

CHAPTER 6

INVESTMENT

ARTICLE 6.1: DEFINITIONS

For the purposes of this Chapter:

1. **investment** means every kind of asset and includes:-
 - (a) movable and immovable property and other property rights such as mortgage, liens or pledges;
 - (b) shares, stocks, debentures and similar interests in companies;
 - (c) rights to money or to any performance under contract having a financial value;
 - (d) intellectual property rights
 - (e) goodwill, technical processes and know-how as conferred by law or under contract;
 - (f) business concessions conferred by law or under contract, including concessions to search for, extract or exploit oil and other minerals and other natural resources.
2. For the purposes of paragraph 1, returns that are invested shall be treated as investments and any alteration in the form in which assets are invested or reinvested shall not affect their character as investments.
3. **returns** means monetary returns yielded by or derived from an investment including any profits, interest, capital gains, dividends, royalties, fees, or payments in connection with intellectual property rights.
4. **investor of a Party** means:
 - (a) an enterprise of a Party; or
 - (b) a national of a Partythat has made or is in the process of making or is seeking to make an investment;
5. **national** means any natural person possessing the citizenship of a Party in accordance with its laws.

6. **enterprise** means any entity that is incorporated, constituted, set up or otherwise duly organized under the law of a Party⁶⁻¹, whether or not for profit, whether privately or otherwise owned, with limited or unlimited liability, including any corporation, company, association, partnership, trust, joint venture, co-operatives or sole proprietorship. An enterprise shall not include any legal entity, which is established and located in the territory of a Party with negligible or nil business operations or with no real and continuous business activities carried out in the territory of that Party.

7. **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form, and includes measures taken by:

- (a) central, regional, or local governments and authorities; and
- (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

ARTICLE 6.2: SCOPE OF APPLICATION

1. This Chapter shall apply to investors of a Party, and to their investments in the territory of the other Party whether made before or after the entry into force of this Agreement.

2. An enterprise duly organized under the law of a Party shall not be treated as an investor of the other Party, but any investments in that enterprise by investors of that other Party shall be covered under this Chapter.

3. The provisions of this Chapter as specified in Article 7.24 shall apply *mutatis mutandis* to the measures affecting the supply of services by a service provider of a Party through commercial presence in the territory of the other Party

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

5. This Chapter shall not apply to subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments.

ARTICLE 6.3: NATIONAL TREATMENT

1. Each Party shall accord to investors of the other Party, and investments of investors of the other Party, in relation to the establishment, acquisition or expansion of

⁶⁻¹ The provisions of this Chapter, except for the provisions in paragraph 1 of Article 6.3 would be extended to branches of enterprises incorporated under the laws of a non-party, that are registered or set up in the territory of either Party, that are specifically permitted in other Chapters of the Agreement.

investments in the sectors listed at Annex 6A and Annex 6B, treatment no less than that it accords in like circumstances to its own investors and investments. Any subsequent establishment, acquisition or expansion of investments by an enterprise that is incorporated, constituted, set up or otherwise duly organized under the law of a Party, and which is owned by an investor of the other Party, shall be regarded as an investment of the other Party, for the purpose of determining the applicable treatment to be accorded under this paragraph⁶⁻².

2. Each Party shall accord to investors of the other Party, and investments of investors of the other Party, in relation to the management, conduct, operation, liquidation, sale and transfer (or other disposition) of investments, treatment no less favourable than it accords in like circumstances to its own investors and investments.

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

4. The provisions of paragraphs 1, 2, 3 above shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege resulting from any arrangement or international agreement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 6.4: COMPENSATION FOR LOSSES

Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, a state of emergency or civil disturbances in the territory of the latter Party, shall be accorded by that Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which that Party accords to its own investors or to investors of any non-Party. Any payments under this Article shall be freely transferable.

ARTICLE 6.5: EXPROPRIATION

1. Neither Party shall take any measure of expropriation⁶⁻³ against the investments of investors of the other Party unless the measures are taken on a non-discriminatory basis, for a purpose authorized by law, in accordance with due process of law and against payment of compensation in accordance with this Article.

