CHAPTER 9 – INVESTMENT

SECTION A

Investment Protection

Article 9.1

Definitions

For purposes of this Chapter:

1. '**investment**' means every kind of asset which is owned, directly or indirectly or controlled, directly or indirectly by investors of one Party in the territory[1] of the other Party, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, or a certain duration. Forms that an investment may take include:

a) tangible or intangible, movable or immovable property, as well as any other property rights, such as leases, mortgages, liens, and pledges;

b) an enterprise including a branch, shares, stocks and other forms of equity participation in an enterprise including rights derived therefrom;

c) bonds, debentures, and loans and other debt instruments, including rights derived therefrom;

d) other financial assets including derivatives, futures and options;

e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;

f) claims to money or to other assets, or to any contractual performance having an economic value;

g) intellectual property rights, as defined in Chapter 11 of this Agreement [Intellectual Property], and goodwill;

[1] For greater certainty, this shall include investments made in an exclusive economic zone or continental shelf, as provided in the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS).

h) licenses, authorizations, permits, and similar rights conferred pursuant to applicable domestic law, including any concessions to search for, cultivate, extract or exploit natural resources.[2]

Returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments.

2. **'investor'** means a natural person3 or a juridical person of a Party that has made an investment in the territory of the other Party.

3. **'juridical person'** means any legal entity duly constituted or otherwise organised under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, association.

4. a **'Union juridical person'** or a **'Singapore juridical person'** means a juridical person set up in accordance with the laws of a Member State of the European Union or Singapore respectively, and having its registered office, central administration4, or principal place of business in the territory of the European Union or Singapore, respectively.

Should the juridical person have only its registered office or central administration in the territory of the European Union or of Singapore respectively, it shall not be considered as a European Union or Singapore juridical person respectively, unless it engages in substantive business operations5 in the territory of the European Union or of Singapore, respectively.

5. 'treatment' or **'measures'** adopted or maintained by a Party includes those taken by:
(a) central, regional or local governments and authorities; and
(b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities

6. **'returns'** means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, payments in connection with intellectual property rights, payments in kind and all other lawful income.

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

[2] For greater certainty, an order or judgment entered in a judicial or administrative action shall not constitute in itself an investment.
[3] The definition of natural person also includes natural persons permanently residing in Latvia who are not citizens of Latvia or any other state but who are entitled, under the laws and regulations of Latvia, to receive a non-citizen's passport' (Alien's Passport).
[4] Central administration means the head office where ultimate decision making takes place.
[5] The EU understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations". Accordingly, for a juridical person set up in accordance with the laws of Singapore and having only its registered office or central administration in the territory of Singapore, the EU shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous economic link with the economy of Singapore.

Article 9.2

Scope

1. The provisions in this Chapter shall apply to all investments made by investors of one Party, in accordance with the applicable laws, whether made before or after the entry into force of this Agreement. For greater certainty, the provisions of this Chapter do not bind any Party in relation to that Party's treatment[6] of investors of the other Party and their investments before the date of entry into force of this Agreement.

2. [Notwithstanding any other provision in this Agreement,] Article Y4 [National Treatment] shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

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

shall not constitute a breach of Article 9.4 [Standard of Treatment] or be considered an expropriation.

3. Article 9.3 [National Treatment] shall not apply to:
a) the procurement by governmental agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of goods or the supply of services for commercial sale;

b) audio-visual services.

Article 9.3

National treatment

1. Each Party shall accord to investors of the other Party and to their investments, treatment in its territory no less favourable than the treatment it accords, in like situations, to its own investors and their investments with respect to the operation, management, conduct, maintenance, use, enjoyment and sale or other disposal of their investments.

2. Notwithstanding paragraph 1, a Party may adopt or maintain any measure with respect to the operation, management, conduct, maintenance, use, enjoyment and sale or other disposal

[6] The Parties understand that the term "treatment" includes failures to act.

of an establishment that is not inconsistent with the commitments inscribed in its Schedule of Specific Commitments in Annex [8][7], where such measure is:

(a) a measure that is adopted on or before the entry into force of this Agreement;

(b) a measure referred to in sub-paragraph (a) that is being continued, replaced or amended after the entry into force of this Agreement, provided the measure is no less consistent with paragraph 1 after being continued, replaced or amended than the measure as it existed prior to its continuation, replacement or amendment; or

(c) a measure not falling within sub-paragraph (a) or (b), provided it is not applied in respect of, or in a way that causes loss or damage[8] to, investments made in the territory of the Party before the entry into force of such measure.

3. Notwithstanding paragraphs 1 and 2, a Party may adopt or enforce measures that accord investors and investments of the other Party less favourable treatment than that accorded to its own investors and their investments, in like situations, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the investors or investments of the other Party in the territory of a Party, or is a disguised restriction on investments, where the measures are:

(a) necessary to protect public security, public morals or to maintain public order[9];
(b) necessary to protect human, animal or plant life or health;
(c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or investments;
(d) necessary for the protection of national treasures of artistic, historic or archaeological value;
(e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
    (i) the prevention of deceptive or fraudulent practices or to deal with the effects of a default on a contract;
    (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidential of individual records and accounts;
    (iii) safety.

(f) aimed at ensuring the effective or equitable[10] imposition or collection of direct taxes in respect of investors or investments of the other Party.

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[7] It is understood that "a measure that is not inconsistent with the commitments inscribed in a Party's Schedule of Specific Commitments in Annex [8]" shall include any measure in respect of any sector that has not been inscribed, and any measure that is not inconsistent with any condition, limitation or reservation that has been inscribed in respect of any sector, in such Schedule, regardless of whether such measure affects "establishment" as defined in [Art 8.8 (d) of Chapter 8 – Services, Establishment and E-Commerce].

[8] For the purposes of Article 9.3 paragraph 2 c), it is understood that factors like the fact that a Party has provided for a reasonable phase in period for the implementation of a measure or has made any other attempt to address the effects of the measure on investments made before its entry into force, shall be taken into account in determining whether the measure causes loss or damage to investments made before its entry into force.

[9] 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.

[10] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

Article 9.4

Standard of Treatment

1. Each Party shall accord in its territory to investments[11] of the other Party fair and equitable treatment and full protection and security.

