

Agreement
between
the Taipei Economic and Cultural Office in Thailand (TECO)
and
the Thailand Trade and Economic Office in Taipei (TTEO)
for the Promotion and Protection of Investments

The Taipei Economic and Cultural Office in Thailand and the Thailand Trade and Economic Office in Taipei (hereinafter referred to collectively as “Contracting Parties” and individually as “Contracting Party”);

Recognising the need for mutual benefit to formulate an advanced investment agreement based on the existing *Agreement between the Taipei Economic and Trade Office in Thailand and the Thailand Trade and Economic Office in Taipei for the Promotion and Protection of Investments* signed in Taipei, Taiwan on 30 April 1996;

Recognising that the promotion and the reciprocal protection of investments, guided by the principles of responsible and sustainable investment, will be conducive to the stimulation of individual business initiative and will increase prosperity in the territories represented by the Contracting Parties; and

Recognising further the importance of regulation to achieve legitimate policy objectives with regard to the protection of the society, public health, safety, environment, public morals, labour rights, social or consumer protection or for prudential financial reasons, the integrity of the financial system, the promotion of essential security interests, the promotion and protection of cultural diversity, and the right of the authorities of each territory to regulate and adopt measures to ensure that these objectives are protected at the level that they each consider appropriate, in line with their respective principles.

Have agreed as follows:

SECTION A

Article 1 Objectives

The objectives of this Agreement are to encourage and promote the flow of investment between territories of both Contracting Parties on a mutually advantageous basis, under conditions of transparency within a stable framework of rules to ensure the protection and security of investments by investors of the other territory within each jurisdiction, while recognising the rights for the authorities of the territories to regulate and their responsibilities to protect public health, public order, safety, and the environment.

Article 2 Definitions

For the purposes of this Agreement:

Territory means, with respect to each Contracting Party, the territory represented by that Contracting Party.

Investment means foreign direct investment made by investors of a territory in the other territory in accordance with the laws, regulations, and policies¹ of the latter in order to establish lasting economic relations, that has the characteristics of an investment, including the commitment of capital or other resources, the expectation of non-speculative gain or profit, and the assumption of risk, and that includes every kind of asset, in particular, though not exclusively:

(a) shares, stocks, bonds, loans and debentures of a company, and any other similar forms of participation in a juridical person, including rights derived therefrom;

¹ For the purposes of this definition, “policies” means those policies affecting an investment that are endorsed and announced by the authorities of a territory in a written form and made publicly available in a written form.

(b) claims to money and any other right to perform under contract having an economic value,² including turnkey, construction, management, production or revenue sharing contracts;

(c) intellectual property and industrial property rights, know-how, trade secrets, and goodwill, as recognised by the law of the authorities of the territory where the investment is made and connected with the substantial business operation of a juridical person of the host territory;

(d) business concession, licence, authorisation, and permit conferred pursuant to laws and regulations or contracts³;

(e) other movable and immovable property, and any other property rights such as mortgages, liens, and pledges.

Any alteration of the form in which assets are invested shall not affect their nature as an investment, provided that such alteration is consistent with the laws and regulations of the authorities of the territory where the investments were made and the investment continues to have the characteristics listed in this Article.

Investor means a natural or juridical person of a territory that has made an investment in the other territory. For greater certainty,

(a) a “natural person” is a citizen according to the laws of the authorities of that territory. A natural person who holds two or more citizenships shall be deemed to be exclusively a citizen of his or her dominant and effective citizenship; and

² For greater certainty, the term “investment” does not mean claims to money that arise solely from:

- a. commercial contracts for sale of goods or services; or
- b. the extension of credit in connection with such commercial contracts.

³ The term “investment” does not include an order or judgment entered in a judicial or administrative action.

