

Article 18
Investment Dispute Settlement
between a Party and an Investor of any other Party

1. This Article shall apply to investment disputes between a Party and an investor of any other Party concerning an alleged breach of Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (General Treatment of Investment), Article 7 (Senior Management and Boards of Directors), Article 10 (Transfers), Article 12 (Expropriation and Compensation) and Article 13 (Compensation for Losses) of this Agreement which causes loss or damage by reason of, or arising out of, that breach to:

- (a) the investor in relation to its covered investments; or

- (b) the covered investment that has been made by that investor,

relating to the management, conduct, operation or sale or other disposition of a covered investment.

2. A natural person possessing the nationality or citizenship of a Party shall not pursue a claim against that Party under this Agreement.

3. An investment may not make a claim under this Article.

4. In the event of an investment dispute arising under this Article, the disputing parties shall as far as possible resolve the dispute through consultation and negotiation, a request of which shall be made in writing, with a view towards reaching an amicable settlement.

5. Any such dispute which has not been resolved within a period of six months from the date of written request for consultations may be submitted to the courts or administrative tribunals of the disputing Party provided that such courts or tribunals have jurisdictions over such claims or to arbitration. In the latter event, the investor has the choice among any of the following:

- (a) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the disputing Party and the non-disputing Party are parties to the ICSID Convention²⁰;
- (b) the ICSID Additional Facility Rules, provided that either the disputing Party or the non-disputing Party is a party to the ICSID Convention;
- (c) the UNCITRAL Arbitration Rules; or
- (d) any other arbitration institution or any other arbitration rules, if the disputing parties so agree.

6. Once the investor has submitted the dispute to the courts or administrative tribunals of the disputing Party or any of the arbitration mechanisms provided for in paragraph 5, the choice of forum shall be final.

7. The submission of a dispute to arbitration under paragraph 5 shall be conditional upon:

- (a) the submission of the dispute to such arbitration taking place within three years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement and, of the loss or damage incurred by the

²⁰ In the case of the Republic of the 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. For greater certainty, nothing in this Agreement shall be construed to derogate from the written agreement requirement set out in this footnote.

disputing investor in relation to its covered investment or by the covered investment; and

- (b) the disputing investor providing written notice, which shall be delivered at least 90 days before the claim to arbitration is submitted, to the disputing Party of its intent to submit the dispute to such arbitration and which:
 - (i) nominates one of the fora in paragraph 5(a), (b), (c), or (d) as the forum for dispute settlement; and
 - (ii) briefly summarises the alleged breach of the disputing Party under this Agreement (including the articles alleged to have been breached) and the loss or damage allegedly caused to the investor in relation to its covered investment or caused to the covered investment.²¹

8. Where an investment dispute relate to a measure which may be a taxation measure, the disputing Party and the non-disputing Party, including representatives of their tax administrations, shall hold consultations to determine whether the measure in question is a taxation measure.

²¹ In the event of an investment dispute between Korea and an investor of any other Party or between any other Party and an investor of Korea, it shall be considered that the disputing Party consents to the submission of the dispute to the arbitration forum selected by the disputing investor, provided that Korea and that other Party had consented to submission of investment disputes to that forum in existing bilateral agreements to which both Korea and that other Party are parties.

9. Where a disputing investor claims that the disputing Party has breached Article 12 (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 with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation.

10. Any tribunal that may be established under this Article shall accord serious consideration to the decision of the disputing Party and the non-disputing Party under paragraphs 8 and 9.

11. If the disputing Party and the non-disputing Party fail either to initiate such consultations referred to in paragraphs 8 and 9, or to make such joint decisions, within the period of 180 days from the date of the receipt of request for consultation referred to in paragraph 4, the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Article.

12. A Party shall not 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 5, for the preservation of its rights and interests.

13. A Party shall not give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and any other Party shall have consented to submit or have submitted to arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for

the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

14. 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.