

I. ウィーン条約法条約

第31条 解釈に関する一般的な規則

- 1 条約は、文脈によりかつその趣旨及び目的に照らして与えられる用語の通常の意味に従い、誠実に解釈するものとする。
- 2 条約の解釈上、文脈というときは、条約文（前文及び附属書を含む。）のほかに、次のものを含める。
 - （a）条約の締結に関連してすべての当事国の間でされた条約の関係合意
 - （b）条約の締結に関連して当事国の一又は二以上が作成した文書であつてこれらの当事国以外の当事国が条約の関係文書として認めたもの
- 3 文脈とともに、次のものを考慮する。
 - （a）条約の解釈又は適用につき当事国の間で後にされた合意
 - （b）条約の適用につき後に生じた慣行であつて、条約の解釈についての当事国の合意を確立するもの
 - （c）当事国の間の関係において適用される国際法の関連規則
- 4 用語は、当事国がこれに特別の意味を与えることを意図していたと認められる場合には、当該特別の意味を有する。

第32条 解釈の補足的な手段

前条の規定の適用により得られた意味を確認するため又は次の場合における意味を決定するため、解釈の補足的な手段、特に条約の準備作業及び条約の締結の際の事情に依拠することができる。

- （a）前条の規定による解釈によつては意味があいまい又は不明確である場合
- （b）前条の規定による解釈により明らかに常識に反した又は不合理な結果がもたらされる場合

第33条 二以上の言語により確定がされた条約の解釈

- 1 条約について二以上の言語により確定がされた場合には、それぞれの言語による条約文がひとしく権威を有する。ただし、相違があるときは特定の言語による条約文によることを条約が定めている場合又はこのことについて当事国が合意する場合は、この限りでない。
- 2 条約文の確定に係る言語以外の言語による条約文は、条約に定めがある場合又は当事国が合意する場合にのみ、正文とみなされる。
- 3 条約の用語は、各正文において同一の意味を有すると推定される。
- 4 1の規定に従い特定の言語による条約文による場合を除くほか、各正文の比較により、第三十一条及び前条の規定を適用しても解消されない意味の相違があることが明らかとなつた場合には、条約の趣旨及び目的を考慮した上、すべての正文について最大の調和が図られる意味を採用する。

II. 最恵国待遇条項

1. より広い均霑対象を指定していると思われる最恵国待遇条項

UK Model IPPA

ARTICLE 3: National Treatment and Most-favoured-nation Provisions

- (1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.
- (2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.
- (3) For the avoidance of doubt it is confirmed that the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 12 of this Agreement.

* Article 1:: 定義、Article 2: 投資の保護・促進 (FET、完全な保護、不合理・差別的な措置の禁止など)、Article 4: 非常時における補償、Article 5: 収用、Article 6: 送金、Article 7: 例外、Article 8: 投資家対国家の紛争処理、Article 9: 国家対国家の紛争処理、Article 10: 代位、Article 11 : 他の国際法規則、Article 12: 適用範囲

ARTICLE 11 Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by nationals or companies of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

ARTICLE 12 Scope of Application

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

2. 均霑対象を制限している最恵国待遇条項

(1) Draft Model Norway BIT 2007

SECTION 2 – TREATMENT AND PROTECTION OF INVESTORS AND INVESTMENTS

ARTICLE [4] MOST-FAVOURLED-NATION TREATMENT

1. Each Party shall accord to investors of the other Party and to their investments, treatment no less favourable than the treatment it accords in like circumstances ³ to investors and their investments of any other State, subject to the country-specific reservations set out in Annex [B], in relation to the establishment, acquisition, expansion, management, conduct, operation and disposal of investments.
2. If a Party accords more favourable treatment to investors of any other State or their investments by virtue of a free trade agreement, customs union [or similar agreement that also provides for substantial liberalisation of investments] or by a labour market integration agreements, it shall not be obliged to accord such treatment to investors of the other Party or their investments. However, upon request from another Party, it shall afford adequate opportunity to negotiate the benefits granted therein.
3. For greater certainty, treatment referred to in paragraph [1] does not encompass dispute resolution mechanisms provided for in this Agreement or other International Agreements.

