

2. A Party shall not have recourse to Chapter 9 regarding a refusal to grant entry and temporary stay under this Chapter unless:

- (a) the matter involves a pattern of practice on the part of the granting Party; and
- (b) the natural persons of the Party concerned have exhausted the domestic remedies, where available, regarding the particular matter.

Article 50 *bis*.9  
General Exceptions

For the purposes of this Chapter, Article 50.13 shall apply *mutatis mutandis*.

Article 50 *bis*.10  
Measures Pursuant to Immigration Laws and  
Regulations

Except for this Chapter and Chapters 1, 9 and 10, nothing in this Agreement shall impose any obligation on each Party regarding measures affecting the movement of natural persons of another Party.

Note: For greater certainty, the measures affecting the movement of natural persons of another Party include immigration formalities."

Article 6  
Amendment to Chapter 7 (Investment)  
of the AJCEP Agreement

Chapter 7 of the AJCEP Agreement shall be replaced by the following:

"Chapter 7  
Investment

Article 51.1  
Scope and Coverage

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

- (a) investors of another Party; and
  - (b) covered investments.
2. This Chapter 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;
  - (c) services supplied in the exercise of governmental authority, provided that such services are supplied neither on a commercial basis, nor in competition with one or more service suppliers; and
  - (d) claims arising out of events which occurred prior to the date of entry into force of the First Protocol.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapters 6 and 6 *bis*.

4. Notwithstanding paragraph 3, Articles 51.4, 51.9, 51.10, 51.11, 51.12 and 51.13 shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of another Party covered by Chapter 6, but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter.

Note: For greater certainty, paragraph 4 shall not preclude a Party from applying Articles 8, 51.14, 51.15, 51.19, 51.20, 51.21 or other relevant provisions of this Chapter to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of another Party covered by Chapter 6, but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter.

Article 51.2  
Definitions

For the purposes of this Chapter, the term:

- (a) "covered investment" means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of the First Protocol or established, acquired or expanded thereafter, and which, where applicable, has been admitted, according to its laws, regulations and national policies;

Note 1: For greater certainty, "national policies" means those policies affecting an investment that are endorsed and announced by the Government of a Party, and made publicly available in a written form. Each Party shall, upon request by another Party, respond to specific questions from, and provide information to, the latter Party, in the English language, with respect to such national policies.

Note 2: In the case of the Kingdom of Thailand, this Chapter shall apply to covered investments which, where applicable, have been specifically approved in writing for protection by the competent authorities, in accordance with its laws, regulations and national policies.

Note 3: In the case of the Kingdom of Cambodia and the Socialist Republic of Viet Nam, "has been admitted" means "has been specifically registered or approved in writing, as the case may be".

- (b) "freely usable currency" means any currency designated as such by the IMF under the Articles of Agreement of the IMF as may be amended;
- (c) "investment" means every kind of asset that an investor owns or controls, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gains or profits, or the assumption of risk, including:
  - (i) movable and immovable property, any other tangible and intangible property, and any other related property rights, such as leases, mortgages, liens and pledges;
  - (ii) shares, stocks, bonds, debentures, loans and other forms of debt or equity participation in a juridical person, including rights or interests derived therefrom;
  - (iii) intellectual property rights that are conferred pursuant to the laws and regulations of a Party in whose territory the investment is made, including, where applicable, copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications, undisclosed information, and goodwill;
  - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
  - (v) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits, including those for the exploration and exploitation of natural resources; and

(vi) claims to money and to any performance under contract having a financial value, but the term "investment" does not include claims to money that arise solely from:

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

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

The term "investment" also includes returns, which are the amounts yielded by or derived from an investment, in particular, though not exclusively, profits, interests, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments;

Note: The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(d) "investor of a Party" means:

(i) a natural person of a Party; or

(ii) a juridical person of a Party,

that seeks to make, is making, or has made investments in the territory of another Party;

Note: The Parties understand that an investor of a Party that "seeks to make" investments refers to an investor of a Party that has taken active steps to initiate a notification or approval process, where applicable, for making an investment for a permit or licence which authorises the investor to establish investments.

