

CHAPTER 9 INVESTMENT

Article 9.1: Definitions

For the purposes of this Chapter:

(a) **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, expanded or operated thereafter, which has been admitted and, where applicable, specifically approved in writing for protection by the competent authorities of the host Party, in accordance with its laws, regulations, and policies;

(b) **freely usable currencies** means a freely usable currency as determined by the International Monetary Fund (IMF) under its Articles of Agreement and any amendments thereto, or any currency that is used to make international payments and is widely traded in international principal exchange markets;

(c) **investments** means every kind of asset that an investor owns or controls, which has the characteristics of an investment,¹ such as the commitment of capital or other resources, the expectation of gains or profits, or the assumption of risk. The forms that an investment may take include in particular:

- (i) a juridical person;
- (ii) movable and immovable property, and any other property rights, such as leases, mortgages, liens, and pledges;²
- (iii) shares, stocks, and any other form of equity participation, excluding beneficial ownership, of a juridical person and rights derived therefrom;

¹ Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take.

² For greater certainty, market share, access to market, expected gains, and opportunities for profit making are not, by themselves, investments.

(iv) bonds and debentures of a juridical person and rights derived therefrom;

(v) returns reinvested;

(vi) claims to money and to any other rights to contractual performance having a financial value related to investment;³

(vii) intellectual property rights which are recognised pursuant to the laws and regulations of the host Party;

(viii) rights under contracts, including construction, management, production, or revenue-sharing contracts; and

(ix) rights conferred pursuant to the laws and regulations of the host Party or contracts, such as concessions, licences, authorisations, and permits.

The term “investment” does not include an order or judgment, sought or entered in any judicial, administrative, or arbitral proceeding, including an arbitral award.

For the purposes of the definition of investment in this subparagraph, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

(d) **investor of a Party** means a natural person of a Party,⁴ or a juridical person of a Party recognised as a legal entity by the law of the other Party, that seeks to make,⁵ is making an investment or has made a covered investment in the territory of the other Party;

³ For greater certainty, the term “investment” does not include claims to money that arise solely from:

(a) commercial contracts for the sale of goods or services by a natural person or juridical person in the territory of a Party to a natural person or juridical person in the territory of the other Party; or

(b) the extension of credit in connection with a commercial transaction, such as trade financing.

⁴ Natural persons who hold two or more nationalities shall be deemed to be exclusively nationals of the State of their dominant and effective nationality.

⁵ For greater certainty, the Parties understand that an investor that “seeks to make” an investment refers to an investor of the other Party that has taken active steps to make an investment. Where a notification or approval process is required for making an investment, an investor that “seeks to make” an investment refers to an investor of the other Party that has initiated such notification or approval process.

(e) **juridical person** means any entity constituted or organised under the applicable law of the host Party;^{6, 7, 8}

(f) **juridical person of a Party** means a juridical person constituted or otherwise organised under the laws and regulations of that Party and is engaged in substantive business operations in that Party;

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

(i) central, regional or local governments and authorities; and

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

(h) **natural person of a Party** means any natural person possessing the nationality or citizenship of that Party in accordance with its laws and regulations; and

(i) **return** means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income.

Article 9.2: Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

(a) investors of the other Party; and

(b) covered investments.

2. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

3. This Chapter shall not apply to:

⁶ For greater certainty, a branch of a juridical person does not have any right to make any claim against any Party under this Agreement.

⁷ For greater certainty, the inclusion of a “branch” in the definition of “juridical person” is without prejudice to a Party’s ability to treat a branch under its law as an entity that has no independent legal existence and is not separately organised.

⁸ A branch of a legal entity of a non-Party shall not be considered as a juridical person of a Party.

- (a) government procurement;
- (b) subsidies or grants provided by a Party, including government supported loans, guarantees, insurance, and any conditions attached to the receipt or continued receipt of such subsidies or grants;
- (c) services supplied in the exercise of governmental authority;
- (d) any taxation measure, except as provided for in Article 9.11 (Expropriation and Compensation) and Article 9.12 (Transfers); and
- (e) any measure adopted or maintained by a Party to the extent that it is covered by Chapter 8 (Trade in Services).

