

CHAPTER 9 INVESTMENT

Section A: Investment

ARTICLE 9.1: SCOPE

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party;
 - (b) covered investments; and
 - (c) with respect to Article 9.9, all investments in the territory of the Party.¹
2. For greater certainty, subject to Article 9.17.2, this Chapter does not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.²
3. For the purposes of this Chapter, **measures adopted or maintained by a Party** means measures adopted or maintained by:
 - (a) central or local governments and authorities; and
 - (b) non-governmental bodies in the exercise of powers delegated by central or local governments or authorities.
4. Notwithstanding paragraph 1, this Chapter shall not apply to financial services, as defined in Article 1.7 (Definitions).
5. This Chapter shall apply to measures adopted or maintained by the Party relating to a posted bond or financial security, only to the extent that such bond or financial security is a covered investment.

ARTICLE 9.2: RELATION TO OTHER CHAPTERS

In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

¹ For greater certainty, an investor of a non-Party shall not claim any right based on this Chapter.

² This paragraph shall not be construed so as to preclude an investor who made any investments before the date of entry into force of this Agreement from submitting an arbitration claim pursuant to Article 9.17.2.

ARTICLE 9.3: NATIONAL TREATMENT

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

ARTICLE 9.4: MOST-FAVOURED-NATION TREATMENT

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments.
3. For greater certainty, the treatment referred to in this Article (MFN) does not encompass definitions, or investor-state dispute settlement procedures, or mechanisms including those set out in Section B.

ARTICLE 9.5: GENERAL TREATMENT

1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law, including fair and equitable treatment and full protection and security.
2. The concepts of "fair and equitable treatment" and "full protection and security" in this Article do not require treatment in addition to or beyond that which is required by the applicable rules of customary international law and do not create additional substantive rights. For greater certainty:
 - (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings; and
 - (b) "full protection and security" requires each Party to provide the level of police protection required under applicable customary international law.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

ARTICLE 9.6: LOSSES AND COMPENSATION

1. Notwithstanding Article 9.12.6(b), a Party shall accord to investors of the other Party, and to covered investment, with respect to restitution, indemnification, compensation or other settlement relating to losses suffered by investments in its territory owing to war, other armed conflict, revolution, revolt, insurrection, civil disturbance, riot or other such similar activity in its territory, treatment no less favorable than that it accords, in like circumstances, to its own investors and their investments or investors of any non-Party and their investments. Any compensation shall be effectively realizable, freely transferable and freely convertible at the market exchange rate into freely usable currencies.

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

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

the latter Party shall provide the investor with restitution or compensation for such loss. Any compensation shall be without undue delay, adequate, and effective, freely transferable and freely convertible at the market exchange rate into freely usable currencies.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 9.3 but for Article 9.12.6(b).

ARTICLE 9.7: EXPROPRIATION AND COMPENSATION³

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (expropriation), except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner; and
- (c) on payment of prompt, adequate, and effective compensation.

2. The compensation referred to in paragraph 1(c) shall:

- (a) be paid without delay;

³ Article 9.7 shall be interpreted in accordance with Annex 9-A.

- (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);
 - (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
 - (d) be fully realizable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:
- (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
 - (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. Without prejudice to Section B, the investors affected shall have a right, under the law of the Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of the legality of the expropriation and of the valuation of their investment, in accordance with the principles set out in this Article.
6. This Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 14 (Intellectual Property Rights) or the TRIPS Agreement.

ARTICLE 9.8: TRANSFERS⁴

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
- (a) contributions to capital, including the initial contribution;
 - (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
 - (c) interest, royalty payments, management fees, and technical assistance and other fees or other current incomes accruing from investments;

⁴ For greater certainty, Annex 9-E shall apply to Article 9.8.

- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Article 9.6.1 and 9.6.2 and Article 9.7; and
- (f) payments arising out of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer provided that the investor has complied with all his fiscal obligations to that Party.

3. Notwithstanding paragraphs 1 through 2, a Party may 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) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offenses;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

ARTICLE 9.9: PERFORMANCE REQUIREMENTS

1. No Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of an investment in its territory of an investor of the other Party or of a non-Party, impose or enforce any requirement or enforce any commitment or undertaking:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use, or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

- (f) to transfer technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory, except those undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement; or
- (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.