(b) a “juridical person” is an entity constituted or otherwise duly organized under the laws of the authorities of that territory and has its seats, together with real economic interests, whether for profit or otherwise, in that territory, including any incorporation, trust, partnership, joint venture, sole proprietorship, association or similar organization;

Returns means amounts yielded by an investment and in particular, though not exclusively, includes profits, interests, capital gains, dividends, royalties or fees;

Freely usable currency means “freely usable currency” as determined by the International Monetary Fund (IMF) under its *Articles of Agreement* and amendments thereto, or any currency that is used to make international payments and is widely traded in the international principal exchange markets;

Measure means any measure by authorities of one territory, whether in the form of a law, regulation, rule, procedure, decision, administrative action, practice that directly affects investors and/or their investments, or any other form;

Measures adopted by the authorities of a territory includes measures taken by:

(a) central or local authorities; or

(b) other authoritative bodies in the exercise of powers delegated by central or local authorities;

Disputing investor means an investor of a territory that makes a claim against authorities of the other territory under Section B;

Disputing Party means authorities of a territory against which a claim is made under Section B;

Disputing parties means the disputing investor and the disputing Party;

Disputing party means either the disputing investor or the disputing Party;

Non-disputing Party means authorities of the territory of the disputing investor;

TRIPS Agreement means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*;

Third-party funding means any funding provided by a natural or juridical person who is not a party to the dispute but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings in return for a remuneration dependent on the outcome of the dispute, or any funding provided by a natural or juridical person who is not a party to the dispute in the form of a donation or grant.

Article 3 Scope of Application

1. This Agreement shall apply to investments made directly or indirectly by an investor of one territory in the other territory, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, in conformity with its laws and regulations.

2. Notwithstanding any other provision of this Agreement, the authorities of a territory shall not be prevented from taking measures for prudential financial reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform to the provisions of this Agreement, they shall not be used as a means of avoiding the obligations of the authorities of the territory under this Agreement.

3. This Agreement shall not apply to:

(a) subsidies or grants provided by the authorities of a territory or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments;

(b) measures which relate to the privatisation of public undertakings;

(c) laws, regulations or requirements governing procurement by authorities of a territory; and

(d) taxation measures, except under Article 9 (Transfers) and Article 10 (Expropriation and Compensation).

4. Nothing in this Agreement shall affect the rights and obligations of the authorities of each territory under any international tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

5. Nothing in this Agreement shall affect the rights and obligations of the authorities of each territory as a member of the World Trade Organization, including the provisions under the *Agreement on Trade-Related Investment Measures*.

6. Nothing in this Agreement shall be construed to require the authorities of a territory to disclose information relating to the affairs and accounts of any individual customers or any confidential or proprietary information in the possession of public entities.

7. The provisions of this Agreement shall not affect the right of the authorities of each territory to regulate within their territory as may be necessary to achieve legitimate policy objectives such as the protection of the society, public health, safety, environment, public morals, labour rights, social or consumer protection or for prudential financial reasons, the integrity of the financial system, the promotion of essential security interests or the promotion and protection of cultural diversity.

Article 4 Promotion of Investment

1. The authorities of each territory shall encourage and create favourable conditions in their territory for investments of the investors of the other territory.

2. The authorities of a territory shall within the framework of their legislation give sympathetic consideration to applications for the entry and sojourn of citizens of the other territory who wish to enter that territory in connection with an investment; the same shall apply to employed persons of the other territory who in connection with an investment wish to enter that territory and sojourn there to take up employment. Applications for permit shall also be given sympathetic consideration.

3. The authorities of each territory shall ensure that their laws, regulations, judicial decisions, procedures and administrative rulings of general application with respect to any matter covered by this Agreement which may affect the investments of investors of one territory in the other territory are published or made publicly available.⁴

4. Each Contracting Party shall endeavour to designate a contact point to assist investors to become acquainted with information relating to investment in its territory.

Article 5 Corporate Social Responsibility

The authorities of each territory should encourage investors operating within their territory and subject to their laws and regulations to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines

⁴ Nothing in this Agreement shall be construed to require the authorities of either territory to furnish or allow access to information, the disclosure of which they consider would:

- (a) be contrary to the public interest as determined by their law;
- (b) be contrary to any of its legislation, including those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
- (c) impede law enforcement; or
- (d) prejudice legitimate commercial interests of particular enterprises, public or private.

and principles of corporate social responsibility that have been endorsed or are supported by the authorities of that territory. These standards, guidelines and principles address issues such as labour, the environment, human rights, community relations, and anti-corruption.

