

ANNEX 10 A Customary International Law

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Articles 10.05 and 10.11 results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

ANNEX 10 B Expropriation

The Parties confirm their shared understanding that:

1. Article 10.11 (1) is intended to reflect customary international law concerning the obligation of States with respect to expropriation.
2. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
3. Article 10.11 (1) addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
4. The second situation addressed by Article 10.11 (1) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
 - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and
 - (iii) the character of the government action.
 - (b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

ANNEX 10 C Delivery of Notifications and other Documents

1. For purposes of the Article 10.39 (2), the place for the delivery of notifications and other documents will be:
 - (a) in the case of the Republic of China (Taiwan): The Department of Investment Services, Ministry of Economic Affairs, 8F, No. 71, Guancian Road, Taipei 10047, Taiwan, R.O.C. ;
 - (b) in the case of the Republic of El Salvador: Dirección de Administración de Tratados Comerciales, Ministerio de Economía, Alameda Juan Pablo II y Calle Guadalupe, Edificio C1-C2, Plan Maestro, Centro de Gobierno, San Salvador, El Salvador; and
 - (c) in the case of the Republic of Honduras: Dirección General de Integración Económica y Política Comercial, Secretaría de Estado en los Despachos de Industria y Comercio, Boulevard José Cecilio del Valle, Edificio San José, antiguo edificio de Fenaduanah, Tegucigalpa, Honduras.
2. The Parties shall communicate any change of the designated place for the delivery of notifications and other documents.

ANNEX 10 D

The Parties agree that this Agreement substitutes the Agreement Between the Republic of China (Taiwan) and the Republic of El Salvador on the Reciprocal Promotion and Protection of Investments (herein Bilateral Investment Agreement), signed on August 30, 1996 and in force since February 25, 1997, as well as the Agreement Between the Republic of China (Taiwan) and the Republic of Honduras on the Treatment and Protection of Investments (herein Bilateral Investment Agreement), signed on February 26, 1996 and in force since October 26, 1998, and will therefore govern the relations between the Parties regarding the promotion and protection of investments.

Henceforth, all investments made after the entry into force of this Agreement by an investor of a Party in the territory of another Party, will be governed by the provisions contained in this Chapter.

Any covered investments existing prior to the entry into force of this Agreement will be governed at election of the investor by the corresponding Bilateral Investment Agreement or this Chapter for a term of ten (10) years after the entry into force of this Agreement. After the expiration of said term, those investments will be governed by the provisions contained in this Chapter.

Moreover, and only for the covered investments made prior to the entry into force of this Agreement, any dispute arising with regards to them will be governed, at the election of the investor, by the

corresponding Bilateral Investment Agreement or this Chapter for a term of ten (10) years after the entry into force of this Agreement. After the expiration of said term, any dispute that arises and that is covered by the protections of this Agreement will be governed by the provisions contained in this Chapter.

For greater certainty, an investor, either on his behalf or on the behalf of an enterprise, cannot submit the same claim to both Investor-State Dispute Resolution Mechanisms. The election of one or the other mechanism will be definite and exclusive.

For purposes of this Agreement, the term “covered investment”, means an investment that was made in accordance with the terms of the Bilateral Investment Agreements referred to above, and was therefore a protected investment under those Agreements.