4. Notwithstanding subparagraph 3(e), Article 9.5 (Treatment of Investment), Article 9.6 (Compensation for Losses), Article 9.11 (Expropriation and Compensation), Article 9.12 (Transfers), Article 9.13 (Subrogation), and Article 9.24 (Settlement of Investment Disputes between a Party and an Investor of the other Party) shall apply, *mutatis mutandis*, to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party covered by Chapter 8 (Trade in Services), but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter, regardless of whether such a service sector is scheduled in the Party's Schedule of Specific Commitments in Annex 8A (Schedule of Specific Commitments – Thailand) or Annex 8B (Schedule of Specific Commitments – Sri Lanka).

5. For the purposes of liberalisation, this Chapter shall apply to investments, subject to Article 9.9 (Reservations and Non-conforming Measures), in the non-service sectors.

6. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system or to ensure the stability of the exchange rate, including to prevent speculative capital flow. Where such measures are taken, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

7. For greater certainty, the provisions of this Chapter do not impose any obligation on either Party in relation to any act or fact that took place, or any situation that ceased to exist, before the date of entry into force of this Agreement.

Article 9.3: National Treatment

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

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

Article 9.4: Most-Favoured-Nation Treatment

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

3. For greater certainty, whether treatment is accorded in “like circumstances” 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. The treatment, as set forth in paragraphs 1 and 2, shall not include:

(a) any preferential treatment accorded to investors or their investments under any existing bilateral, regional or international agreements, or any forms of economic or regional cooperation with any non-Party;

(b) in the case of Thailand, any measure that accords preferential treatment to ASEAN Member States under any agreements between all ASEAN Member States, in force or signed after the date of entry into force of this Agreement. For the avoidance of doubt, such agreements do not include agreements between ASEAN Member States and non-ASEAN Member States;

(c) in the case of Sri Lanka, any measure that accords preferential treatment to SAARC Member States under any agreements between all SAARC Member States, in force or signed after the date of entry into force of this Agreement. For the avoidance of doubt, such agreements do not include agreements between SAARC Member States and non-SAARC Member States;

5. For greater certainty, paragraphs 1 and 2 shall not be construed as granting to investors options or procedures for the settlement of disputes other than those set out in Article 9.24 (Settlement of Investment Disputes between a Party and an Investor of the other Party).

Article 9.5: Treatment of Investment

1. Each Party shall accord to covered investments of nationals or juridical persons of the other Party, fair and equitable treatment and full protection and security in its territory. No Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or juridical persons of other Party. Each Party shall observe any obligation it may have entered into with regard to investments of nationals or juridical persons of the other Party.

2. For greater certainty:

(a) “fair and equitable treatment” requires each Party not to deny justice in any legal, criminal, civil, administrative or adjudicatory proceedings in accordance with the principle of due process;

(b) “full protection and security” requires each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of the covered investments; and

(c) the concepts of fair and equitable treatment and full protection and security in subparagraphs (a) and (b) do not require treatment in addition to or beyond that is required by the customary international law minimum standard of treatment of aliens,⁹ and do not create additional substantive rights.

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 9.6: Compensation for Losses

1. Each Party shall accord to investors of the other Party, whose covered investments suffered losses due to war or other armed conflict, state of national emergency, civil strife or other similar events in its territory, treatment no less favourable than that it accords, in like circumstances, to its own investors or investors of a non-Party, relating to restitution, indemnification, compensation or other forms of settlement.

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

(a) requisitioning of its investment or part thereof by the other Party’s forces or authorities; or

(b) destruction of its investment or part thereof by the other Party’s forces or authorities, which was not required by the necessity of the situation,

the other Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss.

⁹ Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Article 9.7: Performance Requirements

The provisions of the WTO Agreement on Trade-related Investments Measures (TRIMs), which are not specifically mentioned in or modified by this Agreement shall apply, *mutatis mutandis*, to this Agreement.

Article 9.8: Senior Management and Boards of Directors

1. A Party shall not require that a juridical person 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 a juridical person of that Party that is a covered investment, be of a particular nationality or resident in the territory of that Party, provided that the requirement does not materially impair the ability of the investor of the other Party to exercise control over its investment.
3. For the avoidance of doubt, nothing in this Article shall be construed to limit a Party from exercising its rights as a shareholder.

