

4. For the purposes of this Section, “temporary entry or stay” means entry or stay by a natural person of a Party to this Chapter, without the intent to reside permanently within the territory of the other Party to this Chapter.
5. Neither Party to this Chapter may impose or maintain any numerical restriction or requirement of economic needs test relating to temporary entry or stay of natural persons referred to in paragraph 1 of this Article except as provided for in its Schedule in Annex 4 to Protocol No. 1.

## **ARTICLE 8.27**

### **Recognition**

Article VII of GATS shall apply between the Parties to this Chapter, *mutatis mutandis*.

## **SECTION V. INVESTMENT**

## **ARTICLE 8.28**

### **Definitions**

For the purposes of this Section:

- a) **“investment”** means any type of asset invested by the investor of a Party to this Chapter in the territory of the other Party to this Chapter in accordance with the latter Party's laws and regulations, that has the characteristics of an investment, including such characteristics as the commitment to capital or other resources, the expectation of profit and assumption of risk, in particular, though not exclusively:
  - i. movable and immovable property as well as any property rights such as mortgages or pledges;

- ii. shares, stocks and any other form of participation in capital of a juridical person;
- iii. bonds and debentures;
- iv. claims to money or claims under contracts having an economic value<sup>3</sup>, relating to investments;
- v. intellectual property rights;
- vi. goodwill;
- vii. rights conferred by law or under contract to conduct business activity and having financial value, including, but not limited to construction, production, revenue-sharing contracts and concessions related in particular to exploration, development, extraction and exploitation of natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as investments. Such change shall be made in accordance with laws and regulations of the Party to this Chapter in which territory the investments were made.

- b) **“investor of a Party to this Chapter”** means any natural or juridical person of a Party to this Chapter in accordance with its laws and regulations that has made investments in the territory of the other Party to this Chapter;
- c) **“returns”** means the amounts derived from an investment including but not limited to profit, dividends, interest, capital gains, royalties and other fees; and

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<sup>3</sup> For greater certainty, investment does not mean claims to money that arise solely from:

- a) commercial contracts for sale of goods or services; or
- b) the extension of credit in connection with such commercial contracts.

- d) “**freely usable currency**” means a freely usable currency as determined by the International Monetary Fund in accordance with Articles of Agreement of the International Monetary Fund.

## **ARTICLE 8.29**

### **Scope**

1. This Section shall apply to all investments made by investors of a Party to this Chapter in the territory of the other Party to this Chapter after 19 June 1981, in existence as of the date of entry into force of this Agreement, but it shall not apply to any act or fact that took place or any situation or dispute that arose or ceased to exist before entry into force of this Agreement.
2. Investments of investors of a Party to this Chapter made in the territory of the other Party to this Chapter in the form of establishment and commercial presence, as defined and governed by Section III (Establishment, Commercial Presence and Activities) of this Chapter shall not be covered by Articles 8.30, 8.31, 8.32 and 8.33 of this Agreement.
3. This Section shall not apply to provision of subsidies or other forms of State or municipal support to investors and its investments, except for those subsidies and other forms of State or municipal support to investors and its investments under Article 8.34 of this Agreement.

## **ARTICLE 8.30**

### **Promotion and Admission of Investments**

Each Party to this Chapter shall encourage and create favourable conditions to investors of the other Party to make investments in its territory and admit the investments of investors of the other Party to this Chapter in accordance with the laws and regulations of the former Party.

