[X]. Chapter Seven (Trade in Services, Establishment and Electronic Commerce) is hereby replaced with the following:

"CHAPTER SEVEN-B

INVESTMENT

SECTION A

SCOPE AND DEFINITIONS

ARTICLE 7B.1

Scope

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

   (a) investors of the other Party;

   (b) covered investments; and

   (c) with respect to Articles 7B.14 through 7B.16, all investments in the territory of that Party.

2. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:

   (a) the central, regional or local governments or authorities of that Party; and

   (b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party.[1]

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

4. With respect to the establishment, acquisition or expansion of an investment, Articles 7B.4 through 7B.6 shall not apply to any measure relating to activities carried out in the exercise of governmental authority.

[1] For greater certainty, governmental authority is delegated under the Party's law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

ARTICLE 7B.2

Definitions

For the purposes of this Chapter:

activities carried out in the exercise of governmental authority means activities carried out neither on a commercial basis nor in competition with one or more economic operators;

central level of government means:

(a) for Korea, the central level of government; and

(b) for the United Kingdom, His Majesty's Government of the United Kingdom of Great Britain and Northern Ireland;

Centre means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with the other Party. If that investor is a natural person, who is a permanent resident of a Party and a national of the other Party, that natural person may not submit a claim to arbitration against that latter Party;

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of the Upgrade Protocol or established, acquired, or expanded thereafter;

day means a calendar day;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the law of a Party that carries out substantial business activities in the territory of that Party;[2]

existing means in effect on the date the Upgrade Protocol enters into force;

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

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[2] Whether an enterprise carries out substantial business activities in the territory of a Party should be established on a case-by-case overall examination of the relevant circumstances of the enterprise in that Party.

good means any merchandise, product, article, or material;

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

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, 18 March 1965;

investment means every asset that an investor owns or controls, directly or indirectly, 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;[3]

(d) futures, options and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;

(f) intellectual property rights;

(g) licences, authorisations, permits and similar rights conferred pursuant to the Party's law;[4] and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action.

[3] Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

[4] Whether a particular type of licence, authorisation, permit or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

investor of a non-party means, with respect to a Party, an investor that attempts to make,[5] is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

investor of a Party means a Party, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party;

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or in any other form;

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

national means:

(a) for Korea, a Korean national or a permanent resident, under its laws; and

(b) for the United Kingdom, a British citizen or a permanent resident, under its laws and regulations;

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

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

regional level of government means:

(a) for the United Kingdom, Northern Ireland, Scotland or Wales; and

(b) for Korea, "regional level of government" is not applicable;

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

Secretary-General means the Secretary-General of ICSID;

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party;

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

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

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[5] For greater certainty, the Parties understand that, for the purposes of the definitions of "investor of a non-party" and "investor of a Party", an investor "attempts to make" an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.

ARTICLE 7B.3

Relation to Other Chapters

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

2. A requirement of a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Seven-D (Financial Services).

SECTION B

INVESTMENT LIBERALISATION AND PROTECTION

ARTICLE 7B.4

Market Access

1. The United Kingdom shall not adopt or maintain, with respect to market access through a covered investment in the form of an enterprise,[6] either on the basis of a regional subdivision or on the basis of its entire territory, a measure that:[7]

(a) imposes limitations on:

(i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive suppliers or the requirement of an economic needs test;

(ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

[6] For the purposes of this Article, the term "covered investment in the form of an enterprise" is understood to include the creation or maintenance of a branch or representative office.

[7] For greater certainty, paragraph 1 also covers measures adopted or maintained by the United Kingdom affecting the supply of a service in its territory by a covered investment, to the extent they fall under the scope of this Chapter.

(iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[8] or

(iv) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of an economic activity, in the form of numerical quotas or the requirement of an economic needs test;

(b) restricts or requires the carrying out of an economic activity to or by specific types of legal entity or a joint venture.

2. Korea's obligations and specific commitments, with respect to market access through a covered investment in the form of an enterprise, are governed by Annex 7B-E and Appendix 7B-E.1.[9]

ARTICLE 7B.5

National Treatment[10]

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

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

3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

[8] Subparagraphs (a)(i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural good.

[9] Paragraph 2 does not apply to measures adopted or maintained by Korea affecting the supply of a service in its territory by a covered investment. With regards to market access, measures adopted or maintained by Korea affecting the supply of a service in its territory by a covered investment are governed by Article 7A.5 (Market Access) pursuant to Article 7A.1.2(a) (Scope).

[10] For greater certainty, whether treatment is accorded in "like circumstances" under Articles 7B.5 or 7B.6 depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

ARTICLE 7B.6

Most Favoured Nation Treatment[11, 12]

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of any non-party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

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

ARTICLE 7B.7

Minimum Standard of Treatment[13]

1. Each Party shall accord to covered investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. 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 by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under 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.

[11] For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, such as those included in Section C.