2. To comply with the obligation to provide fair and equitable treatment set out in paragraph 1, neither Party shall adopt measures that constitute:

(a) Denial of justice[12] in criminal, civil and administrative proceedings;

(b) A fundamental breach of due process;

(c) Manifestly arbitrary conduct;

(d) Harassment, coercion, abuse of power or similar bad faith conduct; or

(e) A breach of the legitimate expectations of an investor arising from specific or unambiguous representations[13] from a Party so as to induce the investment and which are reasonably relied upon by the investor.

3. Treatment not listed in paragraph 2 can also constitute a breach of fair and equitable treatment where the Parties have so agreed in accordance with the procedures provided in [Article 17.1 (4)(c)].

(i) apply to non-resident investors or investments in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
(ii) apply to non-residents in order to ensure the imposition or collection of taxes in Party's territory; or
(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
(iv) apply to investments in or from the territory the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
(v) distinguish investors or investments subject to tax on worldwide taxable items from other investors or investments in recognition of the difference in the nature of the tax base between them; or
(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard a Party's tax base.

Tax terms or concepts in paragraph (f) and in this footnote are to be determined according to tax definitions or concepts, or equivalent or similar definitions and concepts, under domestic law of the Member taking the measure.

[11] Treatment in this article includes treatment of investors which directly or indirectly interferes with the investors' operation, management, conduct, maintenance, use, enjoyment and sale or other disposal of their investments.

[12] For greater certainty, the sole fact that the investor's claim has been rejected, dismissed or unsuccessful does not in itself constitute a denial of justice.

[13] For greater certainty, representations made so as to induce the investments include the representations made in order to convince the investor to continue with, not to liquidate or to make subsequent investments.

4. For greater certainty, "full protection and security" only refers to a Party's obligation relating to physical security of investors and investments.

5. Where a Party, itself or through any entity mentioned in article 1 paragraph 5, had given any specific and clearly spelt out commitment in a contractual written obligation[14] towards an investor of the other Party with respect to the investor's investment or towards such an investment, that Party shall not frustrate or undermine the said commitment through the exercise of its governmental authority[15] either:

(a) deliberately; or

(b) in a way which substantially alters the balance of rights and obligation in the contractual written obligation unless the Party provides reasonable compensation to restore the investor or investment to a position which it would have been in had the frustration or undermining not occurred.

6. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 9.5

Compensation for Losses

1. Investors of a Party whose investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Party shall be accorded by the latter Party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than the one accorded by the latter Party to its own investors or to the investors of any third country, whichever is more favourable to the investor concerned.

2. Without prejudice to paragraph 1 of this Article, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party resulting from:

(a) requisitioning of its investment or a part thereof by the latter's armed forces or authorities; or
(b) destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation;

shall be accorded by the latter Party restitution or compensation.

[14] For the purposes of this paragraph, a "contractual written obligation" means an agreement in writing, entered into by both parties, whether in a single instrument or multiple instruments, that creates an exchange of rights and obligations, binding both parties.

[15] For the purposes of this article, a Party frustrates or undermines a commitment through the exercise of its governmental authority when it frustrates or undermines the said commitment through the adoption, maintenance or non-adoption of measures mandatory or enforceable under domestic laws.

Article 9.6

Expropriation[16]

1. Neither Party shall directly or indirectly nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as 'expropriation') the investments of investors of the other Party except:

(a) for a public purpose;
(b) under due process of law;
(c) on a non-discriminatory basis; and
(d) against payment of prompt, adequate and effective compensation in accordance with paragraph 2.

2. Compensation shall amount to the fair market value of the investment immediately before its expropriation or impending expropriation became public knowledge plus interest at a commercially reasonable rate, established on a market basis taking into account the length of time from the time of expropriation until the time of payment. Such compensation shall be effectively realisable, freely transferable in accordance with Article 9.7 [Transfer] and made without delay.

3. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, to the extent that such issuance is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement ("TRIPS Agreement").

4. Any measure of expropriation or valuation shall, at the request of the investors affected, be reviewed by a judicial or other independent authority of the Party taking the measure.

Article 9.7

Transfer

1. Each Party shall guarantee to investors of the other Party the free transfer relating to an investment. The transfer shall be made in a freely convertible currency without restriction or delay. Such transfers include:

(a) contributions to capital such as principal and additional funds to maintain, develop or increase the investment;
(b) profits, dividends, capital gains and other returns, proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

[16] For greater certainty, this Article shall be interpreted in accordance with [Annex 9-A on Expropriation], [Annex 9-B on Land Expropriation] and the [Annex/Joint Understanding 9-C on Expropriation and Intellectual Property Rights].

(c) interest, royalty payments, management fees, and technical assistance and other fees;
(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 Article 9.6 [Expropriation] and 9.5 [Compensation for Losses];
(g) payments arising under Article 9.27 [Final award, Section B Investor-to-State Dispute Settlement].

2. Nothing in this article shall be construed to prevent a Party from applying in an equitable and non-discriminatory manner its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;
(b) issuing, trading, or dealing in securities, futures, options, or derivatives;
(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
(d) criminal or penal offenses;
(e) ensuring compliance with orders or judgments in judicial or administrative proceedings;
(f) social security, public retirement or compulsory savings schemes; or
(g) taxation.

3. When in exceptional circumstances, capital movements cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party, safeguard measures affecting transfers may temporarily be taken by the Party concerned, provided that these measures shall be strictly necessary and shall not exceed in any case a period of six months [17].

The Party adopting the safeguard measures shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.

Article 9.8

Subrogation

1. If a Party, or an agency acting on behalf of the Party, makes a payment in favour of any of its investors under a guarantee, a contract of insurance or other form of indemnity it has entered into or granted in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or title or the assignment of any claim in respect of such investment. The Party or the agency shall have the right to exercise the subrogated or assigned right or claim to the same extent as the original right or claim of the investor. Such

[17] The application of safeguard measures may be extended through their formal reintroduction in case of continuing exceptional circumstances and after having notified the other Party regarding the implementation of any proposed formal reintroduction.

subrogated rights may be exercised by the Party or an agency or by the investor if the Party or the agency so authorizes.

Article 9.9

Termination

In the event that the present Agreement is terminated pursuant to with Article 17.13 [Duration], the provisions of this Chapter shall continue to be effective for a further period of 20 years from that date in respect of investments made before the date of termination of the present Agreement. This Article shall not apply in the case of the provisional application of this Agreement.