2. The provisions of paragraph 1 do not preclude either Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of an investment in its territory of an investor of the other Party or of a non-Party, on compliance with⁵:

- (a) any requirement other than the requirements set forth in subparagraphs 1(b), 1(c), 1(d), and 1(e);
- (b) a requirement to locate production, supply or acquire a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory;
- (c) the requirements set forth in subparagraphs 1(b) and 1(c), when the requirements relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas are imposed by an importing Party; or
- (d) the requirements set forth in subparagraphs 1(b) and 1(c), when the requirements relating to goods or services with respect to export promotion and foreign aid program.

3. Paragraphs 1 and 2 shall not be construed to provide an investor of a Party a right to submit to arbitration under Section B a claim that the other Party has breached an obligation set forth in paragraphs 1 and 2 against a non-Party.

4. Paragraphs 1 and 2, with regards to an investment of an investor of a non-Party, shall not apply until both Parties, individually, have undertaken such an obligation in any existing or future free trade area agreements referred to in Article XXIV GATT with any non-Party.

5. Paragraphs 1(a), (b), and (c) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

⁵ For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement or enforcing a commitment or undertaking to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory, provided that such activity is consistent with paragraph 1(f).

6. Subparagraph 1(f) shall not apply when the requirement is imposed or the commitment or undertaking is enforced by a court of justice, administrative tribunal, or competition authority to remedy a violation of competition laws.

7. This Article does not preclude enforcement of any commitment, undertaking or requirement between private parties, where a Party did not impose or require the commitment, undertaking or requirement.

ARTICLE 9.10: SENIOR MANAGEMENT AND BOARDS OF DIRECTORS

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

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

ARTICLE 9.11: DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:

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

2. For the purpose of this Article, an enterprise is:

- (a) "owned" by an investor if more than 50 percent of the equity interest in it is beneficially owned by the investor; and
- (b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

ARTICLE 9.12: NON-CONFORMING MEASURES

1. Articles 9.3, 9.4, 9.9, and 9.10 do not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at

- (i) the central level of government, as set out by that Party in its Schedule to Annex I; or
- (ii) a local level of government;⁶
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before amendment, with Article 9.3, 9.4, 9.9, or 9.10.

2. Subparagraph 1(c) shall not apply until both Parties, individually, have undertaken the obligation specified in subparagraph 1(c) in any existing or future free trade area agreement or similar arrangements covering investment liberalization provisions with any non-Party. Until such time, Article 9.3, 9.4, 9.9 and 9.10 shall not apply to an amendment to any non-conforming measure referred to in subparagraph 1(a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the entry into force of the Agreement, with Article 9.3, 9.4, 9.9, or 9.10.⁷

3. Articles 9.3, 9.4, 9.9, and 9.10 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

4. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

5. Articles 9.3 and 9.4 do not apply to any measure that is an exception to, or derogation from, the obligations under Section A (General Provisions) of Chapter 14 (Intellectual Property Rights) as specifically provided in that Section.

6. Articles 9.3, 9.4, 9.9, and 9.10 do not apply to:

- (a) government procurement; or
- (b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

7. Each Party recognizes the importance of reviewing from time to time the non-conforming measures specified in its Schedules in Annexes I and II exploring the possibility for the reduction or elimination of the non-conforming measures.

⁶ For Korea, **local level of government** means a local government as defined in the *Local Autonomy Act*.

⁷ A claim that a Party has breached an obligation set forth in subparagraph 1(c) shall not be subject to arbitration under Section B until both Parties, individually, have undertaken the obligation specified in subparagraph 1(c) and adopted investor-state dispute settlement mechanism in any existing or future free trade area agreements or similar arrangements with any non-Party.

ARTICLE 9.13: SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

1. Nothing in Article 9.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted or registered under the requirements of its laws or regulations, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 9.3 and 9.4, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice 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 9.14: SUBROGATION

1. Where a Party or a designated agency of a Party makes a payment to any of its investors under a guarantee, a contract of insurance, or other form of indemnity, against non-commercial risks it has granted in respect to an investment of an investor of that Party, the other Party shall recognize the subrogation of any right or claim the investor would have possessed under this Chapter in respect to the investment.

