



**AGREEMENT ON INVESTMENT UNDER THE
FRAMEWORK AGREEMENT ON COMPREHENSIVE
ECONOMIC COOPERATION BETWEEN THE
ASSOCIATION OF SOUTHEAST ASIAN NATIONS AND
THE REPUBLIC OF INDIA**

PREAMBLE

The Governments of Brunei Darussalam, the Kingdom of Cambodia (Cambodia), the Republic of Indonesia (Indonesia), the Lao People's Democratic Republic (Lao PDR), Malaysia, the Republic of the Union of Myanmar (Myanmar), the Republic of the Philippines (Philippines), the Republic of Singapore (Singapore), the Kingdom of Thailand (Thailand) and the Socialist Republic of Viet Nam (Viet Nam), collectively, the Member States of the Association of Southeast Asian Nations, and the Government of the Republic of India;

RECALLING the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India (Framework Agreement) signed in Bali on 8 October 2003;

RECALLING further Article 2 of the Framework Agreement reflecting their commitment to establish an ASEAN-India Regional Trade and Investment Area (RTIA) including a Free Trade Area in goods, services and investment;

RECOGNISING the objectives of promoting investment, creating a liberal, facilitative, transparent and competitive investment regime, progressively liberalising investment; strengthening cooperation in investment, facilitating

investment, improving transparency of investment rules and regulations; and providing for protection of investment;

REAFFIRMING their commitment to establish a liberal and competitive investment regime that facilitates and promotes investment within the ASEAN-India RTIA;

CONSIDERING the different levels of development and the need to provide flexibility and special and differential treatment to the newer ASEAN Member States;

HAVE AGREED as follows:

ARTICLE 1

Scope

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

- (a) investors of any other Party; and
- (b) investments of investors of another Party in its territory, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and which, where applicable, has been admitted¹ by that Party, subject to its relevant laws, regulations and policies.

2. This Agreement shall not apply to:

- (a) government procurement;

¹ For greater certainty: (a) in the case of Thailand, protection under this Agreement shall be accorded to investments, as referred to in paragraph 1(b) of this Article, which have been specifically approved in writing for protection by the competent authorities; (b) in the case of Cambodia and Viet Nam, "has been admitted" means "has been specifically registered or approved in writing, as the case may be".

- (b) subsidies or grants provided by a Party;
- (c) services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this Agreement, a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers; and
- (d) any taxation measure, except under Article 11 (Transfers).

3. This Agreement shall not apply to claims arising out of events which occurred, or claims which have been raised prior to the entry into force of this Agreement.

- 4. (a) This Agreement does not apply to measures adopted or maintained by a Party to the extent that they are covered by the ASEAN-India Trade in Services Agreement.
- (b) Notwithstanding paragraph 4 (a), for the purpose of protection, Article 7 (Treatment of Investment), Article 8 (Expropriation and Compensation), Article 9 (Compensation for Losses), Article 10 (Subrogation), Article 11 (Transfers), and Article 20 (Investment Disputes between a Party and an Investor), shall apply, *mutatis mutandis*, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of any one of the other Parties pursuant to the ASEAN-India Trade in Services Agreement but only to the extent that any such measures relate to an investment as referred to paragraph 1(b) of Article 1 (Scope) and an obligation under this Agreement, regardless of whether such a service sector is

scheduled in a Party's schedule of specific services commitments made under the ASEAN-India Trade in Services Agreement.²

5. For the purpose of liberalisation and subject to Article 4 (Reservations), this Agreement shall apply to the following sectors:

- (a) manufacturing;
- (b) agriculture;
- (c) fishery;
- (d) forestry; and
- (e) mining and quarrying.

ARTICLE 2

Definitions

For the purposes of this Agreement:

- (a) **Agreement** means the Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India;
- (b) **ASEAN** means the Association of Southeast Asian Nations which comprises of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam and whose members are referred to in this Agreement

² For greater certainty, paragraph 4 (b) does not preclude a Party from applying Article 13 (Denial of Benefits) to such service supplier in its territory.

collectively as the ASEAN Member States and individually as an ASEAN Member State;

- (c) **freely usable currency** means a freely usable currency as determined by the International Monetary Fund (IMF) in accordance with the IMF Articles of Agreement and any amendments thereto;
- (d) **IMF Articles of Agreement** means the *Articles of Agreement of the International Monetary Fund*;
- (e) **investment**³ means every kind of asset that an investor owns or controls in the territory of another Party, and that has the characteristics of an investment, including such characteristics as the commitment of capital, the expectation of gain or profit, or the assumption of risk.