Article 9.10

Relationship with other Agreements

1. Upon the entry into force of this Agreement, including this Chapter, the agreements between Member States of the European Union and Singapore listed in Annex 9-D including the rights and obligations derived therefrom, 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 17.12 [Entry into Force] of this Agreement, including this Chapter, the application of the provisions of the agreements listed in Annex 9-D, as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application. In the event the provisional application of this Agreement is terminated, the suspension shall cease and the agreements listed in Annex 9-D shall have effect.

3. Notwithstanding paragraphs 1 and 2, a claim may be submitted pursuant to the provisions of an agreement listed in Annex 9-D, regarding treatment accorded while the said agreement was in force, pursuant to the rules and procedures established in the agreement, and provided that no more than three (3) years have elapsed since the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement is not suspended pursuant to paragraph 2, the date of entry into force of this Agreement .

4. Notwithstanding paragraphs 1 and 2, if the provisional application of this Agreement, including this Chapter, is terminated and this Agreement, including this Chapter, does not enter into force, a claim may be submitted pursuant to the provisions of this Agreement, regarding treatment accorded during the period of the provisional application of this Agreement, pursuant to the rules and procedures established in this Agreement, and provided no more than three (3) years have elapsed since the date of termination of the provisional application.

5. For the purposes of this Article, the definition of "entry into force of this Agreement" provided for in paragraph 4(d) of Article 17.12 [Entry into Force] shall not apply.

ANNEXES

***Annex 9-A** to the Investment Protection Section*

EXPROPRIATION

The Parties confirm their shared understanding that:

1. Article 9.6 [Expropriation] addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure. The second is indirect expropriation, where 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.

2. The determination of whether a measure or series of measures 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:

(a) the economic impact of the measure or series of measures and its duration, although the fact that a measure or a 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;
(b) the extent to which the measure or series of measures interferes with the possibility to use, enjoy or dispose of the property and
(c) the character of the measure or series of measures, notably its object, context and intent.

For greater certainty, except in the rare in the circumstance where the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measure or series of measures by a Party that are designed and applied to protect legitimate public policy objectives such as public health, safety and the environment, do not constitute indirect expropriation.

***Annex 9-B** to the Investment Protection Section*

LAND EXPROPRIATION

1**.** Notwithstanding the obligations under Article 9.6 [Expropriation], where Singapore is the expropriating Party, any measure of expropriation relating to land, which shall be as defined in the Land Acquisition Act (Chapter 152), shall be upon payment of compensation at market value in accordance with the aforesaid legislation.

2. For the purposes of this Agreement, any measure of expropriation under the Land Acquisition Act (Chapter 152) should be for a public purpose or incidental to a public purpose.

Annex 9-C *to the Investment Protection Section*

EXPROPRIATION AND INTELLECTUAL PROPERTY RIGHTS

For greater certainty, the revocation, limitation or creation of intellectual property rights, to the extent that these measures are consistent with TRIPS Agreement and Chapter 11 (Intellectual Property) of this Agreement, do not constitute expropriation. Moreover, a determination that these measures are inconsistent with the TRIPS Agreement and Chapter 11 (Intellectual Property) of this Agreement does not establish that there has been an expropriation.

Annex 9-D *to the Investment Protection Section*

The agreements between Member States of the European Union and Singapore are:

(i) Agreement between the Government of the Republic of Singapore and the Government of the Republic of Bulgaria on the Mutual Promotion and Protection of Investments, done at Singapore on 15 September 2003;
(ii) Agreement between the Government of the Republic of Singapore and the Belgo-Luxemburg Economic Union on the Promotion and Protection of Investments, done at Brussels on 17 November 1978;
(iii) Agreement between the Government of the Republic of Singapore and the Government of the Czech Republic on the Promotion and Protection of Investments, done at Singapore on 8 April 1995;
(iv) Treaty between the Federal Republic of Germany and the Republic of Singapore concerning the Promotion and Reciprocal Protection of Investments, done at Singapore on 3 October 1973;
(v) Agreement between the Government of the Republic of Singapore and the Government of the Republic of France concerning the Promotion and the Protection of Investments, done at Paris on 8 September 1975;

(vi) Agreement between the Government of the Republic of Singapore and the Government of the Republic of Latvia on the Promotion and Protection of Investments, done at Singapore on 7 July 1998;
(vii) Agreement between the Republic of Singapore and the Republic of Hungary on the Promotion and Protection of Investments, done at Singapore on 17 April 1997;
(viii) Agreement on Economic Cooperation between the Government of the Kingdom of the Netherlands and the Government of the Republic of Singapore, done at Singapore on 16 May 1972;
(ix) Agreement between the Government of the Republic of Singapore and the Government of the Republic of Poland on the Promotion and Protection of Investments, done at Warsaw, Poland, on 3 June 1993;
(x) Agreement between the Government of the Republic of Singapore and the Government of the Republic of Slovenia on the Mutual Promotion and Protection of Investments, done at Singapore on 25 January 1999;
(xi) Agreement between the Republic of Singapore and the Slovak Republic on the Promotion and Reciprocal Protection of Investments, done at Singapore on 13 October 2006; and
(xii) Agreement between the Government of the Republic of Singapore and the Government of the United Kingdom of Great Britain and Northern Ireland for the Promotion and Protection of Investments, done at Singapore on 22 July 1975.

UNDERSTANDING []

IN RELATION TO SINGAPORE'S SPECIFIC CONSTRAINTS OF SPACE OR ACCESS TO NATURAL RESOURCES

1. Article 9.3 [National Treatment] shall not apply to any measure relating to:
(a) the supply of potable water in Singapore;
(b) the ownership, purchase, development, management, maintenance, use, enjoyment, sale or other disposal of residential property[18] or to any public housing scheme in Singapore.

2. Three years after the entry into force of this agreement and every two years thereafter, should ABSD still be in force, the Trade Committee will review to see if the maintenance of the ABSD is necessary for addressing the stability of the residential property market. In these consultations, Singapore will provide statistics and information relevant to the state of the residential property market.

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UNDERSTANDING 1 – Rev.
IN RELATION TO ARTICLE 17.6 (TAXATION)

The Parties share an understanding that the term "the provisions of this Agreement" referred to in paragraph 1 of Article 17.6 (Taxation) means the provisions that:

[18] The term "residential property" shall refer to real property defined as such in the Residential Property Act 274 Chapter as of .....].