SECTION 5 – EXCEPTIONS

ARTICLE [24] GENERAL EXCEPTIONS

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international [trade or] investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary ⁶:

- i. to protect public morals or to maintain public order ⁷;
- ii. to protect human, animal or plant life or health;
- iii. to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
- iv. for the protection of national treasures of artistic, historic or archaeological value; or
- v. for the protection of the environment

³ The Parties agree/ are of the understanding that a measure applied by a government in pursuance of legitimate policy objectives of public interest such as the protection of public health, safety and the environment, although having a different effect on an investment or investor of another Party, is not inconsistent with national treatment and most favoured nation treatment when justified by showing that it bears a reasonable relationship to rational policies not motivated by preference of domestic over foreign owned investment.

⁶ For greater certainty, the concept of "necessity" in this Article shall include measures taken by a Party as provided for by the precautionary principle, including the principle of precautionary action.

⁷ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society

ARTICLE [25] PRUDENTIAL REGULATION

Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, to ensure the integrity and stability of the financial system, or to enhance market competition, including ownership control and limitation.

Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

ARTICLE [26] SECURITY EXCEPTIONS

Nothing in this Agreement shall be construed:

- i. to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- ii. to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (a) relating to investment in defence and security sector[s];
 - (b) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (c) taken in time of war or other emergency in international relations; or
- iii. to prevent any Party from taking any action in pursuance of its obligations for the maintenance of international peace and security, including under the United Nations Charter.

ARTICLE [27] CULTURAL EXCEPTIONS

The provisions of this Agreement shall not apply to a Party's laws and measures specifically designed to preserve and promote linguistic and cultural diversity, cultural and audiovisual policy, as well as rights and obligations of the Parties under international agreements and national laws and measures relating to copyright and related rights.

ARTICLE [28] TAXATION

1. Nothing in this Agreement shall affect the imposition, enforcement or collection of direct or indirect taxes imposed by a Party.
2. Nothing in this Agreement shall create any right to any benefit under an agreement for the avoidance of double taxation concluded by a Party.
3. Any dispute as to whether paragraphs 1 and 2 apply, may only be brought before the Competent Tax Authorities of the Parties according to the procedure of Article [The Joint Committee] or the national courts or appeal organs of a Party, and shall not be covered by Section [Dispute Settlement Provisions] of this Agreement.

(2) Canadian 2004 Model BIT

Section B – Substantive Obligations

Article 4¹ Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.
2. Each Party shall, accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

Article 9 Reservations and Exceptions

1. Articles 3, 4, 6 and 7 shall not apply to:
 - (a) any existing non-conforming measure that is maintained by
 - (i) a Party at the national level, as set out in its Schedule to Annex I, or
 - (ii) a sub-national government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);
 - (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 3, 4, 6 and 7.
2. Articles 3, 4, 6 and 7 shall 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. Article 4 shall not apply to treatment accorded by a Party pursuant to agreements, or with respect to sectors, set out in its schedule to Annex III.
4. In respect of intellectual property rights, a Party may derogate from Articles 3 and 4 in a manner that is consistent with the WTO Agreement.
5. The provisions of Articles 3, 4 and 6 of this Agreement shall not apply to:
 - (a) procurement by a Party or state enterprise;
 - (b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance;
6. For greater certainty, Article 3 of this Agreement shall not apply to the granting by a Party to a financial institution of an exclusive right to provide activities or services forming part of a public retirement plan or statutory system of social security.
7. The provisions of Article 4 of this Agreement shall not apply to financial services.

Article 10 General Exceptions

1. Subject to the requirement that such measures are not applied in a manner that would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to

¹ For greater certainty, the treatment accorded by a Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

- prevent a Party from adopting or enforcing measures necessary:
- (a) to protect human, animal or plant life or health;
 - (b) to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; or
 - (c) for the conservation of living or non-living exhaustible natural resources.
2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:
- (a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
 - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
 - (c) ensuring the integrity and stability of a Party's financial system.
3. Nothing in this Agreement shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 7 (Performance Requirements) or Article 14 (Transfer of Funds);
4. Nothing in this Agreement shall be construed:
- (a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
 - (b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests
 - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,
 - (ii) taken in time of war or other emergency in international relations, or
 - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
 - (c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
5. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting Cabinet confidences, personal privacy or the confidentiality of the financial affairs and accounts of individual customers of financial institutions.
6. The provisions of this Agreement shall not apply to investments in cultural industries.
7. Any measure adopted by a Party in conformity with a decision adopted, extended or modified by the World Trade Organization pursuant to Articles IX:3 or IX:4 of the WTO Agreement shall be deemed to be also in conformity with this Agreement. An investor purporting to act pursuant to Section C of this Agreement may not claim that such a conforming measure is in breach of this Agreement.

