specific Commitments in Annex 6-A and 6-B of Chapter Six (Trade in Services) shall solely apply to the commitments with regard to the trade in services.

ARTICLE 10.9: REVIEW OF RESERVATIONS

1. If, after the date of entry into force of this Agreement, a Party enters into any agreement on investment with a non-Party, it shall give consideration to a request by

² For Korea, local Government means a local Government as defined in the Local Autonomy Act.

the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement.

2. As part of review of this Agreement pursuant to Article 15.2 (Joint Committee and Review), the Parties undertake to review their respective Schedule of Reservations with a view to decreasing its reservations and reducing the terms, limitations, conditions and qualifications on national treatment, performance requirements, and senior management and boards of directors.

3. In any other case, a Party may, upon reasonable notice, request the other Party for a review of its reservations.

4. Any incorporation or review under this Article should maintain the overall balance of commitments undertaken by each Party under this Agreement.

ARTICLE 10.10: TRANSFERS

1. Each Party shall allow all transfers relating to an investment in its territory of an investor of the other Party to be made freely and without delay. Such transfers include:

- (a) the initial capital and additional amounts to maintain or increase the investment;
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees, returns in kind and other amounts derived from the investment;
- (c) proceeds from the sale or liquidation of all or any part of the investment;
- (d) payments made under a contract including payments made pursuant to a loan agreement;
- (e) payments made in accordance with Articles 10.12 and 10.13;
- (f) payments arising out of the settlement of a dispute under Section C; and
- (g) earnings of nationals of the other Party who work in connection with an investment in the territory of that Party.

2. Each Party shall allow transfers to be made without delay in a freely usable currency at the market rate of exchange prevailing on the date of the transfer with respect to spot transactions in the currency to be transferred.

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

the other Party or its investment³.

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

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offenses;
- (d) reports of transfers of currency or other monetary instruments;
- (e) ensuring compliance with orders or judgments in adjudicatory proceedings; or
- (f) social security, public retirement or statutory savings schemes, including provident funds, retirement gratuity programmes and employees insurance programmes⁴.

ARTICLE 10.11: TEMPORARY SAFEGUARD MEASURES

1. A Party may, subject to paragraph 2, adopt or maintain measures relating to cross-border capital transactions or Article 10.10:

- (a) in the event of serious balance of payments or external financial difficulties or threat thereof; or
- (b) where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party.

2. The 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 described in paragraph 1;

³ Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under, Article XI of GATT 1994.

⁴ With regard to paragraph 4(f), it is understood that the Party concerned shall not prevent or delay the transfer of funds by the investors, except to the extent of funds required to satisfy or settle the unpaid social security, public retirement or statutory savings schemes, including provident funds, retirement gratuity and employees insurance

- (c) shall be temporary and phased out progressively as the situation improves;
- (d) shall promptly be notified to the other Party;
- (e) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (f) shall be applied on a national treatment basis; and
- (g) shall ensure that the other Party is treated as favourably as any non-Party.

3. Measures adopted or maintained pursuant to paragraph 1(b) shall not exceed a minimum period required. In addition, a Party adopting such measures or any changes thereof shall commence consultations with the other Party in order to review the restrictions adopted by it.

4. Nothing in this Chapter shall be regarded as affecting the rights and obligations of the Parties under the Articles of *Agreement of the International Monetary Fund*.

ARTICLE 10.12: EXPROPRIATION AND COMPENSATION

1. Neither Party may, directly or indirectly, nationalise or expropriate an investment of an investor of the other Party in its territory, except:

- (a) for a public purpose;
- (b) on a non-discriminatory basis;
- (c) in accordance with due process of law and Article 10.4; and
- (d) on payment of compensation in accordance with paragraphs 2 through 4.

2. Compensation shall:

- (a) be paid without delay and be fully realisable;
- (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"); and
- (c) not reflect any change in value occurring because the intended expropriation had become known earlier.

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 – 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. The investor whose investment is expropriated 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 review of the expropriation measure or valuation of the compensation that has been assessed in accordance with the principles and provisions set out in this Article.

6. This Article does not apply to the issuance of compulsory licences 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 the TRIPS Agreement.

7. This Article is to be interpreted in accordance with the understanding of the Parties on expropriation as set out in Annex 10-A, which shall form an integral part of this Agreement.

ARTICLE 10.13: LOSSES AND COMPENSATION

1. An investor of a Party which has suffered losses relating to its investment in the territory of the other Party due to war or to other armed conflict, state of emergency, revolution, insurrection, civil disturbance, or any other similar event in the territory of the other Party, as regards restitution, indemnification, compensation or any other settlement, shall be accorded by that other Party treatment no less favourable than that which it accords to its own investors or to investors of any non-Party, whichever is more favourable to the investor.

