CHAPTER 10

INVESTMENT

Article 10.1: Definitions

For the purposes of this Chapter:

(a) **covered investment** means, with respect to a Party, an investment in its territory of an investor of another Party 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 admitted[1, 2] by the host Party, subject to its relevant laws, regulations, and policies;[3]

(b) **freely usable currency** means a freely usable currency as determined by the IMF under the IMF Articles of Agreement as may be amended;

(c) **investment** means every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gains or profits, or the assumption of risk. Forms that an investment may take include:

(i) shares, stocks, and other forms of equity participation in a juridical person, including rights derived therefrom;

(ii) bonds, debentures, loans,[4] and other debt instruments of a juridical person and rights derived therefrom;[5]

(iii) rights under contracts, including turnkey, construction, management, production, or revenue-sharing contracts;

(iv) intellectual property rights and goodwill, which are recognised pursuant to the laws and regulations of the host Party;

(v) claims to money or to any contractual performance related to a business and having financial value;[6]

(vi) rights conferred pursuant to the laws and regulations of the host Party or contracts, such as concessions, licences, authorisations, and permits, including those for the exploration and exploitation of natural resources; and

(vii) movable and immovable property, and other property rights, such as leases, mortgages, liens, or pledges.[7]

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

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[1] For Malaysia and Thailand, protection under this Chapter shall be accorded to covered investments which, where applicable, have been specifically approved in writing for protection by their respective competent authorities in accordance with their respective laws, regulations, and policies.

[2] For Cambodia, Indonesia, and Viet Nam, “has been admitted” means “has been specifically registered or approved in writing, as the case may be”.

[3] For the purposes of this definition, “policies” means those policies affecting an investment that are endorsed and announced by the government of a Party in a written form and made publicly available in a written form.

[4] A loan issued by a Party to another Party is not an investment.

[5] Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

[6] For greater certainty, investment does not mean claims to money that arise solely from:

(a) commercial contracts for the sale of goods or services; or

(b) the extension of credit in connection with such commercial contracts.

[7] For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.