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

ARTICLE 9.15: EXCEPTIONS

1. Article 9.4 shall not be construed so as to oblige one Party to extend to the investors or covered investments of the other Party the benefit of any treatment, preference or privilege resulting from:

- (a) any existing customs union, common market, economic or monetary union, free trade area or similar international agreement, to which either Party is a party;
- (b) any future customs union, common market, economic or monetary union, free trade area or similar international agreement, to which either Party will be a party;
- (c) any existing or future bilateral or multilateral agreement concerning intellectual property; or

- (d) any agreement for the promotion and protection of investments concluded between either Party and a third state, that was signed before the entry into force of this Agreement.

2. Subparagraph 1(b) shall cease to apply when both Parties, individually, are party to a customs union, common market, economic or monetary union, free trade area or similar international agreement, which does not include the exception in subparagraph 1(b).

ARTICLE 9.16: DURATION AND TERMINATION

In respect of investments made while this Agreement is in force, the provisions of this Chapter shall continue in effect with respect to such investments for a period of 10 years after the date of termination of this Agreement, except insofar as those Articles extend to the establishment or acquisition of covered investments, and without prejudice to the application thereafter of the rules of general international law.

ARTICLE 9.17: TERM OF THE BILATERAL INVESTMENT TREATY

1. Subject to paragraph 2, the Parties hereby agree that the Bilateral Investment Treaty, as well as all the rights and obligations derived from the said Treaty, will cease to have effect on the date of entry into force of this Agreement.

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

Section B: Investor-State Dispute Settlement

ARTICLE 9.18: CONSULTATION AND NEGOTIATION

In the event of an investment dispute, the claimant and the respondent shall initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

ARTICLE 9.19: SUBMISSION OF A CLAIM TO ARBITRATION

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiations, the claimant may submit to arbitration under this

Section a claim that the respondent has breached an obligation under Section A, provided that such breach causes loss or damage to the investor or its investments.

2. The extent of the claim referred to in paragraph 1 shall not exceed the monetary value of the loss or damage caused to the investor as a result of the breach mentioned in paragraph 1.

3. Before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration (notice of intent). The notice shall specify:

- (a) the name and address of the claimant;
- (b) for each claim, the provision of this Agreement, alleged to have been breached and any other relevant provisions;
- (c) the legal and factual basis for each claim; and
- (d) the relief sought and the approximate amount of damages claimed.

4. Provided that six months have elapsed since submission of the notice of intent, a claimant may submit a claim referred to in paragraph 1:

- (a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;
- (b) under the ICSID Additional Facility Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;
- (c) under the UNCITRAL Arbitration Rules; or
- (d) if the claimant and respondent agree, under any other arbitration rules.

5. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of, or request for, arbitration (notice of arbitration):

- (a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
- (b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
- (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules, are received by the respondent; or
- (d) referred to under any arbitral rules selected under paragraph 4(d) is received by the respondent.

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

6. The arbitration rules applicable under paragraph 4, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except as provided in this Agreement.

7. The claimant shall provide with the notice of arbitration:

- (a) the name of the arbitrator that the claimant appoints; or
- (b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

ARTICLE 9.20: CONSENT OF EACH PARTY TO ARBITRATION

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

- (a) Chapter II (Jurisdiction of the Centre) of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
- (b) Article II of the New York Convention for an "agreement in writing."

ARTICLE 9.21: CONDITIONS AND LIMITATIONS ON CONSENT OF EACH PARTY

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.19.1 and knowledge that the claimant has incurred loss or damage.

2. No claim may be submitted to arbitration under this Section unless:

- (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement;
- (b) the notice of arbitration is accompanied, for claims submitted to arbitration under Article 9.19.1, by the claimant's written waiver of any right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 9.19; and

- (c) no judgment or award has been delivered on the subject matter of the dispute with regard to any measure alleged to constitute a breach referred to in Article 9.19 before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures.

3. The claimant may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's rights and interests during the pendency of the arbitration.

ARTICLE 9.22: SELECTION OF ARBITRATORS

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section. If the Secretary-General is a national of either Party or a national of a non-Party that does not maintain diplomatic relations with either Party or otherwise prevented from discharging the said function, the Deputy Secretary-General shall be invited to make the appointment.

3. If a tribunal has not been constituted within 90 days of the date a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either Party as the presiding arbitrator unless the disputing parties otherwise agree.

