

CHAPTER 9: INVESTMENT

Section A: General Provisions

Article 9.1: Definitions

For the purposes of this Chapter:

claimant means an investor of a Party that is a party to an investment dispute with the other Party;

covered investment means, with respect to a Party, an investment:

- (a) in its territory;
- (b) directly or indirectly owned or controlled by an investor of the other Party; and
- (c) existing on the date of entry into force of this Agreement, or made or acquired thereafter;

disputing parties means both the claimant and the respondent;

enterprise means any legal person or any other entity duly constituted or organised under the applicable legislation, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organisation or company;

enterprise of a Party means an enterprise that is constituted or organised under the legislation of that Party and has substantial business activities in the territory of that Party;

freely usable currency means "freely usable currency" as defined under the *Articles of Agreement of the International Monetary Fund*;

ICSID means the International Centre for Settlement of Investment Disputes;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington, March 18, 1965;

investment means every kind of asset, made in accordance with the legislation of the Party in whose territory the investment is made, that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, such as the

commitment of capital or other resources, the expectation of gain or profit, and the assumption of risk. Forms that an investment may take include¹:

- (a) an enterprise;
- (b) shares, stock and other forms of equity participation in an enterprise;
- (c) bonds, debentures and other forms of debt of an enterprise;
- (d) a loan to an enterprise;
- (e) futures, options and other derivatives;
- (f) rights under contract, including turnkey, construction, management, production, or revenue-sharing contracts;
- (g) claims to money and to any performance under contract having a financial value;
- (h) intellectual property rights and goodwill;
- (i) concessions and similar rights conferred by law or by contract, including concessions to search for, extract or exploit natural resources; and
- (j) any other movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

For greater certainty, investment shall not include:

- (a) public debt;
- (b) claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to a natural person or enterprise in the territory of the other Party;
- (c) the extension of credit, including bank loans, in connection with a commercial transaction, such as trade financing; or
- (d) an order or judgment entered in a judicial or administrative action, or an arbitral award;

investor of a Party means:

¹ An investment includes the amounts yielded by an investment, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as an investment, provided that the change is effected in accordance with the applicable legislation of the Party in whose territory the investment is made.

(a) with respect to the Socialist Republic of Viet Nam:

- i. an enterprise of the Socialist Republic of Viet Nam; or
- ii. a natural person who is a national of the Socialist Republic of Viet Nam but not a national or a permanent resident of the State of Israel; and

(b) with respect to the State of Israel:

- i. an enterprise of the state of Israel; or
- ii. a natural person who is a national or permanent resident of the State of Israel but not a national of the Socialist Republic of Viet Nam;

that has made, is making or seeks to make an investment in the territory of the other Party;

legislation with respect to a Party means the laws, regulations and administrative orders of that Party;

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

respondent means the Party that is a party to an investment dispute;

Secretary-General means the Secretary-General of ICSID;

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights* in Annex 1C to the WTO Agreement;

UNCITRAL Arbitration Rules means the Arbitration Rules of the United Nations Commission on International Trade Law, as revised in 2010.

Article 9.2: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party;
 - (b) covered investments.
2. This Chapter shall not apply to measures adopted or maintained by a Party with regard to financial services.

3. For greater certainty, this Chapter shall not bind either Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement.

4. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency, except with regard to Article 9.16 (Taxation Measures).

5. This Chapter shall not apply to any measure relating to the conduct of tenders or bidding processes of government procurement.

6. For greater certainty, the mere fact that a subsidy² 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 Chapter, even if there is loss or damage to the covered investment as a result.

Article 9.3: Right to Regulate

1. For the purposes of this Agreement, the Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity, through the good faith application of their laws and regulations.