Article 6 Non-discriminatory Treatment

1. The authorities of each territory shall in their territory accord to investors of the other territory and their investments treatment, in like circumstances, as regards management, maintenance, use, enjoyment or disposal of their investments, no less favourable than that which they accord to their own investors or investors of any other territories and their investments, whichever is more favourable, and subject to their laws and regulations.

2. The provisions of Paragraph 1 of this Article shall not be construed so as to oblige the authorities of a territory to extend to the investors of the other territory the benefit of any treatment, preference or privilege by virtue of:

(a) any customs union or free trade area or a monetary union or similar international agreements leading to such unions or other forms of regional cooperation to which either territory is or may become a party; and

(b) any international agreement or arrangement or any domestic laws and regulations relating wholly or mainly to taxation.

3. For greater certainty, the “treatment” accorded to investors of any other territories and their investments as referred to in Paragraphs 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international investment agreements and other trade agreements. Substantive obligations in other international investment agreements and other trade agreements do not in themselves constitute “treatment”, and thus cannot give rise to a breach of this Article, absent measures adopted by the authorities of a territory pursuant to such obligations.

Article 7 Treatment of Investment

1. Investments of investors of either territory shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the other territory in accordance with customary international law. The authorities of neither territory shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments of investors of the other territory.

2. The obligation in Paragraph 1 to provide:

(a) “fair and equitable treatment” refers to the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process;

(b) “full protection and security” requires the authorities of each territory to take such measures as may be reasonably necessary to ensure the physical protection and security of investments; and

(c) the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required under customary international law and do not create additional substantive rights.

3. A determination that there has been a breach of another provision of this Section, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 8 Compensation for Losses

1. Investors of one territory whose investments in the other territory suffer losses owing to war or other armed conflict, civil strife, revolution, a state of emergency,

revolt, insurrection, riot or other such similar activity in that other territory shall be accorded by the authorities of the latter territory treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the authorities of the latter territory accord, in like circumstances, to their own investors or to investors of any other territories, whichever is more favourable to the investors. Resulting payments shall be freely transferable.

2. Without prejudice to Paragraph 1 of this Article, investors of one territory who, in any of the situations referred to in that paragraph, suffer losses in the other territory, resulting from:

(a) requisitioning of their property by the latter's forces or authorities; or

(b) destruction of their property by the latter's forces or authorities, which was not caused in combat action or was not required by the necessity of the situation

shall be accorded prompt, adequate and effective compensation or restitution in accordance with Paragraphs 2 to 4 of Article 10 (Expropriation and Compensation), *mutatis mutandis*. Resulting payments shall be freely transferable.

Article 9 Transfers

1. The authorities of each territory shall allow, after the fulfillment of fiscal obligations of the investors, the free transfer without delay, in a freely usable currency, of:

(a) capital and additional amounts intended to maintain or increase the investment;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment;

(c) proceeds obtained from the total or partial liquidation of the investment;

(d) interest, royalty payments, management fees, and technical assistance and other fees relating to the investment;

(e) payments paid under a contract relating to the investment;

(f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the authorities of a territory to the dispute;

(g) funds in repayment of loans relating to the investment;

(h) compensation payable in accordance with Article 8 (Compensation for Losses) and Article 10 (Expropriation and Compensation); and/or

(i) earnings and other remunerations received by the citizens of the other territory for work or services done in connection with investments made in their territory in accordance with their laws and regulations.

2. The transfers referred to in the preceding paragraph shall be made without delay at the prevailing market rate of exchange applicable on the date of the transfer in the territory where the investment was made.

3. Notwithstanding Paragraphs 1 and 2, the authorities of a territory may delay or prevent a transfer through the necessary, equitable, non-discriminatory and good faith application of their laws and regulations relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, futures or derivatives;

(c) criminal or penal offences;

(d) social security, public retirement or compulsory savings schemes;

(e) ensuring compliance with the judgments in judicial or administrative proceedings;

(f) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(g) the integrity and stability of their currency, external financial position or balance of payments consistent with their rights and obligations under the *Articles of Agreement* of the IMF; and/or

(h) taxation.