- (e) "juridical person of a Party" means any legal entity duly constituted or otherwise organised under a Party's applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association or organisation;
- (f) "measure" means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, affecting investors or investments;
- (g) "measure by a Party" means any measure adopted or maintained by:
  - (i) central, regional or local governments and authorities of a Party; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of a Party; and
- (h) "natural person of a Party" means, for the purposes of subparagraph (d), a natural person who under the law of that Party:
  - (i) is a national or citizen of that Party; or
  - (ii) has the right of permanent residence in that Party, where both that Party and another Party recognise permanent residents and accord substantially the same treatment to their respective permanent residents as they accord to their respective nationals in respect of measures affecting investment.

Article 51.3  
National Treatment

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

Note: The application of this Article is subject to Article 51.23.

Article 51.4  
General Treatment

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security, in accordance with customary international law.
2. For greater certainty, the concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required under the customary international law referred to in paragraph 1, and do not create additional substantive rights.
3. The Parties understand that:
  - (a) "fair and equitable treatment" requires each Party not to deny justice in any legal or administrative proceedings in accordance with the principle of due process of law; and
  - (b) "full protection and security" requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the covered investment.
4. A determination that there has been a breach of another provision of this Chapter, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 51.5  
Prohibition of Performance Requirements

1. No Party shall impose or enforce as a condition for establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory of an investor of another Party any of the following requirements:

- (a) to export a given level or percentage of goods;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from a person or any other entity in its territory;
- (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 the investments of that investor; or
- (e) to restrict sales of goods in its territory that the investments of that investor produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with investment activities in its territory of an investor of another Party, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods from a person or any other entity in its territory;
- (c) 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 investments of that investor; or



- (d) to restrict sales of goods in its territory that investments of that investor produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings.

3. Subparagraphs 2(a) and (b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

Note: The application of this Article is subject to Article 51.23.

#### Article 51.6 Senior Management and Boards of Directors

1. A Party shall not require a juridical person of that Party that is a covered investment to appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority of the members of the board of directors, or any committee thereof, of a juridical person of that Party that is a covered investment, be of a particular nationality or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Note: The application of this Article is subject to Article 51.23.

#### Article 51.7 Reservations and Exceptions

- 1. Articles 51.3, 51.5 and 51.6 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by the following, as set out in the Schedule of each Party in Annex 10-I:

- (i) the central government of the Party; or
  - (ii) a prefecture of Japan or a regional government of an ASEAN Member State;
- (b) any existing non-conforming measure that is maintained by a local government of a Party other than those referred to in subparagraph (a)(ii);
  - (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or
  - (d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed at the date of entry into force of the Party's Schedule in Annex 10-I, with Articles 51.3, 51.5 and 51.6.

2. Articles 51.3, 51.5 and 51.6 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities set out in its Schedule in Annex 10-II.

3. No Party shall, under any measure adopted and covered by its Schedule in Annex 10-II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time that the measure becomes effective, unless otherwise specified in the initial approval by the relevant authorities.

4. In cases where a Party makes an amendment or a modification pursuant to subparagraph 1(d) to any existing non-conforming measure set out in its Schedule in Annex 10-I, or adopts any new or more restrictive measure with respect to sectors, subsectors or activities set out in its Schedule in Annex 10-II, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or as soon as possible thereafter:

- (a) notify the other Parties of detailed information on such amendment or modification, or such measure; and
- (b) respond, upon request of another Party, to specific questions from another Party, with respect to such amendment or modification, or such measure.

5. Each Party shall endeavour, where appropriate, to reduce or eliminate the reservations specified in its Schedules in Annexes 10-I and 10-II respectively.

6. Article 51.3 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the Agreement on the Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as "TRIPS Agreement") as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

Note: The application of this Article is subject to Article 51.23.

