

- (c) to any service supplier that is a juridical person, if it establishes that the service supplier is neither a “service supplier of the other Party” as defined in sub-paragraph (j) of paragraph 6 of Article 58 nor a “service supplier other than those of the Parties” granted benefits under Article 62.

## **CHAPTER 8 INVESTMENT**

### **Article 71 Scope of Chapter 8**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party in the territory of the former Party;  
and
  - (b) investments of investors of the other Party in the territory of the former Party.
2. This Chapter shall not apply to government procurement.
3. Movement of natural persons who are investors shall be governed by Chapter 9.

### **Article 72 Definitions under Chapter 8**

For the purposes of this Chapter:

- (a) the term “investments” means every kind of asset owned or controlled, directly or indirectly, by an investor, including:
  - (i) an enterprise;
  - (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
  - (iii) bonds, debentures, and loans and other forms of debt,<sup>(Note)</sup> including rights derived therefrom;
  - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
  - (v) claims to money and claims to any performance under contract<sup>(Note)</sup> having a financial value;

Note: For the purposes of this Chapter, “loans and other forms of debt” described in (iii) of sub-paragraph (a) of Article 72 and “claims to money and claims to any performance under contract” described in

(v) of sub-paragraph (a) of Article 72 refer to assets which relate to a business activity and do not refer to assets which are of a personal nature, unrelated to any business activity.

- (vi) intellectual property rights, including trademarks, industrial designs, layout-designs of integrated circuits, copyrights, patents, trade names, indications of source or geographical indications and undisclosed information;
  - (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations, and permits; and
  - (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;
- (b) the term “investments” also includes amounts yielded by investments, 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 investments;
  - (c) the term “investor” means any person that seeks to make, is making, or has made, investments;
  - (d) the term “person” means either a natural person or an enterprise;
  - (e) the term “investor of the other Party” means any natural person of the other Party or any enterprise of the other Party;
  - (f) the term “natural person of the other Party” means a natural person who resides in the territory of the other Party or elsewhere and who under the law of the other Party:
    - (i) in respect of Japan, is a national of Japan; and
    - (ii) in respect of Singapore, is a national of Singapore or has the right of permanent residence in Singapore;
  - (g) the term “enterprise” means any legal person or any other entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, association, organisation, company or branch;
  - (h) the term “enterprise of the other Party” means any enterprise duly constituted or otherwise organised under applicable law of the other Party, except an enterprise owned or controlled by

persons of non-Parties and not engaging in substantive business operations in the territory of the other Party; and

- (i) an enterprise is:
  - (i) “owned” by persons of non-Parties if more than 50 percent of the equity interest in it is beneficially owned by persons of non-Parties; and
  - (ii) “controlled” by persons of non-Parties if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

### **Article 73**

#### **National Treatment under Chapter 8**

Each Party shall within its territory accord to investors of the other Party and to their investments in relation to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments, treatment no less favourable than the treatment which it accords in like circumstances to its own investors and investments (hereinafter referred to in this Chapter as “national treatment”).

### **Article 74**

#### **Access to the Courts of Justice**

Each Party shall within its territory accord to investors of the other Party treatment no less favourable than the treatment which it accords in like circumstances to its own investors, with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction both in pursuit and in defence of such investors’ rights.

### **Article 75**

#### **Prohibition of Performance Requirements**

1. Neither Party shall impose or enforce any of the following requirements as a condition for the establishment, acquisition, expansion, management, operation, maintenance, use or possession of investments in its territory of an investor of the other Party:
  - (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 or use goods produced or services provided in the territory of the former Party, or to purchase goods or services from natural or legal persons in the territory of the former Party;
  - (d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investments;

- (e) to restrict sales of goods or services in the territory of the former Party that such investments produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer technology, a production process or other proprietary knowledge to a natural or legal person of the former Party, except when the requirement:
  - (i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or
  - (ii) concerns the transfer of intellectual property which is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;
- (g) to locate its headquarters for a specific region or the world market in the territory of the former Party;
- (h) to achieve a given level or value of research and development in the territory of the former Party; or
- (i) to supply one or more of the goods that it produces or the services that it provides to a specific region outside the territory of the former Party exclusively from the territory of the former Party.

2. Each Party is not precluded by paragraph 1 above from conditioning the receipt or continued receipt of an advantage, in connection with investments in its territory of an investor of the other Party, on compliance with any of the requirements set forth in sub-paragraphs (f) through (i) of paragraph 1 above.

3. Nothing in this Article shall be construed so as to derogate from the obligations of the Parties under the Agreement on Trade Related Investment Measures in Annex 1A to the WTO Agreement.