Article 9.9: Reservations and Non-Conforming Measures

1. Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements), and Article 9.8 (Senior Management and Board of Directors), shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government, as set out by that Party in List A of its Schedule in Annex 9A (Schedule of Reservations and Non-Conforming Measures for Investment - Thailand) or Annex 9B (Schedule of Reservations and Non-Conforming Measures for Investment – Sri Lanka);
 - (ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex 9A (Schedule of Reservations and Non-Conforming Measures for Investment - Thailand) or Annex 9B (Schedule of Reservations and Non-Conforming Measures for Investment – Sri Lanka); 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, at the date of entry into force of this Agreement, with Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements), and Article 9.8 (Senior Management and Board of Directors).

2. Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nation Treatment), Article 9.7 (Performance Requirements), and Article 9.8 (Senior Management and Board 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 List B of its Schedule in Annex 9A (Schedule of Reservations and Non-Conforming Measures for Investment - Thailand) or Annex 9B (Schedule of Reservations and Non-Conforming Measures for Investment – Sri Lanka).

3. No Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by List B of its Schedule in Annex 9A (Schedule of Reservations and Non-Conforming Measures for Investment - Thailand) or Annex 9B (Schedule of Reservations and Non-Conforming Measures for Investment – Sri Lanka), 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 authorities.

4. Article 9.3 (National Treatment) and Article 9.4 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, and any measure that is covered by an exception to, or derogation from, the obligations imposed by Article 3 or 4 of the TRIPS Agreement.

Article 9.10: Transparency

1. To achieve the objectives of this Chapter, each Party, to the extent possible, shall:

(a) make publicly available all relevant laws, regulations, and administrative guidelines of general application that pertain to, or affect, investments in the territory of the Party;

(b) promptly, and at least annually, inform the other Party of the introduction of any new law or of any changes to existing laws, regulations, or administrative guidelines of general application which significantly affect investments or commitments of a Party under this Chapter;

(c) promptly, and at least annually, inform the other Party of any investment-related agreements or arrangements which it has entered into and where preferential treatment was granted; and

(d) establish or designate an enquiry point where, upon request of any natural person or juridical person of the other Party, all information relating to the measures required to be published or made available under subparagraphs (b) and (c) may be promptly obtained.

2. Nothing in this Chapter shall require a Party to furnish or allow access to any confidential information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular juridical persons, public or private.

Article 9.11: Expropriation and Compensation

1. A Party shall not nationalise or expropriate, either directly or through measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as “expropriation”),¹⁰ a covered investment of an investor of the other Party, unless such a measure is taken on a

¹⁰ For the avoidance of doubt, any measure of expropriation relating to land shall be as defined in the Party’s respective existing domestic laws and regulations and any amendments thereto, and shall be for the purpose and upon payment of compensation in accordance with the aforesaid laws and regulations

nondiscriminatory basis, for a public purpose in accordance with due process of law, and upon payment of compensation in accordance with this Article.

2. The compensation referred to in paragraph 1 shall:

(a) be equivalent to the fair market value of the expropriated investment at the time when, or immediately before, the expropriation was publicly announced, or when the expropriation occurred, whichever is applicable;

(b) be effectively realisable and freely transferable in accordance with Article 9.12 (Transfers) between the territories of the Parties;

(c) not reflect any change in value occurring, because the intended expropriation had become known earlier; and

(d) be paid without delay.¹¹

3. In the event of delay, the compensation shall include an appropriate interest in accordance with the laws and regulations of the Party making the expropriation. The compensation, including any accrued interest, shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely useable currency, the compensation referred to in paragraphs 2 and 3 shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

5. 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 10 (Intellectual Property) and the TRIPS Agreement.¹²

¹¹ Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

¹² 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 such rights, and the term “limitation” of intellectual property rights includes exceptions to such rights.