[12] For greater certainty, the existence of substantive provisions in other international agreements concluded by a Party with a non-party do not in themselves constitute the "treatment" referred to in this Article. Measures of a Party pursuant to those provisions may constitute that treatment and thus give rise to a breach of this Article.

[13] Article 7B.7 shall be interpreted in accordance with Annex 7B-A.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

ARTICLE 7B.8

Treatment in Case of Armed Conflict or Civil Strife

1. Notwithstanding Article 7B.12.6(b), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to war or other armed conflict, or revolt, insurrection, riot, or other civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in a situation 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 required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation or both, as appropriate, for that loss.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 7B.5 but for Article 7B.12.6(b).

ARTICLE 7B.9

Expropriation and Compensation[14]

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

(a) for a public purpose;

(b) in a non-discriminatory manner;

[14] Article 7B.9 shall be interpreted in accordance with Annex 7B-B.

(c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and

(d) in accordance with due process of law.

2. Compensation shall:

(a) be paid without delay;

(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 realisable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid 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 paid, 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. This Article does not apply to the issuance of compulsory licences 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 the issuance, revocation, limitation or creation is consistent with Chapter Ten (Intellectual Property) and the TRIPS Agreement.[15]

6. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant:

(a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or

[15] For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

(b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant, standing alone,

does not constitute an expropriation.

ARTICLE 7B.10

Transfers

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;

(d) payments made under a contract, including a loan agreement;

(e) earnings and other remuneration of foreign personnel working in connection with a covered investment;

(f) payments made pursuant to Articles 7B.8 and 7B.9; and

(g) 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.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. A Party shall not require its investors to transfer, or penalise its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, covered investments in the territory of the other Party.

5. Notwithstanding paragraphs 1 through 4, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws[16] relating to:

[16] For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programmes.

(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) 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 7B.11

Subrogation

If a Party, or any agency, institution, statutory body or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

ARTICLE 7B.12

Non-Conforming Measures

1. Articles 7B.4.1, 7B.5 and 7B.6 do not apply to:

(a) any existing non-conforming measure that is maintained by a Party, or, in the case of Article 7B.4.1, by the United Kingdom, at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government;[17]

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

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

(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 the amendment, with Articles 7B.4.1, 7B.5 or 7B.6.

2. Articles 7B.4.1, 7B.5 and 7B.6 do not apply to any measure that a Party, or, in the case of Article 7B.4.1, the United Kingdom, adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of the Upgrade Protocol 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 in existence at the time the measure becomes effective.

4. Article 7B.5 shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by Article 3 of the TRIPS Agreement.

5. Article 7B.6 shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by Article 4 of the TRIPS Agreement.

6. Articles 7B.4.1, 7B.5, and 7B.6 shall not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, or, in the case of Article 7B.4.1, by the United Kingdom, including government supported loans, guarantees and insurance.

ARTICLE 7B.13

Denial of Benefits

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of that investor if a person of a non-party owns or controls the enterprise and the denying Party 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.

ARTICLE 7B.14

Regulatory Measures

1. For the purposes of this Chapter, each Party reaffirms its right to regulate to achieve legitimate public welfare objectives, such as health, safety and the protection of the environment.[18]

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

ARTICLE 7B.15

Investment and the Environment

1. The Parties affirm that investments should be established and operated in a manner sensitive to the environment. Accordingly, each Party shall strive to promote investments and investment practices that contribute to environmental protection.

2. The Parties recognise the right of each Party to set its environmental priorities and levels of environmental protection, and to adopt or modify its law and policies accordingly in a manner consistent with this Chapter.

3. Each Party reaffirms its obligations under the multilateral environmental agreements to which it is a party.

4. The Parties recognise that it is inappropriate to encourage investment by weakening or reducing the standards of environmental protection enshrined in their domestic law.

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[18] For greater certainty, this also includes the adoption or enforcement of measures imposed pursuant to its laws or regulations on the imposition of sanctions. The relevant laws and regulations are:

(a) for the United Kingdom, the *Sanctions and Anti-Money Laundering Act 2018* and its subordinate regulations, including as amended or their successor laws and regulations, and equivalent laws or regulations that apply to or in the territories listed in Article 15.15 (Territorial Application) for whose international relations the United Kingdom is responsible; and

(b) for Korea, the laws and their subordinate regulations governing the imposition of sanctions, including the *Foreign Trade Act*, *Foreign Exchange Transactions Act*, *Act on Reporting and Using Specified Financial Transaction Information*, *Inter-Korean Exchange and Cooperation Act*, and *Act on Prohibition Against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction*, as amended or replaced.

ARTICLE 7B.16

Corporate Social Responsibility

The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.

