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## CHAPTER XX

### INVESTMENT Section A

#### GENERAL PROVISIONS

##### Article 1 Right to regulate

The Parties affirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, environment or public morals, social or consumer protection, privacy and data protection, the promotion and protection of cultural diversity, or competition.

##### Article 2 Scope

This Chapter applies to measures adopted or maintained by<sup>1</sup>:

- (a) the central, regional, or local governments and authorities of that Party; and
- (b) any person, including a state enterprise or any other non-governmental body in the exercise of powers delegated by central, regional, or local governments or authorities.

##### Article 3 Definitions

For the purpose of this Chapter:

**aircraft repair and maintenance services during which an aircraft is withdrawn from service** mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

**computer reservation system services** means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

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<sup>1</sup> For greater certainty, this Chapter covers measures by entities listed under paragraph (a) and (b), which are adopted or maintained either directly, or indirectly by instructing, directing or controlling other entities with regard to those measures.

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**selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;

**ground handling services** means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning.

Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

**“natural person of the EU”** means a national of one of the Member States of the European Union according to its legislation<sup>2</sup> and a **“natural person of Mexico”** means a national of Mexico according to its legislation. A natural person who is a national of Mexico and has the nationality of one of the Member States of the European Union is deemed to be exclusively a natural person of the Party of his or her dominant and effective nationality;

**“enterprise”** means an enterprise as defined in Article XX (General definitions), or a branch or a representative office of an enterprise<sup>3</sup>;

**“enterprise of the EU”** or an **“enterprise of Mexico”** means an enterprise set up in accordance with the laws of a Member State of the European Union or of Mexico and engaged in substantive business operations<sup>4</sup> in the territory of the EU or of Mexico, respectively<sup>5</sup>;

Shipping companies established outside the European Union or Mexico and controlled by nationals of a Member State of the European Union or of Mexico, respectively, shall also be beneficiaries of the provisions of this Title, with the exception of Chapter II (Investment) Section B (Investment Protection) and of Section C (Resolution of Investment Disputes and

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<sup>2</sup> The definition of natural persons of the EU also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen’s passport.

<sup>3</sup> For Mexico, a representative office shall not be considered as an enterprise, unless it is established as a branch.

<sup>4</sup> In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the EU understands that the concept of “effective and continuous link” with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of “substantive business operations”.

<sup>5</sup> For greater certainty, a branch or a representative office of a legal entity of a non-Party shall not be considered as an enterprise of the EU or an enterprise of Mexico.

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Investment Court System), if their vessels are registered in accordance with their respective legislation, in a Member State or in Mexico and fly the flag of that Member State or of Mexico;

**“establishment”** means the setting up, including the acquisition<sup>6</sup> of, an enterprise in Mexico or in the EU;

**“economic activities”** means activities of an industrial, commercial or professional character, and activities of craftsmen, including the supply of services, except activities performed in the exercise of governmental authority;

**“operation”** means the conduct, management, maintenance, use, enjoyment, sale or other disposal of an investment by an investor of one Party, in the territory of the other Party;

**“activities performed in the exercise of governmental authority”** means activities performed neither on a commercial basis nor in competition with one or more economic operators;

**“measure”** includes any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement, practice or any other form<sup>7</sup>;

**“investor of a Party”** means a Party or natural person or an enterprise of a Party, other than a branch or representative office that seeks to make, is making, or has already made an investment in the territory of the other Party.

**“investor of a non-Party”** means, with respect to a Party, an investor that seeks to make, is making, or has made an investment in the territory of that Party, that is not an investor of Mexico or of the EU;

**“covered investment”** means an investment which is owned, directly or indirectly, or controlled, directly or indirectly, by investors of one Party in the territory of the other Party, made in accordance with applicable laws, in existence as of the date of entry into force of this Agreement or established thereafter;

**“investment”** means every kind of asset which is owned or controlled, directly or indirectly, by an investor and acquired in the expectation of, or used for the purpose of, economic benefit or other business purposes and that has the characteristics of an investment, including such characteristics as a certain duration, the commitment of capital or other resources, the

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<sup>6</sup> The term “acquisition” shall be understood as including capital participation in an enterprise with a view to establishing or maintaining lasting economic links.