(a) accord non-discriminatory treatment to goods in the manner and to the extent provided for in Chapter Two (National Treatment and Market Access for Goods);

(b) prevent the maintenance or institution of customs duty or tax in respect of goods in the manner and to the extent provided for in Chapter Two (National Treatment and Market Access for Goods);

(c) accord non-discriminatory treatment to service suppliers and investors in the manner and to the extent provided for in Section A (General Provisions), Section B (Cross-border Supply of Services), Section C (Establishment) and Sub-section 6 (Financial Services) of Section E (Regulatory Framework) of Chapter Eight (Services, Establishment and E-Commerce) and Chapter Nine (Investment Protection)1;

(d) prevent the maintenance or institution of performance requirements in the manner and to the extent [to be] provided for in Chapter Nine (Investment Protection);2 and

(e) accord protection to investors and their investments against expropriation and in relation to article 9.5 [Standard of treatment] and 9.7 [Transfers], in the manner and to the extent provided for in Chapter Nine (Investment Protection).

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ARTICLE X: SOVEREIGN WEALTH FUNDS [To be included in the Institutional, General and Final Provisions Chapter]

Each Party shall encourage its sovereign wealth funds to respect the Generally Accepted Principles and Practices – Santiago Principles.

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TEXT TO BE INCLUDED IN THE PREAMBLE

Reaffirming each Party's right to adopt and enforce measures necessary to pursue legitimate policy objectives such as social, environmental, security, public health and safety, promotion and protection of cultural diversity;

SECTION B

Investor-State Dispute Settlement

[Numbering of the articles in this Section is provisional and will be adjusted during legal revision]

Article 9.14

Scope and Definitions

1. This Section shall apply to a dispute between a claimant of one Party and the other Party concerning treatment[19] alleged to breach the provisions of Section A (Investment Protection) which breach allegedly causes loss or damage to the claimant or its locally established company.

2. For the purposes of this Section, unless otherwise specified:

   (a) "disputing parties" means the claimant and the respondent;

   (b) "claimant" means an investor of a Party, as defined in Article 9.1 (Definitions), which seeks to submit or has submitted a claim pursuant to this Section, either:

      (i) acting on its own behalf; or

      (ii) acting on behalf of a locally established company, as defined in subparagraph (c), which it owns or controls[20];

   (c) "locally established company" means a juridical person owned or controlled[21] by an investor of one Party, established in the territory of the other Party;

   (d) "non-disputing Party" means either Singapore, in the case where the Union or a Member State of the Union is the respondent; or the Union, in the case where Singapore is the respondent; and

   (e) "respondent" means either Singapore; or in the case of the European Union, either the Union or the Member State of the Union as notified pursuant to

[19] The Parties understand that the term "treatment" may include failures to act.

[20] For the avoidance of doubt, paragraph 2(b) shall constitute the Parties' agreement to treat a locally established company as a national of another Contracting State for the purposes of Article 25(2)(b) of the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* of 18 March 1965.

[21] A juridical person is:

(a) owned by natural or juridical persons of the other Party if more than 50 per cent of the equity interest in it is beneficially owned by natural or juridical persons of that Party;

(b) controlled by natural or juridical persons of the other Party if such natural or juridical persons have the power to name a majority of its directors or otherwise to legally direct its actions.

Article 9.18 (Notice of Intent to Arbitrate).

Article 9.15

Amicable Resolution

Any dispute should as far as possible be resolved amicably through negotiations and, where possible, before the submission of a request for consultations pursuant to Article 9.16 (Consultations). An amicable resolution may be agreed at any time, including after arbitration has been commenced.

Article 9.16

Consultations

1. Where a dispute cannot be resolved as provided for under Article 9.15 (Amicable Resolution), a claimant of a Party alleging a breach of the provisions of Section A (Investment Protection) may submit a request for consultations to the other Party.

2. The request for consultations shall contain the following information:

   (a) the name and address of the claimant and, where such request is submitted on behalf of a locally established company, the name, address, and place of incorporation of the locally established company;

   (b) the provisions of Section A (Investment Protection) alleged to have been breached;

   (c) the legal and factual basis for the dispute, including the treatment alleged to breach the provisions of Section A (Investment Protection); and

   (d) the relief sought and the estimated loss or damage allegedly caused to the claimant or its locally established company by reason of that breach.

3. The request for consultations shall be submitted:

   (a) within three years of the date on which the claimant becomes or should have become aware of the treatment alleged to breach the provisions of Section A (Investment Protection); or

   (b) in the event that the time period referred to in subparagraph (a) has already elapsed, and if local remedies are pursued, within one year of the date of exhaustion of local remedies.

4. In the event that the claimant has not submitted a claim to arbitration pursuant to Article 9.19 (Submission of Claim to Arbitration) within eighteen months of

submitting the request for consultations, the claimant shall be deemed to have withdrawn its request for consultations, any notice of intent to arbitrate and to have waived its rights to bring such a claim. This period may be extended by agreement between the parties involved in the consultations.

5. The time periods referred to in paragraphs 3 and 4 shall not render a claim inadmissible where the claimant can demonstrate that the failure to request consultations or submit a claim to arbitration is due to the claimant's inability to act as a result of actions deliberately taken by the respondent, provided that the claimant acts as soon as it is reasonably able to act.

6. In the event that the request for consultations concerns an alleged breach of this Agreement by the Union, or by any Member State of the Union, it shall be sent to the Union.

Article 9.17

Mediation and Alternative Dispute Resolution

1. The disputing parties may at any time, including prior to the delivery of a notice of intent to arbitrate, agree to have recourse to mediation.

2. Recourse to mediation is voluntary and without prejudice to the legal position of either disputing party.

3. Recourse to mediation may be governed by the rules set out in Annex 9-A or such other rules as the disputing parties may agree. Any time limit mentioned in Annex 9-A may be modified by mutual agreement between the disputing parties.

4. The mediator shall be appointed by agreement of the disputing parties or in accordance with Article 3 (Selection of the Mediator) of Annex 9-A. Mediators shall comply with Annex 9-B.

5. The disputing parties shall endeavour to reach a mutually agreed solution within sixty days from the appointment of the mediator.

6. Once the disputing parties agree to have recourse to mediation, paragraphs 3 and 4 of Article 9.16 (Consultations) shall not apply between the date on which it was agreed to have recourse to mediation, and thirty days after the date on which either party to the dispute decides to put an end to the mediation, by way of a letter to the mediator and the other disputing party.