### **Article 76** **Specific Exceptions**

1. Articles 73 and 75 shall not apply to investors and investments, in respect of:
- (a) any exception specified by the Parties in Annexes VA and VB; and
  - (b) an amendment or modification to any exception referred to in sub-paragraph (a) above, provided that the amendment or

modification does not decrease the level of conformity of the exception with Articles 73 and 75.

2. The exceptions referred to in sub-paragraph (a) of paragraph 1 above shall include the following elements, to the extent that these elements are applicable:

- (a) sector or matter;
- (b) obligation or article in respect of which the exception is taken;
- (c) legal source or authority of the exception; and
- (d) succinct description of the exception.

3. If a Party makes an amendment or modification referred to in sub-paragraph (b) of paragraph 1 of this Article, that Party shall, prior to the implementation of the amendment or modification, or in exceptional circumstances, as soon as possible thereafter:

- (a) notify the other Party of the elements set out in paragraph 2 above; and
- (b) provide to the other Party, upon request, particulars of the amended or modified exception.

4. Each Party shall endeavour, where appropriate, to reduce or eliminate the exceptions specified in Annexes VA and VB respectively.

### **Article 77**

#### **Expropriation and Compensation**

1. Each Party shall accord to investments in its territory of investors of the other Party fair and equitable treatment and full protection and security.

2. Neither Party shall expropriate or nationalise investments in its territory of an investor of the other Party or take any measure equivalent to expropriation or nationalisation (hereinafter referred to in this Chapter as "expropriation") except for a public purpose, on a non-discriminatory basis, in accordance with due process of law, and upon payment of compensation in accordance with this Article.

3. Compensation shall be equivalent to the fair market value of the expropriated investments. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier, but may, insofar as such expropriation relates to land, reflect the market value before the expropriation occurred, the trend in the market value, and adjustments to the market value in accordance with the laws of the expropriating Party concerning expropriation.

4. The compensation shall be paid without delay and shall carry an appropriate interest taking into account the length of time from the time of

expropriation until the time of payment. It shall be effectively realisable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of the expropriation, into the currency of the Party of the investors concerned and freely usable currencies defined in the Articles of Agreement of the International Monetary Fund.

5. The investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investor's case or the amount of compensation that has been assessed in accordance with the principles set out in this Article.

### **Article 78**

#### **Repurchase of Leases**

If an agency of the government of a Party responsible for leasing industrial land repurchases a leasehold interest in land owned by an investor of the other Party, that agency shall take into consideration the following matters:

- (a) the value attributable to the remaining period of such leasehold interest;
- (b) priority allocation by the agency of a suitable, alternative property for the investor; and
- (c) reasonable relocation costs that would be incurred by the investor in relocating to the alternative property within the territory of the Party.

### **Article 79**

#### **Protection from Strife**

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the territory of the former Party due to armed conflict, or state of emergency such as revolution, insurrection and civil disturbance, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors.

2. Any payments made pursuant to paragraph 1 above shall be effectively realisable, freely convertible and freely transferable.

### **Article 80**

#### **Transfers**

1. Each Party shall allow all payments relating to investments in its territory of an investor of the other Party to be freely transferred into and out of its territory without delay. Such transfers shall include:

- (a) the initial capital and additional amounts to maintain or increase investments;

- (b) profits, capital gains, dividends, royalties, interests and other current incomes accruing from investments;
- (c) proceeds from the total or partial sale or liquidation of investments;
- (d) payments made under a contract including loan payments in connection with investments;
- (e) earnings of investors of a Party who work in connection with investments in the territory of the other Party;
- (f) payments made in accordance with Articles 77 and 79; and
- (g) payments arising out of the settlement of a dispute under Article 82.

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

3. Notwithstanding paragraphs 1 and 2 above, a Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) the issuing, trading or dealing in securities;
- (c) criminal matters;
- (d) ensuring compliance with orders or judgements in adjudicatory proceedings; or
- (e) obligations of investors arising from social security and public retirement plans.

### **Article 81 Subrogation**

1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or contract of insurance, arising from or pertaining to an investment of that investor within the territory of the other Party, the other Party shall:

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

- (b) recognise the right of the former Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor.
2. Paragraphs 2 to 5 of Article 77, and Articles 79 and 80, shall apply mutatis mutandis as regards payment to be made to the Party or its designated agency first mentioned in paragraph 1 above by virtue of such assignment of right or claim, and the transfer of such payment.