ARTICLE 7B.17

Special Formalities and Information Requirements

1. Nothing in Article 7B.5 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 under 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 7B.5 and 7B.6, a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or 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 7B.18

Security Exceptions

1. Notwithstanding Article 7B.3, nothing in this Chapter shall be construed:

(a) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) to preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or for the protection of its own essential security interests.

ARTICLE 7B.19

General Exceptions

1. Notwithstanding Article 7B.3, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investors or investments, or a disguised restriction on international investment, nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals or maintain public order;[19]

(b) necessary to protect human, animal or plant life or health;

(c) imposed for the protection of national treasures of artistic, historic or archaeological value;

(d) 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 services 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; or

(e) relating to the conservation of exhaustible natural resources.

2. The Parties understand that the measures referred to in:

(a) paragraph 1(b) include environmental measures necessary to protect human, animal or plant life or health; and

(b) paragraph 1(e) applies to measures relating to the conservation of living and non-living exhaustible natural resources.

[19] The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

SECTION C

INVESTOR-STATE DISPUTE SETTLEMENT[20]

ARTICLE 7B.20

Consultation and Negotiation

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

2. The claimant shall deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue.

3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

ARTICLE 7B.21

Submission of a Claim to Arbitration

1. Without prejudice to the rights and obligations of a Party under Chapter Fourteen (Dispute Settlement), if an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 7B.20:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:

(i) that the respondent has breached:

(A) an obligation under Articles 7B.5, 7B.6 or 7B.10, with respect to the management, conduct, operation, sale or other disposition, of its covered investment; or

(B) any other obligation under Section B, except for Article 7B.4; and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:

[20] Section C (Investor-State Dispute Settlement) is subject to Annex 7B-C.

(i) that the respondent has breached:

(A) an obligation under Articles 7B.5, 7B.6 or 7B.10, with respect to the management, conduct, operation, sale or other disposition, of its covered investment; or

(B) any other obligation under Section B, except for Article 7B.4; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. At least 90 days before submitting any claim to arbitration under this Section, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (notice of intent). The notice shall specify:

(a) the name and address of the claimant and, if a claim is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;

(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.

3. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:

(a) the ICSID Convention and the ICSID Arbitration Rules, provided that both the respondent and the non-disputing Party are parties to the ICSID Convention;

(b) the ICSID Additional Facility Rules and the ICSID Additional Facility Arbitration Rules, provided that either the respondent or the non-disputing Party is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.

4. 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 the ICSID Convention is received by the Secretary-General;

(b) referred to in the ICSID Additional Facility Arbitration Rules is received by the Secretary-General;

(c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or(d) referred to under any arbitral institution or arbitration rules selected under paragraph 3(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 arbitration rules.

5. The arbitration rules applicable under paragraph 3 that are in effect on the date the claim or claims were submitted to arbitration under this Section shall govern the arbitration except to the extent modified by this Agreement.

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

(a) the name of the arbitrator that the claimant appoints; or

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

ARTICLE 7B.22

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 be deemed to satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) 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 7B.23

Conditions and Limitations on Consent of Each Party

1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 7B.21.1 and knowledge that the claimant (for claims brought under Article 7B.21.1(a)) or the enterprise (for claims brought under Article 7B.21.1(b)) has incurred loss or damage.

2. No claim shall 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; and

(b) the notice of arbitration is accompanied:

(i) for claims submitted to arbitration under Article 7B.21.1(a), by the claimant's written waiver; and

(ii) for claims submitted to arbitration under Article 7B.21.1(b), by the claimant's and the enterprise's written waivers,

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 7B.21.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 7B.21.1(a)) and the claimant or the enterprise (for claims brought under Article 7B.21.1(b)) 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 or the enterprise's rights and interests during the pendency of the arbitration.

4. An investor of a Party may not initiate or continue a claim under this Section if a claim involving the same measure or measures alleged to constitute a breach under Article 7B.21 and arising from the same events or circumstances is initiated or continued under an agreement between the respondent and a non-party by:

(a) a person of a non-party that owns or controls, directly or indirectly, the claimant; or

(b) a person of a non-party that is owned or controlled, directly or indirectly, by the claimant.

5. Notwithstanding paragraph 4, the claim may proceed if the respondent agrees that the claim may proceed, or if the claimant and the person of a non-Party agree to consolidate the claims under the respective agreements before a tribunal constituted under this Section.

ARTICLE 7B.24

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.

3. If a tribunal has not been constituted within a period of 90 days after the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in the Secretary-General's 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 agree otherwise.

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

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Arbitration Rules;

(b) a claimant referred to in Article 7B.21.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Arbitration Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 7B.21.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Arbitration Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

5. Arbitrators appointed to a tribunal for claims submitted under this Section shall:

(a) have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international investment or international trade agreements;

(b) be independent, not be affiliated with any government nor take instructions from any organisation or government regarding the dispute;

(c) comply with internationally recognised standards or guidelines regarding direct or indirect conflicts of interest, such as the International Bar Association Guidelines on Conflicts of Interest in International Arbitration; and

(d) shall not, for the duration of the proceedings, act as counsel or as party-appointed expert or witness in any pending or new arbitration under this Section.