7. Nothing in this Article shall preclude the disputing parties from having recourse to other forms of alternative dispute resolution.

Article 9.18

Notice of Intent to Arbitrate

1. If the dispute cannot be settled within three months of the submission of the request for consultations, the claimant may deliver a notice of intent to arbitrate which shall specify in writing the claimant's intention to submit the claim to arbitration, and contain the following information:

   (a) the name and address of the claimant and, where such request is submitted on behalf of a locally established company, the name, address, and place of incorporation of the locally established company;

   (b) the provisions of Section A (Investment Protection) alleged to have been breached;

   (c) the legal and factual basis for the dispute, including the treatment alleged to breach the provisions of Section A (Investment Protection); and

   (d) the relief sought and the estimated loss or damage allegedly caused to the claimant or its locally established company by reason of that breach.

   The notice of intent to arbitrate shall be sent to the Union or to Singapore, as the case may be.

2. Where a notice of intent to arbitrate has been sent to the Union, the Union shall make a determination of the respondent within two months from the date of receipt of the notice. The Union shall inform the claimant of this determination immediately, on the basis of which the claimant may submit a notice of arbitration pursuant to Article 9.19 (Submission of Claim to Arbitration).

3. Where no determination of the respondent has been made pursuant to paragraph 2, the following shall apply:

   (a) in the event that the notice of intent to arbitrate exclusively identifies treatment by a Member State of the Union, that Member State shall act as respondent;

   (b) in the event that the notice of intent to arbitrate identifies any treatment by an institution, body or agency of the Union, the Union shall act as respondent.

4. Where either the Union or a Member State acts as respondent, neither the Union nor the Member State concerned shall assert the inadmissibility of a claim, or otherwise assert that a claim or award is unfounded or invalid, on the ground that the proper respondent should be or should have been the Union rather than the Member State or *vice versa*.

5. For greater certainty, nothing in this Agreement or the applicable arbitration rules shall prevent the exchange, between the Union and the Member State concerned, of all

information relating to a dispute.

Article 9.19

Submission of Claim to Arbitration

1. No earlier than three months from the date of the notice of intent delivered pursuant to Article 9.18 (Notice of Intent to Arbitrate), the claimant may submit the claim to one of the following dispute settlement mechanisms[22]:

   (a) arbitration under the auspices of the International Centre for Settlement of Investment Disputes (hereinafter referred to as "ICSID") pursuant to the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* of 18 March 1965 (hereinafter referred to as the "ICSID Convention");

   (b) arbitration under the auspices of ICSID pursuant to the ICSID Convention in accordance with the Rules on the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes (hereinafter referred to as "ICSID Additional Facility Rules"), where the conditions for proceedings pursuant to subparagraph (a) do not apply;

   (c) an arbitral tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or

   (d) any other arbitral institutions or under any other arbitration rules if the disputing parties so agree. For this purpose, the respondent shall be deemed to have agreed to the institutions or rules proposed by the claimant unless it objects, in writing, within thirty days of the respondent's receipt of notification of the claimant's submission of the dispute, in which case the claimant may submit a claim under one of the dispute settlement mechanisms provided for in subparagraphs (a), (b) or (c).

2. Paragraph 1 of this Article shall constitute the consent of the respondent to the submission of a claim to arbitration under this Section. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

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[22] For greater certainty:

(a) the arbitration rules of the relevant dispute settlement mechanisms shall apply subject to the specific rules set out in this Section, and supplemented by decisions adopted pursuant to subparagraph 2(c) of Article 9.33 (Role of Committees); and

(b) claims where a representative submits a claim in the name of a class composed of an undetermined number of unidentified claimants and intends to conduct the proceedings by representing the interests of such claimants and making all decisions relating to the conduct of the claim on their behalf shall not be admissible.

(a) Chapter II of the ICSID Convention, and the ICSID Additional Facility Rules; and

(b) Article II of the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958 (hereinafter referred to as "New York Convention") for an "agreement in writing".

3. The claimant may, when submitting its claim, propose that a sole arbitrator should hear the case. The respondent shall give sympathetic consideration to such a request, in particular where the claimant is, or is claiming on behalf of, a small or medium-sized enterprise or the compensation or damages claimed are relatively low.

Article 9.20

Conditions to the Submission of Claim to Arbitration

1. A claim may be submitted to arbitration under this Section only if:

(a) the submission of the claim is accompanied by the claimant's consent in writing to arbitration in accordance with the procedures set out in this Section and the claimant's designation of one of the *fora* referred to in paragraph 1 of Article 9.19 (Submission of Claim to Arbitration) as the forum for dispute settlement;

(b) at least six months have elapsed since the submission of the request for consultations under Article 9.16 (Consultations) and at least three months have elapsed from the submission of the notice of intent to arbitrate under Article 9.18 (Notice of Intent to Arbitrate);

(c) the request for consultations and the notice of intent to arbitrate submitted by the claimant fulfilled the requirements set out in paragraph 2 of Article 9.16 (Consultations) and paragraph 1 of Article 9.18 (Notice of Intent to Arbitrate) respectively;

(d) the legal and factual basis of the dispute was subject to prior consultation pursuant to Article 9.16 (Consultations);

(e) all the claims identified in the submission of the claim to arbitration made pursuant to Article 9.19 (Submission of Claim to Arbitration) are based on treatment identified in the notice of intent to arbitrate made pursuant to Article 9.18 (Notice of Intent to Arbitrate);

(f) the claimant:

(i) withdraws any pending claim submitted to a domestic court or tribunal concerning the same treatment as alleged to breach the provisions of Section A (Investment Protection); and

(ii) declares that it will not submit such a claim before a final award has been rendered pursuant to this Section;

(g) the claimant:

(i) withdraws any pending claim concerning the same treatment as alleged to breach the provisions of Section A (Investment Protection) submitted to another international tribunal established pursuant to this Section, or any other treaty or contract; and

(ii) declares that it will not submit such a claim in the future; and

(h) no final award concerning the same treatment as alleged to breach the provisions of Section A (Investment Protection) has been rendered in a claim submitted by the claimant to another international tribunal established pursuant to this Section, or any other treaty or contract.

