

## **Article 1**

### **Definitions**

For the purposes of this Agreement:

- (a) **ASEAN Member Country** means Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand or the Socialist Republic of Viet Nam, individually;

- (b) **ASEAN Member Countries** means Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, collectively;
- (c) **covered investment** means, with respect to a Party, an investment in its territory of an investor of any other Party, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and has been admitted according to its laws, regulations and national policies, and where applicable, specifically approved in writing<sup>1</sup> by its competent authority;
- (d) **disputing parties** means a disputing investor and a disputing Party;
- (e) **disputing Party** means a Party against which a claim is made under Article 18 (Investment Dispute Settlement between a Party and an Investor of any other Party);
- (f) **Framework Agreement** means the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea;

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<sup>1</sup> For the purpose of protection, the procedures relating to specific approval in writing shall be in Annex 1 (Approval in Writing).

- (g) **freely usable currency** means any currency designated as such by the International Monetary Fund (IMF) under its Articles of Agreement and any amendments thereto;
- (h) **GATS** means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;
- (i) **Implementing Committee** means the Implementing Committee established under Article 5.3 of the Framework Agreement;
- (j) **investment** means every kind of asset that an investor owns or controls, and that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gains or profits or the assumption of risk, and in particular, shall include but is not limited to:
  - (i) movable and immovable property and any other property rights such as mortgages, liens or pledges;
  - (ii) shares, stocks and debentures of a juridical person or interests in the property of such juridical person;
  - (iii) intellectual property rights which are recognised pursuant to laws and regulations of a host Party and international agreements to which the host Party is a party and goodwill;

- (iv) business concessions<sup>2</sup> conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources; and
- (v) a claim to money or any performance having financial value,

but the term **investment** does not include claims to money that arise solely from:

- (i) commercial contracts for the sale of goods or services by a natural or juridical person in the territory of a Party to natural or juridical person in the territory of any other Party; or
- (ii) the extension of credit in connection with a commercial transaction, such as trade financing.

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

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<sup>2</sup> Business concessions include contractual rights such as those under turnkey, construction, management, production or revenue-sharing, concessions, or other similar contracts and may include investment funds for projects such as Build-Operate and Transfer (BOT) and Build-Operate and Own Schemes (BOO).

- (k) **investor of a Party** means a natural person or a juridical person of a Party that is seeking to make<sup>3</sup>, is making, or has made an investment in the territory of any other Party;
- (l) **juridical person of a Party** means any legal entity duly constituted or otherwise organized under a Party's applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association, and its branch<sup>4</sup>;
- (m) **Korea** means the Republic of Korea;
- (n) **measures** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or in any other form affecting investors and/or investments, and include measures taken by:
  - (i) central, regional or local governments and authorities; and

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<sup>3</sup> For greater certainty, the Parties understand that an investor that "is seeking to make" an investment refers to an investor of any other Party that has taken active steps to initiate a notification or approval process, where applicable, for making an investment.

<sup>4</sup> For greater certainty, a branch of a legal entity of a non-Party shall not be considered as a juridical person of a Party.

- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments and authorities;
- (o) **natural person of a Party**<sup>5</sup> means any natural person possessing the nationality or citizenship of or right of permanent residence in that Party in accordance with its laws and regulations;
- (p) **new ASEAN Member Countries** means the Kingdom of Cambodia, the Lao People's Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;
- (q) **non-disputing Party** means the Party of the disputing investor;
- (r) **Parties** means the ASEAN Member Countries and Korea, collectively;
- (s) **Party** means an ASEAN Member Country or Korea;
- (t) **returns** means amounts yielded by or derived from an investment particularly, though not exclusively, any profits, interests, capital gains, dividends, royalties or fees;

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<sup>5</sup> In the case of a Party who does not grant rights of permanent residence to foreigners or accord its permanent residents the same benefits as its nationals or citizens, it shall not be legally obliged to accord the benefits of this Agreement to permanent residents of any other Party or claim the aforesaid benefits for its permanent residents, if applicable, from any other Party.

- (u) **WTO** means the World Trade Organisation; and
- (v) **WTO Agreement** means the Marrakesh Agreement Establishing the World Trade Organisation, done at Marrakesh on the 15th day of April 1994 and the other agreements negotiated thereunder.