ANNEX III Exceptions from Most-Favoured-Nation Treatment

1. Article 4 shall not apply to treatment accorded under all bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.
2. Article 4 shall not apply to treatment by a Party pursuant to any existing or future bilateral or multilateral agreement:
 - (a) establishing, strengthening or expanding a free trade area or customs union;
 - (b) relating to:
 - (i) aviation;
 - (ii) fisheries;
 - (iii) maritime matters, including salvage.
3. For greater certainty, Article 4 shall not apply to any current or future foreign aid programme to promote economic development, whether under a bilateral agreement, or pursuant to a multilateral arrangement or agreement, such as the OECD Agreement on Export Credits.

III. その他

1. パフォーマンス要求に関する規定

(1) Draft Model Norway BIT 2007

ARTICLE [8] PERFORMANCE REQUIREMENTS

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of the other Party:
 - i. [to export a given level or percentage of goods or services;]
 - ii. [to achieve a given level or percentage of domestic content;]
 - iii. [to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;]
 - iv. [to 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;]
 - v. [to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales to the volume or value of its exports or foreign exchange earnings;]
 - vi. [to transfer technology, a production process or other proprietary knowledge to a natural or legal person in its territory, except when the requirement]
 - (a) is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws, or
 - (b) concerns the transfer of intellectual property and is undertaken in a manner not inconsistent with the TRIPS Agreement;]
 - vii. [to locate its headquarters for a specific region or the world market in the territory of that Party;]
 - viii. [to supply one or more of the goods that it produces or the services that it provides to a specific region or the world market exclusively from the territory of that Party;]
 - ix. [to achieve a given level or value of research and development in its territory;]
 - x. [to hire a given level of nationals;]
 - xi. [to achieve a minimum level of domestic equity participation other than nominal qualifying shares for directors or incorporators of corporations.]
2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1.
3. Performance requirements, other than those referred to in paragraph 1, shall only be applied in the public interest and shall be set forth in the national legislation of the Party imposing the requirement and published in the official gazette or otherwise be publicly available according to Article [Transparency] so that investors may become acquainted with them before the investment decision is made. All performance requirements shall be applied against all investors and their investments in a non-discriminatory, transparent and objective manner.
4. A Party may not apply new performance requirements to existing investments, or amend existing performance requirements in a manner restricting the commercial freedom of the investor, except where such requirements are at the same time made applicable to all other investors in that Party.

4.2.6 Performance Requirements¹

• • • In the model agreement's provision concerning performance requirements, this is indicated by placing all of the performance requirements in the provision in square brackets. The prohibitions in question can be removed according to how the specific economic and legal needs are assessed.

• • • It follows moreover from the model agreement's provision concerning performance requirements that such requirements may only be imposed on the basis of social considerations, that any such requirements must be known and be laid down in the host country's legislation, and that they must be applied in an open, objective and non-discriminatory manner.

(2) Canadian 2004 Model BIT

Article 7 Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or a non-Party in its territory:
 - (a) - (g) 省略
2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 3 and 4 apply to the measure.
3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:
 - (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
 - (c) to 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) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
5. Paragraphs 1 and 3 shall not apply to any requirement other than the requirements set out in those paragraphs.
6. The provisions of:

¹ COMMENTS ON THE MODEL FOR FUTURE INVESTMENT AGREEMENTS, English translation, pp. 24-26

- (a) Paragraphs (1) (a), (b) and (c), and (3) (a) and (b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
- (b) Paragraphs (1) (b), (c), (f) and (g), and (3) (a) and (b) shall not apply to procurement by a Party or a state enterprise; and
- (c) Paragraphs (3) (a) and (b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

Article 10 General Exceptions

1. Subject to the requirement that such measures are not applied in a manner that would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary:
 - (a) to protect human, animal or plant life or health;
 - (b) to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; or
 - (c) for the conservation of living or non-living exhaustible natural resources.
2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:
 - (a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
 - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
 - (c) ensuring the integrity and stability of a Party's financial system.
3. Nothing in this Agreement shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 7 (Performance Requirements) or Article 14 (Transfer of Funds);
4. Nothing in this Agreement shall be construed:
 - (a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
 - (b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests
 - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,
 - (ii) taken in time of war or other emergency in international relations, or
 - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
 - (c) to prevent any Party from taking action in pursuance of its obligations under the United

Nations Charter for the maintenance of international peace and security.

5. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting Cabinet confidences, personal privacy or the confidentiality of the financial affairs and accounts of individual customers of financial institutions.
6. The provisions of this Agreement shall not apply to investments in cultural industries.
7. Any measure adopted by a Party in conformity with a decision adopted, extended or modified by the World Trade Organization pursuant to Articles IX:3 or IX:4 of the WTO Agreement shall be deemed to be also in conformity with this Agreement. An investor purporting to act pursuant to Section C of this Agreement may not claim that such a conforming measure is in breach of this Agreement.

(3) US 2004 Model BIT

Article 2: Scope and Coverage

1. This Treaty applies to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party;
 - (b) covered investments; and
 - (c) with respect to Articles 8 [Performance Requirements], 12 [Investment and Environment], and 13 [Investment and Labor], all investments in the territory of the Party.
2. A Party's obligations under Section A shall apply:
 - (a) to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party; and
 - (b) to the political subdivisions of that Party.
3. For greater certainty, this Treaty 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 Treaty.

Article 8: Performance Requirements

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition 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 undertaking¹⁰:
 - (a) - (g) 省略
2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:
 - (a) - (d) 省略

¹⁰ 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 purposes of paragraph 1.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, 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.
- (b) Paragraph 1(f) does not apply:
- (i) when a Party authorizes use of an intellectual property right in accordance with Article 31 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; or
 - (ii) 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 anticompetitive under the Party's competition laws¹¹.
- (c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:
- (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Treaty;
 - (ii) necessary to protect human, animal, or plant life or health; or
 - (iii) related to the conservation of living or non-living exhaustible natural resources.
- (d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
- (e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to government procurement.
- (f) 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.
4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.
5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

Article 14: Non-Conforming Measures

1. Articles 3 [National Treatment], 4 [Most-Favored-Nation Treatment], 8 [Performance Requirements], and 9 [Senior Management and Boards of Directors] do not apply to:
- (a) any existing non-conforming measure that is maintained by a Party at:
- (i) the central level of government, as set out by that Party in its Schedule to Annex I or Annex III,
 - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I or Annex III,
- or

¹¹ The Parties recognize that a patent does not necessarily confer market power.

- (iii) a local level of 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 Article 3 [National Treatment], 4 [Most-Favored-Nation Treatment], 8 [Performance Requirements], or 9 [Senior Management and Boards of Directors].
2. Articles 3 [National Treatment], 4 [Most-Favored-Nation Treatment], 8 [Performance Requirements], and 9 [Senior Management and Boards of Directors] do 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. Neither Party may, under any measure adopted after the date of entry into force of this Treaty and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Articles 3 [National Treatment] and 4 [Most-Favored-Nation Treatment] do not apply to any measure covered by an exception to, or derogation from, the obligations under Article 3 or 4 of the TRIPS Agreement, as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.
5. Articles 3 [National Treatment], 4 [Most-Favored-Nation Treatment], and 9 [Senior Management and Boards of Directors] do not apply to:
- (a) government procurement; or
 - (b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

Article 21: Taxation

3. Subject to paragraph 4, Article 8 [Performance Requirements] (2) through (4) shall apply to all taxation measures.

2. 送金に関する規定

(1) 日エジプト投資協定(1977. 1.28/1978. 1.14)

第八条

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- (1) 資本
- (2) 収益
- (3) 貸付けの返済金
- (4) 投資財産の全部又は一部の清算の価額

(2) 日中投資協定(1988. 8.27/1989. 5.14)

第8条 いずれの一方の締約国の国民及び会社も、他方の締約国により、両締約国の領域の間及び当該他方の締約国の領域と第3国の領域との間に行われる支払、送金及び投資財産の清算の価額を含む金銭証券又は資金の移転の自由を保証される。