4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

- (a) the respondent agrees to the appointment of a national of the other Party to a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules; and
- (b) a claimant referred to in Article 9.19.1 may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of a national of the other disputing party as a member of the tribunal.

ARTICLE 9.23: CONDUCT OF THE ARBITRATION

1. Unless the disputing parties agree otherwise, the place of arbitration shall be in the territory of a State that is a party to the New York Convention.

2. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement. On the request of a disputing Party, the non-disputing Party should resubmit its oral submission in writing.

3. After consulting the disputing parties, the tribunal may allow a party or entity that is not a disputing party to file a written *amicus curiae* submission according to the Annex 9-F (Amicus Curiae) with the tribunal regarding a matter within the scope of the dispute. In determining whether to allow such a filing, the tribunal shall consider, among other things, the extent to which:

- (a) the *amicus curiae* submission would assist the tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge, or insight that is different from that of the disputing parties;
- (b) the *amicus curiae* submission would address a matter within the scope of the dispute; and
- (c) the *amicus curiae* has a significant interest in the proceeding.

The tribunal shall ensure that the *amicus curiae* submission does not disrupt the proceeding or unduly burden or unfairly prejudice either disputing party, and that the disputing parties are given an opportunity to present their observations on the *amicus curiae* submission.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 9.29.

- (a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.
- (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
- (c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in Article 20 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

- (d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days of the date the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. A respondent may not assert as a defense, counterclaim, or right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract, except with respect to any subrogation as provided for in Article 9.14.

8. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 9.19. For the purposes of this paragraph, an order includes a recommendation.

9. (a) In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties and to the non-disputing Party. Within 60 days after the date the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any such comments and issue its decision or award no later than 45 days after the date the 60-day comment period expires.

- (b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 10 or Annex 9-C.

10. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for the purposes of reviewing awards rendered by tribunals

constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties may negotiate an agreement that would have such appellate body review awards rendered under Article 9.29 in arbitrations commenced after the multilateral agreement enters into force between the Parties.

ARTICLE 9.24: TRANSPARENCY OF ARBITRAL PROCEEDINGS

1. Subject to paragraphs 2, 3, and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and make them available to the public:

- (a) the notice of intent;
- (b) the notice of arbitration;
- (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 9.23.2, 9.23.3 and Article 9.28;
- (d) minutes or transcripts of hearings of the tribunal, where available; and
- (e) orders, awards, and decisions of the tribunal.

2. Hearings shall be open to the public, unless the parties decide otherwise. Hearings shall be held in closed session when the submissions and arguments of a party contain confidential information. The tribunal may, in consultation with the parties, adopt appropriate logistical arrangements and procedures to ensure that hearings are not disrupted by the attendance of the public.

3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 21.2 (Essential Security) or Article 21.4 (Disclosure of Information).

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

- (a) Neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
- (b) Any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal; and
- (c) A disputing party shall, at the time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted

version shall be provided to the non-disputing Party and made public in accordance with paragraph 1.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

ARTICLE 9.25: GOVERNING LAW

1. Subject to paragraph 4, when a claim is submitted under Article 9.19.1, the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of disputing Party.

3. The Tribunal shall not have jurisdiction to determine the legality of a measure under the TRIPS Agreement or other multilateral intellectual property treaty.

4. A decision of the Joint Committee declaring its interpretation of a provision of this Agreement under Article 19.1 (Joint Committee) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

ARTICLE 9.26: INTERPRETATION OF ANNEXES

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint Committee on the issue. The Joint Committee shall submit in writing any decision declaring its interpretation under Article 19.1 (Joint Committee) to the tribunal within 60 days of delivery of the request.

2. A decision issued by the Joint Committee under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Joint Committee fails to issue such a decision within 60 days, the tribunal shall decide the issue.

ARTICLE 9.27: EXPERT REPORTS

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

ARTICLE 9.28: CONSOLIDATION

1. Where two or more claims have been submitted separately to arbitration under Article 9.19.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

- (a) one arbitrator appointed by agreement of the claimants;
- (b) one arbitrator appointed by the respondent; and
- (c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of either Party.

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of that disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of the non-disputing Party.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 9.19.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;

- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
- (c) instruct a tribunal previously established under Article 9.22 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:
 - (i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and
 - (ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 9.19.1 and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6, and shall specify in the request:

- (a) the name and address of the claimant;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 9.22 shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 9.22 be stayed, unless the latter tribunal has already adjourned its proceedings.