2. For the purposes of subparagraphs 1(f), 1(g) and 1(h), the term "claimant" refers to the investor and, where applicable, to the locally established company. In addition, for the purposes of subparagraphs 1(f)(i), 1(g)(i), and 1(h), the term "claimant" includes all persons who directly or indirectly have an ownership interest in, or who are controlled by the investor or, where applicable, the locally established company.

3. Upon request of the respondent, the tribunal shall decline jurisdiction where the claimant fails to respect any of the requirements or declarations referred to in paragraphs 1 and 2.

4. Subparagraphs 1(f), 1(g) and 1(h) shall not prevent the claimant from seeking interim measures of protection before the courts or administrative tribunals of the respondent prior to the institution or during the pendency of proceedings before any of the dispute settlement *fora* referred to in Article 9.19 (Submission of Claim to Arbitration. For the purposes of this Article, interim measures of protection shall be for the sole purpose of preservation of the claimant's rights and interests and shall not involve the payment of damages or the resolution of the substance of the matter in dispute.

5. This Article is without prejudice to other jurisdictional requirements applicable to the relevant dispute settlement mechanism and arising from the applicable arbitration rules.

6. For greater certainty, a tribunal shall decline jurisdiction where the dispute had arisen, or was very likely to arise, at the time when the claimant acquired ownership or control of the investment subject to the dispute, and the tribunal determines based on the facts that the claimant has acquired ownership or control of the investment for the main purpose of submitting the claim to arbitration under this Section. This is without

prejudice to other jurisdictional objections which could be entertained by the tribunal.

Article 9.21

Constitution of the Tribunal

1. Unless the disputing parties otherwise agree, such as to a tribunal composed of a sole arbitrator, the tribunal shall be composed of three arbitrators, one appointed by each of the disputing parties and the third, who shall be the chairperson, appointed by agreement of the disputing parties.

2. If the tribunal has not been constituted within ninety days from the date on which the claim was submitted to arbitration pursuant to Article 9.19 (Submission of Claim to Arbitration), the Secretary General of ICSID shall, upon request of a disputing party, appoint the arbitrator or arbitrators not yet appointed from the list established pursuant to paragraph 3. In the event that such list has not been established on the date a claim is submitted to arbitration, the Secretary General of ICSID shall appoint the arbitrator or arbitrators not yet appointed at his or her own discretion, in consultation with the disputing parties, and:

   (a) in the event that the arbitrator not yet appointed is neither a chairperson nor a sole arbitrator, taking into account the individuals proposed by the relevant Party pursuant to subparagraph 4(a), and

   (b) in the event that the arbitrator not yet appointed is the chairperson or a sole arbitrator, taking into account any individuals whose names appear on both lists proposed by the Parties pursuant to subparagraph 4(b).

3. The Trade Committee will, pursuant to subparagraph 2(a) of Article 9.33 (Role of Committees), no later than one year after the entry into force of this Agreement, establish a list of individuals who are willing and able to serve as arbitrators, ensuring that the list, once established, includes at least fifteen individuals thereafter.

4. For the purpose of establishing the list referred to in paragraph 3:

   (a) each Party shall propose five individuals to serve as arbitrators who may not act as chairpersons or sole arbitrators; and

   (b) each Party shall propose a list of individuals who are not nationals of either Party who may act as chairpersons or sole arbitrators, for the Trade Committee to thereafter agree on at least five individuals who may act as chairpersons or sole arbitrators.

   In case one Party wishes to propose more than five individuals pursuant to subparagraph (a), the other Party may propose the same number of additional

arbitrators, and the Trade Committee may agree to increase the number of individuals who may act as chairpersons or sole arbitrators accordingly.

5. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

   (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

   (b) a claimant acting on its own behalf may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

   (c) a claimant acting on behalf of a locally established company may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that both the claimant and the locally established company agree in writing to the appointment of each individual member of the tribunal.

6. All arbitrators shall have specialised knowledge of or experience in public international law and international investment law, or in the settlement of disputes under international investment agreements.

7. All arbitrators shall be independent, serve in their individual capacities and not be affiliated with the government of either of the Parties, and shall comply with Annex 9-B. Arbitrators who serve on the list established pursuant to paragraph 3 or who have been proposed pursuant to paragraph 4 shall not, for that reason alone, be deemed to be affiliated with the government of any Party.

8. If a disputing party considers that an arbitrator does not meet the requirements set out in paragraph 7, it shall send a notice of challenge to the appointment of the arbitrator within forty-five days of the date on which:

   (a) the disputing party was notified of the appointment of the arbitrator; or

   (b) the disputing party first became aware of the arbitrator's alleged failure to meet such requirements.

   The notice of challenge shall be sent to the other disputing party, to all arbitrators and to the Secretary General of ICSID, and it shall state the reasons for the challenge.

9. When the appointment of an arbitrator has been challenged by a disputing party, the disputing parties may agree to the challenge and request the challenged arbitrator to resign. The arbitrator may also, after the challenge, elect to resign. Either way, this does not imply acceptance of the validity of the grounds for the challenge.

10. If, within thirty days from the date of the notice of challenge, the challenged arbitrator has elected not to resign, the Secretary General of ICSID shall, after hearing the disputing parties and after providing the arbitrator an opportunity to submit any observations, issue a decision within sixty days of receipt of the notice of challenge and forthwith notify the disputing parties and other arbitrators, as applicable.

11. Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

Article 9.22

Applicable Law and Rules of Interpretation

1. The tribunal shall decide whether the treatment that is the subject of the claim is in breach of an obligation under Section A (Investment Protection).

2. Subject to paragraph 3, the tribunal shall apply this Agreement interpreted in accordance with the *Vienna Convention on the Law of Treaties* and other rules and principles of international law applicable between the Parties.

3. Where serious concerns arise as regards issues of interpretation which may affect matters relating to this Chapter, the Trade Committee, pursuant to subparagraph 2(b) of Article 9.33 (Role of Committees), may adopt interpretations of provisions of this Agreement. The Committee on Trade in Services, Investment and Government Procurement should exercise due restraint in recommending interpretations of any provision already submitted to a tribunal in a dispute between a Party and a claimant of the other Party where a final award has yet to be made. Any interpretation adopted by the Trade Committee shall be binding on a tribunal deciding on a claim submitted in accordance with Article 9.19 (Submission of Claim to Arbitration), and any award shall be consistent with that decision.