ARTICLE 7B.25

Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 7B.21.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place 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.

3. After consultation with the disputing parties, the tribunal may accept and consider written *amicus curiae* submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; 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. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, 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 favour of the claimant may be made under Article 7B.31 or that a claim is manifestly without legal merit.

(a) An objection under this paragraph 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 that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 7B.31, the tribunal shall assume to be true the 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 the relevant article 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, including an objection to jurisdiction, 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 after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, 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 the tribunal decides a respondent's objection under paragraph 4 or 5, it 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. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 7B.7, the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.

8. A respondent may not assert as a defence, counterclaim, 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 under an insurance or guarantee contract, except with respect to any subrogation as provided for in Article 7B.11.

9. 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 7B.21. For the purposes of this paragraph, an order includes a recommendation.

10. 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. 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 not later than 45 days after the date the 60-day comment period expires.

ARTICLE 7B.26

Governing Law

1. Subject to paragraph 2, when a claim is submitted under Article 7B.21, the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.[21]

2. A decision of the Trade Committee on the interpretation of a provision of this Agreement under Article 15.1.4(d) (Trade Committee) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

ARTICLE 7B.27

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;[22]

(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 Articles 7B.25.2, 7B.25.3 and 7B.30;

(d) minutes or transcripts of hearings of the tribunal, if available; and

(e) orders, awards and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.

[21] For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent when it is relevant to the claim as a matter of fact.

[22] In the case of the notice of intent, the respondent shall promptly transmit it to the non-disputing Party and make it available to the public only if, after receiving the claimant's notice of intent, the claimant submits the notice of arbitration and the respondent receives it.

3. Nothing in this Section, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 7B.18 or 15.9*bis* (Disclosure of Information).[23]

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

(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information if 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 according to any schedule set by the tribunal;

(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and

(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:

(i) withdraw all or part of its submission containing that information; or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).

In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavour to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.

[23] For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 7B.18 or 15.9*bis* (Disclosure of Information), the respondent may still withhold that information from disclosure to the public.

6. When a claim is submitted to arbitration under the UNCITRAL Arbitration Rules in accordance with Article 7B.21.3(c), notwithstanding any provision to the contrary in the UNCITRAL Arbitration Rules, the transparency of the arbitral proceedings will only be subject to paragraphs 1 to 5, unless the disputing parties agree otherwise.

ARTICLE 7B.28

Interpretation of Annexes

1. If a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in its Schedule to Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Trade Committee on the issue. The Trade Committee shall submit in writing any decision on its interpretation under Article 15.1.4(d) (Trade Committee) to the tribunal within 90 days of delivery of the request.

2. A decision issued by the Trade 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 Trade Committee fails to issue such a decision within 90 days, the tribunal shall decide the issue.

ARTICLE 7B.29

Expert Reports

Without prejudice to the appointment of other kinds of experts when authorised by the applicable arbitration rules, a tribunal, on 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 on specific matters within the scope of the dispute, subject to any terms and conditions that the disputing parties may agree.

ARTICLE 7B.30

Consolidation

1. If two or more claims have been submitted separately to arbitration under Article 7B.21.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, a 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 a period of 30 days after the date of 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 agree otherwise, 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 that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.

5. If, within a period of 60 days after the date when 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 request of any disputing party sought to be covered by the order, shall appoint, in the Secretary-General discretion, the arbitrator or arbitrators not yet appointed.

6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 7B.21.1 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 7B.24 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. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 7B.21.1 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 7B.24 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 the 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 7B.24 be stayed, unless the latter tribunal has already adjourned its proceedings.

ARTICLE 7B.31

Awards

1. When a tribunal makes a final award, 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. For greater certainty, if a claimant submits a claim to arbitration under Article 7B.21.1(a), it may recover only for loss or damage that it has incurred in its capacity as a claimant.

3.
(a) The costs and attorney's fees shall in principle be borne by the unsuccessful disputing party. However, the tribunal may apportion each of such costs and attorney's fees between the disputing parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

(b) The tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a disputing party may have to pay to the other disputing party as a result of the decision on allocation of the costs and attorney's fees.

4. Subject to paragraph 1, if a claim is submitted to arbitration under Article 7B.21.1(b) and an award is made in favour of the enterprise:

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.

5. A tribunal shall not award punitive damages.

6. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

7. Subject to paragraph 8 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

8. A disputing party shall 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 7B.21.3(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.

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

10. 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 14.5 (Establishment of the Arbitration 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 14.6 (Interim Panel Report), a recommendation that the respondent abide by or comply with the final award.

11. 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 10.

12. 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 7B.32

Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 7B-D. A Party should endeavour to promptly make publicly available and notify the other Party of any change to the place referred to in that Annex.

