Article 10.11: Compensation for Losses

Each Party shall accord to investors of another Party, and their covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife, or state of emergency, treatment no less favourable than that it accords, in like circumstances, to:

(a) its own investors and their investments; and

(b) investors of any other Party or non-Party, and their investments.

Article 10.12: Subrogation

1. If a Party, or an agency designated by a Party, makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity that it has granted in respect of a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any right or claim in respect of such covered 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 designated by a Party has made a payment to an investor of that Party and has taken over any right or claim of the investor, that investor shall not pursue that right or claim against the other Party in whose territory the covered investment was made, unless that investor is authorised to act on behalf of the Party making the payment or the agency designated by that Party.

3. In the exercise of subrogated or transferred right or claim, a Party or an agency designated by a Party exercising such right or claim shall disclose the coverage of the claims arrangement with its investors to the relevant Party.

Article 10.13: Expropriation[25]

1. No Party shall expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation" in this Chapter), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of compensation in accordance with paragraphs 2 and 3; and

(d) in accordance with due process of law.

2. The compensation referred to in subparagraph 1(c) shall:

(a) be paid without delay;[26]

(b) be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced,[27] or when the expropriation occurred, whichever is earlier (hereinafter referred to as the "date of expropriation" in this Chapter);[28, 29, 30]

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be effectively realisable and freely transferable.

3. In the event of delay, the compensation shall include an appropriate interest in accordance with the expropriating Party's laws, regulations, and policies provided that such laws,

[25] This Article shall be interpreted in accordance with Annex 10B (Expropriation).

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

[27] For the Philippines, the time when the expropriation was publicly announced for the purpose of calculating the fair market value of the expropriated investment refers to the date of filing of the Petition for Expropriation.

[28] For Australia, Brunei Darussalam, Korea, Malaysia, New Zealand, and Singapore, the date of expropriation for the purpose of calculating the fair market value of the expropriated investment means the date immediately before the expropriation occurs.

[29] For Cambodia, Lao PDR, Myanmar, and Viet Nam, the date of expropriation for the purpose of calculating the fair market value of the expropriated investment means the date when the expropriation decision is issued by the competent authority.

[30] For Thailand, the date of expropriation for the purpose of calculating the fair market value of the expropriated investment means the date when the expropriation occurs.