**Article 82**  
**Settlement of Investment Disputes between a Party and an investor of the other Party**

1. For the purposes of this Chapter, an investment dispute is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Chapter with respect to the investments of the investor of that other Party.
2. In the event of an investment dispute, such investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute.
3. If an investment dispute cannot be settled through such consultations within five months from the date on which the investor requested for the consultations in writing, and if the investor concerned has not submitted the investment dispute for resolution (i) under administrative or judicial settlement, or (ii) in accordance with any applicable, previously agreed dispute settlement procedures, that investor may either:
- (a) request the establishment of an arbitral tribunal in accordance with the procedures set out in Annex Vc and submit the investment dispute to that tribunal;
  - (b) submit the investment dispute to conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18, 1965 (hereinafter referred to in this Chapter as “the ICSID Convention”), so long as the ICSID Convention is in force between the Parties, or conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Chapter as “ICSID”) so long as the ICSID Convention is not in force between the Parties; or
  - (c) submit the investment dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976.

4. Each Party hereby consents to the submission of investment disputes to international conciliation or arbitration as provided for in paragraph 3 above, in accordance with the provisions of this Article, provided that:

- (a) less than three years have elapsed since the date the investor knew or ought to have known, whichever is the earlier, of the loss or damage which, it is alleged, has been incurred by the investor; and
- (b) in the case of arbitration in accordance with the provisions of the ICSID Convention referred to in sub-paragraph (b) of paragraph 3 above, if the Chairman of ICSID is asked to appoint an arbitrator or arbitrators pursuant to Article 38 or 56(3) of the ICSID Convention, the Chairman:
  - (i) allows both the Party and the investor to each indicate up to three nationalities, the appointment of arbitrators of which pursuant to Article 38 or 56(3) of the ICSID Convention is unacceptable to it; and
  - (ii) does not appoint as arbitrator any person who is, by virtue of sub-paragraph (i) above, excluded by either the Party or the investor or both the Party and the investor.

5. When the condition set out in sub-paragraph (a) of paragraph 4 above is not met, the consent given in paragraph 4 above shall be invalidated.

6. When the conditions set out in sub-paragraph (b) of paragraph 4 of this Article are not met, the consent to arbitration by ICSID given in paragraph 4 of this Article shall be invalidated. In such circumstances, a different method of dispute settlement can be chosen from among those methods provided for in paragraph 3 of this Article other than ICSID arbitration.

7. Paragraphs 3 and 4 of this Article shall not apply if an investor which is an enterprise of a Party owned or controlled by persons of non-Parties submits an investment dispute with respect to its investments in the territory of the other Party, unless the investments concerned have been established, acquired or expanded in the territory of that other Party.

8. An investor to an investment dispute who intends to submit an investment dispute pursuant to paragraph 3 of this Article shall give to the Party that is a party to the investment dispute written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify:

- (a) the name and address of the investor concerned;
- (b) the specific measures of that Party at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Chapter alleged to have been breached; and

- (c) the dispute settlement procedures set forth in sub-paragraph (a), (b) or (c) of paragraph 3 of this Article which the investor will seek.

9. When an investor of a Party submits an investment dispute pursuant to paragraph 3 of this Article and the disputing Party invokes Article 84 or 85, the arbitrators to be selected shall, on the request of the disputing Party or investor, have the necessary expertise relevant to the specific financial matters under dispute.

10. (a) The award shall include:
- (i) a judgement whether or not there has been a breach by a Party of any rights conferred by this Chapter in respect of the investor of the other Party and its investments; and
  - (ii) a remedy if there has been such breach.
- (b) The award rendered in accordance with sub-paragraph (a) above shall be final and binding upon the Party and the investor, except to the extent provided for in sub-paragraphs (c) and (d) below.
- (c) Where an award provides that there has been a breach by a Party of any rights conferred by this Chapter in respect of the investor of the other Party and its investments, the Party to the dispute is entitled to implement the award through one of the following remedies, in lieu of the remedy indicated pursuant to (ii) of sub-paragraph (a) of this paragraph:
- (i) pecuniary compensation, including interest from the time the loss or damage was incurred until time of payment;
  - (ii) restitution in kind; or
  - (iii) pecuniary compensation and restitution in combination,
- provided that:
- (A) the Party notifies the investor, within 30 days after the date of the award, that it will implement the award through one of the remedies indicated in (i), (ii) or (iii) of this sub-paragraph; and
  - (B) where the Party chooses to implement the award in accordance with (i) or (iii) of this sub-paragraph, the Party and the investor agree as to the amount of pecuniary compensation, or in lieu of such agreement, a decision pursuant to sub-paragraph (d) below is made.
- (d) If the Party and the investor are unable to agree, within 60 days after the date of the award, as to the amount of pecuniary

compensation as provided for in (B) of sub-paragraph (c) above, the matter may be referred, by either the Party or the investor, to the arbitral tribunal that rendered the award. The award on the amount of pecuniary compensation in accordance with this paragraph is final and binding on both the Party and the investor.