2. Notwithstanding paragraph 1, an investor of a Party which, in any of the situations referred to in that paragraph, suffers a loss in the territory of the other Party resulting from

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

shall be accorded by the other Party restitution or compensation which in either case shall be prompt, adequate and effective and with respect to compensation, shall be in accordance with Article 10.12.

ARTICLE 10.14: SUBROGATION

1. Where a Party or an agency authorised by that Party has granted indemnity, guarantee or a contract of insurance against non-commercial risks with regard to an investment by one of its investors in the territory of the other Party and when payment has been made under this indemnity, guarantee or a contract of insurance by the former Party or the agency authorised by it, the latter Party shall recognise the rights of the former Party or the agency authorised by the Party by virtue of the principle of subrogation to the rights of the investor.

2. Where a Party or the agency authorised by the Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the agency authorised by the Party, making the payment, pursue those rights and claims against the other Party.

3. Articles 10.10, 10.12 and 10.13 shall apply *mutatis mutandis* as regards payment to be made to the Party or the agency prescribed in paragraphs 1 and 2 by virtue of such recognition of rights and claims, and the transfer of such payment.

ARTICLE 10.15: SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

1. Nothing in Article 10.3 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 the other Party, such as the requirement that investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protection afforded by a Party to investors of the other Party and investments of investors of the other Party pursuant to this Chapter.

2. Notwithstanding Article 10.3, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for information 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.

ARTICLE 10.16: HEALTH, SAFETY AND ENVIRONMENTAL MEASURES

1. Nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining or enforcing any measure consistent with this Agreement that is in the public interest, such as measures to meet health, safety or 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 the other Party has offered such an encouragement, it may request consultations with the other Party and the Parties shall consult with a view to avoiding any such encouragement.

ARTICLE 10.17: DENIAL OF BENEFITS

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, subject to prior notification and consultation with the other Party, and where the denying Party establishes that:

- (a) the enterprise has no substantial business activities in the territory of the other Party; and
- (b) the enterprise is owned or controlled by an investor of a non-Party or of the denying Party.

ARTICLE 10.18: EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between States where like conditions prevail, or a disguised restriction on investors and investments, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order;
- (b) necessary to protect human, animal or plant life or health, or the environment;
- (c) necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Chapter;
- (d) necessary to protect national treasures of artistic, historic or archaeological value; or
- (e) necessary to conserve exhaustible, natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. Nothing in this Chapter shall be construed:

- (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent a Party from taking any actions which it considers necessary for the protection of its essential security interests;

- (i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;
 - (ii) taken in time of war or other emergency in international relations;
 - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
 - (iv) to protect critical public infrastructures for communications, power and water supply from deliberate attempts intended to disable or degrade such infrastructures⁵;
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security; or
 - (d) to require a Party to accord the benefits of this Chapter to an investor that is an enterprise of the other Party where a Party adopts or maintains measures in any of its laws or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party or an investor of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such an enterprise or to its investments.

3. Paragraph 2 shall be interpreted in accordance with the understanding of the Parties regarding Security Exceptions for Investment and Non-justiciability of Security Exceptions set out in Annexes 10-B and 10-C respectively, which shall form an integral part of this Agreement.

4. A Party shall immediately inform the other Party to the fullest extent possible, of measures taken under paragraphs 1, 2(b) and (c) and of their termination, if such measures were taken.

ARTICLE 10.19: ACCESS TO JUDICIAL AND ADMINISTRATIVE PROCEDURES

Each Party shall within its territory accord to investors of the other Party treatment no less favourable than the treatment, which it accords in like circumstances to its own investors, with respect to access to its courts of justice and administrative tribunals

⁵ Paragraph 2(b)(iv) is subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on investment.

and agencies in all levels of jurisdiction both in pursuit and in defence of such investors' rights.

ARTICLE 10.20: OTHER OBLIGATIONS

If the laws or regulations of either Party or international obligations existing at present or established hereafter between the Parties in addition to this Chapter, result in a position entitling investors of the other Party and investments by investors of the other Party to treatment more favourable than is provided for by this Chapter, such position shall not be affected by this Chapter.

Section C: Settlement of Disputes

ARTICLE 10.21: SETTLEMENT OF DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY

1. This Article establishes a mechanism for settlement of investment disputes under this Chapter and assures equal treatment among the investors or investments of both the Parties in accordance with principles of international reciprocity and due process before an arbitral tribunal. This Article shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former Party under this Chapter, which causes loss or damage to the investor or its investments.

2. The parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations, which may include the use of non-binding third-party procedures.