#### Article 51.8 Public Comments

Each Party shall, to the extent provided for under its domestic legal framework, endeavour to provide, except in cases of emergency, a reasonable opportunity for comments by the public before the adoption of regulations of general application that affect any matter covered by this Chapter.

#### Article 51.9 Expropriation and Compensation

1. No Party shall expropriate or nationalise covered investments, or take any measure equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation"), except:

- (a) for a public purpose;
- (b) in accordance with due process of law;

- (c) on a non-discriminatory basis; and
- (d) upon payment of prompt, adequate and effective compensation.

2. For the purposes of subparagraph 1(d), the compensation shall:

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

Note: In the case of the Republic of the Philippines, the time when the expropriation was publicly announced refers to the date of filing of the Petition for Expropriation.

- (b) not reflect any change in value occurring because the intended expropriation had become publicly known earlier;
- (c) be settled and paid without undue delay; and

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

- (d) be effectively realisable and freely transferable.

3. The compensation shall include appropriate interest. The compensation, including any accrued interest, shall be payable either in the currency of the expropriating Party, or if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely usable currency, the compensation, including any accrued interest, shall be converted into the currency of payment at the market exchange rate prevailing on the date of payment.

5. Notwithstanding paragraphs 1 through 4, any measure of expropriation relating to land shall be as defined in the existing domestic laws and regulations of the expropriating Party on the date of entry into force of the First Protocol, and shall be, for the purposes of and upon payment of compensation, in accordance with the aforesaid laws and regulations. Such compensation shall be subject to any subsequent amendments to the aforesaid laws and regulations relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

6. This Article shall not apply to the issuance of compulsory licences concerning intellectual property rights in accordance with the TRIPS Agreement.

Article 51.10  
Compensation for Losses or Damages

Each Party shall accord to investors of another Party that have suffered loss or damage relating to their covered investments in the territory of the former Party owing to war, armed conflict or a state of emergency such as revolution, insurrection, civil strife or any other similar event in 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 to investors of a non-Party.

Article 51.11  
Transfers

1. Each Party shall allow all transfers relating to covered investments to be made freely and without delay into and out of its territory. Such transfers shall include:

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) profits, interest, capital gains, dividends, royalties, technical assistance fees, management fees and other current income accruing from covered investments;

- (c) payments made under a contract, including payments made under a loan agreement in connection with covered investments;
- (d) proceeds from the total or partial sale or liquidation of covered investments;
- (e) earnings and other remuneration of personnel engaged in activities in connection with covered investments;
- (f) payments made in accordance with Articles 51.9 and 51.10; and
- (g) payments arising out of the settlement of an investment dispute under Article 51.13.

2. Each Party shall allow transfers referred to in paragraph 1 to be made in a freely usable currency at the market rate of exchange prevailing in its territory on the date of the transfer.

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

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) criminal or penal offences;
- (d) obligations arising from social security, public retirement or compulsory savings scheme;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;
- (f) severance entitlement of employees;
- (g) reports or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and

- (h) the requirement to register and satisfy any other formalities imposed by the central bank and any other relevant authorities of a Party.

Note: For greater certainty, by virtue of paragraph 1 of Article 6, each Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its laws and regulations relating to taxation measures.

4. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the IMF under the Articles of Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF.

#### Article 51.12 Subrogation

1. Where a Party or an agency authorised by that Party has granted a contract of insurance or any form of financial guarantee with regard to a covered investment by one of its investors in the territory of another Party and when payment has been made under such contract or financial guarantee by the former Party or the agency authorised by it, the latter Party shall recognise the subrogation or transfer of any right or claim with regard to such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

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

3. In the exercise of subrogated rights or claims, a Party or an agency authorised by the Party exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the other Party referred to in paragraph 2.

4. Articles 51.9, 51.10 and 51.11 shall apply *mutatis mutandis* as regards payment to be made to the Party or the agency prescribed in paragraphs 1 and 2 by virtue of such subrogation or transfer of rights or claims, and the transfer of such payment.