ARTICLE 9.29: AWARDS

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and

- (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.
- 2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.
- 3. A tribunal may not award punitive damages.
- 4. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
- 5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
- 6. A disputing party may not seek enforcement of a final award until:
 - (a) in the case of a final award made under the ICSID Convention,
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) revision or annulment proceedings have been completed; and
 - (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 9.19.4(d),
 - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or
 - (ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.
- 7. Each Party shall provide for the enforcement of an award in its territory.
- 8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the non-disputing Party, a panel shall be established under Article 20.7 (Establishment of Panel). The requesting Party may seek in such proceedings:
 - (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
 - (b) in accordance with Article 20.11 (Panel Report), a recommendation that the respondent abide by or comply with the final award.

9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 8.

10. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

ARTICLE 9.30: SERVICE OF DOCUMENTS

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 9-B.

Section C: Definitions

ARTICLE 9.31: DEFINITIONS

For the purposes of this Chapter:

Bilateral Investment Treaty means the Agreement between the Government of the State of Israel and the Government of the Republic of Korea for the Reciprocal Promotion and Protection of Investments, done at Jerusalem, February 7th, 1999;

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

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means an enterprise as defined in Article 1.7 (Definitions), and a branch of an enterprise

enterprise of a Party means an enterprise constituted or organized under the law of a Party, or a branch located in the territory of that Party, and carrying out substantial business activities there;

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

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

investment means every asset that an investor owns or controls, directly or indirectly, provided that the investment has been made in accordance with the laws and regulations of the Party in whose territory the investment is made, that has the characteristics of an

investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;⁸ and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.⁹

The provisions of this chapter relating to investments shall apply to the reinvestment of the returns of an investment, which shall be granted the same treatment granted to the original investment, if the reinvestment is effected in accordance with the legislation of the Party in whose territory the investment is made. A change in the form of the investment or a change in the form of the reinvestment shall not affect their character as investments within the meaning of this Chapter if the change is effected in accordance with the legislation of the Party in whose territory the investment is made.

investor of a Party means a Party or state enterprise thereof, or a natural person¹⁰ or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national of both Parties shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

legislation means the laws and regulations of a Party and the right to exercise the administrative powers conferred by those laws and regulations.

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

non-disputing Party means the Party that is not a party to an investment dispute;

⁸ The term "investment" does not include an order or judgement entered in a judicial or administrative action.

⁹ For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

¹⁰ For Israel, the term natural person includes a natural person who is a national or permanent resident of the state of Israel.

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

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

returns means the amounts yielded by an investment including, but not limited to: dividends, profits, sums received from the total or partial liquidation of an investment, interest, capital gains, royalties or fees;

Secretary-General means the Secretary-General of ICSID; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, as revised in 2010 or as subsequently agreed between the Parties.

ANNEX 9-A EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment.
2. Article 9.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article 9.7.1 is indirect expropriation, where an action or a series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - (a) The determination of whether an action or a series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers all relevant factors relating to the investment, including:
 - (i) the economic impact of the government action, although the fact that an action or a series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
 - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;¹¹ and
 - (iii) the character of the government action, including its objectives and context.¹²
 - (b) Except in rare circumstances, such as, for example, when an action or a series of actions is extremely severe or disproportionate in light of its purpose or effect, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate price stabilization (through, for example, measures to improve the housing conditions for low-income households), do not constitute indirect expropriations.¹³

¹¹ Whether an investor's investment-backed expectations are reasonable depends in part on the nature and extent of governmental regulation in the relevant sector. For example, an investor's expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.

¹² For Korea, a relevant consideration could include whether the investor or the investment bears a disproportionate burden such as a special sacrifice that exceeds what the investor or investment should be expected to endure for the public interest.

¹³ For greater certainty, the list of "legitimate public welfare objectives" in subparagraph (b) is not exhaustive.

ANNEX 9-B
SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B

Korea

Notices and other documents in disputes under Section B shall be served on Korea by delivery to:

Office of International Legal Affairs
Ministry of Justice of the Republic of Korea
Government Complex, Gwacheon
Korea

or to its successors.