Article 9.23

Claims Manifestly Without Legal Merit

1. The respondent may, either no later than thirty days after the constitution of a tribunal pursuant to Article 9.21 (Constitution of the Tribunal) and in any event before the first session of the tribunal, file an objection that a claim is manifestly without legal merit.

2. The respondent shall specify as precisely as possible the basis for the objection.

3. The tribunal, after giving the disputing parties an opportunity to present their observations on the objection, shall, at its first session or promptly thereafter, issue a decision or award on the objection.

4. This procedure and any decision of the tribunal shall be without prejudice to the right of a respondent to object, pursuant to Article 9.24 (Claims Unfounded as a Matter of Law) or in the course of the proceeding, to the legal merits of a claim and without prejudice to the tribunal's authority to address other objections as a preliminary question.

Article 9.24

Claims Unfounded as a Matter of Law

1. Without prejudice to the tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at any appropriate time, the tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted under this Section is not a claim for which an award in favour of the claimant may be made under Article 9.19 (Submission of Claim to Arbitration), even if the facts alleged were assumed to be true. The tribunal may also consider any other relevant facts not in dispute.

2. An objection under paragraph 1 shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or statement of defence or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment. An objection may not be submitted under paragraph 1 as long as proceedings under Article 9.23 (Claims Manifestly without Legal Merit) are pending, unless the tribunal grants leave to file an objection under this Article, after having taken due account of the circumstances of the case.

3. Upon receipt of an objection under paragraph 1, and unless it considers the objection manifestly unfounded, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

Article 9.25

Transparency of Proceedings

Annex 9-C shall apply to disputes under this Section.

Article 9.26

The Non-disputing Party to the Agreement

1. The tribunal shall accept or, after consultation with the disputing parties, may invite oral or written submissions on issues of treaty interpretation from the non-disputing Party to the Agreement.

2. The tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraph 1.

3. The tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. The tribunal shall also ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the non-disputing Party to the Agreement.

Article 9.27

Final Award

1. Where the tribunal makes a final award finding a breach of the provisions of this Chapter, the tribunal may award, separately or in combination, only:[23]

   (a) monetary damages and any applicable interest; and

   (b) restitution of property, provided that the respondent may pay monetary damages and any applicable interest, as determined by the tribunal in accordance with Section A (Investment Protection), in lieu of restitution.

2. Monetary damages shall not be greater than the loss suffered by the claimant or, as applicable, its locally established company, as a result of the breach of the relevant provisions of Section A (Investment Protection), reduced by any prior damages or compensation already provided by the Party concerned. The tribunal shall not award punitive damages.

3. Where a claim is submitted on behalf of a locally established company, the arbitral award shall be made to the locally established company.

[23] For greater certainty, a final award shall be made on the basis of a request from the claimant and shall be made after considering any comments of the disputing parties.

Article 9.28

Indemnification or Other Compensation

The respondent may not assert, and the tribunal shall not accept, as a defence, counterclaim, right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation, pursuant to an insurance or guarantee contract, for all or part of the damages sought in a dispute initiated under this Section.

Article 9.29

Costs

1. The tribunal shall order that the costs of the arbitration shall be borne by the unsuccessful disputing party. In exceptional circumstances the tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the case.

2. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful party, unless the tribunal determines that such apportionment of costs is not appropriate in the circumstances of the case.

3. Where only some parts of the claims have been successful, the costs awarded shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

4. Where a claim or parts of a claim are dismissed on application of Article 9.23 (Claims Manifestly without Legal Merits) or Article 9.24 (Claims Unfounded as a Matter of Law), the tribunal shall order that all costs relating to such a claim or parts thereof, including the costs of arbitration and other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party.

5. The fees and expenses of the arbitrators shall be those determined pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the initiation of the arbitration.

Article 9.30

Enforcement of awards

1. An award issued pursuant to this Section shall be binding on the disputing parties.

2. Each disputing party shall abide by and comply with the terms of the award except to the extent that enforcement has been stayed in accordance with this Agreement or the relevant provisions of the dispute settlement mechanism to which the claim was submitted in accordance with Article 9.19 (Submission of Claim to Arbitration).

3. Each Party shall ensure the recognition and enforcement of the award in accordance with its international obligations and relevant laws and regulations.

4. A claim that is submitted to arbitration under this Section shall be deemed to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

Article 9.31

Role of the Parties to the Agreement

1. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to arbitration under this Section, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

2. For greater certainty, paragraph 1 shall not exclude the possibility of a Party having recourse to dispute settlement procedures under Chapter 15 (Dispute Settlement) in respect of a measure of general application even if that measure is alleged to have breached the Agreement as regards a specific investment in respect of which a claim has been submitted pursuant to Article 9.19 (Submission of Claim to Arbitration) and is without prejudice to Article 9.26 (The Non-disputing Party to the Agreement).

Article 9.32

Consolidation

1. Where two or more claims that have been submitted separately to arbitration under Article 9.19 (Submission of Claim to Arbitration) have a question of law or fact in common and arise out of the same events or circumstances, a disputing party may seek the establishment of a separate tribunal and request that such tribunal issue a consolidation order in accordance with:

   (a) the agreement of all the disputing parties sought to be covered by the order, in which case the disputing parties shall submit a joint request in accordance with paragraph 3; or

   (b) paragraphs 2 through 14, provided that only one respondent is sought to be covered by the order.

2. A disputing party seeking a consolidation order shall first deliver a notice to the other disputing parties sought to be covered by the order. This notice shall specify:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the claims, or parts thereof, sought to be covered by the order; and

(c) the grounds for the order sought

The disputing parties shall endeavor to agree on the consolidation order sought, the applicable arbitration rules and the composition of the consolidating tribunal.

3. Where the disputing parties referred to in paragraph 2 have not reached an agreement on consolidation within thirty days of the notice, a disputing party may make a request for a consolidation order under paragraph 7. The request shall be delivered, in writing, to the Secretary-General of ICSID and all the disputing parties sought to be covered by the order. Such a request shall specify:

(a) the names and addresses of all the disputing parties sought to be covered by the order;

(b) the claims, or parts thereof, sought to be covered by the order; and

(c) the grounds for the order sought.

Where the disputing parties have reached an agreement on consolidation of the claims, they shall submit a joint request to the Secretary-General of ICSID in accordance with this paragraph.