2 1の規定は、いずれか一方の締約国が、自国の関係法令に従い、為替制限を課することを妨げるものではない。

(3) 日露投資協定(1998.11.13/2000. 5.27)

第八条

1 いずれの一方の締約国の投資家も、他方の締約国により、両締約国の領域の間及び当該他方の締約国の領域と第三国の領域との間において自己の行う投資に関連する移転を行う自由を保証される。その移転には、次のものの移転を含む。

- (1) 当初の資本及び投資財産を維持し又は増大させるための追加の価値
- (2) 収益
- (3) 貸付の返済のための資金
- (4) 投資財産の全部又は一部の清算によって得られる収入
- (5) 第五条の規定に従って支払われる補償
- (6) 第六条の規定に従って行われる支払

(7) 当該投資に関連して当該他方の締約国の領域内において就労する権利を有する当該一方の締約国の国民が受領した賃金その他の報酬

2 各締約国は、移転が、遅滞なく、交換可能な通貨により、移転される通貨の直接取引きの市場における為替相場（当該移転の日のもの）によって行われることを妨げてはならない。

3 1の規定にかかわらず、いずれの一方の締約国も、例外的な金融状況又は経済状況にお

いては、自国の法令に従い、かつ、国際通貨基金協定の当事国である限り同協定に従って、為替制限を課することができる。

- 4 いずれの一方の締約国の投資家も、他方の締約国の領域内において、1 から 3 までに規定する事項に関し、当該他方の締約国又は第三国の投資家に与えられる待遇よりも不利でない待遇を与えられる。

(4) 日韓投資協定(2002. 5.22/2003. 1. 1)

第十二条

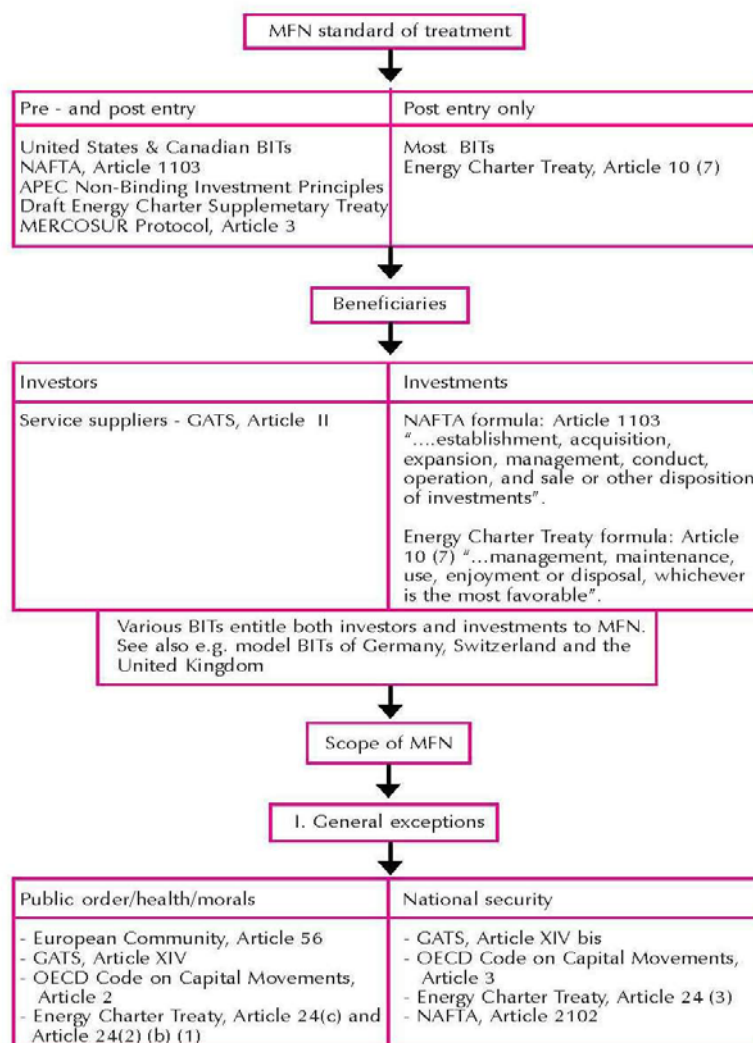
- 1 各締約国は、自国の領域に向けた又はその領域からのすべての支払その他の資金の移転であって、自国の領域内にある他方の締約国の投資家の投資財産に関連するものが、遅滞なく、かつ、自由に行われることを確保する。この資金の移転には、特に次のものの移転を含む。
 - (a) 投資財産を維持し又は増大させるための当初の及び追加的な資金
 - (b) 利益、利子、配当、資本利得、使用料又は手数料
 - (c) 返済金その他契約に基づいて行われる支払
 - (d) 投資財産の全部又は一部の売却又は清算によって得られる収入
 - (e) 前二条の規定に従って行われる支払
 - (f) 第十五条の規定に基づく紛争の処理から生ずる支払
 - (g) 当該他方の締約国から来訪した者であって、投資財産に関連する活動に従事するものの収入その他の報酬
- 2 いずれの締約国も、資金の移転が遅滞なく、かつ、自由交換可能通貨により移転の日の市場における為替相場で行われることを妨げてはならない。
- 3 1 及び 2 の規定にかかわらず、各締約国は、次の事項に関する自国の法律を衡平、無差別かつ善意に適用する場合には、資金の移転を遅らせ又は妨げることができる。
 - (a) 破産、債務不履行又は債権者の権利の保護
 - (b) 証券の発行、交換又は取引
 - (c) 刑事犯罪
 - (d) 裁決手続における命令又は判決の履行の確保