Article 51.13  
Settlement of Investment Disputes  
between a Party and an Investor of Another Party

1. This Article shall apply to investment disputes between a Party and an investor of another Party concerning an alleged breach of an obligation of the former Party under this Chapter which causes loss or damage to the covered investment of the investor.

2. For the purposes of this Chapter, the term:

- (a) "disputing investor" means an investor of a Party that makes a claim against another Party under this Article;
- (b) "disputing Party" means a Party against which a claim is made under this Article;
- (c) "disputing parties" means a disputing investor and a disputing Party;
- (d) "disputing party" means either a disputing investor or a disputing Party;
- (e) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, 18 March 1965;
- (f) "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;
- (g) "New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958;



- (h) "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law adopted by the United Nations General Assembly, 15 December 1976; and
- (i) "UNCITRAL Conciliation Rules" means the conciliation rules of the United Nations Commission on International Trade Law adopted by the United Nations General Assembly, 4 December 1980.

3. Subject to subparagraph 10(c), nothing in this Article shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement within the territory of the disputing Party.

4. A natural person possessing the nationality or citizenship of the disputing Party shall not pursue a claim against that Party under this Article.

5. Any investment dispute shall, as far as possible, be settled amicably through consultations between the disputing parties.

6. In the event that an investment dispute cannot be settled by consultation as provided for in paragraph 5, the disputing investor may, subject to this Article, submit to courts or administrative tribunals of the disputing Party or to conciliation or arbitration under this Article a claim:

- (a) that the disputing Party has breached an obligation under Article 51.3, Article 51.4, subparagraphs 1(a) through (d) of Article 51.5, Article 51.6, Article 51.9, Article 51.10 and Article 51.11 relating to the management, conduct, operation, or sale or other disposition of a covered investment; and
- (b) that the disputing investor or its covered investment has incurred loss or damage by reason of, or arising out of, that breach.

7. (a) A disputing investor may submit a claim referred to in paragraph 6 at the choice of the disputing investor to one of the following alternatives:

- (i) courts or administrative tribunals of the disputing Party, provided that such courts or administrative tribunals have jurisdiction over such claim;
  - (ii) conciliation or arbitration under the ICSID Convention and the ICSID Rules of Procedure for Conciliation Proceedings and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;
  - (iii) conciliation or arbitration under the ICSID Additional Facility Rules, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention;
  - (iv) conciliation under the UNCITRAL Conciliation Rules or arbitration under the UNCITRAL Arbitration Rules; or
  - (v) if agreed with the disputing Party, any other arbitration institution or arbitration under any other arbitration rules.
- (b) For the purposes of subparagraph 7(a), a disputing investor may submit a claim to conciliation or arbitration under subparagraphs (a)(ii) through (v), only if the investment dispute cannot be resolved as provided for in paragraph 5 within one hundred and eighty (180) days from the date of receipt by the disputing Party of a written request for consultation and negotiation.

8. Once the disputing investor has submitted the claim to the courts or administrative tribunals of the disputing Party, the choice of forum shall be final.

9. (a) Each Party hereby consents to the submission of a claim to conciliation or arbitration set forth in paragraph 7 in accordance with the procedures set out in this Article.

Note 1: Notwithstanding subparagraph 9(a), in the event of an investment dispute between the Republic of Indonesia and an investor of another Party or the Republic of the Philippines and an investor of another Party, consent to the submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings shall be subject to a separate written agreement between the disputing parties. For greater certainty, the institution of proceedings, commencement of conciliation proceedings, or reference to arbitration under subparagraphs 7(a)(iii) and (iv) shall be governed by the applicable arbitration or conciliation rules. For the avoidance of doubt, the aforementioned separate written agreement applies only to the submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings.

Note 2: Notwithstanding subparagraph 9(a), in the case of an investment dispute between the Kingdom of Thailand and an investor of another Party or between another Party and an investor of the Kingdom of Thailand, the disputing Party consents to the submission of a claim to conciliation or arbitration set forth in paragraph 7, provided that the Kingdom of Thailand and the other Party had consented to submission of a claim to the conciliation or arbitration in existing international agreements to which both the Kingdom of Thailand and that other Party are parties. Such consent shall be subject to the same conditions and limitations as stipulated in such international agreements.