Forms that an investment may take include, but are not limited to:

- (i) shares, stocks and other forms of equity participation in a juridical person and rights derived therefrom;
- (ii) bonds, debentures, loans, and other debt instruments of a juridical person and rights derived therefrom;
- (iii) movable and immovable property and other property rights such as mortgages, liens or pledges;
- (iv) intellectual property rights recognised under the laws and regulations of each Party and

³ For greater certainty, the definition of investment shall be read in accordance with subparagraph 1(b) of Article 1 (Scope). The term "investment" does not include an order or judgment entered in a judicial or administrative action.

connected with the substantial business operation of a juridical person of that Party;

- (v) claims to money or to any contractual performance related to a business of a juridical person and having financial value. For greater certainty, 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;

Investment will not include any other claims to money that do not involve subparagraph (e) (i) to (vii) of this Article;

- (vi) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
- (vii) business concessions required to conduct economic activity and having financial value conferred by law or under a contract, including concessions related to natural resources.

For the purpose of the definition of investment in this Article, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

- (f) **investor of a Party** means a natural person of a Party or a juridical person of a Party that is making, or has made an investment in the territory of another Party;
- (g) **juridical person** means any legal entity duly constituted or otherwise organised under applicable laws of a Party, whether for profit or otherwise, and whether privately-owned or governmentally-owned,

including any corporation, trust, partnership, joint venture, sole proprietorship, association or cooperatives;

- (h) **juridical person of a Party** means a juridical person constituted or organised under the applicable laws of that Party;
- (i) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action and includes measures taken by:
 - (i) central, regional, or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;
- (j) **natural person of a Party** means a person possessing the nationality or citizenship of that Party in accordance with its laws and regulations.

In the case of Brunei Darussalam, in accordance with its laws, regulations and national policies, the term "natural person of a Party" means a person possessing the nationality of Brunei Darussalam or a Permanent Resident of Brunei Darussalam who does not possess the nationality of another Party or non-Party. Brunei Darussalam shall request bilateral consultations with another Party, on a case-by-case basis, on the issue of whether to recognise such Permanent Resident as an investor of Brunei Darussalam;

- (k) **newer ASEAN Member States** means the Kingdom of Cambodia, the Lao People's Democratic Republic, the Republic of the Union of Myanmar and the Socialist Republic of Viet Nam;

- (l) **Parties** mean the ASEAN Member States and India, collectively;
- (m) **Party** means an ASEAN Member State or India;
- (n) **returns** mean amounts yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalties, fees, or payments in connection with intellectual property rights;
- (o) **WTO** means the World Trade Organization; and
- (p) **WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade Organization*, done on 15 April 1994 .

ARTICLE 3

National Treatment

1. Each Party shall accord to investors of another Party, and to investments as referred to in subparagraph 1(b) of Article 1 (Scope), in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer or other disposition of investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments.⁴
2. The treatment to be accorded by a Party under paragraph 1 of this Article means, with respect to a regional or local level, treatment no less favourable than the most favoured treatment accorded at that regional or local level, in like circumstances, to investors, and investments of the investors, of the Party to which it forms a part.

⁴ The Party shall not exercise any discrimination against investors of another Party or their investments. Another Party means an ASEAN Member State or India.

3. A Party shall not be obliged to extend to the investors of another Party the benefits or privileges arising from customs union, free trade agreements or similar bilateral, regional or international agreements or arrangements of which that Party is or may become a member, including any arrangements between or among ASEAN Member States.

4. A determination of whether investments or investors are in "like circumstances" should be made, based upon an objective assessment of all circumstances on a case-by-case basis, including, *inter alia*:

- (a) the sector the investor is in;
- (b) the location of the investment;
- (c) the aim of the measure concerned; and
- (d) the regulatory process generally applied in relation to the measure concerned.

The examination shall not be limited to or biased towards any one factor.

5. Extension of financial assistance or measures taken by a Party in favour of its investors and their investments in pursuit of legitimate public purpose including the protection of health, safety, the environment shall not be considered as a violation of this Article.

ARTICLE 4

Reservations⁵

1. Article 3 (National Treatment) shall not apply to:

⁵ For greater certainty, India shall provide a common single Schedule of Reservations which will be applied without discrimination among ASEAN Member States, and ASEAN Member States shall provide their respective Schedule of Reservations.

- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the central level of government as set out by that Party in its Schedule of Reservations in List 1;
 - (ii) the regional level of government as set out by that Party in its Schedule of Reservations in List 1; or
 - (iii) the local level of government.
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of the Party's Schedule of Reservations in List 1, with Article 3 (National Treatment).

2. Article 3 (National Treatment) shall not apply to any reservation for measures that a Party adopts or maintains with respect to existing or new and emerging sectors, sub-sectors or activities, as set out in List 2.

3. Other than pursuant to any procedures for the modification of Schedules of Reservations, a Party may not, under any measure adopted after the date of entry into force of this Agreement and covered by List 2, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Procedures for the modification of the Schedules of Reservations referred to in paragraph 3 of this Article are to be pursuant to Article 6 (Work Programme).