Article 10 Expropriation and Compensation

1. Investments of investors of either territory shall not be expropriated, nationalised or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred as “expropriation”) in the other territory except for public purposes, under due process of law, on a non-discriminatory basis, and against prompt, effective and adequate compensation.

2. Compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be fully realizable and shall be paid without any restriction or delay. In the event of delay, it shall carry an appropriate interest in accordance with the laws and regulations of the authorities of the territory where

the expropriation occurred. The payment of such compensation shall be freely transferable in a freely usable currency.

4. The investor affected shall have a right, under the laws of the authorities of the territory where the expropriation occurred, to review, by a judicial or other independent authority of that territory, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article. The authorities of the territory where the expropriation occurred shall make every endeavour to ensure that such review is carried out promptly.

5. 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 TRIPS Agreement.

6. This Article shall be read in conjunction with the Annex on Expropriation.

Article 11 Subrogation

1. If the authorities of a territory, or an agency designated by them, make a payment to an investor of their territory under a policy of insurance against noncommercial risks, which they have given in respect of any investment or any part thereof in the other territory, the authorities of the latter territory shall recognise:

(a) the assignment, whether under law or pursuant to a legal transaction, of any right or claim from such an investor to the authorities of the former territory or their designated agency; and

(b) that the authorities of the former territory or their designated agency are entitled by virtue of subrogation to exercise the rights and enforce the claims of such an investor.

The authorities of the former territory or their designated agency shall, accordingly, be entitled to assert, if they so desire, any such right or claim to the same extent as their predecessor in title.

2. If the authorities of the former territory acquire amounts in the lawful currency of the other territory or credits thereof by virtue of an assignment under Paragraph 1(a) of this Article, such amounts and credits shall be freely available to them for the purpose of meeting their expenditures in the other territory.

3. In the exercise of subrogated rights or claims, the authorities of a territory or an agency designated by them exercising such rights or claims shall disclose the coverage of the claims arrangement with their investors to the authorities of the other territory referred to in Paragraph 1.

Article 12 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 between the authorities of the territories, their investors or their investments where like conditions prevail, or a disguised restriction on investors of any territory or their investments, nothing in this Agreement shall be construed to prevent the adoption or enforcement by the authorities of a territory of measures:

(a) necessary to protect public morals or to maintain public order;⁵

(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 Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices to deal with the effects of a default on a contract;

⁵ For the purpose of this subparagraph, footnote 5 of Article XIV of the GATS is incorporated into and forms part of this Agreement, *mutatis mutandis*.

(ii) the protection of the privacy of the individual in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; and

(iii) safety;

(d) aimed at ensuring the equitable or effective⁶ imposition or collection of direct taxes in respect of investors of either territory or their investments;

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

(f) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. Insofar as measures affecting the supply of financial services are concerned, Paragraph 2 (Domestic Regulation) of the Annex on Financial Services of GATS shall be incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

Article 13 Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require the authorities of either territory to furnish any information, the disclosure of which they consider contrary to their essential security interests;

(b) to prevent the authorities of either territory from taking any action which they consider necessary for the protection of their essential security interests, including but not limited to:

⁶ For the purpose of this subparagraph, footnote 6 of Article XIV of the GATS is incorporated into and forms part of this Agreement, *mutatis mutandis*.

(i) action relating to fissionable and fusionable materials or the materials from which they derived;

(ii) action relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) action taken so as to protect critical public infrastructure from deliberate attempts intended to disable or degrade such infrastructure; and

(iv) action taken in time of war or other emergency in domestic or international relations; or

(c) to prevent the authorities of either territory from taking any action in pursuance of their obligations under the United Nations Charter for the maintenance of international peace and security.

Article 14 Denial of Benefits

Subject to prior notification and consultation, the authorities of a territory may deny the benefits of this Agreement to:

(a) investors of the other territory where the investment is being made by a juridical person that is owned or controlled by persons of any other territories and the juridical person has no substantive business operations in that other territory; or

(b) investors of the other territory where the investment is being made by a juridical person that is owned or controlled by persons of the denying authorities.