- (b) The consent given under subparagraph 9(a) and the submission by a disputing investor of an investment dispute to conciliation or arbitration shall satisfy the requirements of:
  - (i) Chapter II of the ICSID Convention or the ICSID Additional Facility Rules, for written consent of the parties to an investment dispute; and
  - (ii) Article II of the New York Convention for an agreement in writing.

10. The submission of a claim to conciliation or arbitration under subparagraph 7(a)(ii), (iii), (iv) or (v) in accordance with the provisions of this Article shall be conditional upon:

- (a) the submission of the claim to such conciliation or arbitration taking place within three (3) years from the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in subparagraph 6(a) causing loss or damage to the disputing investor or its covered investment;
- (b) the disputing investor providing written notice, which shall be submitted at least ninety (90) days before the claim is submitted, to the disputing Party of the disputing investor's intent to submit the claim to such conciliation or arbitration. The notice shall:
  - (i) specify either subparagraph 7(a)(ii), (iii), (iv) or (v) as the forum for dispute settlement and, in the case of subparagraphs 7(a)(ii) through (iv), whether conciliation or arbitration is being sought; and
  - (ii) briefly summarise the alleged breach of the disputing Party under this Chapter, including the Articles alleged to have been breached, and the loss or damage allegedly caused to the disputing investor or its covered investment; and

(c) the written request or invitation to conciliate or notice of arbitration being accompanied by the disputing investor's written waiver of any right to initiate or continue before any court or administrative tribunal under the law of either Party or other dispute settlement mechanisms including investment dispute settlement mechanisms under any other bilateral or multilateral agreement to which both the disputing Party and the Party of the disputing investor are parties, any proceedings with respect to any measure of the disputing Party alleged to constitute a breach referred to in paragraph 6. Accordingly, once the disputing investor has submitted the claim to any of the conciliation or arbitration under subparagraph 7(a)(ii), (iii), (iv) or (v), the choice of forum shall be final.

11. Notwithstanding subparagraph 10(c), the disputing investor may initiate or continue an action that seeks interim injunctive relief for the sole purpose of preserving the disputing investor's rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute before a court or an administrative tribunal under the law of the disputing Party.

12. No Party shall give diplomatic protection, nor bring an international claim, in respect of an investment dispute which one of its investors and any one of the other Parties shall have consented to submit or have submitted to conciliation or arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such investment 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 investment dispute.

13. An arbitral tribunal established under paragraph 7 shall decide the issues in dispute in accordance with this Chapter, and applicable rules of international law and, where applicable, relevant domestic laws of the disputing Party.

Note: The arbitral tribunal does not have jurisdiction to determine the legality of a measure alleged to constitute a breach of this Chapter under the domestic law of the disputing Party.

14. An arbitral tribunal shall address and decide on any objection by the disputing Party that a claim is not admissible, or the claim is outside the jurisdiction or competence of the arbitral tribunal, provided that the disputing Party so requests as soon as possible after the arbitral tribunal is established, and in no event later than the date that the arbitral tribunal fixes for the disputing Party to submit its counter-memorial.

15. Notwithstanding paragraph 14, the arbitral tribunal may on its initiative consider, at any stage of the proceeding, whether the claim is admissible, or within the jurisdiction or competence of the arbitral tribunal.

16. In general, the arbitral tribunal should decide on the objection referred to in paragraph 14 as a preliminary question. However, the arbitral tribunal may join it to the merits of the claim. In considering whether to join the objection to the merits of the claim, the arbitral tribunal shall, as far as possible, obtain the consent of the disputing parties.