2. For greater certainty, the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under this Agreement.

Section B: Non-Discrimination and Liberalisation of Investment

Article 9.4: 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, maintenance, use, enjoyment or disposal of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own

²For Viet Nam, "subsidy" includes investment incentives, and investment assistance such as production site assistance, human resources training and competitiveness strengthening activities, such as assistance for technology, research and development, legal aids, market information and promotion.

investors with respect to the establishment, acquisition, expansion, management, maintenance, use, enjoyment or disposal of investments in its territory.

Article 9.5: 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 any non-Party with respect to the establishment, acquisition, expansion, management, maintenance, use, enjoyment or disposal of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, maintenance, use, enjoyment or disposal of investments in its territory.

3. For greater certainty, the treatment referred to in this Article does not encompass definitions or any investor-state dispute settlement procedures or mechanism, including mechanisms and procedures similar to those set out in Section D (Investor – State Dispute Settlement).

4. For greater certainty, substantive provisions in other international investment treaties and other trade agreements where not accompanied by measures that are adopted or maintained by a Party pursuant to those provisions, do not, by themselves constitute “treatment”, and thus cannot give rise to a breach of this Article.³

Article 9.6: Performance Requirements

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, maintenance, use, enjoyment or disposal of an investment in its territory of an investor of the other Party, impose or enforce any requirement or enforce any commitment or undertaking:

- (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 a natural person or an enterprise in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

³ For greater certainty, the Parties reaffirm their understanding that this article shall be interpreted in accordance with the principle of *ejusdem generis*.

- (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way 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 person or an enterprise in its territory, except those undertaken in a manner not inconsistent with the TRIPS Agreement.
2. The provisions of paragraph 1 do not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with establishment, acquisition, expansion, management, maintenance, use, enjoyment or disposal of an investment in its territory of an investor of the other Party, on compliance with:
- (a) any requirement other than the requirements set forth in subparagraphs 1(b), 1(c), 1(d), and 1(e);
 - (b) a requirement to locate production, supply or acquire a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory;
 - (c) the requirements set forth in subparagraphs 1(b) and 1(c), when the requirements relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas are imposed by an importing Party; and
3. Subparagraphs 1(a), 1(b) and 1(c) do not apply to qualification requirements for goods or services with respect to export promotion.
4. Subparagraph 1(f) shall not apply when a requirement is imposed or the commitment or undertaking is enforced by a court of justice, administrative tribunal or competition authority to remedy a determined violation of competition laws.
5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.
6. For greater certainty, paragraph 1 does not apply to any requirement other than the requirements set out in that paragraph.

Article 9.7: Senior Management and Board of Directors

1. No Party may require that an enterprise of that Party, that is a covered investment, appoint to senior management positions a natural person of any particular nationality.

2. Notwithstanding paragraph 1, a Party may require that a majority or less of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be a national of that Party or resident in the territory of that Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 9.8: Non-Conforming Measures

1. Article 9.4 (National Treatment), Article 9.5 (Most-Favoured Nation Treatment), Article 9.6 (Performance Requirements) and Article 9.7 (Senior Management and Boards 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 its Schedule to Annex I;
 - (ii) 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 or modification to any non-conforming measure referred to in subparagraph (a), provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the date of entry into force of this Agreement, with Articles 9.4 (National Treatment), 9.5 (Most-Favoured National Treatment), 9.6 (Performance Requirement) and 9.7 (Senior Management and Boards of Directors).

2. Articles 9.4 (National Treatment), 9.5 (Most-Favoured Nation Treatment), 9.6 (Performance Requirements) and 9.7 (Senior Management and Board of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities set out in its Schedule in Annex II.

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule in Annex II, 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.

4. The Parties confirm their understanding that, when a new sector, which does not exist at the time of the entry into force of this Agreement, emerges in a Party after the date of entry into force of this Agreement and that Party, therefore, wishes to amend the Annexes to this Chapter, the Parties shall, upon request by that Party, enter immediately into discussion with a view to amending the Annexes.

5. Articles 9.4 (National Treatment) and 9.5 (Most-Favoured Nation Treatment) shall not apply to any measure covered by the exceptions to, or derogations from, obligations under the TRIPS Agreement.