SECTION B:

Section B.1: Settlement of Disputes between an Investor of a Territory and Authorities of the other Territory of a Contracting Party

Article 15 Scope

1. This Section shall apply to investment disputes between an investor of a territory and authorities of the other territory arising out of an alleged breach of Article 6 (Non-discriminatory Treatment), Article 7 (Treatment of Investment), Article 8 (Compensation for Losses), Article 9 (Transfers), Article 10 (Expropriation and Compensation), and Article 11 (Subrogation) which directly causes loss or damage to the investment.

2. This Section shall not apply to:

(a) investment disputes arising out of events which occurred prior to the entry into force of this Agreement;

(b) disputes where the disputing investor holds the citizenship of the territory of the disputing Party; and

(c) disputes arising out of an investment which has not been made in good faith, for example, one involving corruption or illegality.

Article 16 Good Offices, Conciliation and Mediation

1. The disputing parties may agree in writing, at any time, to initiate alternative dispute resolution proceedings, which may include the use of non-binding, third-party procedures, particularly good offices, mediation, and conciliation.

2. Recourse to mediation and conciliation is without prejudice to the legal position or rights of either disputing party under this Section. The relevant procedures shall be governed by the rules agreed by the disputing parties.

3. The disputing parties may agree to conciliation proceedings pursuant to the UNCITRAL Conciliation Rules, ICSID Conciliation (Additional Facility) Rules or any other fora.

4. The disputing parties may agree to mediation in accordance with the mediation rules and/or under the administration of any fora recognised by authorities of each territory. The disputing parties agree to participate in the mediation in good faith and undertake to abide by the terms of any settlement reached.

5. Where the disputing parties have agreed to a solution, each disputing party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.

6. Nothing in this Article shall preclude the disputing parties from having recourse to other forms of alternative dispute resolution.

Article 17 Amicable Resolution and Consultations

1. In the event of a dispute between an investor of a territory and authorities of the other territory, the disputing parties shall as far as possible resolve the dispute amicably through negotiations, and where possible, before the submission of a request for consultations. An amicable resolution may be agreed at any time including after arbitration pursuant to Article 19 (Submission of a Claim) has been commenced.

2. Where a dispute cannot be resolved as provided for under Paragraph 1, the disputing investor alleging a breach of this Agreement as specified under Paragraph 1 of Article 15 (Scope) shall submit a request in writing for consultations to the disputing Party.

3. With the objective of resolving an investment dispute through consultations, a disputing investor shall provide the disputing Party in the request, prior to the commencement of consultations, the following information:

(a) the name and address of the disputing investor;

(b) the provisions of this Agreement as specified under Paragraph 1 of Article 15 (Scope) alleged to have been breached;

(c) the legal and factual basis for the dispute, including the treatment alleged to breach the provisions of this Agreement as specified under Paragraph 1 of Article 15 (Scope); and

(d) the relief sought and the estimated loss or damage allegedly caused to the disputing investor.

4. The request for consultations shall be submitted within three years of the date on which the disputing investor becomes or should have become aware of the treatment alleged to breach the provisions of this Agreement as specified under Paragraph 1 of Article 15 (Scope) which directly causes loss or damage to the investment.

5. Consultations shall commence within 60 days of receipt by the disputing Party of the request for consultations, unless the disputing parties otherwise agree.

6. In the event that the disputing investor has not submitted a claim to arbitration pursuant to Article 19 (Submission of a Claim) within 18 months of submitting the request for consultations, the disputing investor shall be deemed to have withdrawn its request for consultations, any notice of intent to arbitrate and to have waived its rights to bring such a claim. This period may be extended by agreement between the disputing parties.

7. The time periods referred to in Paragraphs 4 and 6 shall not render a claim inadmissible where the disputing investor can demonstrate that the failure to request consultations or submit a claim to arbitration is due to the disputing investor's inability to act as a result of actions deliberately taken by the disputing Party, provided that the disputing investor acts as soon as it is reasonably able to act.