17. Unless the disputing parties have agreed to another expedited procedure for making preliminary objections, a disputing Party may, no later than ninety (90) days after the constitution of the arbitral tribunal, and in any event before the first session of the arbitral tribunal, file an objection that a claim is manifestly without legal merit. The disputing Party shall specify as precisely as possible the basis for the objection. The arbitral 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 arbitral tribunal shall be without prejudice to the right of a disputing Party to file an objection pursuant to paragraph 14 or to object, in the course of the proceeding, that a claim lacks legal merit.

18. If the arbitral tribunal decides that the claim is not admissible, or the claim is outside the jurisdiction or competence of the arbitral tribunal, or that the claim is manifestly without legal merit, it shall render an award to that effect.

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

20. (a) The arbitral tribunal shall at the request of a disputing Party, or may on its own account, request a joint interpretation of any provision of this Chapter that is in issue in an investment dispute. The Parties shall submit in writing any joint decision declaring their interpretation made by consensus to the arbitral tribunal within sixty (60) days from the date of receipt of the request. Without prejudice to subparagraph (b), if the Parties fail to issue such a decision within sixty (60) days, any interpretation submitted by a Party shall be forwarded to the disputing parties and the arbitral tribunal, which shall decide the issue on its own account.

(b) A joint decision of the Joint Committee on the interpretation of any provision of this Chapter under subparagraph 2(e)(iv) of Article 11 shall be binding on an arbitral tribunal, and any decision or award issued by an arbitral tribunal must be consistent with that joint decision.

21. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the New York Convention.

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

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

Article 51.14  
General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or their investors where like conditions prevail, or a disguised restriction on investors or investments made by investors of another Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order, provided that the public order exception may only be invoked 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 laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
  - (iii) safety;



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

#### Article 51.15

##### Special Formalities and Information Requirements

1. Nothing in Article 51.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investments, including a requirement that investments be legally constituted or comply with registration requirements, provided that such formalities do not materially impair the rights afforded by a Party to investors of another Party and investments pursuant to this Chapter.

2. Notwithstanding Article 51.3, a Party may require an investor of another Party, or a covered investment, to provide information concerning that investment solely for information or statistical purposes. The Party shall protect any confidential information from any disclosure that would prejudice legitimate commercial interests of particular juridical persons, public or private, or the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good-faith application of its law.

#### Article 51.16

##### Special and Differential Treatment for the Newer ASEAN Member States

In order to increase benefits of this Chapter for the newer ASEAN Member States, and in accordance with Articles 2, 3 and 52, special and differential treatment should be accorded to the newer ASEAN Member States under this Chapter, through:

- (a) access to information on the investment policies of other Parties, business information, relevant databases and contact point for investment promotion;

- (b) technical assistance to strengthen their capacity in relation to investment policies and promotion including in areas such as human resource development;
- (c) commitments in areas of interest to the newer ASEAN Member States; and
- (d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

Article 51.17  
Promotion of Investment

1. Each Party should further promote investment in order to strengthen the economic relationship among Parties.

2. Subject to their laws and regulations and the availability of funds, the Parties shall cooperate in promoting and increasing awareness of ASEAN-Japan as an investment area, where possible, through, among others:

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

Article 51.18  
Facilitation of Investment

1. Each Party shall endeavour to further create stable, favourable and transparent conditions in order to encourage greater investment by investors of another Party in its territory.

2. Subject to their laws and regulations and the availability of funds, the Parties shall cooperate to facilitate investments among Japan and ASEAN Member States, where possible, through, among others:

- (a) creating the necessary environment for all forms of investment;
- (b) simplifying procedures for investment applications and approvals;
- (c) promoting dissemination of investment information, including investment rules, regulations, policies and procedures; and
- (d) establishing one-stop investment centres in the respective host Parties to provide assistance and advisory services to the business sectors including facilitation of operating licences and permits.

Article 51.19  
Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Article 51.3 relating to cross-border capital transactions and Article 51.11:

- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. The measures referred to in paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the IMF;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of another Party;

- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) be temporary and phased out progressively as the situation specified in paragraph 1 improves; and
- (e) be applied such that any one of the other Parties is treated no less favourably than any other Party or non-Party.