6. Articles 9.4 (National Treatment), 9.5 (Most-Favoured Nation Treatment), 9.6 (Performance Requirements) and 9.7 (Senior Management and Board of Directors) shall not apply to:

- (a) any measure that a Party adopts or maintains with respect to government procurement;
- (b) Subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

Article 9.9: Special Formalities and Information Requirements

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 or registered under the requirements of its legislation, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and to covered investments pursuant to this Chapter and are not used as means of avoiding the Party's commitments or obligations under 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 information that is confidential from any disclosure that would prejudice the competitive position of the investor or its covered investment.

Section C: Investment Promotion and Protection

Article 9.10: Scope of Investment Protection

This Section applies to investors of a Party who had made covered investment in the territory of the other Party, and their covered investments.

Article 9.11: Treatment of Investments

1. Covered investments shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party in accordance with applicable customary international law.

2. For greater certainty, "full protection and security" refers to the Party's obligations to act as may be reasonably necessary to protect the physical security of investors and covered investments.

3. For greater certainty, the "full protection and security" does not imply, in any case, better police protection than that accorded to nationals of the Party where the investment has been made.

4. For greater certainty, 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 9.12: Losses and Compensation

1. Notwithstanding paragraph 9.8(6)(b), each Party shall accord to investors of the other Party that have suffered a loss or damage relating to their investments in the territory of the former Party due to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other such similar activity in the territory of that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors or investors of a non- Party.

2. Without prejudice to paragraph 1, if an investor, suffers a loss in the territory of the other Party resulting from:

- (a) requisitioning of its property by the Party's forces or authorities; or
- (b) destruction of its property by the Party's forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

the Party shall provide the investor with restitution or adequate compensation for such loss.

3. Any payment under this Article shall be effectively realisable, freely transferable and freely convertible at the market exchange rate into freely usable currencies.

Article 9.13: Expropriation and Compensation⁴

1. A Party shall not expropriate or nationalise a covered investment either directly, or indirectly through measures having an effect equivalent to expropriation or nationalisation ("expropriation"), except:

⁴ This Article shall be interpreted in accordance with Annex 9A(Expropriation).

- (a) for a public purpose;
- (b) when made in accordance with the legislation of the Party;
- (c) in a non-discriminatory manner; and
- (d) when accompanied by compensation, in accordance with paragraph 2.

2. The compensation shall:

- (a) be paid without delay and in a freely usable currency;
- (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place;
- (c) not reflect any change in value occurring because the intended expropriation had become known earlier;
- (d) be fully realisable and freely transferable; and
- (e) include interest, at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

3. Notwithstanding paragraphs 1 and 2, where Viet Nam is the expropriating Party, any measure of direct expropriation relating to land shall be:

- (a) for a purpose in accordance with the applicable domestic legislation⁵; and
- (b) upon payment of compensation that follow the general trends in the market value of the land use right, while recognising the applicable domestic legislation which will be implemented in good faith in a non-discriminatory, and equitable manner.

4. Without prejudice to Section D (Investor – State Dispute Settlement), the investors affected shall have a right, under the legislation of the Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of the legality of the expropriation and of the valuation of their investment, in accordance with the principles set out in this Article.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that

⁵ The applicable domestic legislation is *Law on Land 2013* (Viet Nam) and *Decree No. 44/2014/ND-CP dated 15 May 2014 Regulating Land Prices*, as amended on the date of entry into force of this Agreement for Viet Nam.

such issuance, revocation, limitation, or creation is consistent with the TRIPS Agreement.

Article 9.14: Transfers⁶

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, including the initial contribution and additional amounts to maintain, or increase the investment;

(b) profits, dividends, interest, capital gains, royalties, management fees, technical assistance fees and other fees, or other current incomes accruing from the covered investment;

(c) proceeds from the sale or liquidation of all or any part of the covered investment;

(d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;

(e) payments made in accordance with Articles 9.12 (Losses and Compensation) and 9.13 (Expropriation and Compensation); and

(f) payments arising out of a dispute referred to in Section D (Investor – State Dispute Settlement).