Article 9.12: 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) capital and additional amounts to maintain or increase an investment;
- (b) profits, capital gains, dividends, interest, royalty payments, technical assistance and technical and management fees, license fees, and other current income accruing from any covered investment;
- (c) proceeds from the total or partial sale or liquidation of any covered investment;
- (d) payments made under a contract relating to the covered investment, including a loan agreement;
- (e) payments made pursuant to Articles 9.6 (Compensation for losses) and Articles 9.11 (Expropriation and Compensation);
- (f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the parties to the dispute; and
- (g) earnings and other remuneration of personnel engaged from abroad in connection with the covered investment.

2. Each Party shall permit such 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. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations 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 and the recovery of the proceeds of crime;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings;

(f) taxation;

(g) social security, public retirement, or compulsory savings schemes;

(h) severance entitlement of employees; and

(i) requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of that Party.

4. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the IMF under its Articles of Agreement as may be amended, including the use of exchange actions which are in conformity with the Articles of Agreement as may be amended, provided that the Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 9.18 (Temporary Safeguard Measures) or at the request of the IMF.

Article 9.13: Subrogation

1. If a Party or its designated agency makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity that it has granted on non-commercial risk in respect of a covered investment, the other Party shall recognise the subrogation or transfer of any right or claim in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

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

3. In the exercise of subrogated rights or claims, a Party or its designated agency exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the other Party.

Article 9.14: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party and to the investor's covered investments if the investor is a juridical person owned or controlled by a person of a non-Party or of the denying Party, and such juridical person has no substantive business operations in the territory of the other Party.

2. The denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the request of the other Party.

Article 9.15: Promotion of Investment

The Parties shall endeavour to promote and increase awareness of the Parties as an investment area, including through:

- (a) encouraging investments between the Parties;
- (b) organising investment promotion activities between the Parties;
- (c) promoting business matching events;
- (d) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations, and policies; and
- (e) conducting information exchanges on other issues of mutual concern relating to investment promotion.

Article 9.16: Facilitation of Investment

Subject to its laws and regulations, each Party shall endeavor to cooperate in investment facilitation between the Parties including through:

- (a) creating the necessary environment for all forms of investment;
- (b) simplifying procedures for investment applications and approvals;

(c) promoting the dissemination of investment information, including investment rules, laws, regulations, policies, and procedures; and

(d) establishing or maintaining either contact points, one-stop investment centres, focal points or other entities in the respective host Party to provide assistance and advisory services to investors, including the facilitation of operating licences and permits.

Article 9.17: Special Formalities and Treatment of Information

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 covered investments, such as a requirement that covered investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by that Party to investors of the other Party and investments pursuant to this Chapter.

2. Notwithstanding Article 9.4 (National Treatment) and Article 9.5 (Most-Favoured Nation Treatment), 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 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 9.18: Temporary Safeguard Measures

1. A Party may adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 9.1 (Definitions) in the event that it is in serious balance of payments and external financial difficulties or under threat thereof, or 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. Such restrictions shall be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party and be applied in good faith so as to avoid unnecessary damage to the commercial, economic, and financial interests of the other Party.
3. The duration of the restrictions stipulated in paragraph 1 shall not exceed those necessary to deal with the circumstances described in paragraph 1, provided that such restrictions are consistent with the IMF Articles of Agreement.
4. Such restrictions shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.
5. Where such restrictions are adopted or maintained, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter or under the IMF Articles of Agreement.

Article 9.19: General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or their investors where like conditions prevail, or a disguised restriction on investors or investments made by investors of the other Party, 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;¹³
- (b) necessary to protect human, animal or plant life or health;¹⁴
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

¹³ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society. For greater certainty, the Parties understand that the fundamental interests of society include the maintenance of religious harmony.

¹⁴ The Parties understand that the measures referred to in sub-paragraph (b) include environmental measures necessary to protect human, animal or plant life or health.

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

(iii) safety;

(d) imposed for the protection of national treasures of artistic, historic or archaeological value; or

(e) relating to the conservation of exhaustible natural resources.¹⁵

Article 9.20: Security Exceptions

1. For the purposes of this Chapter, 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 including:

(i) relating to fissionable and fusionable materials or the materials from which they are derived;

(ii) 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;

(iii) taken to protect critical public infrastructures, including communication, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructures;

(iv) taken in time of national emergency or war or other emergency in international relations; or

(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.