Israel

Notices and other documents in disputes under Section B shall be served on Israel by delivery to:

Chief Economist Department
Ministry of Finance
Government Quarter, Jerusalem
Israel

or to its successors.

ANNEX 9-C
POSSIBILITY OF AN APPELLATE MECHANISM

Within three years after the date this Agreement enters into force, the Parties shall consider whether to establish a bilateral appellate body or similar mechanism to review awards rendered under Article 9.29 in arbitrations commenced after they establish the appellate body or similar mechanism.

ANNEX 9-D

TAXATION AND EXPROPRIATION

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

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

ANNEX 9-E
TRANSFERS

1. Nothing in this Chapter or Chapter 10 (Cross-Border Trade in Services) shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures pursuant to the Party's laws and regulations with regard to payments and capital movements:

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

2. The measures referred to in paragraph 1:

- (a) are in effect for a period not to exceed one year; however, if extremely exceptional circumstances arise such that the Party seeks to extend such measures, such Party will coordinate in advance with the other Party concerning the implementation of any proposed extension;
- (b) are not confiscatory;
- (c) do not constitute a dual or multiple exchange rate practice;
- (d) do not otherwise interfere with investors' ability to earn a market rate of return in the territory of the Party on any restricted assets;¹⁴
- (e) avoid unnecessary damage to the commercial, economic, or financial interests of the other Party;
- (f) are temporary and phased out progressively as the situation calling for imposition of such measures improves;
- (g) are applied in a manner consistent with Articles 9.3 and 10.2 (National Treatment) and Articles 9.4 and 10.3 (Most-Favoured-Nation Treatment) subject to the Schedules set out in Annex I and Annex II;
- (h) shall be promptly notified to the other Party;

¹⁴ For greater certainty, the term "restricted assets" in subparagraph (d) refers only to assets invested in the territory of a Party by an investor of the other Party that are restricted from being transferred out of the territory of a Party.

- (i) shall be consistent with the *Articles of Agreement of the IMF*, as may be amended; and
- (j) shall not restrict payments or transfers for current transactions, unless the imposition of such measures complies with the procedures stipulated in the *Articles of Agreement of the International Monetary Fund*.¹⁵

¹⁵ **Current transactions** shall have the meaning set forth in Article 30(d) of the *Articles of Agreement of the International Monetary Fund* and, for greater certainty, shall include interest pursuant to a loan or bond on any restricted amortization payments coming due during the period that controls on capital transactions are applied.

ANNEX 9-F
AMICUS CURIAE

The Tribunal may receive *amicus curiae* briefs from interested natural persons of a Party or legal persons, established in the territory of the Parties.

1. The briefs submitted to the Tribunal shall:
 - (a) be dated and signed by the interested person or its representative, and include the contact information of such person;
 - (b) disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission;
 - (c) be addressed to the chair person and shall be also communicated to the disputing parties in the language or languages chosen by the disputing parties; and
 - (d) be concise and in no case exceed 15 typed pages including any annexes.
2. The briefs shall be accompanied by a written declaration clearly indicating:
 - (a) a description of the interested persons who present them, including their place of incorporation in case of legal persons and address in case of natural persons, the nature of their activities, their sources of financing and, where relevant, documentation corroborating said information;
 - (b) whether the interested persons have any direct or indirect relation with any of the disputing parties as well as if they have received any financial or other type of contribution from any of the disputing parties, another government, natural persons or legal persons, generally or in the preparation of the brief; and
 - (c) a brief summary of how the interested persons brief would assist the tribunal in the determination of a factual or legal issue related to the proceeding.
3. The Tribunal shall not consider *amicus curiae* briefs which do not conform to the above rules.

ANNEX 9-G
SUBMISSION OF A CLAIM TO ARBITRATION

Korea

1. Notwithstanding Article 9.21.2, an investor of the State of Israel shall not submit to arbitration under Section B a claim that Korea has breached an obligation under Section A, if the investor has alleged that breach of an obligation under Section A in any proceedings before a court or administrative tribunal of Korea.

2. For greater certainty, where an investor of the State of Israel or an enterprise of Korea that is a juridical person that the investor owns or controls directly or indirectly makes an allegation that Korea has breached an obligation under Section A before a court or administrative tribunal of Korea, that election shall be final, and the investor may not thereafter allege that breach, in an arbitration under Section B.