Article 18 Notice of Intent to Arbitrate

If an investment dispute has not been resolved within six months from the date of receipt by the disputing Party of the request for consultations, the disputing investor may, subject to this Section, submit a notice of intent to arbitrate to the disputing Party which shall specify in writing the disputing investor's intention to submit the claim to arbitration pursuant to Article 19 (Submission of a Claim) and contain the information as stipulated in Paragraph 3 of Article 17 (Amicable Resolution and Consultations).

Article 19 Submission of a Claim

1. No earlier than three months from the date of the written notice of intent delivered pursuant to Article 18 (Notice of Intent to Arbitrate), the disputing investor may submit the claim to one of the following dispute settlement mechanisms:

(a) the competent courts or administrative tribunals of the territory the investment was made, provided that such courts or administrative tribunals have jurisdiction;

(b) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as revised in 2010; or

(c) any other arbitration or arbitration institution as agreed by the disputing parties.

2. Once the investor has submitted the dispute to any of the settlement procedures listed in Paragraph 1 (b) or (c) of this Article, the choice of the procedure is final.

Article 20 Conditions and Limitations on Submission of Claim to Arbitration

1. The dispute shall be submitted to arbitration under Paragraph 1(b) or (c) of Article 19 (Submission of a Claim) in accordance with this Section, and shall be conditional upon:

(a) the submission of the claim is accompanied by the disputing investor's consent in writing to arbitration in accordance with the procedures set out in this Section and the disputing investor's designation of one of the fora referred to in Paragraph 1(b) or (c) of Article 19 (Submission of a Claim) as the forum for dispute settlement;

(b) the request for consultations and the notice of intent to arbitrate submitted by the disputing investor fulfilled the requirements set out in Paragraph 3 of Article 17 (Amicable Resolution and Consultations) and Article 18 (Notice of Intent to Arbitrate); and

(c) the submission of the claim under Paragraph 1(b) or (c) of Article 19 (Submission of a Claim) is accompanied by the disputing investor's written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals in the territory the investment was made, or any pending claim concerning the same treatment as alleged to breach the provisions listed in Article 15 (Scope) submitted to another international tribunal established pursuant to this Section or any other agreement.

2. For greater certainty, a tribunal shall decline jurisdiction where the dispute had arisen, or was very likely to arise, at the time when the disputing investor acquired ownership or control of the investment subject to the dispute, and the tribunal determines based on the facts that the disputing investor has acquired ownership or control of the investment for the main purpose of submitting the claim to arbitration under this Section. This is without prejudice to other jurisdictional objections which could be entertained by the tribunal.

Article 21 Conduct of Arbitration

1. A disputing Party may, no later than three months after the constitution of the tribunal, file an objection that a claim is inadmissible or that a claim is otherwise outside the jurisdiction or competence of the tribunal. A disputing Party may also file an objection that a claim is manifestly without legal merit. The disputing Party shall specify as precisely as possible the basis for the objection.

2. On the receipt of an objection pursuant to Paragraph 1, the tribunal shall suspend the proceedings on the merits and establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim and issue a decision or award on the objection, stating the grounds therefor.

3. The disputing Party does not waive any objection as to inadmissibility, jurisdiction or competence, or any argument on the merits, merely because the disputing Party did or did not raise an objection under Paragraph 1.

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

5. Where an investor claims that the disputing Party has breached Article 10 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the disputing Party and the non-disputing Party shall, upon request from the disputing Party, hold consultations between relevant authorities with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation. Any tribunal that may be established pursuant to this Section shall accord serious consideration to the decision of the authorities of the territories under this Paragraph.

6. If the authorities of both territories fail either to initiate the consultations referred to in Paragraph 5, or to determine whether such taxation measure has an effect equivalent to expropriation or nationalisation within 180 days from the date of receipt of the request for consultations referred to in Article 17 (Amicable Resolution and Consultations), the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Section.

Article 22 Counterclaim

A disputing Party may submit a counterclaim for damages arising directly out of the subject matter of the dispute before any tribunal established pursuant to this Agreement.