5. Nothing in this Agreement shall be construed so as to derogate from rights and obligations under international agreements in respect of protection of intellectual property rights to which the Parties are party, including the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement) and other treaties concluded under the auspices of the World Intellectual Property Organization.

6. A Party may take reservations to exclude admission, establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer or other disposition of portfolio investments from the benefits of this Agreement. Such reservations shall be notified upon entry into force of this Agreement.

ARTICLE 5

Review of Reservations⁶

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

2. As part of the review of this Agreement pursuant to Article 28 (Review), the Parties agree to review their respective Schedules of Reservations with a view to

⁶ For greater certainty, India shall provide a common single Schedule of Reservations, which will be applied without discrimination among ASEAN Member States, and ASEAN Member States shall provide their respective Schedule of Reservations.

improving reservations on national treatment with regard to the establishment, acquisition or expansion of investments.

ARTICLE 6

Work Programme

1. The Parties shall enter into discussions on:
 - (a) Schedules of Reservations to this Agreement;
and
 - (b) Procedures for the modification of Schedules of Reservations.
2. The Parties shall conclude the discussions referred to in paragraph 1 of this Article, within three (3) years from the date of entry into force of this Agreement unless the Parties otherwise agree. These discussions shall be overseen by the Joint Committee on Investment established under Article 23 (Joint Committee on Investment).
3. Schedules of Reservations referred to in paragraph 1 of this Article shall enter into force on a date agreed to by the Parties.
4. Notwithstanding anything to the contrary in this Agreement, Article 3 (National Treatment), Article 28 (Review), and paragraphs 1 to 5 of Article 4 (Reservations), shall not apply until the Parties' Schedules of Reservations have entered into force in accordance with paragraph 3 of this Article.
5. For the purpose of subparagraph (j) of Article 2 (Definitions), the Parties recognise that the criteria for recognition of Brunei Darussalam's Permanent Residents may be established during such bilateral consultations.

ARTICLE 7

Treatment of Investment

1. Each Party shall accord to investments as referred to in subparagraph 1(b) of Article 1 (Scope), fair and equitable treatment and full protection and security.
2. For greater certainty:⁷
 - (a) fair and equitable treatment requires each Party not to deny justice in any legal or administrative proceedings;
 - (b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the investments as referred to in subparagraph 1(b) of Article 1 (Scope); 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 Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

ARTICLE 8

Expropriation and Compensation

1. A Party shall not expropriate or nationalise investments as referred to in subparagraph 1(b) of Article 1 (Scope) either

⁷ In the case of Indonesia, only subparagraphs 2(a) and (b) shall apply where Indonesia is the Party according treatment under this Article.

directly or through measures equivalent to expropriation or nationalisation ("expropriation"), except:

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

2. A measure or a series of related measures by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment as referred to in subparagraph 1(b) of Article 1 (Scope). Such measure addresses two situations:

- (a) the first situation is direct expropriation, where an investment as referred to in subparagraph 1(b) of Article 1 (Scope) is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
- (b) the second situation is where a measure or series of related measures by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether a measure or series of related measures by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in subparagraph 2(b) of this Article requires a case-by-case, fact-based inquiry that considers, among other factors:

- (a) the economic impact of the government measure, although the fact that a measure or series of related measures by a Party has an adverse effect on the economic value of an investment,

standing alone, does not establish that such an expropriation has occurred;

- (b) whether the government measure breaches the government's prior binding written commitment to the investor whether by contract, licence or other legal document; and
- (c) the character of the government measure, including its objectives and whether the measure is disproportionate to the public purpose.

4. The compensation referred to in subparagraph 1(c) of this Article shall:

- (a) be paid without delay;⁸
- (b) be equivalent to the fair market value of the expropriated investment at the time when or immediately before the expropriation was publicly announced,⁹ or when the expropriation occurred, whichever is applicable;
- (c) not reflect any change in value because the intended expropriation had become known earlier; and
- (d) be effectively realisable and freely transferable.

5. In the event of delay, the compensation shall include an appropriate interest at the prevailing commercial rate.¹⁰

⁸ The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

⁹ In the case of the Philippines, the time when or immediately before the expropriation was publicly announced refers to the date of filing of the Petition for Expropriation.

¹⁰ For Cambodia, Malaysia, Myanmar, Philippines, Thailand and Viet Nam, in the event of delay, the rate and payment of interest of compensation for expropriation of investments of investors of another Party shall be determined in accordance with

The compensation, including any accrued interest, shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in a freely usable currency.

6. If an investor requests payment in a freely usable currency, the compensation referred to in subparagraph 1(c) of this Article, including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

7. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, in accordance with the TRIPS Agreement.