¹⁵ The Parties understand that the measures referred to in sub-paragraph (e) applies to the measures necessary to conserve living and non-living exhaustible natural resources.

2. A Party that takes actions under subparagraph 1(b) or (c) shall inform the other Party to the fullest extent possible of the actions taken and of their termination.

Article 9.21: Term of Bilateral Investment Treaty

1. Subject to paragraph 2, the Parties agree that the Agreement between the Government of the Kingdom of Thailand and the Government of the Democratic Socialist Republic of Sri Lanka Concerning the Promotion and Protection of Investments, signed at Bangkok, Thailand, on 3 May 1996 (“BIT”), as well as all the rights and obligations derived from the said agreement, shall cease to have effect on the date of entry into force of this Agreement.

2. Any and all investments made pursuant to the BIT before the entry into force of this Agreement will be governed by the said BIT regarding any matter arising while the BIT was in force. An investor may only submit an arbitration claim pursuant to the BIT regarding any matter arising while the BIT was in force, pursuant to the rules and procedures established in it, and provided that no more than three years have elapsed since the date of entry into force of this Agreement.

Article 9.22: Corporate Social Responsibility

Each Party should encourage investors 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.

Article 9.23: Committee on Investment

1. The Parties hereby establish a Committee on Investment with a view to accomplishing the objectives of this Chapter. The functions of the Committee shall be to:

- (a) discuss and review the implementation and operation of this Chapter;

(b) exchange information on, and discuss investment-related matters within, the scope of this Chapter which relate to the improvement of investment environment;

(c) consider any issues raised by either Party concerning investment agreements; and

(d) discuss any other investment-related matters concerning this Chapter.

2. The Committee shall meet as agreed by the Parties.

3. Any dispute arising out of the interpretation, implementation, or application of this Chapter, shall be referred to the Committee without prejudice to Article 9.24 (Settlement of Investment Disputes between a Party and an Investor of the Other Party), and the Committee shall seek to resolve disputes that may arise in areas covered by this Chapter.

Article 9.24: Settlement of Investment Disputes between a Party and an Investor of the Other Party

Scope and Definitions

1. 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 under Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nations Treatment), Article 9.5 (Treatment of Investment), Article 9.6 (Compensation for Losses), Article 9.7 (Performance Requirements), Article 9.8 (Senior Management and Board of Directors), Article 9.11 (Expropriation and Compensation), Article 9.12 (Transfers), and Article 9.13 (Subrogation) which causes loss or damage to the investor in relation to its covered investment or the covered investment that has been made by that investor with respect to the management, conduct, operation, sale or other disposition of such covered investment.

2. This Article shall not apply to:

(a) pre-investment activities and expenditures relating to admission, establishment, acquisition, or expansion;

(b) disputes arising out of events which occurred prior to the entry into force of this Agreement;

(c) disputes where the disputing investor holds the nationality or citizenship of the disputing Party; and

(d) disputes arising out of an investment which has not been made in good faith and has not been made in accordance with domestic laws and regulations.

3. A claim with respect to public debt shall be subject to this Article and Annex 9C (Public Debt).

4. For the purposes of this Article:

(a) **Appointing Authority** means:

(i) in the case of arbitration under subparagraph 8(a), the Secretary-General of the Permanent Court of Arbitration; or

(ii) any person as agreed between the disputing parties;

(b) **disputing Party** means a Party against which a claim is made under this Article;

(c) **disputing party** means a disputing investor or a disputing Party;

(d) **disputing parties** means a disputing investor and a disputing Party;

(e) **disputing investor** means an investor of a Party that makes a claim against the other Party on its own behalf under this Article and, where relevant, includes an investor of a Party that makes a claim on behalf of a juridical person of the disputing Party that the investor owns or controls according to business registration record in the host country and the claim shall only be limited to the proportion of the equity owned;

(f) **ICSID** means the International Centre for Settlement of Investment Disputes;

(g) **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;

(h) **ICSID Convention** means the Convention on the Settlement of Investment Disputes between States and National of other States, done at Washington on 18 March 1965;

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

(j) **non-disputing Party** means the Party of the disputing investor; and

(k) **UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

Consultations

5. In the event of an investment dispute referred to in paragraph 1, the disputing parties shall, as far as possible, resolve the dispute through consultations with a view towards reaching an amicable settlement. Such consultations may include the use of non-binding, third party procedures, and shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Party.