2. Each Party shall allow such transfers 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 legislation relating to:

(a) the payment of taxes and dues;

(b) bankruptcy, insolvency or the protection of the rights of a creditor;

(c) issuing, trading or dealing in securities futures, options or derivatives;

(d) criminal or penal offences;

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

⁶ For greater certainty, Annex 9-B (Temporary Safeguard Measures) shall apply to Article 9.14 (Transfers).

(f) ensuring compliance with an order or judgment in judicial or administrative proceedings; or

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

Article 9.15: Subrogation

1. If a Party or its designated agency makes a payment to one of its investors under a guarantee, a contract of insurance or other form of indemnity it has entered into in respect of an investment in the territory of the other Party, the other Party shall recognise:

(a) the assignment, to the former Party or its designated agency, of any right or claim of the investor in respect of such investment, that formed the basis of such payment; and

(b) the right of the former Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.

2. For greater certainty, the Party or its designated agency shall be entitled in all circumstances to:

(a) the same treatment in respect of the rights and claims acquired by it by virtue of the assignment referred to in paragraph 1; and

(b) the same payments due pursuant to those rights and claims, as the investor referred to in paragraph 1 was entitled to receive by virtue of this Chapter in respect of the investment.

3. If a Party or its designated agency has made a payment to its investor and has taken over rights and claims of the investor under paragraph 1, that investor shall not, unless authorised in writing by the Party or its designated agency to act on behalf of the Party or its designated agency making the payment, pursue those rights and claims against the other Party. In the exercise of subrogated rights or claims, a Party or its designated agency exercising such rights or claims shall disclose evidence of the subrogation or transfer of rights from the investor to the Party or its designated agency to the other Party.

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

Article 9.16: Taxation Measures⁷

1. Nothing in this Section shall impose obligations with respect to taxation measures except as expressly provided in paragraph 3.
2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.
3. Articles 9.13 (Expropriation and Compensation) and 9.6 (Performances requirements) shall apply to taxation measures.

Article 9.17: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to its covered investments if persons of a non - Party own or control the enterprise and the denying Party⁸:
 - (a) does not maintain diplomatic relations with the non - Party; or
 - (b) adopts or maintains measures with respect to the non - Party or a person of the non - Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.
2. For the purpose of this Article, an enterprise is:
 - (a) “owned” by an investor if more than 50 percent of the equity interest in it is beneficially owned by the investor; and
 - (b) “controlled” by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

Article 9.18: General Exceptions

1. Notwithstanding Article 9.5 (Most-Favoured Nation Treatment), nothing in this Agreement shall be construed so as to oblige a Party to extend to the investors of the other Party and to their covered investments the benefits of any treatment resulting from:

⁷ This Article shall be interpreted in accordance with Annex 9C (Taxation and Expropriation).

⁸ For greater certainty, the benefits of this Chapter may be denied by a Party, in accordance with this Article, at any time, including after the institution of arbitration proceedings in accordance with Section D (Investor – State Dispute Settlement).

- (a) any bilateral or multilateral international agreement for the promotion and protection of investment which was signed prior to the date of entry into force of this Agreement;
- (b) any existing or future customs union, free trade area agreement, common market, economic union or similar international agreement, to which either Party is a party or may become a party, within the meaning of "customs union" or "free trade area" in accordance with Article XXIV of the GATT 1994 and Article V of the GATS; or
- (c) any existing or future bilateral or multilateral agreement concerning intellectual property.