8. Notwithstanding paragraphs 1, 4, 5 and 6 of this Article, any measure of expropriation relating to land shall be as defined in the expropriating Party's existing domestic laws and regulations and any amendments thereto, and shall be for the purposes of and upon payment of compensation in accordance with the aforesaid laws and regulations.

9. Non-discriminatory regulatory measures by a Party or measures and awards by judicial bodies of a Party that are designed and applied in pursuit of public policy to achieve legitimate public interest or public welfare objectives, such as the protection of public health, safety, and the environment, do not constitute expropriation of the type referred to in subparagraph 2(b) of this Article.

ARTICLE 9

Compensation for Losses

Investors of a Party whose investments as referred to in subparagraph 1(b) of Article 1 (Scope) in the territory of another Party suffer losses owing to war or other armed

their laws, regulations and policies provided that such laws, regulations and policies are applied on a non-discriminatory basis.

conflict, a state of national emergency or civil disturbances in the territory of the latter Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Party accords to its own investors and their investments or to investors of any other Party or non-Party and their investments.

ARTICLE 10

Subrogation

1. If a Party or an agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or claim in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

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

3. In any proceeding involving an investment dispute, a Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the investor or the investment as referred to in subparagraph 1(b) of Article 1 (Scope) has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

4. In the exercise of subrogated rights or claims, a Party or the agency of the Party exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the relevant Party.

ARTICLE 11

Transfers

1. Each Party shall allow all transfers relating to investments as referred to in subparagraph 1(b) of Article 1 (Scope) to be made freely and without delay. Such transfers include:

- (a) initial capital and additional amount to maintain or increase the investment;
- (b) profits, capital gains, dividends, royalties, licence fees, technical assistance and technical and management fees, interest and other current income accruing from any investments as referred to in subparagraph 1(b) of Article 1 (Scope);
- (c) proceeds from the total or partial sale or liquidation of any investments as referred to in subparagraph 1(b) of Article 1 (Scope);
- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Article 8 (Expropriation and Compensation) and Article 9 (Compensation for Losses);
- (f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the parties to the dispute; and
- (g) earnings and other remuneration of personnel employed or engaged on contractual basis from abroad in connection with that investments as referred to in subparagraph 1(b) of Article 1 (Scope).

2. Each Party shall allow such transfers relating to an investment as referred to in subparagraph 1(b) of Article 1 (Scope) to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

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

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offences and the recovery of the proceeds of crime;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;
- (f) taxation;
- (g) social security, public retirement, or compulsory savings schemes, including provident funds, retirement gratuity programmes and employees insurance programmes;
- (h) severance entitlements of employees;
- (i) requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of a Party; and

- (j) in the case of India, requirements to lock-in initial capital investments, as provided in India's Foreign Direct Investment (FDI) Policy, where applicable, provided that, any new measure which would require a lock-in period for investments should not apply to existing investments.

4. Nothing in this Agreement shall affect the rights and obligations of the Parties as members of the IMF under the IMF Articles of Agreement, as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 12 (Temporary Safeguard Measures) or at the request of the IMF.

ARTICLE 12

Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Article 3 (National Treatment) relating to cross-border capital transactions or Article 11 (Transfers) in the event of serious balance of payments and external financial difficulties or under threat thereof.

2. A Party may adopt or maintain measures not conforming with its obligations under Article 11 (Transfers) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious economic or financial disturbance or serious difficulties for the operation of monetary or exchange rate policies in the Party concerned.¹¹

¹¹ For greater certainty, any measures taken to ensure the stability of the exchange rate including to prevent speculative capital flows shall not be adopted or maintained for the purpose of protecting a particular sector.

3. The measures referred to in paragraphs 1 and 2 of this Article shall:

- (a) be consistent with the IMF Articles of Agreement, as may be amended;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of another Party;
- (c) not exceed those necessary to deal with the circumstances described in paragraph 1 or 2;
- (d) be temporary and phased out progressively as the situation specified in paragraph 1 improves; and
- (e) be applied such that any one of the other Parties is treated no less favourably than any other Party or non-Party.

4. Measures adopted or maintained pursuant to paragraph 2 of this Article shall, in addition to subparagraphs 3(a) to (e) of this Article:

- (a) be phased out when conditions would no longer justify their institution or maintenance;
- (b) be applied on a national treatment basis; and
- (c) avoid unnecessary damage to investors and investments as referred to in subparagraph 1(b) of Article 1 (Scope) of another Party.

5. Any restrictions adopted or maintained under paragraphs 1 and 2 of this Article or any changes therein, shall be promptly notified to the other Parties.

6. To the extent that it does not duplicate the process under the WTO, IMF, or any other similar processes, the Party adopting any restrictions under paragraph 1 of this Article shall, on the request of another Party, commence consultations in order to review the restrictions adopted by it.