6. With the objective of resolving an investment dispute through consultations, a disputing investor shall provide the disputing Party, prior to the commencement of consultations, with information regarding the legal and factual basis for the investment dispute.

Claim by an Investor of a Party

7. If an investment dispute has not been resolved within 180 days after the date of receipt by a disputing Party of a request for consultations, the disputing investor may submit to conciliation or arbitration a claim:

(a) that the disputing Party has breached an obligation arising under Article 9.3 (National Treatment), Article 9.4 (Most-Favoured-Nations treatment), Article 9.5 (Treatment of Investment), Article 9.6 (Compensation for Losses), Article 9.7 (Performance Requirements), Article 9.8 (Senior Management and Board of Directors), Article 9.11 (Expropriation and Compensation), Article 9.12 (Transfers), or Article 9.13 (Subrogation) relating

to the management, conduct, operation, sale or other disposition of a covered investment; and

(b) that the covered investment has incurred loss or damage by reason of, or arising out of, that breach.

Submission of a Claim

8. A disputing investor may submit a claim referred to in paragraph 7 at the choice of the disputing investor:

(a) under the UNCITRAL Arbitration Rules; or

(b) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules,

provided that resort to one of the fora under subparagraphs (a) and (b) shall exclude resort to any other forum.

9. A claim shall be deemed submitted to arbitration under this Section when the disputing investor's notice of or request for arbitration made in accordance with paragraph 12 is received under the applicable arbitration rules.

10. The arbitration rules applicable under subparagraphs 8(a) and (b), as in effect on the date on which the claim or claims were submitted to arbitration under this Section shall govern the arbitration, except to the extent modified by this Article.

11. In relation to a specific investment dispute or class of disputes, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant tribunal or tribunals established pursuant to this Section, and on individual arbitrators serving on such tribunals.

12. The disputing investor shall provide with the notice of arbitration:

(a) the name of the arbitrator that the disputing investor appoints; or

(b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

Conditions and Limitations on Submission of a Claim

13. The submission of a dispute as provided for in paragraph 7 to conciliation or arbitration under subparagraphs 8(a) and (b) in accordance with this Article, shall be conditional upon:

(a) the submission of the investment dispute to such conciliation or arbitration taking place within three years after the date on which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in subparagraph 7(a) causing loss or damage to the investor in relation to its covered investment or the covered investment that has been made by that investor;

(b) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Party of its intent to submit the investment dispute to such conciliation or arbitration, and which briefly summarises the alleged breach of the disputing Party, including the provisions of this Chapter alleged to have been breached, and the loss or damage allegedly caused to the disputing investor or a covered investment;

(c) the notice of arbitration being accompanied by the disputing investor's written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, other dispute settlement procedures, or any proceeding with respect to any measure alleged to constitute a breach referred to in paragraph 7.

14. Notwithstanding subparagraph 13(c), no Party shall prevent the disputing investor from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving its rights and interests and that does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Party.

15. No Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which has been submitted to conciliation or arbitration under this Section, unless the other Party has failed to abide by and comply with the award rendered in such a 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.

16. A disputing Party shall not assert, as a defence, counter-claim, right of set off or otherwise, that the disputing investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Selection of Arbitrators

17. Unless the disputing parties otherwise agree, the tribunal shall comprise of three arbitrators:

(a) one arbitrator appointed by each of the disputing parties; and

(b) the third arbitrator, who shall be the presiding arbitrator, appointed by agreement of the disputing parties, shall be a national of a non-Party which has diplomatic relations with the disputing Party and non-disputing Party, and shall not have permanent residence in either the disputing Party or non-disputing Party.

18. Arbitrators shall have expertise or experience in public international law, international trade, or international investment rules, and be independent of, and not be affiliated with or take instructions from the disputing Party, the non-disputing Party or the disputing investor.