<sup>7</sup> For greater certainty, “measure” includes failures to act.

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expectation of gain or profit or the assumption of risk. Forms that an investment may take include:

- a) an enterprise;
- b) shares, stock and other forms of equity participation in an enterprise;
- (c) bonds, debentures, loans, and other debt instruments of an enterprise;<sup>8</sup>
- (d) interests arising from:
  - i) concessions, licenses, authorisations, permits, and similar rights conferred pursuant to domestic law
  - ii) turnkey, construction, management, production, concession, or revenue-sharing contracts, and other similar contracts;
- (d) intellectual property rights;
- (e) other tangible or intangible, movable or immovable property, and related property rights, such as leases, liens and pledges<sup>9</sup>;
- (f) claims to money involving the kind of interests set out in subparagraphs (a) to (e) above, but no claims to money that arise solely from:
  - (i) Commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to a natural person or enterprise in the territory of the other Party, or
  - (ii) The extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (c) above;

Investment does not include an order or judgment entered in a judicial or administrative action.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments provided that the form taken by any investment or reinvestment maintains its compliance with the definition of investment.

**“freely convertible currency”** means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.

**"returns"** means the amounts yielded by an investment and includes in particular, though not exclusively, profits, interest, dividends, capital gains, royalties, payments in connection with intellectual property rights, payments in kind management fees and other fees derived from the investment. For the purposes of the definition of investment, returns that are reinvested shall be treated as investments.<sup>10</sup>

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<sup>8</sup> Some forms of debt such as bonds, loans, debentures and long term notes, are more likely to have characteristics of an investment, while other forms of debt are less likely to have such characteristics.

<sup>9</sup> For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

<sup>10</sup> For greater certainty reinvested returns under this paragraph shall be treated as investments as long as they comply with the definition of investment under this article.

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**"TRIPS Agreement"** means the Agreement on Trade-related Aspects of Intellectual Property Rights and related issues in the WTO.

#### Article 4 **Relation to Other Chapters**

1. In the event of any inconsistency between this Chapter and the Financial Services Chapter, the latter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

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## **SECTION A**

### **LIBERALISATION OF INVESTMENTS**

#### **Article 5 Scope**

1. This Section applies to measures adopted or maintained by a Party affecting the establishment of an enterprise or the operation of an investment of an investor of the other Party in its territory.
2. This Section shall not apply to:
  - (a) activities performed in the exercise of governmental authority within the territory of the respective Party;
  - (b) government procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article 19.2.2 (Scope and coverage);
  - (c) measures adopted or maintained by a Party to the extent that they are covered by Chapter XX (Financial Services);
  - (d) audio-visual services;
  - (e) national maritime cabotage<sup>11</sup>;
  - (f) air services, or related services in support of air services<sup>12</sup>, other than the following:
    - i. aircraft repair and maintenance services during which an aircraft is withdrawn from service;
    - ii. selling and marketing of air transport services;
    - iii. computer reservation system services; and

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<sup>11</sup> For the EU, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a Member State of the European Union and another port or point located in that same Member State of the European Union, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in a Member State of the European Union.

For Mexico, national maritime cabotage under this Chapter covers the navigation that any vessel performs by sea, between ports or places located within the Mexican marine zones and Mexican shores.

<sup>12</sup> For greater certainty, "air services or related services in support of air services" also include the following services: rental of aircraft with crew, airport operation services and services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

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iv. ground handling services.

3. Subsidies shall be dealt with by Chapter [YY (on Competition and Subsidies)]. Articles 2.2 [Market Access], 2.3 [National Treatment] and 2.4 [Most Favoured Nation] shall not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees, and insurance.