ARTICLE 13

Denial of Benefits

1. A Party may deny the benefits of this Agreement to an investor of another Party that is a juridical person of the other Party and to an investment of such investor if an investor of a non-Party owns or controls the juridical person, and the denying Party:

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

2. Subject to prior notification and consultation with the other Party, a Party may also deny the benefits of this Agreement to an investor of the other Party that is a juridical person of the other Party and to investments of that juridical person and where the denying Party establishes that:

- (a) the juridical person has no substantive business operations in the territory of the other Party; or
- (b) the juridical person is owned or controlled by investor(s) of a non-Party or of the denying Party.

3. A juridical person is:

- (a) "owned" by an investor in accordance with the laws, regulations and national policies of each Party;
- (b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

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

ARTICLE 14 **Transparency**

1. In order to achieve the objectives of this Agreement, each Party shall:

- (a) to the extent possible make available all relevant laws, regulations, policies and administrative guidelines of general application that pertain to, or affect investments in its territory;
- (b) establish or designate an enquiry point where, upon request of any natural person, juridical person or any one of the other Parties, all information relating to the measures required to be published or made available under subparagraph (a) may be promptly obtained; and

- (c) notify the other Parties through the ASEAN Secretariat at least once annually of any investment-related agreements or arrangements which grants any preferential treatment and to which it is a party.

2. Each Party shall endeavour, upon request by another Party, to respond promptly to specific questions and provide information to that other Party with respect to matters referred to in paragraph 1 of this Article.

3. Nothing in this Agreement shall require a Party to furnish or allow access to 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 particular juridical persons, public or private.

4. All notifications and communications made pursuant to paragraph 1 of this Article shall be in the English language.

ARTICLE 15

Special Formalities and Disclosure of Information

1. Nothing in Article 3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with an investment, including a requirement that such an investment be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the rights afforded by a Party to investors of another Party and their investments pursuant to this Agreement.

2. Notwithstanding Article 3 (National Treatment), a Party may require an investor of another Party, or investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect to the extent possible any confidential information which has

been provided from any disclosure that would prejudice legitimate commercial interests of the investor or the investments. 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 laws.

ARTICLE 16

Special and Differential Treatment for the Newer ASEAN Member States

In order to increase the benefits of this Agreement for the newer ASEAN Member States, and in accordance with the objectives of and the Preamble to this Agreement and objectives of Article 2 (Measures for Economic Cooperation) of the Framework Agreement, the Parties shall accord, to the extent possible, special and differential treatment to the newer ASEAN Member States under this Agreement, through:

- (a) technical assistance to strengthen their capacity in relation to investment policies and promotion, including in areas such as human resource development;
- (b) access to information on the investment policies of other Parties, business information, relevant databases and contact points for investment promotion agencies;
- (c) commitments in areas of interest to the newer ASEAN Member States; and
- (d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

ARTICLE 17

Promotion of Investment

The Parties shall cooperate in promoting investment activities by building upon existing agreements or arrangements already in place for economic cooperation, with the aim of advancing investment relations between the Parties through, amongst others:

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

ARTICLE 18

Facilitation of Investment

Subject to their laws and regulations, the Parties shall cooperate to facilitate investments amongst ASEAN and India through, amongst others:

- (a) endeavour to create the necessary environment for all forms of investment;
- (b) simplifying procedures for investment applications and approvals;
- (c) promoting dissemination of investment information, including investment rules, regulations, policies and procedures; and

- (d) establishing one-stop investment centres in the respective host Parties to provide assistance and advisory services to the business sectors including facilitation of operating licences and permits.

ARTICLE 19

Dispute between Parties

The provisions of the *Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India* signed in Bangkok, Thailand on 13 August 2009 shall apply to the settlement of disputes between or amongst the Parties under this Agreement.

ARTICLE 20

Investment Disputes between a Party and an Investor

Scope

1. This Article shall apply to investment disputes between a Party and an investor of another Party concerning an alleged breach of an obligation of the former Party under Article 3 (National Treatment), Article 7 (Treatment of Investment), Article 8 (Expropriation and Compensation), Article 9 (Compensation for Losses) and Article 11 (Transfers), which causes loss or damage to the investor in relation to its investment as referred to in subparagraph 1(b) of Article 1 (Scope) with respect to the management, conduct, operation, or sale or other disposition of such investment.

2. This Article shall not apply:

- (a) to investment disputes arising out of events which occurred or to investment disputes which had been settled or which were already under

judicial or arbitral process, prior to the entry into force of this Agreement; or

- (b) in cases where the disputing investor holds the nationality or citizenship of the disputing Party.

3. Nothing in this Article shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement available within the disputing Party.