Article 23 Selection of Arbitrators

1. The disputing parties shall appoint three arbitrators, as stipulated in the applicable arbitration rules, which altogether constitute an arbitral tribunal.

2. Any persons appointed as an arbitrator shall have expertise or experience in public international law, international investment law or in the settlement of disputes under international investment agreements. An arbitrator shall be chosen strictly on the basis of impartiality, reliability, and independence, and shall be free of any actual or potential conflict of interest. An arbitrator shall conduct himself or herself in accordance with the code of conduct under applicable arbitration rules.

3. Members of the tribunal shall not act as legal counsel or shall not have acted as legal counsel for the last two years in any investment dispute under this Agreement.

4. Members of the tribunal and their staff shall be independent of, and not be affiliated with or take instructions from, either disputing party or the authorities of both territories with regard to matters related to the dispute. They shall not participate in the consideration of any dispute that would create a direct or indirect conflict of interest, including as legal counsel, party-appointed expert or witness.

5. If a disputing party considers that an arbitrator does not meet the requirements set out in Paragraph 2, it shall send a notice of challenge to the appointment of the arbitrator within 45 days of the date on which:

(a) the disputing party was notified of the appointment of the arbitrator; or

(b) the disputing party first became aware of the arbitrator's alleged failure to meet such requirements.

The notice of challenge shall be sent to the other disputing party and all arbitrators, and it shall state the reasons for the challenge.

6. A decision on the challenge shall be taken by the person, persons or competent body in accordance with the applicable arbitration rules.

Article 24 Place of Arbitration

Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in either territory or a party to the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, adopted at the United Nations in New York on 10 June 1958.

Article 25 Consolidation of Claims

Where two or more claims have been submitted separately to arbitration under Article 19 (Submission of a Claim) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

Article 26 Governing Law

1. Subject to Paragraphs 2 and 3, when a claim is submitted under Article 19 (Submission of a Claim), the tribunal shall decide the issues in dispute in accordance with this Agreement, the applicable rules of international law and, where applicable, any relevant domestic laws of the disputing Party.

2. The tribunal shall, on its own account or at the request of a disputing party, request that the Joint Committee on Investment (“JCI”) established under Article 30 (Joint Committee on Investment) issues a joint decision declaring the interpretation of any provision of this Agreement that is at issue in a dispute. The JCI shall submit in writing any joint decision declaring its interpretation to the tribunal within 90 days of the delivery of the request. Without prejudice to Paragraph 3, if the JCI fails to issue such a decision within 90 days, any interpretation submitted by the authorities of either territory shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account.

3. A joint decision issued by the JCI declaring its interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision. In the case that the JCI is unable to issue an interpretation within 90 days as stipulated in this Article, it shall submit a request in writing to the tribunal to consider extending such timeframe.

Article 27 Third-Party Funding

1. In case of third-party funding, the disputing party benefiting from it shall notify the other disputing party and the tribunal, or where the tribunal is not established, the appointing authority of the tribunal, of the existence and nature of the funding arrangement, and the name and address of the third-party funder. If the third-party funder is a juridical person, this notice shall include the names of the persons that own or control that juridical person.

2. Such notice shall be made at the time of submission of a claim, or, when the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.

Article 28 Awards

1. The disputing parties may agree on a resolution of the dispute at any time before the tribunal issues its final award.

2. If the arbitral tribunal finds that the disputing Party has breached one or more obligations listed in Paragraph 1 of Article 15 (Scope), it may award compensation for the losses suffered by the disputing investor. Compensation shall be limited to direct losses, and may only include loss of future profits where such profits are financially assessable, probable, and reasonably foreseeable. The determination of such loss of future profits shall be made on a case-by-case basis and take into consideration, among other factors, whether the disputed investment has a record of profitability and the investor can provide the evidence that such profitability will continue.

3. The tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and/or

(b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

4. A tribunal may also award costs and fees in accordance with this Section and the applicable arbitration rules.

5. A tribunal may not award punitive damages.

6. All arbitral awards shall be final and binding on the disputing parties and shall be enforced in accordance with the laws of the disputing Party.