19. The Appointing Authority shall serve as an appointing authority for arbitration under this Section.

20. If a tribunal has not been constituted within 75 days after the date that a claim is submitted to arbitration under this Article, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

21. The disputing parties may establish rules relating to expenses incurred by the tribunal, including arbitrator's remuneration.

22. Where any arbitrator appointed as provided for in this Section resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and the successor shall have all the powers and duties of the original arbitrator.

Consolidation

23. Where two or more claims have been submitted separately to arbitration under paragraph 7, and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all disputing parties may agree to consolidate those claims in any manner they deem appropriate.

Conduct of the Arbitration

24. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, a tribunal shall decide on the matter before proceeding to the merits.

25. A disputing Party may, no later than 45 days after the constitution of the tribunal, file an objection that a claim is manifestly without merit. A disputing Party may also file an objection that a claim is otherwise outside the jurisdiction or competence of the tribunal. The disputing Party shall specify as precisely as possible the basis for the objection.

26. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.

27. The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the disputing parties a reasonable opportunity to comment.

Place of Arbitration

28. Unless the disputing parties otherwise agree, the tribunal shall determine the seat of arbitration in accordance with the applicable arbitration rules, provided that the seat place shall be in the territory of a State that is a party to the New York Convention.¹⁶

¹⁶ The tribunal shall take into consideration that the English language is the preferred language of the Parties in determining the seat of arbitration.

29. Unless the disputing parties otherwise agree, the venue of arbitration shall be in the territory of either Party.

30. Where an investor claims that the disputing Party has breached Article 9.11 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the disputing Party and the non-disputing Party shall, upon request from the disputing Party, hold consultations with a view to determine whether the taxation measure in question has an effect equivalent to expropriation or nationalisation. Any tribunal that may be established pursuant to this Article shall accord serious consideration to the decision of both Parties under this paragraph.

31. If both Parties fail either to initiate consultations referred to in paragraph 30, or to determine whether such taxation measure has an effect equivalent to expropriation or nationalisation within the period of 180 days after the date of the receipt of request for consultations referred to in paragraphs 5 and 6, the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Article.

Transparency of Arbitral Proceedings

32. Subject to paragraphs 33 and 34, the disputing Party may make publicly available all awards and decisions produced by the tribunal.

33. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

34. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties, shall be protected from disclosure to the public.

35. A disputing party may disclose to persons directly connected with the arbitral proceedings such confidential information as it considers necessary for the preparation of its case, but it shall require that such confidential information is protected.

36. The tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's laws protecting Cabinet confidences, personal privacy or

the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

37. The non-disputing Party shall be entitled, at its cost, to receive from the disputing Party a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing Party. The disputing Party shall notify the other Party of the receipt of the notice of arbitration within 30 days thereof.

Governing Law

38. Subject to paragraphs 39 and 40, when a claim is submitted under paragraph 7, the tribunal shall decide on the issues in dispute in accordance with this Agreement, any other applicable agreements between the Parties, any relevant rules of international law applicable in the relations between the Parties, and, where applicable, any relevant law of the disputing Party.

39. The tribunal shall, on its own account or at the request of a disputing party, request a joint interpretation of any provision of this Agreement that is at issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days after the delivery of the request. Without prejudice to paragraph 40, if the Parties fail to issue such a decision within 60 days, any interpretation submitted by a Party shall be forwarded to the disputing parties and the tribunal, which shall decide on the issue on its own account.

40. A joint decision of the Parties declaring their interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.

Awards

41. Where a tribunal makes a final award against either of the disputing parties, 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 disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

42. A tribunal may also award costs and attorney's fees in accordance with this Article and the applicable arbitration rules.

43. A tribunal may not award punitive damages.

44. An award made by a tribunal shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.

45. Subject to paragraph 46 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.¹⁷

46. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award 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;

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to subparagraph 8(b):

(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.

47. Each Party shall provide for the enforcement of an award in its territory.

¹⁷ The Parties understand that there may be domestic legal and administrative processes that need to be observed before an award can be complied with.