4. For greater certainty and without prejudice to Article 22 (Relationship with Other Agreements), this Chapter does not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

## **Article 6 Market Access**

1. In the sectors or subsectors where market access commitments are undertaken, neither Party shall adopt or maintain, with respect to market access through establishment or operation by investors of the other Party or by enterprises constituting covered investments, either on the basis of its entire territory or on the basis of a territorial subdivision, a measure that:
  - (a) limits the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;
  - (b) limits the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (c) limits the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>13</sup>
  - (d) restricts or requires specific types of legal entity or joint venture through which an investor of the other Party may carry out an economic activity;
  - (e) limits the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

## **Article 7 National Treatment**

1. Each Party shall accord to investors of the other Party and to their covered investments treatment no less favourable than the treatment it accords, in like situations, to its own

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<sup>13</sup> Subparagraphs 2 (a), (b), and (c) do not cover measures taken in order to limit the production of an agricultural or fishery product.

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investors and to their enterprises, respectively, with respect to their establishment in its territory.

2. Each Party shall accord to investors of the other Party and to their covered investments, treatment no less favourable than the treatment it accords, in like situations, to its own investors and to their investments, respectively, with respect to their operation in its territory.
3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government of Mexico, treatment no less favourable than the most favourable treatment accorded, in like situations, by that regional level of government of Mexico to investors, and to investments of investors, the Party of which it forms a part.

The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a government of or in a Member State of the EU, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to its own investors, and to investments of such investors, in its territory.

## **Article 8 Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors of the other Party and to their covered investments treatment no less favourable than the treatment it accords, in like situations, to investors and enterprises, respectively, of any non-Party with respect to their establishment in its territory.
2. Each Party shall accord to investors of the other Party and to their covered investments treatment no less favourable than the treatment it accords, in like situations, to investors and investments, respectively, of any non-Party with respect to the operation of investments in its territory.
3. Paragraphs 1 and 2 shall not be construed to oblige a Party to extend to the investors of the other Party the benefit of any treatment resulting from measures providing for recognition, including of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, [or of prudential measures].
4. For greater certainty, Most-Favoured-Nation Treatment referred to in this Article does not include treatment accorded to investors of a non-Party and their investments by provisions concerning the settlement of investment disputes provided for in this or other international agreements concluded between a Party and a non-Party. The substantive provisions in other international investment or trade agreements do not in themselves constitute "treatment" as referred to in paragraphs 1 and 2, and thus cannot give rise to a breach of this Article. Measures applied pursuant to such provisions may constitute "treatment" under this Article.



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## **Article 9 Performance Requirements**

1. Neither Party may, in connection with the establishment of any enterprise or the operation of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement or enforce any commitment or undertaking to<sup>14</sup>:
    - (a) export a given level or percentage of goods or services;
    - (b) achieve a given level or percentage of domestic content;
    - (c) purchase, use, or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory;
    - (d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
    - (e) restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
    - (f) provide access to or transfer a particular technology, a production process, or other proprietary knowledge to a natural person or enterprise in its territory; or
    - (g) supply exclusively from the territory of the Party to a specific regional market or to the world market, goods or services that such investment produces.
  - (h) locate the headquarters of that investor for a specific region or the world market in its territory;
  - (k) restrict the exportation or sale for export.
2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment of any enterprise or the operation of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement to:
    - (a) achieve a given level or percentage of domestic content;
    - (b) purchase, use, or accord a preference to goods produced or services provided in its territory, or to purchase goods from natural persons or enterprises in its territory;

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<sup>14</sup> For greater certainty a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “commitment or undertaking” for the purpose of paragraph 1.

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- (c) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
  - (d) restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
  - (e) to restrict the exportation or sale for export.
3. Paragraph 2 shall not be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
  4. Paragraph 1 (f) does not apply when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be a violation of the Party's competition laws.
  5. Paragraph 1(f) does not apply when a Party authorises use of an intellectual property right in accordance with Article 31 and 31Bis of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement.
  6. Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.
  7. Paragraphs 2 (a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
  8. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.
  9. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties other than a Party, where a Party did not impose or require the commitment, undertaking, or requirement.
  10. This Article is without prejudice to World Trade Organization commitments of a Party.

## **Article 10 Senior Management and Board of Directors**

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1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.
2. No Party may require that the Board of Directors of an enterprise of the other Party be composed of nationals or residents in the territory of the Party, or a combination thereof.