- (e) The award shall be executed by the applicable laws and regulations concerning the execution of such awards in force in the Party in whose territory such execution is sought.

11. Nothing in this Article shall be construed so as to prevent an investor to an investment dispute from seeking administrative or judicial settlement within the territory of the Party that is a party to the investment dispute.

12. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which one of its investors and the other Party shall have consented to submit or shall have submitted to arbitration under this Article, unless such other Party shall have failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

### **Article 83** **General Exceptions under Chapter 8**

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on investments of investors of a Party in the territory of the other Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or to maintain public order;<sup>(Note)</sup>

Note: 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.

- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with the laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contract;
  - (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;

- (iii) safety;
- (d) relating to prison labour;
- (e) imposed for the protection of national treasures of artistic, historic, or archaeological value;
- (f) to conserve exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. In cases where a Party takes any measure pursuant to paragraph 1 above or Article 4, which it implements after this Agreement comes into force, such Party shall make reasonable effort to notify the other Party of the description of the measure either before such measure is taken or as soon as possible thereafter, if such measure could affect investments or investors of the other Party in respect of obligations made under this Chapter.

#### **Article 84 Temporary Safeguard**

1. A Party may adopt or maintain measures inconsistent with its obligations provided for in Article 73 relating to cross-border capital transactions or Article 80:

- (a) in the event of serious balance-of-payments or external financial difficulties or threat thereof; or
- (b) where, in exceptional circumstances, movements of capital result in serious economic and financial disturbance in the Party concerned.

2. The measures referred to in paragraph 1 above:

- (a) shall be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) shall not exceed those necessary to deal with the circumstances described in paragraph 1 above;
- (c) shall be temporary and shall be eliminated as soon as conditions permit;
- (d) shall promptly be notified to the other Party;
- (e) shall not discriminate between the Parties;
- (f) shall ensure that the other Party is treated as favourably as any non-Party; and

- (g) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party.

3. Nothing in this Chapter shall be regarded as affecting the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

### **Article 85 Prudential Measures**

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking measures for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system.
2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

### **Article 86 Intellectual Property Rights**

Notwithstanding the provisions of Article 73, the Parties agree in respect of intellectual property rights that national treatment as provided for in that Article shall apply only to the extent as provided for in the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement.

### **Article 87 Taxation Measures as Expropriation**

1. Article 77 shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 2 of Article 77.
2. Where paragraph 1 above applies, Articles 74, 82, 88 and paragraph 1 of Article 89 shall also apply in respect of taxation measures.

### **Article 88 Joint Committee on Investment**

1. For the purposes of effective implementation of this Chapter, a Joint Committee on Investment (hereinafter referred to in this Article as "the Committee") shall be established. The functions of the Committee shall be:
  - (a) reviewing and discussing the implementation and operation of this Chapter;
  - (b) reviewing the specific exceptions under paragraph 1 of Article 76 for the purpose of contributing to the reduction or elimination,

where appropriate, of such exceptions, and encouraging favourable conditions for investors of both Parties; and

- (c) discussing other investment related issues concerning this Chapter.

2. The Committee may decide to hold a joint meeting with the private sector.

### **Article 89 Application of Chapter 8**

1. In fulfilling the obligations under this Chapter, each Party shall take such reasonable measures as are available to it to ensure observance by its local governments and non-governmental bodies in the exercise of power delegated by central or local governments within its territory.

2. If a Party has entered into an international agreement on investment with a non-Party, or enters into such an agreement after this Agreement comes into force, it shall favourably consider according to investors of the other Party and to their investments, treatment, in relation to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments, no less favourable than the treatment that it accords in like circumstances to investors of that non-Party and their investments pursuant to such an agreement.

## **CHAPTER 9 MOVEMENT OF NATURAL PERSONS**

### **Article 90 Scope of Chapter 9**

1. This Chapter applies to measures affecting the movement of natural persons of a Party who enter the territory of the other Party for business purposes.

2. This Agreement shall not apply to measures regarding nationality or citizenship, residence on a permanent basis or employment on a permanent basis.

### **Article 91 Definitions under Chapter 9**

The term “natural person of the other Party” means a natural person who resides in the territory of the other Party or elsewhere and who under the law of the other Party:

- (a) in respect of Japan, is a national of Japan; and