**ARTICLE 8.31****Fair and Equitable Treatment and Full Protection and Security**

1. Each Party to this Chapter shall accord to investments of investors of the other Party to this Chapter fair and equitable treatment and full protection and security.
2. “Fair and equitable treatment” referred to in paragraph 1 of this Article requires, in particular, each Party to this Chapter not to deny justice in any judicial or administrative proceedings.
3. “Full protection and security” referred to in paragraph 1 of this Article requires each Party to this Chapter to take such measures as may be reasonably necessary to ensure the protection and security of investments of an investor of the other Party to this Chapter.
4. With respect to investments of an investor of the other Party to this Chapter in the territory of the former Party, “fair and equitable treatment” and “full protection and security” referred to in paragraph 1 of this Article do not require treatment more favourable than that accorded to the former Party’s own investors and/or investors of any third country in accordance with its laws and regulations.
5. 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 8.32****National Treatment**

1. Each Party to this Chapter shall accord to investors of the other Party to this Chapter and investments of an investor of the other Party to this Chapter treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments in its territory.

2. Each Party to this Chapter shall reserve the right in accordance with its laws and regulations to apply and introduce exemptions from national treatment, referred to in paragraph 1 of this Article, to foreign investors and their investments including reinvestments.

### **ARTICLE 8.33**

#### **Most-Favoured-Nation Treatment**

1. Each Party to this Chapter shall accord to investors of the other Party to this Chapter and investments of an investor of the other Party to this Chapter treatment no less favourable than that it accords, in like circumstances, to investors of any third country and their investments in its territory.
2. For greater certainty, this Article shall not apply to international dispute settlement procedures or mechanisms such as those set out in Article 8.38 of this Agreement.
3. Nothing in this Section shall be construed as to oblige a Party to this Chapter to provide to investors of the other Party to this Chapter or their investments benefits or privileges that the former Party is providing or will provide in future:
  - a) in accordance with the economic integration agreements of the former Party; or
  - b) on the basis of the agreements on avoidance of double taxation or other arrangements on taxation issues.

### **ARTICLE 8.34**

#### **Compensation for Losses**

Each Party to this Chapter shall accord to investors of the other Party to this Chapter and to investments of investors of the other Party to this Chapter with respect to measures it adopts or maintains relating to losses suffered by investments of such investors in its territory owing to war or other armed conflict, revolt, insurrection, revolution, riot, civil strife or civil disturbance, treatment no less favourable than that it accords, in like circumstances, to:

- a) its own investors and their investments; or
- b) investors of any third country and their investments.

### **ARTICLE 8.35**

#### **Expropriation and Compensation**

1. Neither Party to this Chapter shall nationalise, expropriate or subject to measures equivalent in effect to nationalisation or expropriation an investment of the investor of the other Party to this Chapter (hereinafter referred to as “expropriation”), except:
  - a) for a public purpose;
  - b) in accordance with the procedure established by the laws and regulations of the former Party;
  - c) in a non-discriminatory manner; and
  - d) on payment of prompt, adequate and effective compensation in accordance with paragraph 3 of this Article.
2. The determination of whether a measure or series of such measures of either Party to this Chapter have an effect equivalent to nationalisation or expropriation shall require a case-by-case, fact-based inquiry to consider, inter alia:

- a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of either Party to this Chapter has an adverse effect on the economic value of investments does not establish that an expropriation has occurred;
  - b) the character of the measure or series of measures of either Party to this Chapter.
3. The compensation referred to in subparagraph d) of paragraph 1 of this Article shall:
  - a) be paid without undue delay;
  - b) be equivalent to the fair market value of the expropriated investment calculated on date when the actual or impending expropriation has become publicly announced whichever is earlier; and
  - c) be paid in a freely usable currency or, if agreed by the investor, in the currency of the expropriating Party to this Chapter and be freely transferable subject to the provisions of Article 8.37 of this Agreement. From the date of expropriation until the date of payment the amount of compensation shall be subject to accrued interest at a commercial rate established on a market basis.
4. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement.
5. Notwithstanding paragraphs 1 through 4 of this Article, expropriation relating to land within the territory of either Party to this Chapter shall be carried out in accordance with the laws and regulations of that Party for a purpose established in accordance with such laws and regulations, and upon payment of compensation, which shall be assessed with due consideration to market value and paid without undue delay, in accordance with the laws and regulations of that Party.