⁶⁻² The Parties understand that such enterprises shall be entitled to be accorded any better treatment which is available under the regime of that Party, at the time of such subsequent establishment, acquisition and expansion of investments. Any such better treatment accorded shall not be construed as an automatic addition to the commitments scheduled in the Parties' respective Schedules of Specific Commitments in Annex 6A and Annex 6B.

⁶⁻³ The term "expropriation" includes "nationalisation".

2. The payment of compensation shall be prompt, adequate and effective. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge. Compensation shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. Such compensation shall be effectively realizable, freely transferable and made promptly.

3. Notwithstanding paragraphs 1 and 2, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation and any subsequent amendments thereto relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

4. The investor whose investment is expropriated shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek review of the expropriation measure or valuation of the compensation that has been assessed in accordance with the principles and provisions set out in this Article.

5. When a Party expropriates the assets of an enterprise which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Party own shares, it shall ensure that the provisions of paragraph 1 and 2 are applied to the extent necessary to guarantee compensation as specified therein to such investors of the other Party who are owners of those shares.

6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights.

7. This Article is to be interpreted in accordance with the understanding of the Parties on expropriation as set out in their exchange of letters, which shall form an integral part of this Agreement.

ARTICLE 6.6: REPATRIATION

1. Each Party shall ensure to investors of the other Party the free transfer of their capital and the returns from any investments. The transfers shall be permitted in a freely useable currency at the market rate prevailing in the date of transfer, without undue delay. Such transfers shall include in particular, though not exclusively:

- (a) profits, capital gains, dividends, royalties, licence fees, interest and other current income;
- (b) the proceeds of the total or partial liquidation of an investment;

- (c) repayments made pursuant to a loan agreement in connection with an investment;
- (d) payments in respect of technical assistance, technical service and management fees;
- (e) payments in connection with contracting projects;
- (f) earnings of nationals of the other Party who work in connection with an investment in the territory of the former Party; and
- (g) payments of compensation under Articles 6.4 and 6.5.

2. Notwithstanding paragraph 1, 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 offences, and the recovery of proceeds of crime;
- (d) ensuring the satisfaction of judgments, orders or awards in adjudicatory proceedings such as judicial and quasi-judicial proceedings; or
- (e) social security, public retirement or statutory savings schemes, including provident funds, retirement gratuity programmes and employees insurance programmes.

ARTICLE 6.7: RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on payments or transfers related to investments. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the International Monetary Fund;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;

- (d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and
- (e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any non-Party.

3. Any restrictions adopted or maintained by a Party under paragraph 1 or any changes therein, shall be promptly notified to the other Party.

4. The Party adopting any restrictions under paragraph 1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

ARTICLE 6.8: SUBROGATION

1. In the event that either Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own investors in respect of any of their claims under this Agreement, the other Party acknowledges that the former Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of the said investor.

2. Any payment made by one Party (or any agency, institution, statutory body or corporation designated by it) to its own investors shall not affect the rights of such investors to make their claims against the other Party in accordance with Article 6.21.

ARTICLE 6.9: DENIAL OF BENEFITS

1. A Party may deny the benefits of this Chapter to an investor that is an enterprise of the other Party where the denying Party establishes that:

- (a) the enterprise has no substantial business operations in the territory of the other Party; or
- (b) investors of the denying Party own or control the enterprise.

ARTICLE 6.10: MEASURES IN THE PUBLIC INTEREST

Nothing in this Chapter shall be construed to prevent:

- (a) a Party or its regulatory bodies from adopting, maintaining or enforcing any measure, on a non-discriminatory basis; or
- (b) the judicial bodies of a Party from taking any measures;

consistent with this Chapter that is in the public interest, including measures to meet health, safety or environmental concerns.

ARTICLE 6.11: GENERAL EXCEPTIONS

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

- (a) necessary to protect public morals or to maintain public order;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices to deal with the effects of a default on a contract;
 - (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;
 - (iii) safety;
- (d) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

ARTICLE 6.12: SECURITY EXCEPTIONS

1. Nothing in this Chapter shall be construed:

- (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests
 - (i) relating to fissionable and fusionable materials or the materials from which they are derived;

- (ii) in time of war or other emergency in international relations;
 - (iii) relating to the production or supply of arms and ammunition; or
 - (iv) to protect critical public infrastructures, including communication, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructures; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. Nothing in this Chapter shall be construed to require a Party to accord the benefits of this Chapter to an investor that is an enterprise of the other Party where a Party adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party or an investor of a non-Party that would be violated or circumvented if the benefits of this Chapter were accorded to such an enterprise or to its investments.