SECTION D

TERMINATION OF EXISTING BILATERAL INVESTMENT TREATY

ARTICLE 7B.33

Termination of Existing Bilateral Investment Treaty

1. Subject to paragraph 2, the Parties agree that the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Korea for the Promotion and Protection of Investments, done at Seoul on 4 March 1976 (hereinafter referred to as "1976 BIT"), as well as all rights and obligations arising thereunder, shall be terminated and shall cease to have effect on the date of entry into force of the Upgrade Protocol.[24]

2. Any investment made pursuant to the 1976 BIT before the date of entry into force of the Upgrade Protocol shall continue to be governed by the 1976 BIT with respect to any matter arising while the 1976 BIT was in force. An investor may submit a claim to arbitration under the 1976 BIT, regarding any legal dispute arising while the 1976 BIT was in force, only in accordance with the rules and procedures set out therein, and only if such claim is submitted[25] within three years from the date of entry into force of the Upgrade Protocol.

[24] For greater certainty, this includes in relation to territories for whose international relations the Government of the United Kingdom is responsible to which the 1976 BIT was extended in accordance with Article 11 of the 1976 BIT.

[25] For the purposes of the requirement that such claim must be submitted within three years from the date of entry into force of the Upgrade Protocol, "submitted" means the date on which a request for conciliation or a request for arbitration, initiating proceedings under Articles 28 or 36 of the ICSID Convention, is filed.

ANNEX 7B-A

CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 7B.7 and Annex 7B-B results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 7B.7, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

ANNEX 7B-B

EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or 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 7B.9.1 addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 7B.9.1 is indirect expropriation, where an action or 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 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;[26] and

(iii) the character of the government action.

(b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health,[27] safety and the environment, do not constitute indirect expropriations, except in rare circumstances.

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

[27] For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances and blood and blood-related products.

<u>**ANNEX 7B-C**</u>

INVESTMENT SCREENING

1. A decision or requirement by the United Kingdom under the *National Security and Investment Act 2021* or its subordinate regulations, including as amended or their successor laws or regulations, or on public interest grounds under Part 3 of the *Enterprise Act 2002* or its subordinate regulations, including as amended or their successor laws or regulations, shall not be subject to dispute settlement under Section C or Chapter Fourteen (Dispute Settlement). For greater certainty, decisions or requirements on public interest grounds under Part 3 of the *Enterprise Act 2002* includes decisions or requirements under Chapter 3A of the *Enterprise Act 2002.*

2. A decision or requirement by the Republic of Korea under Chapters I, II and VIII of the *Foreign Investment Promotion Act (Law No. 21065, 1 October 2025)* or their subordinate regulations, including as amended or their successor laws or regulations, Chapters III and VI of the *Act on Prevention of Divulgence and Protection of Industrial Technology (Law No. 21065, 1 October 2025)* or their subordinate regulations, including as amended or their successor laws or regulations, or Chapters III and VIII of the *Act on Special Measures for Strengthening the Competitiveness of, and Protecting National High-Tech Strategic Industries (Law No. 21065, 1 October 2025)*, or their subordinate regulations, including as amended or their successor laws or regulations, to the extent they relate to investment screening, shall not be subject to dispute settlement under Section C or Chapter Fourteen (Dispute Settlement).

ANNEX 7B-D

SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION C

Korea

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

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

United Kingdom

Notices and other documents in disputes under Section C shall be served on the United Kingdom by delivery to:

The Permanent Secretary's Office
Department for Business and Trade
Old Admiralty Building
London SW1A 2DY
United Kingdom

ANNEX 7B-E [1, 2]

KOREA

MARKET ACCESS IN NON-SERVICE INVESTMENT SECTORS

Definitions

1. For the purpose of this Annex and Appendix 7B-E.1:

activities carried out in the exercise of governmental authority means activities carried out neither on a commercial basis nor in competition with one or more economic operators;

central level of government means Korea's central level of government;

economic activity includes any activities of an economic nature except activities carried out in the exercise of governmental authority, i.e. activities carried out neither on a commercial basis nor in competition with one or more economic operators;

establishment means:

(a) the constitution, acquisition or maintenance of a juridical person;[3] or

(b) the creation or maintenance of a branch or representative office,

within the territory of Korea for the purpose of performing an economic activity;

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

investor means any person that seeks to perform or performs an economic activity through setting up an establishment;[4]

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[1] Articles 7B.1 and 7B.2 shall not apply to this Annex and Appendix 7B-E.1.

[2] Nothing in this Annex and Appendix 7B-E.1 is subject to investor-state dispute settlement under Section C.