### **Article 11 Formal requirements**

2. Notwithstanding Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party or its covered investment to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

### **Article 12 Non-Conforming Measures and Exceptions**

1. Articles X (National Treatment), X (Most-Favoured-Nation Treatment), X (Performance Requirements) and X (Senior Management and Board of Directors) do not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party at the level of:
    - (i) the European Union, as set out in its Schedule to Annex I;
    - (ii) a national government, as set out by that Party in its Schedule to Annex I;
    - (iii) a regional government, as set out by that Party in its Schedule to Annex I; or
    - (iv) a local government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X (National Treatment), X (Most Favoured Nation Treatment) and X (Performance Requirements) and X (Senior Management and Board of Directors).
2. Articles X (National Treatment), X (Most-Favoured-Nation Treatment), X (Performance Requirements) and X (Senior Management and Board of Directors) do

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not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.

3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require directly or indirectly an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Article X (Market Access) does not apply to any measure that a Party adopts or maintains with respect to committed sectors or subsectors as set out in its Annex III.
5. Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) do not apply to any measure that constitutes an exception, exemption or waiver from Articles 3 or 4 of the TRIPS, as specifically provided in Articles 3 through 5 of the TRIPS.
6. Within five years of the date of entry into force of this Agreement, Mexico shall:
  - a) set out in its Schedule to Annex I and Annex III any existing non-conforming measures maintained at the sub-federal level of government; and,
  - b) set out in its Schedule to Annex I and Annex II a list relating to its performance requirements.

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## **SECTION B**

### **INVESTMENT PROTECTION**

#### **Article 13 Scope**

This Section applies to:

- (a) covered investments;
- (b) investors of a Party in respect of a covered investment with respect to any measure adopted or maintained by a Party affecting the operation of such investment.

#### **Article 14 Investment and Regulatory Objectives and Measures**

1. The provisions of this Section shall not be interpreted as a commitment from a Party that it will not change the legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or the investor's expectations of profits.
2. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy<sup>15</sup> or requesting its reimbursement, where such action has been ordered by a competent court, administrative tribunal or other competent authority, or as requiring that Party to compensate the investor therefor.
3. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant
  - (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy or grant; or
  - (b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy or grant, or
  - (c) in accordance with paragraph 2;does not constitute a breach of the provisions of this Section.

#### **Article 15 Treatment of Investors and of Covered Investments**

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<sup>15</sup> In the case of the EU, "subsidy" includes any aid granted by a Member State of the EU or through State resources of such Member State, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between the Member States of the EU.

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1. Each Party shall accord in its territory to covered investments of the other Party, and to investors with respect to their covered investments, fair and equitable treatment and full protection and security in accordance with the following paragraphs.
2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitutes<sup>16</sup>:
  - (a) denial of justice in criminal, civil or administrative proceedings; or
  - (b) fundamental breach of due process; or
  - (c) manifest arbitrariness, including targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or
  - (d) harassment, coercion, or abuse of power; or
  - (e) a breach of any additional elements of the fair and equitable treatment obligation which have been adopted by the Parties in accordance with paragraph 7 of this Article.
3. A Party breaches the obligation of full protection and security if a measure or series of measures constitutes a failure to provide physical security to investors and their covered investments.
4. When assessing a breach under this Article, a tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated. However, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's legitimate expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.
5. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish, in or of itself, that there has been a breach of this Article.

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<sup>16</sup> For greater certainty, in determining whether a measure or series of measures amounts to a breach of fair and equitable treatment, a tribunal shall take into account, inter alia, the following:

- (i) With regard to the subparagraphs 2 (a) and 2 (b), whether the measure or series of measures involves gross misconduct that offends judicial propriety. The mere fact that an investor's challenge of the impugned measure in domestic proceeding has been rejected or dismissed or has otherwise failed does not in itself constitute a denial of justice as referred to in the subparagraph 2 (a).
- (ii) With regard to the subparagraph 2 (c), whether the measure or series of measures were patently not founded on reason or fact, or were patently founded on illegitimate grounds such as prejudice or bias. The mere illegality, or a merely inconsistent or questionable application of a policy or procedure, does not in itself constitute manifest arbitrariness as referred to in the subparagraph 2 (c), while a total and unjustified repudiation of a law or regulation, or a measure without reason, or a conduct that is specifically targeted to the investor or its covered investment with the purpose of causing damage are likely to constitute manifest arbitrariness as referred to in the subparagraph 2 (c).
- (iii) With regard to the subparagraph 2 (d), whether a Party acted ultra vires, whether the episodes of alleged harassment or coercion were repeated and sustained.