4. For the purpose of this Article:

- (a) **disputing Party** means a Party against which a claim is made under this Article;
- (b) **disputing party** means a disputing investor or a disputing Party;
- (c) **disputing parties** means a disputing investor and a disputing Party;
- (d) **disputing investor** means an investor of a Party that makes a claim against another Party on its own behalf under this Article, and where relevant includes an investor of a Party that makes a claim on behalf of a juridical person of the disputing Party that the investor owns or controls;
- (e) **ICSID** means the International Centre for Settlement of Investment Disputes;
- (f) **ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington on 18 March 1965;
- (g) **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;

- (h) **New York Convention** means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958;
- (i) **non-disputing Party** means the Party of the disputing investor; and
- (j) **UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law approved by the United Nations General Assembly on 15 December 1976.

Consultation and Negotiation

5. In the event of an investment dispute referred to in paragraph 1 of this Article, the disputing parties shall as far as possible resolve the dispute through consultations and negotiations, with a view towards reaching an amicable settlement. Such consultations and negotiations, which may include the use of non-binding, third party procedures, shall be initiated by a written request for consultations and negotiations by the disputing investor to the disputing Party.

6. With the objective of resolving an investment dispute through consultations and negotiations, a disputing investor shall provide the disputing Party, prior to the commencement of consultations and negotiations, with information regarding the legal and factual basis for the dispute.

Choice of Forum

7. Where the dispute cannot be resolved as provided for under paragraph 5 of this Article within one hundred eighty (180) days from the date of written request for consultations

and negotiations, unless the disputing parties agree otherwise, it may be submitted at the choice of the disputing investor to:

- (a) the courts or administrative tribunals of the disputing Party;¹²
- (b) conciliation or arbitration in accordance with the ICSID Convention and the *ICSID Rules of Procedure for Arbitration Proceedings*,¹³ provided that both the disputing Party and the non-disputing Party are parties to the ICSID Convention;
- (c) conciliation or arbitration under the ICSID Additional Facility Rules, provided that either of the disputing Party or the non-disputing Party is a party, but not both, to the ICSID Convention;
- (d) an international *ad hoc* arbitral tribunal established under the UNCITRAL Arbitration Rules; or
- (e) any other arbitral institution or in accordance with any other arbitral rules, if the disputing parties agree.

Provided that submission of the dispute by the disputing investor to any courts or administrative tribunals or to any fora or any arbitration rules under subparagraphs 7(a) to (e) shall exclude resort to the other.

¹² This shall apply provided such courts or administrative tribunals have jurisdiction.

¹³ In the case of Philippines, submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings shall be subject to a written agreement between the disputing parties in the event that an investment dispute arises.

Conditions and Limitations on Submission of Claim

8. The submission of a dispute to conciliation or arbitration under subparagraph 7(b), (c), (d) or (e) of this Article in accordance with the provisions of this Article, shall be conditional upon:

- (a) the submission of the dispute to such conciliation or arbitration taking place within three (3) years of the time at which the disputing investor became aware, or should reasonably have become aware of an alleged breach of an obligation under this Agreement causing loss or damage to the investor in relation to its investment as referred to in subparagraph 1(b) of Article 1 (Scope); and
- (b) the disputing investor providing to the disputing Party a written notice of intent at least ninety (90) days before the claim is submitted. The notice of intent shall specify:
 - (i) either subparagraph 7(b), (c), (d) or (e) as the forum for dispute settlement and, in the case of subparagraph 7(b), whether conciliation or arbitration is being sought;
 - (ii) the name and address of the disputing investor and its legal representative;
 - (iii) the waiver of the right to initiate or continue any proceedings, excluding proceedings for interim measures of protection referred to in paragraph 30 of this Article, before any other dispute settlement fora referred to in paragraph 7 of this Article in relation to the matter under dispute;
 - (iv) a brief summary of the factual and legal basis of the dispute sufficient to present the

problem clearly, including the provisions of this Agreement alleged to have been breached and the relevant measure at issue, as may be applicable; and

- (v) the relief sought, and where appropriate, the approximate amount of damages claimed.

9. The applicable arbitration rules shall govern the arbitration referred to in this Article except to the extent modified by the Parties in this Article.

Selection of Arbitrators

10. Unless the disputing parties agree otherwise, an arbitral tribunal established under subparagraphs 7(b), (c), (d) and (e) of this Article shall comprise three (3) arbitrators, one (1) arbitrator appointed by each of the disputing parties within seventy-five (75) days from the date the investment dispute was submitted for arbitration. The third arbitrator, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties. If the disputing investor or the disputing Party fails to appoint their respective arbitrators within seventy-five (75) days from the date on which the investment dispute was submitted to arbitration, the Secretary-General of ICSID in the case of arbitration referred to in subparagraph 7(b) or (c) of this Article, or the Secretary-General of the Permanent Court of Arbitration (PCA) in the case of arbitration referred to in subparagraph 7(d) or (e) of this Article, on the request of either of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed from the ICSID or PCA Panel of Arbitrators respectively, subject to the requirements of paragraph 11 of this Article.