3. Any such dispute which has not been settled within a period of six months from the date of request for consultations and negotiations may be submitted to the courts or administrative tribunals of the Party concerned or to arbitration. In the latter event, the investor has the choice among any of the following:

- (a) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;
- (b) the ICSID Additional Facility Rules, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention;
- (c) the UNCITRAL Arbitration Rules; or
- (d) any other arbitral institution or in accordance with any other arbitral rules, if the parties to the dispute so agree.

4. Once the investor has submitted the dispute to either the courts or administrative tribunals of the disputing Party or any of the arbitration mechanisms provided for in paragraph 3, the choice of the procedure shall be final.

5. Each Party hereby consents to the submission of a dispute to arbitration under paragraphs 3(a), (b) and (c) in accordance with the provisions of this Article, conditional upon:

- (a) the submission of the dispute to such arbitration takes place within three years from the date on which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Chapter and of the loss or damage incurred by the disputing investor or its investment; and
- (b) the disputing investor gives written notice which shall be delivered at least 90 days before the claim to arbitration is submitted, to the disputing Party of its intention to submit the dispute to such arbitration and which
 - (i) selects one of the fora in paragraph 3(a), (b) or (c) as the forum for dispute settlement, and
 - (ii) briefly summarises the alleged breaches of the disputing Party under this Chapter (including the articles alleged to have been breached) and the loss or damage allegedly caused to the investor or its investment.

6. Notwithstanding paragraph 4, the disputing investor may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of monetary damages or the resolution of the substance of the matter in dispute before a court or administrative tribunal of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's rights and interests during the pendency of the arbitration.

7. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such 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 dispute.

Section D: Final Provisions

ARTICLE 10.22: ENTRY INTO FORCE, DURATION AND TERMINATION

In the event that this Agreement is terminated, the provisions of this Chapter, the provisions in Chapter Fourteen (Dispute Settlement), and other provisions in this Agreement necessary for or consequential to the application of this Chapter, except pre-establishment national treatment under Articles 10.3 and 10.8, shall continue to be in effect with respect to investments made or acquired before the date of termination of this Agreement for a further period of 15 years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

ANNEX 10-A EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment made in the territory of that Party.
2. Article 10.12.1 addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article 10.12.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure:
 - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including:
 - (i) the economic impact of the government action, although the fact that an action or 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;⁶ and
 - (iii) the character of the government action, including its objectives and context. Relevant considerations could include whether the government action imposes a special sacrifice on the particular investor or investment that exceeds what the investor or investment should be expected to endure for the public interest.
 - (b) Except in rare circumstances, such as, for example, when a measure or series of measures is extremely severe or disproportionate in light of its purpose or effect, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate price stabilisation (through, for example, measures to improve the housing conditions for low-income households), do not constitute indirect expropriations.

⁶ For greater certainty, whether an investor's investment-backed expectations are reasonable depends in part on the nature and extent of governmental regulation in the relevant sector. For example, an investor's expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.

ANNEX 10-B
SECURITY EXCEPTIONS FOR INVESTMENT

The Parties confirm the following understanding with respect to interpretation and/or implementation of this Chapter:

- (a) the measures referred to in Article 10.18.2(d) are measures where the intention and objective of the Party imposing the measures is for the protection of its essential security interests. These measures shall be imposed on a non-discriminatory basis and may be found in any of its laws or regulations:
 - (i) In the case of India, the applicable measures referred to in Article 10.18.2(d) are essentially set out in the regulations framed under the *Foreign Exchange Management Act (FEMA)*. India shall upon request by Korea, provide information on the measures concerned; and
 - (ii) In the case of Korea- Korea does not presently adopt or maintain any unilateral measures against a non-Party or investor of a non-Party in its laws or regulations; and

- (b) the measures which a Party adopts or maintains with respect to a non-Party or investors of a non-Party shall not impinge upon the other Party's sovereign rights to conduct its foreign policy nor shall it prohibit enterprises of foreign enterprises that are subject to such measures from establishing themselves in the other Party.

ANNEX 10-C
NON JUSTICIABILITY OF SECURITY EXCEPTIONS

The Parties confirm the following understanding with respect to the interpretation and/or implementation of this Chapter:

- (a) in respect of disputes submitted to arbitration pursuant to Article 10.21.3, where the disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a security exception as set out in Article 10.18.2, any decision of the disputing Party taken on such security considerations shall be non-justiciable in that it shall not be open to any arbitral tribunal to review the merits of any such decision, even where the arbitral proceedings concern an assessment of any claim for damages and/or compensation, or an adjudication of any other issues referred to the tribunal; and
- (b) for the avoidance of doubt, Article 10.21.3 shall be applicable in the arbitral proceedings for damages and/or compensation due to the measures taken under security exceptions as set out in Article 10.18.2.