[3] The terms "constitution" and "acquisition" of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

[4] Where the economic activity is not performed directly by a juridical person but through other forms of establishment such as a branch or a representative office, the investor including the juridical person shall, nonetheless, through such establishment, be accorded the treatment provided for investors under this Annex and Appendix 7B-E.1. Such treatment shall be extended to the establishment through which the economic activity is performed and need not be extended to any other parts of the investor located outside the territory where the economic activity is performed.

juridical person means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

juridical person of the United Kingdom means a juridical person constituted or organised under the law of the United Kingdom that carries out substantial business activities in the territory of the United Kingdom;[5]

measure means any measure by Korea, whether in the form of a law, regulation, rule, procedure, decision, administrative action or in any other form;

national means:

(a) for Korea, a Korean national or a permanent resident, under its laws; and

(b) for the United Kingdom, a British citizen or a permanent resident, under its laws and regulations;

natural person means a national of Korea or of the United Kingdom;

person means either a natural person or a juridical person; and

state enterprise means an enterprise that is owned, or controlled through ownership interests, by a Party.

Scope

2. With a view to improving the investment environment, and in particular, the conditions of establishment between the Parties, this Annex and Appendix 7B-E.1 apply to measures by Korea affecting establishment in all economic activities, with the exception of:

(a) the mining, manufacturing and processing[6] of nuclear materials; and

(b) the production of, or trade in, arms, munitions and war material.[7]

3. Korea's obligations under this Annex and Appendix 7B-E.1 shall apply to measures adopted or maintained by:

(a) the central or local governments or authorities of Korea; and

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[5] Whether an enterprise carries out substantial business activities in the territory of the United Kingdom should be established on a case-by-case overall examination of the relevant circumstances of the enterprise in the United Kingdom.

[6] For greater certainty, the processing of nuclear materials covers all the activities included in the International Standard Industrial Classification of all Economic Activities as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N°4, ISIC REV 3.1, 2002 code 2330.

[7] "War material" is limited to any product which is solely intended and made for military use in connection with the conduct of war or defence activities.

(b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central or local governments or authorities of Korea.[8]

4. Nothing in this Annex and Appendix 7B-E.1 shall be construed to impose any obligation with respect to government procurement.

5. This Annex and Appendix 7B-E.1 shall not apply to subsidies or grants provided by Korea, including government-supported loans, guarantees and insurance.

6. This Annex and Appendix 7B-E.1 shall not apply to any measure relating to activities carried out in the exercise of governmental authority.

7. For greater certainty, this Annex and Appendix 7B-E.1 does not bind Korea in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Upgrade Protocol.

Market Access

8. With respect to market access through establishment, Korea shall accord to establishments and investors of the United Kingdom treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Appendix 7B-E.1.

9. In sectors where market access commitments are undertaken, the measures which Korea shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Appendix 7B-E.1, are defined as:

(a) limitations on the number of establishments whether in the form of numerical quotas, monopolies, exclusive rights or other establishment requirements such as economic needs test;

(b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[9]

(d) measures which restrict or require specific types of legal entity or joint ventures through which an investor of the United Kingdom may perform an economic activity; and

(e) limitations on the total number of natural persons, that may be employed in a particular sector or that an investor may employ and who are necessary

[8] For greater certainty, governmental authority is delegated under Korea's law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

[9] Subparagraphs (i) through (iii) do not cover measures taken in order to limit the production of an agricultural product.

for, and directly related to, the performance of an economic activity in the form of numerical quotas or the requirement of an economic needs test.

Lists of Commitments

10. The sectors liberalised by Korea pursuant to this Annex and, by means of reservations, the market access limitations applicable to establishments and investors of the United Kingdom in those sectors, are set out in the lists of commitments included in Appendix 7B-E.1.

APPENDIX 7B-E.1

KOREA

SPECIFIC COMMITMENTS ON MARKET ACCESS IN NON-SERVICES SECTORS

EXPLANATORY NOTES

1. The list of commitments below (hereinafter referred to as “this Appendix”) indicates, the economic activities liberalised pursuant to paragraph 10 of the Annex 7B-E and, by means of reservations, the market access limitations that apply to establishments and investors of the United Kingdom in those activities. This Appendix is composed of the following elements:

(a) the first column, indicating the sector or sub-sector in which the commitment is undertaken by Korea, and the scope of liberalisation to which the reservations apply; and

(b) the second column, describing the applicable reservations to paragraphs 8 and 9 of Annex 7B-E in the sector or sub-sector indicated in first column.

2. Establishment in sectors or sub-sectors covered by this Agreement and not mentioned in this Appendix is not committed7B-E.

3. Establishment in service sectors, which is already covered in Korea’s reservation lists in Annex I and Annex II, is not covered in this Appendix.

4. Notwithstanding paragraphs 8 and 9 of Annex 7B-E, non-discriminatory requirements as regards the types of legal form of an establishment do not need to be specified in this Appendix in order to be maintained or adopted by Korea.

5. In identifying individual sectors and sub-sectors: **ISIC rev 3.1** means the International Standard Industrial Classification of all Economic Activities as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 4, *ISIC REV* 3.1, 2002.