2. Subject to the requirements that such measures are not applied in an arbitrary or unjustifiable manner, and do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining, enforcing measures including environmental measures, that it considers necessary:

- (a) to protect human, animal or plant life or health;
- (b) to protect public morals or to maintain public order, provided that the measure may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society;
- (c) to ensure safety;
- (d) to protect national treasures of artistic, historic or archaeological value;
- (e) to conserve living or non-living exhaustible natural resources, provided that such measures are made effective in conjunction with restrictions on domestic production or consumption; or
- (f) to secure compliance with the legislation 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 contract; and
 - (ii) the protection of the privacy of the individual in relation to the processing and dissemination of personal data and the protection of confidentiality of personal records and accounts.

2. Nothing in this Agreement shall prevent a Party from adopting or maintaining reasonable measures for prudential reasons, including:

- (a) the protection of investors, depositors, policy holders, policy claimants, as well as financial market participants, or persons to whom a fiduciary duty is owed by a financial institution;
- (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
- (c) ensuring the integrity and stability of the Party's financial system.

Such measures shall be taken in good faith and shall not be used as means of avoiding a Party's commitments or obligations under this Agreement.

Section D: Investor – State Dispute Settlement

Article 9.19: Consultation and Negotiation

1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.
2. The claimant shall deliver to the respondent a written request for consultations setting out the following:
 - (a) the name and address of the claimant and its covered investment;
 - (b) the nature of the claim, including the measure or measures alleged to breach the provisions of this Chapter, and a brief description of facts regarding said measure or measures;
 - (c) the relief sought and the initial assessment of amount of damages claimed; and
 - (d) indication and supporting documents that the claimant is an investor of the other Party and that it owns or controls the covered investment with respect to which a request for consultations was submitted.
3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of a tribunal.

Article 9.20: Submission of Claim to Arbitration

1. In the event that an investment dispute cannot be settled by consultation and negotiation according to Article 9.19 (Consultation and Negotiation) within six months from the date on which the claimant requested in writing the respondent for consultation and negotiation, the claimant may, only on its own behalf, submit to arbitration under this Article, a claim that:
 - (a) the respondent has breached an obligation under:
 - i. Section C (Investment Promotion and Protection); or
 - ii. Articles 9.4 (National Treatment), 9.5 (Most-Favoured Nation Treatment), 9.7 (Senior Management and Board of Directors) and 9.6 (Performance Requirement) with regard to management, maintenance, use, enjoyment or disposal of investments, and

- (b) the claimant has incurred loss or damage by reason of, or arising out of, that breach.
2. For greater certainty, a claimant may only submit a claim with regards to an investment as defined in Article 9.1 (Definitions).
3. The extent of the claim referred to in paragraph 1 shall not exceed the monetary value of the loss or damage caused to the investor as a result of the breach mentioned in paragraph 1.
4. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration (notice of intent). The notice shall specify:
 - (a) the name and address of the claimant and its covered investment;
 - (b) for each claim, the provision of Section C (Investment Promotion and Protection) alleged to have been breached and any other relevant provisions;
 - (c) the legal and factual basis for each claim;
 - (d) the relief sought and the approximate amount of damages claimed; and
 - (e) indication and supporting documents establishing that the claimant is an investor of the other Party and that it owns or controls the covered investment in respect of which a request for consultations was submitted.
5. Provided that six months have elapsed since the claimant requested in writing the respondent for consultation and negotiation, the claimant may submit a claim referred to in paragraph 2 to arbitration:
 - (a) under the ICSID Convention, provided that both Parties are parties to the ICSID Convention;
 - (b) under the ICSID Additional Facility Rules, provided that either Party, but not both, is a party to the ICSID Convention;
 - (c) under the UNCITRAL Arbitration Rules; or
 - (d) if the disputing parties agree, under any other arbitration institution or arbitration rules.
6. The claimant shall provide with the notice of arbitration:
 - (a) the name of the arbitrator that the claimant appoints; or

- (b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

7. A claim shall be deemed submitted to arbitration under this Article when the claimant's notice of or request for arbitration:

- (a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General of ICSID;
- (b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General of ICSID;
- (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules, are received by the respondent; or
- (d) under any other arbitration institution or arbitration rules selected under subparagraph 3(d) is received by the respondent, unless otherwise specified by such institution or in such rules.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Article on the date of its receipt under the applicable arbitral rules.