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6. The fact that a measure breaches domestic law does not, in and of itself, establish a breach of the obligations referred to in this Article. In order to ascertain whether the measure breaches this Article, the Tribunal must consider whether a Party has acted inconsistently with paragraphs 1 to 4.
7. The Parties shall, at the request of a Party, review the content of the obligation to provide fair and equitable treatment. The [...] Committee (*reference to Article on Services and Investment Committee*) may develop recommendations in this respect and submit them to the [...] Committee (*reference to Article on Trade Committee*). The [...] Committee (*reference to Article on Trade Committee*) shall consider whether to recommend that the Agreement is amended, in accordance with Article [...] (*relevant procedures for the amendment of the Agreement*).

## **Article 16 Transfers**

1. Each Party shall permit all transfers relating to a covered investment to be made freely without restriction or delay into and out of its territory. Such transfers include:
  - (a) contributions to capital, such as the principal and additional amounts to maintain develop or increase the investment;
  - (b) profits, dividends, capital gains, interest, royalty payments, management fees, and other returns;
  - (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
  - (d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
  - (e) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment;
  - (f) payments made pursuant to Articles X (Compensation for Losses) and Y (Expropriation and Compensation);
  - (g) payments of damages pursuant to an award issued by a tribunal under Section C: Resolution of Investment Disputes.
2. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of another Party.

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3. Each Party shall permit transfers relating to a covered investment to be made in a freely convertible currency at the market rate of exchange prevailing for that currency on the date of transfer.
4. Notwithstanding paragraph 2, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 5.
5. Notwithstanding paragraphs 1, 2 and 3, this Article shall not be construed as precluding a Party from preventing or delaying a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:
  - (a) bankruptcy, insolvency, bank recovery and resolution, or the protection of the rights of creditors and the prudential supervision of financial institutions;
  - (b) ensuring compliance with orders or judgments in judicial or administrative proceedings;
  - (c) issuing, trading, or dealing in financial instruments such as securities, futures, options, or derivatives;
  - (d) criminal or penal offences, deceptive or fraudulent practices; or
  - (e) financial reporting or record keeping of transfers where necessary to assist law enforcement or financial regulatory authorities;
  - (g) social security, public retirement or compulsory savings schemes;

provided that such laws pursue legitimate policy objectives and do not aim to restrict trade and investment.

### **Article 17 Compensation for Losses**

1. Each Party shall accord to investors of the other Party, whose covered investments suffer losses owing to war, or other armed conflict, revolution, a state of national emergency, insurrection, riot or any other similar event, with respect to restitution, indemnification, compensation or other form of settlements, treatment no less favourable than the treatment that it accords to its own investors or investors of any non-Party, whichever is the most favourable.
2. Without prejudice to paragraph 1 of this Article, investors of one Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party resulting from:



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- (a) requisitioning of their covered investment or a part thereof by its forces or authorities; or
- (b) destruction of their covered investment or a part thereof by its forces or authorities, which was not required by the necessity of the situation,

shall be accorded adequate and effective restitution or compensation. Resulting payments shall be freely convertible and transferable.

### **Article 18 Expropriation and Compensation**

1. Neither Party may expropriate or nationalise a covered investment either directly or indirectly through measures having an effect equivalent to expropriation or nationalisation (hereinafter referred to as “expropriation”), except:
  - (a) for a public purpose;
  - (b) in a non-discriminatory manner;
  - (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
  - (d) in accordance with due process of law.For greater certainty, this paragraph shall be interpreted in accordance with Annex I (Expropriation).
2. The compensation referred to in paragraph 1 shall:
  - (a) be paid without delay;
  - (b) be equivalent to the fair market value of the expropriated investment at the time immediately before the expropriation took place (“the date of expropriation”)
  - (c) not reflect any change in value occurring because the intended expropriation had become known earlier;
  - (d) be fully realisable and freely transferable without delay to the country designated by the investor; and
  - (e) include interest at a commercially reasonable rate from the date of expropriation until the date of payment.
3. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
4. The compensation shall be paid in the currency of the country of which the investor is a national or in any freely convertible currency.