7. All sums received or payable as a result of a settlement shall be freely transferable in a freely usable currency.

**Section B.2: Settlement of Disputes between the Authorities of the
Territories of the Contracting Parties**

**Article 29 Settlement of Disputes between the Authorities of the Territories
of the Contracting Parties**

1. Any dispute between the authorities of the territories of the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled amicably through consultation or negotiation.

2. If a dispute cannot thus be settled within six months, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal on such terms and conditions as the Contracting Parties may agree.

SECTION C

Article 30 Joint Committee on Investment

1. For the purposes of the effective implementation and operation of this Agreement, a Joint Committee on Investment (“JCI”) composed of senior representatives of the authorities of each territory shall be established.

2. The JCI shall meet whenever necessary. Each Contracting Party may request at any time, through a notice in writing to the other Contracting Party, that a meeting of the JCI be held. The request shall provide sufficient information to understand the basis for the request, including, where relevant, identification of the issues in dispute. Such a meeting shall take place within 60 days of receipt of the request, unless the Contracting Parties agree otherwise.

3. The functions of the JCI shall be to:

(a) facilitate the consultation, negotiation, and settlement of investment disputes between a disputing investor and authorities of the other territory with a view to settling such disputes amicably;

(b) supervise and review the implementation and operation of this Agreement;

(c) exchange information on any matters related to this Agreement;

(d) review case law of investment arbitration tribunals relevant to the implementation of this Agreement; and

(e) issue an interpretation of a provision of this Agreement, which shall be binding on a tribunal established under Section B.1 (Settlement of Disputes between an Investor of a Territory and Authorities of the other Territory of a Contracting Party) pursuant to Article 26 (Governing Law).

4. The JCI shall establish its rules of procedure.

Article 31 Final Provisions

1. This Agreement may be amended in writing by mutual consent of the Contracting Parties. Any amendment shall enter into force after each Contracting Party has notified the other Contracting Party in writing that it has completed all internal requirements for the entry into force of such amendment.

2. Each Contracting Party shall notify the other in writing of the completion of the internal legal procedures required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

3. This Agreement shall remain in force indefinitely unless either Contracting Party notifies the other Contracting Party in writing of its intention to terminate it. The termination of this Agreement shall become effective one year after notice of termination has been received by the other Contracting Party. In respect of investments made prior to the date when the termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a period of ten years.

4. Upon the entry into force, this Agreement shall supersede and replace the *Agreement between the Taipei Economic and Trade Office in Thailand and the Thailand Trade and Economic Office in Taipei for the Promotion and Protection of Investments* signed on 30 April 1996.

5. The Annex to this Agreement shall form an integral part of this Agreement.

Done in duplicate in the English language.

For the Taipei Economic and Cultural
Office in Thailand

For the Thailand Trade and Economic
Office in Taipei

Chang Chun-Fu
Representative

Date: _____

Place: Bangkok

Narong Boonsatthanwong
Executive Director

Date: _____

Place: Taipei

ANNEX on EXPROPRIATION

1. An action or a series of related actions by the authorities of a territory cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment and eliminates all or substantially all of its value.

2. Article 10 (Expropriation and Compensation) addresses two situations:

(a) the first situation is where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) the second situation is where an action or a series of related actions by the authorities of a territory has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or a series of related actions by the authorities of a territory, in a specific fact situation, constitutes an expropriation of the type referred to in Paragraph 2(b), requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the action or the series of related actions by the authorities of that territory, although the fact that such action or series of related actions has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;

(b) whether the action or the series of related actions by the authorities of that territory breaches their prior binding written commitment to the investor whether by contract, licence or other legal document; and

(c) the character of the action or the series of related actions by the authorities of that territory, including its objective and whether it is disproportionate to the public purpose referred to in Article 10 (Expropriation and Compensation).

4. Non-discriminatory regulatory actions by the authorities of a territory that are designed and applied to achieve legitimate policy objectives such as the protection of public health, safety and the environment do not constitute expropriation.