Article 9.21: Consent of Each Party to Arbitration

1. Each Party hereby consents to the submission of a claim to arbitration under this Article in accordance with this Chapter.
2. The claimant shall deliver its consent in accordance with the procedures provided for in this Section at the time of submitting a claim pursuant to Article 9.20 (Submission of a Claim to Arbitration).
3. The consent under paragraphs 1 and 2 and the submission of a claim to arbitration under this Article shall be deemed to satisfy the requirements of:
 - (a) Chapter II of the ICSID Convention or the ICSID Additional Facility Rules for written consent of the parties; and
 - (b) Article II of the New York Convention for an agreement in writing.

Article 9.22: Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Article if more than three years have elapsed from the date on which the claimant first acquired, or should have

first acquired, knowledge of the breach alleged under paragraph 1 of Article 9.20 (Submission of Claim to Arbitration) and knowledge that the claimant has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:
 - (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Article;
 - (b) the notice of arbitration is accompanied, for claims submitted to arbitration under Article 9.20 (Submission of Claim to Arbitration), by the claimant's written waiver of any right to initiate or continue, before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, including those in other bilateral or multilateral agreements which both Parties are parties to, any proceeding with respect to the subject matter of its claim or to any measure alleged to constitute a breach referred to in Article 9.20 (Submission of Claim to Arbitration); and
 - (c) no judgment or award has been delivered on the subject matter of the dispute with regard to any measure alleged to constitute a breach referred to in paragraph 2 of Article 9.20 (Submission of Claim to Arbitration) before any administrative tribunal or court under the law of either Party, other dispute settlement procedures or under the mechanisms mentioned in subparagraph (b).

Article 9.23: Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The Secretary-General shall serve as appointing authority for an arbitration under this Section. If the Secretary-General is a national of either Party or a national of a non-Party that does not maintain diplomatic relations with either Party or otherwise prevented from discharging the said function, the Deputy Secretary-General shall be invited to make the appointment.
3. If a tribunal has not been constituted within 90 days of the date a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either Party as the presiding arbitrator unless the disputing parties otherwise agree.
4. Arbitrators shall not be nationals of states not having diplomatic relations with either Party.

Article 9.24: Place of Arbitration

1. The claimant and the respondent may agree on the place of arbitration.
2. If the claimant and the respondent fail to reach an agreement regarding the place of arbitration, the tribunal shall determine the place of arbitration provided:
 - (a) that the place shall be in the area of a Party or in the area of a non-Party that is a party to the New York Convention;
 - (b) that the determined place of arbitration is in accordance with the applicable arbitral rules.

Article 9.25: Places of Hearings and Procedural Language

1. The claimant and the respondent may agree on the place of a hearing, subject to the applicable arbitration rules.
2. If the claimant and the respondent fail to reach an agreement regarding the place of a hearing, the tribunal shall determine the place of a hearing, provided:
 - (a) that the determined place of the hearing is in accordance with the applicable arbitral rules;
 - (b) that the tribunal has taken both disputing parties' interests under consideration with regard to the financial burden of the arbitration procedure; and
 - (c) that if the determined place of the hearing is in the territory of a non-Party it shall be a non-Party with which both Parties have diplomatic relations.
3. Unless the claimant and the respondent agree otherwise, the procedural language of the proceedings shall be English.
4. Any language or languages selected under paragraph 3 shall be made in accordance with the applicable arbitration rules.