3. Any measures adopted or maintained under paragraph 1 shall be promptly notified to the other Parties.

#### Article 51.20 Prudential Measures

1. Notwithstanding any other provisions in this Chapter, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an entity supplying financial services, or to ensure the integrity and stability of its financial system.

2. Where the measures taken by a Party pursuant to paragraph 1 do not conform with this Chapter, they shall not be used as a means of avoiding the commitments or obligations of the Party under this Chapter.

3. Nothing in this Chapter shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

#### Article 51.21 Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of the latter Party and to its investments if the juridical person is owned or controlled by an investor of a non-Party and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of the latter Party and to its investments if the juridical person is owned or controlled by an investor of a non-Party or of the denying Party and the juridical person has no substantive business operations in the territory of that latter Party.

Note: The denying Party shall endeavour to notify the other Parties of its decision to deny the benefits of this Chapter to an investor of another Party.

3. For the purposes of this Article, a juridical person is:

- (a) "owned" by an investor if more than fifty (50) per cent 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.

4. Following notification, and without prejudice to paragraphs 1 through 3, the Republic of the Philippines may deny the benefits of this Chapter to an investor of another Party and to investments of that investor, where it establishes that such investor has made an investment in breach of the provisions of Commonwealth Act No. 108, entitled "An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges", as amended by Presidential Decree No. 715, otherwise known as "The Anti-Dummy Law", as may be amended.

Article 51.22  
Sub-Committee on Investment

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to:

- (a) discuss and review the implementation and operation of this Chapter;
- (b) review the exceptional measures maintained, amended, modified or adopted pursuant to paragraph 1 of Article 51.7 for the purpose of contributing to the reduction or elimination of such exceptional measures;
- (c) discuss the exceptional measures adopted or maintained pursuant to paragraph 2 of Article 51.7 for the purpose of encouraging favourable conditions for investors of the Parties;
- (d) discuss any other investment-related matters concerning this Chapter; and
- (e) report, where appropriate, its findings to the Joint Committee.

3. The Sub-Committee shall be:

- (a) composed of representatives of the Governments of Japan and ASEAN Member States; and
- (b) co-chaired by an official of the Government of Japan and an official of one of the Governments of ASEAN Member States.

4. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

5. The Sub-Committee may, upon mutual consent of the Parties, invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed, and hold joint meetings with the private sectors.

Article 51.23  
Work Programme

1. The Parties shall, immediately after the date of entry into force of the First Protocol, enter into consultations on the Schedules of Reservations as referred to in Article 51.7 with the participation of Japan and ASEAN Member States. The Sub-Committee on Investment referred to in Article 51.22 shall function as the forum to discuss the matter.

2. The consultations referred to in paragraph 1 shall be concluded within two (2) years from the date of entry into force of the First Protocol, unless the Parties agree otherwise.

3. The Schedules of Reservations of the Parties as a result of the consultations referred to in paragraph 1 shall enter into force and be incorporated into this Agreement as Annexes 10-I and 10-II in accordance with Article 77.

4. Article 51.7 shall not apply until the date of entry into force of the Schedules of Reservations referred to in paragraph 3. Japan and ASEAN Member States shall enter into further discussions to review subparagraph 1(d) of that Article with a view to examining a possibility for promoting further liberalisation of investment.

5. Article 51.3 shall not affect the right of each Party to adopt, maintain or apply measures that set out conditions and qualifications for admission of investment, including, but not limited to, those with regard to foreign ownership and control. Upon entry into force of the Schedules of Reservations referred to in paragraph 3, this paragraph shall cease to be effective.

6. Article 51.3 shall not apply to any measures that a Party adopts or maintains with respect to establishment, acquisition and expansion of investments until the date of entry into force of the Schedules of Reservations referred to in paragraph 3.