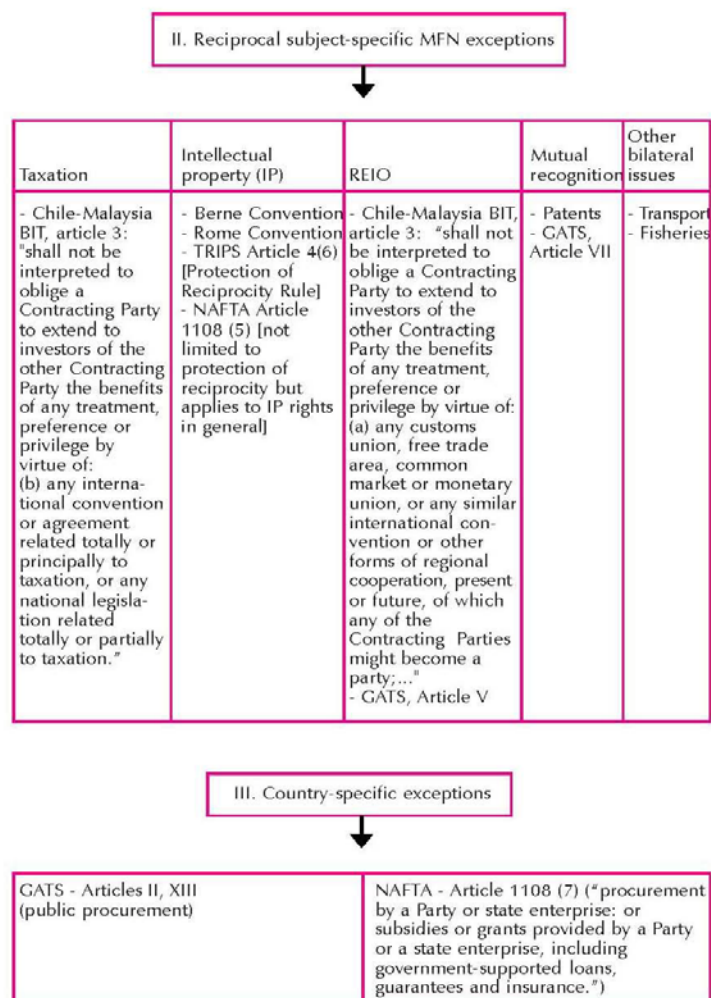
(5) 日・ベトナム投資協定(2003.11.14/2004.12.19)

日韓投資協定と同様。

→ Canadian 2004 Model BIT、Draft Model Norway BIT 2007、US 2004 Model BIT もほぼ同様の規定

Annex. Diagram of MFN clauses with illustrations





Source: UNCTAD.