Article 9.26: Conduct of Arbitration

1. In an arbitration procedure under this Section, the respondent shall not assert, as a defence, counterclaim, right of setoff or otherwise, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

2. Unless the disputing parties have agreed to another expedited procedure for making preliminary objections, the Party which is the party to the dispute may, no later than 30 days after the constitution of the tribunal, and in any event before the first session of the tribunal, file an objection that a claim is manifestly without legal merit. The Party which is the party to the dispute shall specify as precisely as possible the basis for the objection. The tribunal, after giving the disputing parties the opportunity to present their observations on the objection, shall, at its first session or promptly thereafter, notify the disputing parties of its decision on the objection. The decision of the tribunal shall be without prejudice to the right of the Party which is the party to the dispute to file an objection to the jurisdiction of the tribunal or to object, in the course of the proceedings, that a claim lacks legal merit.

3. The tribunal may order security for costs at a proposal of the respondent. The tribunal shall especially consider ordering security for costs when there is a reason to believe:

- (a) that the claimant will be unable to pay, if ordered to do so, a reasonable part of attorney fees and other costs to the Party which is the party to the dispute; or
- (b) that the claimant has divested assets to avoid the consequences of the arbitral proceedings.

Should the claimant fail to pay the security for costs ordered by the tribunal within the time period set by the tribunal, the tribunal may order the suspension or termination of the arbitral proceedings.

Article 9.27: Third-Party Funding

1. An investor shall file a written notice to the other disputing party and the arbitral tribunal disclosing the name and address of any non-party from which the investor, directly or indirectly, has received funds for the pursuit or defence of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding ("third-party funding"). If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.

2. The investor shall file the notice referred to in paragraph 1 upon submission of the request for arbitration, or immediately upon concluding a third-party funding arrangement after submission. The investor shall immediately notify the arbitral tribunal and the other disputing party of any changes to the information in the notice.

3. The tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding.

Article 9.28: Governing Law

1. Subject to paragraph 3, when a claim is submitted under this Section, the tribunal shall decide the issues in dispute in accordance with this Chapter and applicable rules of international law, and take into consideration, as matter of fact, any relevant domestic law of the disputing Party.⁹
2. The tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Chapter, under the domestic law of a Party.
3. In cases where reference to the TRIPS Agreement is made in an arbitration procedure under this Section, the tribunal shall consider relevant interpretation in reports of panels and the Appellate Body adopted by the WTO Dispute Settlement Body regarding substantially equivalent rights or obligations of the Parties under the TRIPS Agreement, or other multilateral intellectual property treaties.
4. When serious concerns arise as regards issues of interpretation which may affect matters relating to this Section, the Parties may adopt, at any time, joint interpretations of provisions of this Agreement. Any such interpretation shall be binding upon the tribunal.
5. For greater certainty, the tribunal shall be bound by the interpretation given to the domestic law by the courts or authorities which are competent to interpret the relevant domestic law, and any meaning given to the relevant domestic law made by the tribunal shall not be binding upon the courts and the authorities of either Party..

Article 9.29: Awards

1. Where a tribunal makes a final award against a respondent, the tribunal may award:
 - (a) monetary damages and applicable interest;
 - (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest, in lieu of restitution; or
 - (c) both.
2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules. At the request of the respondent, the award will specify the account for transfer of money or the person to whom restitution should be made.

⁹ For greater certainty, a Party may not invoke the provisions of its domestic law as a justification for its failure to perform this Chapter.

3. Without prejudice to paragraph 2 and to the claimant's right to claim that they are not adequately compensated, the monetary value of the award made under paragraph 1 shall not be greater than the loss suffered by the investor as a result of the breach determined by the tribunal, reduced by any prior damages or compensation already provided in relation to the same factual dispute. For the calculation of monetary damages, the tribunal shall take into account any restitution of property or repeal or modification of the measure, or other mitigating factors.
4. A tribunal may not award punitive damages.
5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
6. Subject to the applicable arbitration rules and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
7. Each Party shall provide for the enforcement of an award in its territory.
8. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention.

Section E: Final Provisions

Article 9.30: Duration and Termination

In respect of investments made while this Agreement is in force, the provisions of Sections A (General Provisions), C (Investment Promotion and Protection) and D (Investor-State Dispute Settlement) of this Chapter and relevant provisions of Chapter 1 (Initial Provisions and General Definitions) and Chapter 11 (Exceptions) shall continue in effect with respect to such investments for a period of ten years after the date of termination of this Agreement unless otherwise agreed by the Parties thereafter.

