

CHAPTER 7

INVESTMENT

Article 7.1: Definitions

For the purposes of this Chapter:

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;

enterprise means an enterprise as defined in Article 1.2 (General Definitions), and a branch of an enterprise;

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

freely usable currency means “freely usable currency” as determined by the International Monetary Fund under its Articles of Agreement;

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;^{2 3}
- (d) futures, options and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;

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.

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.

³ A loan issued by one Party to the other Party is not an investment.

- (f) intellectual property rights;
- (g) licences, authorisations, permits and similar rights conferred pursuant to the Party's laws and regulations; and
- (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;

investor of a non-Party means, with respect to a Party, an investor that attempts to make,⁴ is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

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 the other Party; and

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, and includes measures taken by:

- (a) central, regional or local governments and authorities; and
- (b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.

Article 7.2: Scope⁵

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party; and
 - (b) covered investments.
2. Article 7.3, Article 7.4, Article 7.5 and Article 7.7 shall not apply to subsidies and grants provided by a Party including government-supported loans, guarantees and insurance.

⁴ 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.

⁵ For greater certainty, this Agreement shall not apply to measures affecting natural persons seeking access to the employment market of either Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis. This Agreement shall not prevent either Party from applying measures to regulate the entry of natural persons into, or the temporary stay in, its territory.

3. Article 7.3, Article 7.4 and Article 7.5 shall not apply to any measures affecting investments adopted or maintained pursuant to Chapter 8 (Services) to the extent that they relate to the supply of any specific service through commercial presence as defined in Article 8.3.1(n)(iii) (Definitions), whether or not they are covered by Annex 8.1 (Services Commitments).

4. Nothing in this Chapter shall be construed to impose an obligation on a Party to privatise.

5. For greater certainty, an obligation in 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 entry into force of that relevant obligation for that Party.

Article 7.3: Most Favoured Nation Status

Except as otherwise provided for in this Agreement, each Party shall accord to investors of the other Party, and to covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition), protection and expropriation (including any compensation) of investments, treatment that is no less favourable than that it accords in like situations to investors and investments from any other State or separate customs territory which is not party to this Agreement.

Article 7.4: National Treatment

Except as otherwise provided for in this Agreement, each Party shall accord to investors of the other Party, and to covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer (or other disposition), protection and expropriation (including any compensation) of investments, treatment that is no less favourable than that it accords in like situations to its own investors and investments.

Article 7.5: Interaction between Article 7.3 and Article 7.4

Each Party shall accord to investors of the other Party, and to covered investments, the better of the treatment required by Article 7.3 and Article 7.4.

Article 7.6: Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.⁶

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 the customary international law minimum standard of treatment of aliens referred to in paragraph 1 and do not create additional substantive rights. The obligation in paragraph 1 to provide:

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

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

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

5. 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 7.7: Treatment in Cases of Armed Conflict or Civil Strife

1. Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, civil disturbances, a state of national emergency, revolt, insurrection, riot or other similar situations in the territory of the latter Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Party accords to investors of any non-Party or to its own investors, whichever is more favourable. Any resulting compensation shall be made in freely usable currency and be freely transferable in accordance with Article 7.9.

⁶ The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 7.6 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.

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 the other Party resulting from:

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

the latter Party shall provide the investor restitution, compensation or both, as appropriate, for that loss.

Article 7.8: Expropriation and Compensation

1. Neither 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;
- (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.

2. Compensation shall:

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

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. Notwithstanding paragraphs 1, 2, 3 and 4, in the case of Singapore, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation⁷ of the expropriating Party on the date of entry into force of this Protocol, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation.

6. 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 the TRIPS Agreement.⁸

7. 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 7.9: 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. Such transfers include:

- (a) contributions to capital;⁹

⁷ The existing domestic legislation as at the date of entry into force of the Protocol for Singapore is the Land Acquisition Act (Cap. 152).

⁸ For greater certainty, the term "revocation" of intellectual property rights includes the cancellation or nullification of such rights, and the term "limitation" of intellectual property rights includes exceptions to such rights.

⁹ For greater certainty, contributions to capital include the initial contribution.

- (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;
- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Article 7.7 and Article 7.8; and
- (f) payments arising out of a dispute.

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

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

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 and regulations¹⁰ relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) criminal or penal offences;
- (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.

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.

6. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its

¹⁰ For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws and regulations relating to its social security, public retirement or compulsory savings programmes.

obligations under this Chapter regarding such transactions, except under Article 16.6 (Measures to Safeguard the Balance of Payments) or at the request of the Fund.

Article 7.10: Limitations

1. Article 7.3, Article 7.4 and Article 7.5 shall not apply to:
 - (a) any limitation that is listed by a Party in Annex 7.2;
 - (b) an amendment to a limitation covered by paragraph (a) to the extent that the amendment does not decrease the conformity of the limitation with Article 7.3, Article 7.4 and Article 7.5;
 - (c) any new limitation adopted by a Party, and incorporated into Annex 7.2, which does not affect the overall level of commitments of that Party under this Chapter;

to the extent that such limitations are inconsistent with those Articles.

2. As part of the reviews of this Agreement provided for in Article 15.4 (Review), the Parties undertake to review the status of the limitations set out in Annex 7.2 with a view to reducing the limitations or removing them.

3. A Party may, at any time, either on the request of the other Party or unilaterally, remove in whole or in part limitations set out in Annex 7.2 by written notification to the other Party.

4. A Party may, at any time, incorporate a new limitation into Annex 7.2 in accordance with paragraph 1(c) by written notification to the other Party. On receiving such written notification, the other Party may request consultations regarding the limitation. On receiving the request for consultations, the Party incorporating the new limitation shall enter into consultations with the other Party.

Article 7.11: Subrogation

1. In the event that either Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own investors in respect of any of their claims under this Chapter, the other Party acknowledges that the former Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of such investors.

2. Any payment made by one Party (or any agency, institution, statutory body or corporation designated by it) to its investors shall not affect the right of such investors to

make their claims against the other Party in accordance with Article 7.14, in cases where the former Party elects not to exercise its subrogated rights or claims.

Article 7.12: Special Formalities and Information Requirements

1. Nothing in Article 7.4 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 the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 7.3, Article 7.4 and Article 7.5, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect 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 7.13: 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 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 the other Party.

Article 7.14: Investment Disputes

1. Any legal dispute between an investor of one Party and the other Party arising directly out of an investment by that investor in the territory of that other Party shall, as far as possible, be settled amicably through negotiations between the investor and that other Party.

2. If the dispute cannot be resolved as provided for in paragraph 1 within six months from the date of request for negotiations then, unless the parties to the dispute agree otherwise, it shall, on the request of either such party, be submitted to conciliation or arbitration by the International Centre for Settlement of Investment Disputes established by the *Convention on the Settlement of Investment Disputes between the States and Nationals of Other States* done at Washington on 18 March, 1965, provided that the other party does not withhold its consent under Article 25 of that Convention.

3. No claim may be brought under this Article in respect of a tobacco control measure¹¹ of a Party.

¹¹ A tobacco control measure means a measure of a Party related to the production or consumption of manufactured tobacco products (including products made or derived from tobacco), their distribution, labelling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well as enforcement measures, such as inspection, recordkeeping, and reporting requirements. For greater certainty, a measure with respect to tobacco leaf that is not in the possession of a manufacturer of tobacco products or that is not part of a manufactured tobacco product is not a tobacco control measure.