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5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter X (Chapter on Intellectual Property) and the TRIPS Agreement<sup>17</sup>.

### **Article 19 Subrogation**

1. If a Party or its designated agency makes a payment under a guarantee, contract of insurance or other form of indemnity it has entered into in respect of a covered investment made by one of its investors in the territory of the other Party, the other Party shall recognise the subrogation or transfer of any right or claim of the investor under the Section in respect of such covered investment. The Party or its designated Agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor. 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 the agency authorised by the Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the agency authorised by the Party making the payment, pursue those rights and claims against the other Party.

### **Article 20 Denial of Benefits**

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:

- (a) an investor of a non-Party owns or controls the enterprise; and
- (b) the denying Party adopts or maintains a measure with respect to the non-Party, or with respect to enterprises or natural persons of the non-Party, that prohibits transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to that investor or to its investments.

### **Article 21 Termination**

1. In the event that this Agreement is terminated pursuant to Article XX (Duration and Termination), this Section and Section C (Resolution of Investment Disputes...) shall continue to apply for a further period of 5 years from the date of termination, with respect to investments made before the date of termination of the present Agreement.

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<sup>17</sup> For greater certainty, the term “revocation” of intellectual property rights includes the cancellation or nullification of such rights, and the term “limitation” of intellectual property rights includes exceptions to such rights.

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2. The period referred to in paragraph 1 shall be extended for a single additional period of 5 years, provided that no other investment protection agreement between the Parties is in force.
3. This Article shall not apply in the case where the provisional application of this Agreement is terminated and this Agreement does not enter into force.

## **Article 22 Relationship with Other Agreements**

1. On the date of entry into force of this Agreement, the agreements between Member States of the European Union and Mexico listed in Annex YY (Agreements between the Member States of the European Union and Mexico) including the rights and obligations derived therefrom<sup>18</sup> shall cease to have effect and shall be replaced and superseded by this Agreement.
2. In the event of the provisional application in accordance with paragraph 4 of Article [X.X] (Entry into Force and Provisional Application), including this Chapter, the application of the agreements listed in Annex [YY] (Agreements between the Member States of the European Union and Mexico), as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application. In the event that the provisional application of this Agreement is terminated and this Agreement does not enter into force, the suspension shall cease and the agreements listed in Annex [YY] (Agreements between the Member States of the European Union and Mexico) shall have effect.
3. Notwithstanding paragraphs 1 and 2, a claim may be submitted pursuant to an agreement listed in Annex Y (Agreements between the Member States of the European Union and Mexico), in accordance with the rules and procedures established in that agreement, provided that:
  - (a) the claim arises from an alleged breach of that agreement that took place prior to the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement ceases to have effect pursuant to paragraph 1 prior to the date of entry into force of this Agreement; and
  - (b) no more than three years have elapsed from the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement ceases to have effect pursuant to paragraph 1, from the date of entry into force of this Agreement until the date of submission of the claim.

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<sup>18</sup> For greater certainty, the provisions for termination under Article XX (Termination) of this Chapter shall on the date of entry into force supersede the corresponding provisions on termination of the Agreements listed in Annex YY.

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4. Notwithstanding paragraph 2, if the provisional application of this Agreement, including this Chapter, is terminated and this Agreement does not enter into force, a claim may be submitted pursuant to this Agreement, in accordance with the rules and procedures established in this Agreement, provided that:
  - (a) the claim arises from an alleged breach of this Agreement that took place during the period of provisional application of this Agreement; and
  - (b) no more than three years have elapsed from the date of termination of the provisional application until the date of submission of the claim.
5. For the purposes of this Article, the definition of “entry into force of this Agreement” provided for in paragraph 7 of Article [58] (Entry into Force) shall not apply.