7. Pending entry into force of the Schedules of Reservations referred to in paragraph 3:

(a) an ASEAN Member State may adopt, maintain or apply any measures that do not conform with Article 51.3, provided that:

(i) with respect to investors of Japan or their investments, such measures comply with any other international investment agreement to which both Japan and that ASEAN Member State are parties;

(ii) with respect to investors of another ASEAN Member State or their investments, such measures comply with any other international investment agreement among ASEAN Member States and to which that ASEAN Member State is a party; and

(b) Japan may adopt, maintain or apply any measures that do not conform with Article 51.3, provided that, with respect to investors of an ASEAN Member State or their investments, such measures comply with any other international investment agreement, to which both Japan and that ASEAN Member State are parties.

Note 1: For the purposes of subparagraphs 7(a)(i) and (b), the term "other international investment agreement" means any of the following agreements, as relevant and as may be amended:



- (i) Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership, done at Singapore, 13 January 2002;
- (ii) Agreement between the Government of Japan and the Government of Malaysia for an Economic Partnership, done at Kuala Lumpur, 13 December 2005;
- (iii) Agreement between Japan and the Republic of the Philippines for an Economic Partnership, done at Helsinki, 9 September 2006;
- (iv) Agreement between Japan and the Kingdom of Thailand for an Economic Partnership, done at Tokyo, 3 April 2007;
- (v) Agreement between Japan and the Kingdom of Cambodia for the Liberalization, Promotion and Protection of Investment, done at Tokyo, 14 June 2007;
- (vi) Agreement between Japan and Brunei Darussalam for an Economic Partnership, done at Tokyo, 18 June 2007;
- (vii) Agreement between Japan and the Republic of Indonesia for an Economic Partnership, done at Jakarta, 20 August 2007;
- (viii) Agreement between Japan and the Lao People's Democratic Republic for the Liberalisation, Promotion and Protection of Investment, done at Tokyo, 16 January 2008;

- (ix) Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership, done at Tokyo, 25 December 2008; and
- (x) Agreement between the Government of Japan and the Government of the Republic of the Union of Myanmar for the Liberalisation, Promotion and Protection of Investment, done at Tokyo, 15 December 2013.

Note 2: For the purposes of subparagraph 7(a)(ii), the term "other international investment agreement" means any of the following agreements, as relevant and as may be amended:

- (i) ASEAN Comprehensive Investment Agreement, done at Cha-am, 26 February 2009;
- (ii) Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Cha-am, 27 February 2009;
- (iii) Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea, done at Jeju-do, 2 June 2009;
- (iv) Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the People's Republic of China, done at Bangkok, 15 August 2009;

- (v) Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, done at Nay Pyi Taw, 12 November 2014; and
- (vi) Agreement on Investment among the Governments of the Hong Kong Special Administrative Region of the People's Republic of China and the Member States of the Association of Southeast Asian Nations, done at Ha Noi, 18 May 2018.

8. Articles 51.5 and 51.6 shall not apply until the date of entry into force of the Schedules of Reservations referred to in paragraph 3.

9. The Parties shall also enter into discussions with a view to agreeing on the application of Most-Favoured-Nation treatment to this Chapter, including the Schedules of Reservations.

10. The Parties shall also enter into consultations to seek agreement on the application of Articles 51.9 and 51.13 to taxation measures that constitute expropriation.

Annex A to Chapter 7  
Expropriation and Compensation

1. An action or a series of related actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in a covered investment.
2. Article 51.9 addresses two situations:
  - (a) the first situation is direct expropriation, where a covered investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
  - (b) the second situation is where an action or a series of related actions by a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
3. The determination of whether an action or series of related actions by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in subparagraph 2(b) requires a case-by-case, fact-based inquiry that considers, among other factors:
  - (a) the economic impact of the government action, although the fact that such action or series of related actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;
  - (b) whether the government action breaches the government's prior binding written commitment to the investor, whether by contract, licence or any other legal document; and
  - (c) the character of the government action, including its objective and whether such action is disproportionate to the public purpose.

4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives such as the protection of public health, safety and the environment do not constitute expropriation of the type referred to in subparagraph 2(b)."