6. This Appendix does not include measures relating to qualification requirements and procedures, technical standards and licensing requirements when they do not constitute a market access limitation within the meaning of paragraphs 8 and 9 of Annex 7B-E. Those measures (e.g. the need to obtain a license, universal service obligations, the need to obtain recognition of qualifications in regulated sectors, the need to pass specific examinations, including language examinations, and non-discriminatory requirements that certain activities may not be carried out in environmental protected areas or areas of particular historic and artistic interest), even if not listed, apply in any case to establishments and investors of the United Kingdom.

7. This Appendix does not include measures concerning subsidies or grants provided by Korea, including government-supported loans, guarantees and insurance.

8. For greater certainty, the specific commitments applying to the entry and temporary stay of business persons are set out in Annex 7C-A (Korea's Schedule of Specific commitments on Entry and Temporary Stay of Business Persons).

Sector or Sub-sector	**Limitations on Market Access**
ALL SECTORS INCLUDED IN THIS APPENDIX	**<u>Acquisition of Land</u>** Unbound for measures with respect to the acquisition of land by foreign persons, except that a juridical person shall continue to be permitted to acquire land where the juridical person: (1) is not deemed foreign pursuant to Article 2 of the *Act on Report on Real Estate Transactions*, and (2) is deemed foreign under the *Act on Report on Real Estate Transactions* or is a branch of a foreign juridical person, subject to approval or notification in accordance with the *Act on Report on Real Estate Transactions*, if the land is to be used for any of the following legitimate business purposes: (a) ordinary business activities; (b) housing for senior management; or (c) fulfilling land-holding requirements stipulated by pertinent laws. Unbound for measures with respect to the acquisition of farmland by foreign persons.

Sector or Sub-sector	Limitations on Market Access
	<u>Investment</u> Unbound for measures with respect to the transfer or disposition of equity interests or assets held by state enterprises or governmental authorities.[1, 2] A foreigner who intends to make a foreign direct investment shall, in advance, make report to the Minister of Trade, Industry and Resources in accordance with the Ordinance of the Minister of Trade, Industry and Resources. The same limitation shall apply to any modification of matters, such as the amount of foreign direct investment and the ratio thereof. Unbound for measures with respect to investments in the defence industry. Foreign investors who intend to acquire the outstanding shares of defence industry other than the newly issued ones shall obtain prior permission from the Minister of Trade, Industry and Resources.
	<u>Disadvantaged Groups</u> Unbound for measures that accords rights or preferences to socially or economically disadvantaged groups, such as the disabled, persons who have rendered distinguished services to the state, and ethnic minorities.[3]

[1] This reservation does not apply to former private enterprises that are owned by the state as a result of corporate reorganisation processes.

[2] For purposes of this reservation, “state enterprise” shall include any enterprise created for the sole purpose of selling or disposing of equity interests or assets of other state enterprises or governmental authorities.

[3] The measures for companies employing disadvantaged groups are applied in a non-discriminatory way.

Sector or Sub-sector	Limitations on Market Access
ALL SECTORS INCLUDED IN THIS APPENDIX	**<u>State-Owned National Electronic/Information System</u>** Unbound for measures affecting the administration and operation of any state-owned electronic information system that contains proprietary government information or information gathered pursuant to the regulatory functions and powers of the government. This reservation does not apply to payment and settlement systems related to financial services.
	<u>Firearms, Swords, Explosives, Etc.</u> Unbound for measures with respect to the firearms, swords, and explosives sectors, including the manufacture, use, sale, storage, transport, import, export, and possession of firearms, swords, or explosives.
	<u>Atomic Energy</u> Unbound for measures with respect to the atomic energy industry.
	<u>Electric Power Industry</u> Unbound for measures with respect to electric power generation, transmission, distribution, and sale. Any such measure shall not decrease the level of aggregate foreign ownership permitted in the electric power industry as listed under sector D (a) a) (ISIC rev 3.1: 401).

Sector or Sub-sector	Limitations on Market Access
	<u>Gas Industry</u> Unbound for measures with respect to the import and wholesale distribution of natural gas and the operation of terminals and the national high pressure pipeline network. Any such measure shall not decrease the level of aggregate foreign ownership permitted in the gas industry as listed under sector D (a) b) (ISIC rev 3.1: 402).
A. AGRICULTURE, HUNTING, FORESTRY	
(a) <u>Agriculture, hunting and related service activities</u> (ISIC rev 3.1: 011,012,013,015)	Unbound for rice or barley farming.
(b) <u>Forestry and logging</u> (ISIC rev 3.1: 02)	None
B. MINING AND QUARRYING	

Sector or Sub-sector	Limitations on Market Access
(a) Mining of coal and lignite; extraction of peat (ISIC rev 3.1: 10)	None
(b) Extraction of crude petroleum and natural gas; service activities incidental to oil and gas extraction, excluding surveying (ISIC rev 3.1: 11)	None, under the following conditions: (a) Submarine petroleum[4] extraction rights can be held only by the government; and (b) These rights may be transferred to a licensee for a limited period, provided the applicant meets non-discriminatory and objectively assessed qualification requirements.
(d) Mining of metal ores (ISIC rev 3.1: 13)	None
(e) Other mining and quarrying (ISIC rev 3.1: 14)	None

[4] "Petroleum" includes natural pitch and inflammable natural gas.