11. Unless the disputing parties agree otherwise, the third arbitrator shall:

- (a) not be of the same nationality as the disputing investor, nor be a national of the disputing Party;
- (b) not have his or her usual place of residence in the territory of either disputing Party or non-disputing Party;
- (c) not be employed by nor affiliated with the disputing Party, the non-disputing Party, or the disputing investor;
- (d) not have dealt with the said investment dispute in any capacity; and
- (e) have expertise or experience in public international law, international trade or international investment rules.

Conduct of Arbitration

12. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, the tribunal shall decide the matter before proceeding to the merits.

13. A disputing Party may, no later than three (3) months after the constitution of the tribunal, file an objection that a claim is manifestly without merit or not admissible. A disputing Party may also file an objection that a claim is otherwise outside the jurisdiction or competence of the tribunal. The disputing Party shall specify as precisely as possible the basis for the objection.

14. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.

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

16. Unless the disputing parties otherwise agree, the place of arbitration shall be determined 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.

Transparency

17. Subject to paragraph 18 of this Article, the disputing Party may make publicly available final awards and decisions made by the tribunal.

18. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.

Joint Interpretation

19. The tribunal shall, on its own account or at the request of a disputing Party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within sixty (60) days of the request. Without prejudice to paragraph 20 of this Article, if the Parties fail to submit such a decision within sixty (60) days, any interpretation submitted by a Party individually shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account.

20. A joint decision of the Parties, declaring their interpretation of a provision of this Agreement shall be

binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that joint decision.

Awards

21. The award shall include:

- (a) a judgment as to whether or not there has been a breach by the disputing Party of any rights conferred by this Agreement in respect of the disputing investor and its investments; and
- (b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:
 - (i) payment of monetary damages and applicable interest; and
 - (ii) 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.

22. A tribunal may not award punitive damages.

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

24. The award rendered in accordance with paragraph 21 of this Article shall be final and binding upon the disputing parties. The disputing Party shall provide for the enforcement of such award and execute it without delay.¹⁴

¹⁴ The Parties understand that there may be domestic legal and administrative processes that need to be observed before an award can be complied with.

25. Subject to paragraph 26 of this Article and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.¹⁵

26. A disputing party may not seek enforcement of a final award until:

- (a) in the case of a final award under the ICSID Convention:
 - (i) one hundred twenty (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;
- (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to subparagraph 7(e) of this Article :
 - (i) ninety (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.

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

¹⁵ The Parties understand that there may be domestic legal and administrative processes that need to be observed before an award can be complied with.

Costs

28. Costs may also be awarded in accordance with the applicable arbitration rules.

29. The non-disputing Party shall not, in respect of a dispute which one of its investors has submitted to conciliation or arbitration in accordance with paragraph 7 of this Article, give diplomatic protection, or bring an international claim before another forum, unless the disputing 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.

30. No 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 7 of this Article, for the preservation of its rights and interests.

Governing Law

31. The tribunal shall decide the issues in dispute in accordance with this Agreement and the applicable rules of international law and where applicable, any relevant domestic law of the disputing Party.

ARTICLE 21

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 or amongst the Parties, their investors, or their investments where like

conditions prevail, or a disguised restriction on investors of any Party or their investments, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:

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

2. Insofar as measures affecting the supply of financial services are concerned, paragraph 2 (Domestic Regulation) of the *Annex on Financial Services of the General*

Agreement on Trade in Services in Annex 1B to the WTO Agreement shall be incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

ARTICLE 22

Security Exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:
 - (i) action relating to fissionable and fusionable materials or the materials from which they are derived;
 - (ii) action taken in time of war or other emergency in domestic or international relations;
 - (iii) 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;
 - (iv) action taken so as to protect critical public infrastructure including communication, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructure; 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. Each Party shall inform the other Party to the fullest extent possible of measures taken under subparagraphs 1(b) and (c) of this Article and of their termination.
- 3. Nothing in this Agreement shall be construed to require a Party to accord the benefits of this Agreement to an investor that is a juridical person 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 Agreement were accorded to such juridical person or to its investments.
- 4. Paragraph 3 of this Article shall be interpreted in accordance with the understanding of the Parties on Security Exceptions as set out in Annex 1, which shall form an integral part of this Agreement.
- 5. This Article shall be interpreted in accordance with the understanding of the Parties on non-justiciability of Security Exceptions as set out in Annex 2, which shall form an integral part of this Agreement.