3. Paragraph 2 shall be interpreted in accordance with the understanding of the Parties on security exceptions as set out in their exchange of letters, which shall form an integral part of this Agreement.

4. This Article shall be interpreted in accordance with the understanding of the Parties on non-justiciability of security exceptions as set out in their exchange of letters, which shall form an integral part of this Agreement.

ARTICLE 6.13: DISCLOSURE OF INFORMATION

Nothing in this Chapter shall require any Party to provide confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of public or private enterprises.

ARTICLE 6.14: SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS

1. Nothing in Article 6.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of another Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws and regulations of the Party, provided that such formalities do not impair the substance of the benefits of any of the provisions in this Chapter.

2. Notwithstanding Article 6.3, a Party may require, from an investor of another Party or its investment, routine business information, to be used solely for informational or statistical purposes, concerning that investment in its territory. The Party shall protect such business information as is confidential from disclosure that would prejudice the investor's or the investment's competitive position. Nothing in this paragraph shall

preclude a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.

ARTICLE 6.15: TRANSPARENCY

1. Each Party shall ensure that its laws, regulations and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons or Parties to become acquainted with them.

2. Each Party shall, upon request by the other Party, promptly respond to specific questions from and provide information to the other Party with respect to matters referred to in paragraph 1.

ARTICLE 6.16: SPECIFIC COMMITMENTS AND EXCEPTIONS

1. With respect to paragraph 1 Article 6.3:

- (a) In the case of India – The Schedule of Specific Commitments that India undertakes under paragraph 1 of Article 3 are set out in Annex 6A, which specifies the terms, limitations, conditions and qualifications on national treatment in relation to paragraph 1 of Article 6.3.
- (b) In the case of Singapore – paragraph 1 of Article 6.3 shall not apply to any exception that is specified by Singapore or any measure that Singapore maintains with respect to sectors, sub-sectors or activities as set out in its Schedule of Reservations at Annex 6B.

2. Article 6.19 and Article 6.23 shall not apply to:

- (a) any exception that is specified by the Parties; or
- (b) any measure that the Parties maintain with respect to sectors, sub-sectors or activities as set out

in their respective Schedules at Annexes 6A and 6B.

ARTICLE 6.17: REVIEW OF COMMITMENTS AND EXCEPTIONS

1. If, after this Agreement enters into force, a Party enters into any agreement on investment with a non-Party, it shall give consideration to a request by the other Party for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Party under this Agreement.

2. As part of the reviews of this Agreement pursuant to Article 16.3:

- (a) India undertakes to review its Schedule of Specific Commitment as set out in Annex 6A with a view to increasing its list of committed sectors and reducing the terms, limitations, conditions and qualifications on national treatment with regard to the establishment, acquisition or expansion of investments; and
- (b) Singapore undertakes to review the status of the exceptions set out in its Schedule in Annex 6B with a view to reducing the exceptions or removing them.

3. In any other case, a Party may, upon reasonable notice, request the other Party for a review of its commitments/exceptions:

- (a) In the case of India as set out in Annex 6A - its list of committed sectors and reducing the terms, limitations, conditions and qualifications on national treatment with regard to the establishment, acquisition or expansion of investments; or
- (b) In the case of Singapore as set out in Annex 6B – its exceptions with a view to reducing or removing them.

Any review pursuant to such a request should maintain the overall balance of commitments undertaken by each Party under this Agreement.

ARTICLE 6.18: ACCESS TO COURTS OF JUSTICE

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

ARTICLE 6.19: SENIOR MANAGEMENT AND BOARD OF DIRECTORS

1. Neither Party may require that an investor of the other Party appoint to senior management positions individuals of any particular nationality.