Sector or Sub-sector	Limitations on Market Access
C. MANUFACTURING	
(a) Manufacture of food products and beverages (ISIC rev 3.1: 15 excluding grain polishing)	None
(b) Manufacture of tobacco products (ISIC rev 3.1: 16)	None
(c) Manufacture of textiles (ISIC rev 3.1: 17)	None
(d) Manufacture of wearing apparel; dressing and dyeing of fur (ISIC rev 3.1: 18)	None

Sector or Sub-sector	**Limitations on Market Access**
(e) Tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear (ISIC rev 3.1: 19)	None
(f) Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials (ISIC rev 3.1: 20)	None
(g) Manufacture of paper and paper products (ISIC rev 3.1: 21)	None

Sector or Sub-sector	Limitations on Market Access
(h) Publishing, printing and reproduction of recorded media (ISIC rev3.1: 22, excluding publishing and printing on a fee or contract basis)	None
(i) Manufacture of coke oven products (ISIC rev 3.1: 231)	None
(j) Manufacture of refined petroleum products (ISIC rev 3.1: 232)	None

Sector or Sub-sector	Limitations on Market Access
(l) Manufacture of chemicals and chemical products	
a) Manufacturing of basic chemicals (ISIC rev 3.1 : 241 excluding manufacturing of radioisotope)	None
b) Manufacturing of other chemical products (ISIC rev 3.1 : 242)	None
c) Manufacturing of man made fibres (ISIC rev 3.1 : 243)	None
(m) Manufacture of rubber and plastics products (ISIC rev 3.1: 25)	None

Sector or Sub-sector	Limitations on Market Access
(n) Manufacture of other non-metallic mineral products (ISIC rev 3.1: 26)	None
(o) Manufacture of basic metals (ISIC rev 3.1: 27)	None
(p) Manufacture of fabricated metal products, except machinery and equipment (ISIC rev 3.1: 28 excluding manufacturing of nuclear reactor)	None

Sector or Sub-sector	Limitations on Market Access
(q) Manufacture of machinery and equipment n.e.c. a) Manufacture of general purpose machinery (ISIC rev 3.1: 291) b) Manufacture of special purpose machinery other than weapons and munitions (ISIC rev 3.1: 2921, 2922, 2923, 2924, 2925, 2926, 2929) c) Manufacture of domestic appliances n.e.c. (ISIC rev 3.1: 293)	None None None
(r) Manufacture of office, accounting and computing machinery (ISIC rev 3.1: 30)	None

Sector or Sub-sector	Limitations on Market Access
(s) Manufacture of electrical machinery and apparatus n.e.c. (ISIC rev 3.1: 31)	None
(t) Manufacture of radio, television and communication equipment and apparatus (ISIC rev 3.1: 32)	None
(u) Manufacture of medical, precision and optical instruments, watches and clocks (ISIC rev 3.1: 33 excluding manufacturing of radiation generation facilities)	None

Sector or Sub-sector	Limitations on Market Access
(v) Manufacture of motor vehicles, trailers and semi-trailers (ISIC rev 3.1: 34)	None
(w) Manufacture of other (non-military) transport equipment (ISIC rev 3.1: 35 excluding manufacturing of warships, warplanes and other transport equipment for military use)	None
(x) Manufacture of furniture; manufacturing n.e.c. (ISIC rev 3.1: 36)	None
(y) Recycling (ISIC rev 3.1: 37)	None

Sector or Sub-sector	Limitations on Market Access
D. ELECTRICITY, GAS AND WATER SUPPLY	
(a) Electricity, gas, steam and hot water supply a) Energy industry - electric power generation other than nuclear power generation; electric power transmission, distribution and sales (ISIC rev 3.1: 401)	The aggregate foreign share of power generation facilities, including cogeneration facilities of heat and power for the district heating system may not exceed 30 percent of the total facilities in the territory of Korea. A single shareholder's share of Korea Electric Power Corporation (KEPCO)'s equity interests may not exceed 3 per cent.
(b) Manufacture of gas; distribution of gaseous fuels through mains (ISIC rev 3.1: 402)	A single shareholder's share of Korea Gas Corporation (KOGAS)'s equity interests may not exceed 15 per cent.

Sector or Sub-sector	Limitations on Market Access
(c) Steam and hot water supply (ISIC rev 3.1: 403)	None

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