**ARTICLE 8.36****Subrogation**

1. If a Party to this Chapter or its designated agency made a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity against non-commercial risks it has granted in respect of an investment, the other Party to this Chapter shall recognise the subrogation or transfer of any right or claim of the investor in respect of such investment to the former Party or its designated agency. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor. For greater certainty, such right or claim shall be exercised in accordance with the laws and regulations of the latter Party, but without prejudice to Articles 8.21, 8.22, 8.23, 8.24 and 8.25 of this Agreement.
2. Where a Party to this Chapter 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 that Party or its designated agency making the payment, pursue those rights and claims against the other Party to this Chapter.

**ARTICLE 8.37****Transfer of Payments**

1. Except under the circumstances envisaged in Article 8.8 of this Agreement each Party to this Chapter shall guarantee to investors of the other Party to this Chapter, upon fulfilment by them of all tax and other obligations in accordance with the laws and regulations of the former Party, a free transfer abroad of payments related to their investments, and in particular:
  - a) returns;
  - b) funds in repayment of loans and credits recognised by each Party to this Chapter as investments, as well as accrued interest;



- c) proceeds from sale or full or partial liquidation of investments;
  - d) compensation, stipulated in the Articles 8.34 and 8.35 of this Agreement;
  - e) wages and other remunerations received by investors and natural persons of the other Party to this Chapter authorised to work in connection with investments in the territory of the former Party.
2. Transfer of payments shall be made without undue delay in a freely usable currency at the rate of exchange applicable on the date of the transfer pursuant to the exchange laws and regulations of the Party to this Chapter in which territory the investments were made.

### **ARTICLE 8.38**

#### **Settlement of Disputes between a Party to this Chapter and Investor of the Other Party to this Chapter**

1. Disputes between a Party to this Chapter and an investor of the other Party to this Chapter arising from an alleged breach of an obligation of the former Party under this Chapter in connection with an investment made by the investor in the territory of the former Party shall be settled to the extent possible amicably by means of negotiations. Such negotiations may include the use of non-binding, third-party procedures, such as good offices, conciliation and mediation.
2. The written request submitted by the investor for negotiations referred to in paragraph 1 of this Article shall include:
  - a) the name and address of the investor who is a party to a dispute;
  - b) for each claim the specific provisions under this Chapter alleged to have been breached;
  - c) the legal and factual basis for each claim;

- d) the relief sought and approximate amount of damages claimed.
3. If a dispute cannot be settled amicably by means of negotiations during a period of six months starting from the date of receipt by the Party who is a party to the dispute of the written request of the investor of the other Party to this Chapter, it shall be submitted at the choice of the investor for consideration to:
    - a) a competent court of the Party to this Chapter in which territory the investments were made, or
    - b) an *ad hoc* arbitration court in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law; or
    - c) arbitration by the International Centre for Settlement of Investment Disputes (hereinafter referred to as “ICSID”), created pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965 (ICSID Convention), provided that both the Party who is a party to the dispute and the Party of the investor are party to the ICSID Convention; or
    - d) arbitration under the ICSID Additional Facility Rules, provided that either the Party who is a party to the dispute or the Party of the investor is a party to the ICSID Convention; or
    - e) if the parties to a dispute so agree, to any other arbitration institution or under any other arbitration rules.
  4. The choice of the institution referred to in paragraph 3 of this Article shall be final.
  5. An arbitration award shall be final and binding upon both parties to the dispute. Each Party to this Chapter undertakes to enforce this award in accordance with its laws and regulations.

6. No claim can be submitted to arbitration under this Section if more than three years have elapsed from the date on which the investor who is a party to a dispute first acquired or reasonably should have first acquired, knowledge of the breach alleged under paragraph 1 of this Article.
7. A natural person possessing the nationality of a Party to this Chapter on the date the investments were made may not pursue a claim against that Party under this Article.