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

ARTICLE 6.20: REQUEST FOR EXEMPTION ON IMPORT DUTIES

1. India shall consider on a case-by-case basis requests from Singapore investors for exemptions from custom duties for import of capital goods, excluding consumables, for the purposes of infrastructure projects in India.
2. For the purpose of paragraph 1 above, infrastructure projects include but are not limited to the following:
 - (a) roads and highways;
 - (b) ports and other seaport related infrastructure, such as logistics;
 - (c) airports and other aviation related infrastructure;
 - (d) power (generation, transmission, distribution);
 - (e) water resource management;
 - (f) waste management;
 - (g) other urban infrastructure, such as pollution control and management;
 - (h) housing, including townships; and
 - (i) telecommunications.
3. Such requests shall be made in such form and include such details as may be prescribed. These forms and details would be notified to the contact point provided under Article 16.2.
4. Decision on such requests shall not be subject to the provisions of Article 6.18, Article 6.21, or Chapter 15.

ARTICLE 6.21: INVESTMENT DISPUTES

1. This Article shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former under this Chapter which causes loss or damage to the investor or its investment, except any dispute arising under Article 6.3.1⁶⁻⁴.
2. The parties to the dispute shall, as far as possible, resolve the dispute through consultations and negotiations.

⁶⁻⁴ This Article is subject to the understanding of the Parties on Compulsory Investor-To State Dispute Settlement in relation to Pre-Establishment as set out in their exchange of letters, which shall form an integral part of this Agreement.

3. Where the dispute cannot be resolved as provided for under paragraph 2 within 6 months from the date of a request for consultations and negotiations, then unless the disputing investor and the disputing Party agree otherwise or the investor concerned has already submitted the dispute to the courts or administrative tribunals of the disputing Party (excluding proceedings for interim measures of protection referred to in paragraph 5), the investor may submit the dispute to:

- (a) the courts or administrative tribunals of the disputing Party;
- (b) the International Centre for Settlement of Investment Disputes (ICSID) for conciliation or arbitration pursuant to Articles 28 or 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington on 18 March 1965 (“ICSID Convention”) if the ICSID Convention is in force between the Parties; or if the ICSID Convention is not in force between the Parties, to the ICSID for conciliation or arbitration pursuant to the Additional Facility Rules of ICSID; or
- (c) arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. Each Party hereby consents to the submission of a dispute to conciliation or arbitration under paragraph 3(b) and paragraph 3(c) above in accordance with the provisions of this Article, conditional upon:

- (a) the submission of the dispute to such conciliation or arbitration taking place within three years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Chapter causing loss or damage to the investor or its investment; and
- (b) the disputing investor providing written notice, which shall be submitted at least 30 days before the claim is submitted, to the disputing Party of his or her intent to submit the dispute to such conciliation or arbitration and which:
 - (i) nominates either paragraph 3(b) or paragraph 3(c) as the forum for dispute settlement (and, in the case of paragraph 3(b), nominates whether conciliation or arbitration is being sought);
 - (ii) waives its right to initiate or continue any proceedings (excluding proceedings for interim measures of protection referred to in paragraph 5) before any of the other dispute settlement fora referred to in paragraph 3 in relation to the matter under dispute; and
 - (iii) briefly summarises the alleged breach of the disputing Party under this Chapter (including the articles alleged to have been breached) and the loss or damage allegedly caused to the investor or its investment.

5. Neither Party shall prevent the disputing investor from seeking interim measures of protection, not involving the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the disputing Party,

prior to the institution of proceedings before any of the dispute settlement fora referred to in paragraph 3, for the preservation of its rights and interests.

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

ARTICLE 6.22: OTHER OBLIGATIONS

If the legislation of either Party or international obligations existing at present or established hereafter between the Parties in addition to this Agreement, result in a position entitling investors of the other Party and investments by investors of the other Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement.

ARTICLE 6.23: PROHIBITION OF PERFORMANCE REQUIREMENT

The Parties reaffirm their commitments to WTO Agreement on Trade-Related Investment Measures (“TRIMs”) and hereby incorporate the provisions of TRIMs, as may be amended from time to time, as part of this Agreement.

ARTICLE 6.24: ENTRY INTO FORCE, DURATION AND TERMINATION

In the event that this Agreement is terminated, the provisions of this Chapter, the provisions in Chapter 15, and other provisions in the Agreement necessary for or consequential to the application of this Chapter, except paragraph 1 of Article 6.3 and Article 6.16, shall continue in effect with respect to investments made or acquired before the date of termination of this Agreement for a further period of fifteen years after the date of termination and without prejudice to the application thereafter of the rules of general international law.