Annex 9A: Expropriation

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Expropriation may be direct or indirect:
 - (a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
 - (b) indirect expropriation occurs if a measure or series of measures of a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.
3. The determination of whether a measure or series of measures of a Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that takes into consideration, among other factors:
 - (a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;
 - (b) the duration of the measure or series of measures of a Party;
 - (c) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations¹⁰; and
 - (d) the character of the measure or series of measures, notably their object, context and intent.
4. For greater certainty, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations.

¹⁰ Whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

Annex 9B: Temporary Safeguard Measures

1. A Party may adopt or maintain restrictive measures with regard to payments or transfers for transactions related to investments:
 - (a) in the event of serious balance-of-payments and the external financial difficulties or threat thereof; or
 - (b) in exceptional cases where movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular monetary and exchange rate policies.
2. Restrictive measures referred to in paragraph 1 shall:
 - (a) be applied in such a manner that the other Party is treated no less favourably than any non-Party;
 - (b) be consistent with the *Articles of Agreement of the International Monetary Fund*;
 - (c) not exceed those necessary to deal with the circumstances set out in paragraph 1;
 - (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;
 - (e) avoid unnecessary damages to the commercial, economic and financial interests of the other Party; and
3. The Party which has adopted any measure under paragraph 1 shall notify the other Party, as soon as possible, as to the measures taken, and the expected timetable for their removal.

Annex 9C: Taxation and Expropriation

The determination of whether a taxation measure, in a specific fact situation, constitutes an expropriation requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including the factors listed in Annex 9A (Expropriation) and the following considerations:

- (a) the imposition of taxes does not generally constitute an expropriation. The mere introduction of a new taxation measure or the imposition of a taxation measure in more than one jurisdiction in respect of an investment generally does not in and of itself constitute an expropriation;
- (b) a taxation measure that is consistent with internationally recognised tax policies, principles, and practices should not constitute an expropriation. In particular, a taxation measure aimed at preventing the avoidance or evasion of taxation measures generally does not constitute an expropriation;
- (c) a taxation measure that is applied on a non-discriminatory basis, as opposed to a taxation measure that is targeted at investors of a particular nationality or at specific taxpayers, is less likely to constitute an expropriation; and
- (d) a taxation measure generally does not constitute an expropriation if it was already in force when the investment was made and information about the measure was publicly available.

Annex 9D

Submission of a Claim to Arbitration with respect to Subparagraphs 2(b) and 2(c) of Article 9.22 (Conditions and Limitations on Consent of Each Party)

1. An investor of the State of Israel shall not submit to arbitration under Section D (Investor – State Dispute Settlement) a claim that Viet Nam has breached an obligation under Section B (Non-Discrimination and Liberalisation of Investment) or under Section C (Investment Promotion and Protection), if the investor has alleged that breach of an obligation under Section B (Non-Discrimination and Liberalisation of Investment) or Section C (Investment Promotion and Protection) in any proceedings before a court or administrative tribunal of Viet Nam.
2. For greater certainty, where an investor of the State of Israel makes an allegation that Viet Nam has breached an obligation under Section B (Non-Discrimination and Liberalisation of Investment) or Section C (Investment Promotion and Protection) before a court or administrative tribunal of Viet Nam, that selection shall be final, and the investor may not thereafter allege that breach, in an arbitration under Section D (Investor – State Dispute Settlement).
3. Notwithstanding subparagraphs 2(b) and 2(c) of Article 9.22 (Conditions and Limitations on Consent of Each Party), the claimant may initiate or continue an action that seeks interim injunctive relief that does not involve the payment of monetary damages before an administrative tribunal or court of justice under the law of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's rights and interests during the pendency of the arbitration.