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## **ANNEX ON EXPROPRIATION**

The Parties confirm their shared understanding that:

1. A measure or series of measures by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Article 12(1) (Expropriation and Compensation) addresses two situations. The first is direct expropriation, which occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article 12(1) (Expropriation and Compensation) is indirect expropriation, which occurs when a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.
4. The determination of whether a measure or series of measures by a Party, in a specific situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
  - (i) the economic impact of the measure or series of measures, although the fact that a measure or series of measures 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 duration of the measure or series of measures by a Party;
  - (iii) the extent to which the government measure interferes with the distinct and reasonable expectations of the investor arising out of the investment; and
  - (iv) the character of the the measure or series of measures, notably their object and context.
3. For greater certainty, non-discriminatory measures by a Party that are designed and applied to protect legitimate policy objectives, such as the protection of public health, social services, public education, safety, and the environment, or public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity do not constitute indirect expropriations, except in the rare circumstance when the impact of a measure or series of measures is manifestly excessive in light of its purpose.

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## **ANNEX ON PUBLIC DEBT**

1. The parties recognise that the purchase of debt of a Party entails commercial risk. For greater certainty, no award shall be made in favour of a claimant for a claim under Section C (Resolution of Investment Disputes and Investment Court System) with respect to a default or non-payment of debt of a Party unless the claimant meets its burden of proving that such default or non-payment constitutes a breach of an obligation under Section B (Investment Protection).
2. No claim that a restructuring of debt of a Party breaches an obligation under this Chapter may be submitted to, or if already submitted, be pursued under Section C (Resolution of Investment Disputes and Investment Court System) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that a negotiated restructuring falling under paragraph 4 a) ii) of this Annex breaches Articles XX (National Treatment) or XX (Most Favoured Nation Treatment) of Section A (Liberalisation of Investments)<sup>19</sup>.
3. Notwithstanding Article XX (Submission of a Claim) of Section C (Resolution of Investment Disputes and Investment Court System), and subject to paragraph 2 of this Annex, an investor may not submit a claim under Section C (Resolution of Investment Disputes and Investment Court System) that a restructuring of debt of a Party breaches Articles XX (National Treatment) or XX (Most Favoured Nation Treatment) of Section A (Liberalisation of Investments) or an obligation under Section B (Investment Protection unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article XX (Consultations) of Sub-Section 1 (Scope and Definitions) of Section C (Resolution of Investment Disputes and Investment Court System).
4. For the purposes of this Annex:
  - (a) “negotiated restructuring” means the restructuring or rescheduling of debt of a Party that has been effected through (i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law,<sup>20</sup> or (ii) a debt exchange or other similar process in which the holders of no less than 75% of the aggregate principal amount of the outstanding debt subject to restructuring have consented to such debt exchange or other process.

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<sup>19</sup> For greater certainty, a breach of Article 2.3 (National Treatment) or Article 2.4 (Most Favoured Nation Treatment) of Section A (Liberalisation of Investments) does not occur merely by virtue of a different treatment provided by a Party to certain categories of investors or investments, including such treatment as resulting from differences in the situations of the investors and their investments which may occur due to differences in the characteristics of a particular debt instrument, on the grounds of different macroeconomic impact, for instance, to avoid systemic risks or spill over effects.

<sup>20</sup> For greater certainty, this may include the exchange of debt instruments if provided for under their terms.

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- (b) “governing law” of a debt instrument means a jurisdiction’s legal and regulatory framework applicable to that debt instrument.
- (c) For greater certainty, “debt of a Party” includes, in the case of Mexico, “public debt of Mexico” as defined in its domestic law, and in the case of the European Union any form of debt of the European Union, or of a government of a Member State of the European Union at the central, regional or local level.

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## **ANNEX**

### **AGREEMENTS BETWEEN MEMBER STATES OF THE EUROPEAN UNION AND MEXICO**



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### **Annex to Section B (Investor-State Dispute Settlement)**

A decision by the National Commission on Foreign Investment (Comisión Nacional de Inversiones Extranjeras) following a review pursuant to the entry at Annex I – Mexico – XX with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B (Investor-State Dispute Settlement) or Chapter XX (Dispute Settlement).