ARTICLE 23

Joint Committee on Investment

- 1. A Joint Committee on Investment shall be established within one (1) year from the entry into force of this Agreement.
- 2. The functions of the Joint Committee shall be to:

- (a) review the implementation and operation of this Agreement;
 - (b) submit a report to the Parties on the implementation and operation of this Agreement;
 - (c) consider and recommend to the Parties any amendments to this Agreement;
 - (d) supervise and coordinate the work of all Sub-Committees established under this Agreement; and
 - (e) carry out other functions as may be agreed by the Parties.
3. The Joint Committee on Investment:
- (a) shall be composed of representatives of the Parties; and
 - (b) may establish Sub-Committees and delegate its responsibilities thereto.

ARTICLE 24

Communications

Each Party shall designate a contact point to facilitate communications among the Parties on any matter relating to this Agreement. All official communications in this regard shall be in the English language.

ARTICLE 25

Annexes, Footnotes and Schedules

The Annexes, footnotes and Schedules, to this Agreement shall constitute an integral part of this Agreement.

ARTICLE 26

Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall come into force on such date or dates as may be agreed among them.

ARTICLE 27

Withdrawal and Termination

1. Any Party may withdraw from this Agreement by giving twelve (12) months advance notice in writing to the other Parties.

2. This Agreement shall terminate if, pursuant to paragraph 1 of this Article:

- (a) India withdraws; or
- (b) this Agreement is in force for less than four (4) ASEAN Member States.

3. Any other Party may request in writing, consultations concerning any matter that would arise from the withdrawal within sixty (60) days after the date of receipt of the notice in paragraph 1 of this Article. The requested Party shall enter into consultations in good faith upon receipt of the request.

ARTICLE 28

Review

Unless otherwise agreed, the Parties shall undertake a general review of this Agreement with a view to furthering its objectives within three (3) years from the date of the entry into force of the Agreement, and every three (3) years thereafter.

ARTICLE 29

Depositary

For the ASEAN Member States, this Agreement shall be deposited with the Secretary-General of ASEAN who shall promptly furnish a certified copy thereof to each ASEAN Member State.

ARTICLE 30

Entry into Force

1. Each Party shall notify the other Parties in writing upon completion of its internal requirements¹⁶ necessary for entry into force of this Agreement. This Agreement shall enter into force on 1 July 2015 for any Party that has made such notifications provided that India and at least four (4) ASEAN Member States have made such notifications by that date.

2. If this Agreement does not enter into force on 1 July 2015 it shall enter into force, for any Party that has made the notification referred to in paragraph 1 of this Article, sixty (60) days after the date by which India and at least four (4) ASEAN Member States have made the notifications referred to in paragraph 1 of this Article.

3. After the entry into force of this Agreement pursuant to paragraph 1 or 2 of this Article, this Agreement shall enter into force for any Party sixty (60) days after the date of its notifications referred to in paragraph 1 of this Article.

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed the Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation between the Association of the Southeast Asian Nations and the Republic of India.

¹⁶ For greater certainty, the term "internal requirements" may include obtaining governmental approval or parliamentary approval in accordance with domestic law.

DONE at Nay Pyi Taw, Myanmar this ~~twelfth~~ day
of November in the Year Two Thousand and Fourteenth
in two original copies in the English Language.

Annex 1

Security Exceptions

The Parties confirm the following understanding with respect to interpretation and/or implementation of this Agreement:

- (a) the measures referred to in paragraph 3 of Article 22 (Security Exceptions) are measures where the intention and objective of the Party imposing the measures is for the protection of its essential security interests. These measures shall be imposed on a non-discriminatory basis and may be found in any of its legislation or regulations:
 - (i) In the case of India, the applicable measures referred to in paragraph 3 of Article 22 (Security Exceptions) are currently set out in the regulations framed under the Foreign Exchange Management Act, 1999 (42 of 1999) (FEMA). India shall, upon request by another Party, provide information on the measures concerned;
 - (ii) In the case of ASEAN Member States, they do not presently adopt or maintain any unilateral measures against a non-Party or investor of a non-Party in its laws or regulations. This shall not preclude any ASEAN Member State from adopting similar measures against any non-Party or investor of a non-Party;
- (b) the measures which a Party adopts or maintains with respect to a non-Party or investors of a non-Party shall not impinge upon another Party's sovereign rights to conduct its foreign policy nor shall it prohibit juridical persons of foreign investors that are subject to such measures from establishing themselves in another Party.

Annex 2

Non-Justiciability of Security Exceptions

With respect to the interpretation and/or implementation of this Agreement, the Parties confirm their understanding that disputes submitted to arbitration pursuant to paragraphs 7 and 8 of Article 20 (Investment Disputes between a Party and an Investor), where the disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a security exception as set out in Article 22 (Security Exceptions), any decision of the disputing Party taken on such security considerations shall be non-justiciable in that it shall not be open to any arbitral tribunal to review the merits of any such decision, even where the arbitral proceedings concern an assessment of any claim for damages and/or compensation, or an adjudication of any other issues referred to the tribunal.