4. Unless the Secretary-General of ICSID finds within thirty days after receiving a request under paragraph 3 that the request is manifestly unfounded, a consolidating tribunal shall be established in accordance with paragraphs 6 and 7.

5. The consolidating tribunal shall conduct its proceedings in the following manner:

(a) unless all disputing parties otherwise agree, where all the claims for which a consolidation order is sought have been submitted to arbitration under the same dispute settlement mechanism, the consolidating tribunal shall proceed under the same dispute settlement mechanism;

(b) where the claims for which a consolidation order is sought have not been submitted to arbitration under the same dispute settlement mechanism:

(i) the disputing parties may agree on the applicable dispute settlement mechanism available under Article 9.19 (Submission of Claim to Arbitration) which shall apply to the consolidation proceedings; or

(ii) if the disputing parties cannot agree on the same dispute settlement mechanism within thirty days from the request made pursuant to

paragraph 3, the UNCITRAL arbitration rules shall apply to the consolidation proceedings.

6. Unless the disputing parties sought to be covered by the order otherwise agree, a consolidating tribunal shall comprise three arbitrators:

   (a) one arbitrator appointed by agreement of the claimants;

   (b) one arbitrator appointed by the respondent; and

   (c) the presiding arbitrator appointed by the Secretary-General of ICSID, provided, however, that the presiding arbitrator shall not be a national of either Party.

7. If, within sixty days after the Secretary-General of ICSID receives a request made under paragraph 3, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 6, the Secretary-General of ICSID, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators pursuant to the procedure set out in paragraph 2 of Article 9.21 (Constitution of the Tribunal).

8. Where the consolidating tribunal is satisfied that two or more claims that have been submitted to arbitration under Article 9.19 (Submission of Claim to Arbitration) have a question of law or fact in common, and arise out of the same events or circumstances, the consolidating tribunal may, in the interest of fair and efficient resolution of the claims, including the consistency of arbitral awards, and after hearing the disputing parties, by order:

   (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or

   (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

9. Where a consolidating tribunal has been established, a claimant that has submitted a claim to arbitration under Article 9.19 (Submission of Claim to Arbitration) and that has not been named in a request made under paragraph 3 may make a written request to the consolidating tribunal that it be included in any order made under paragraph 8. Such request shall comply with the requirements set out in paragraph 3.

10. On application of a disputing party, the consolidating tribunal, pending its decision under paragraph 8, may order that the proceedings of a tribunal established under Article 9.19 (Submission of Claim to Arbitration) be stayed, unless the latter tribunal has already adjourned its proceedings.

11. A tribunal established under Article 9.19 (Submission of Claim to Arbitration) shall cease to have jurisdiction to decide a claim, or parts of a claim, over which a consolidating tribunal has assumed jurisdiction, and the proceedings of a tribunal

established under Article 9.19 (Submission of Claim to Arbitration) shall be stayed or adjourned accordingly.

12. The award of the consolidating tribunal in relation to claims, or parts of claims, over which it has assumed jurisdiction, shall be binding on the tribunals established under Article 9.19 (Submission of Claim to Arbitration) in respect of these claims, except to the extent that the award has been stayed in accordance with this Agreement, or the relevant provisions of the dispute settlement mechanism to which the request for consolidation was submitted in accordance with paragraph 5.

13. A claimant may withdraw its claim or part thereof subject to consolidation from arbitration under this Article, provided that such claim or part thereof may not thereafter be resubmitted to arbitration under Article 9.19 (Submission of Claim to Arbitration).

14. At the request of one of the disputing parties, the consolidating tribunal may take such measures as it sees fit in order to preserve the confidentiality of protected information of that disputing party vis-à-vis other disputing parties. Such measures may include allowing the submission of redacted versions of documents containing protected information to the other disputing parties or arrangements to hold parts of the hearing in private.

Article 9.33

Role of Committees

1. The Committee on Trade in Services, Investment and Government Procurement established pursuant to Article 17.2 (Specialised Committees) shall examine:

   (a) difficulties which may arise in the implementation of this Section;

   (b) possible improvements of this Section, in particular in the light of experience and developments in other international *fora*; and,

   (c) whether, and if so, under what conditions, an appellate mechanism to review, on points of law, awards rendered under this Section could be created under this Agreement or whether awards rendered under this Section could be subject to such an appellate mechanism developed pursuant to other institutional arrangements.

2. The Trade Committee may, upon recommendation of the Committee on Trade in Services, Investment and Government Procurement, on agreement of the Parties and after completion of the respective legal requirements and procedures of the Parties, decide to:

   (a) appoint the list of arbitrators pursuant to paragraph 3 of Article 9.21 (Constitution of the Tribunal);

(b) adopt interpretations of this Agreement pursuant to paragraph 3 of Article 9.22 (Applicable Law and Rules of Interpretation); and

(c) adopt and amend rules supplementing the applicable arbitration rules or the rules included in the Annexes. Such rules and amendments shall be binding on tribunals established under this Section.

ANNEX 9-A to the ISDS Section

MEDIATION MECHANISM FOR INVESTOR-STATE DISPUTES

Article 1

Objective

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

SECTION A

Procedure under the Mediation Mechanism

Article 2

Initiation of the Procedure

1. A disputing party may request, at any time, the initiation of a mediation procedure. Such request shall be addressed to the other party in writing.

2. The party to which the request is addressed shall give sympathetic consideration to the request and reply by accepting or rejecting it in writing within ten days of its receipt.

3. Where the request relates to any treatment by an institution, body or agency of the Union or by any Member State of the Union, and no respondent has been determined pursuant to paragraph 2 of Article 9.18 (Notice of Intent to Arbitrate), the request shall be addressed to the Union. If the Union accepts the request, the response shall specify whether the Union or the Member State concerned will be a party to the mediation procedure.

Article 3

Selection of the Mediator

1. The disputing parties shall endeavour to agree on a mediator no later than fifteen days after the receipt of the reply to the request referred to in paragraph 2 of Article 2 (Initiation of the Procedure) of this Annex. Such agreement may include appointing a mediator from the list established according to Article 9.21 (Constitution of the Tribunal).

2. If the disputing parties cannot agree on the mediator pursuant to paragraph 1, either disputing party may request the Secretary-General of ICSID:

(a) to draw the mediator by lot from the list of individuals agreed to pursuant to subparagraph 4(b) of Article 9.21 (Constitution of the Tribunal); or

(b) in the event that such list has not yet been established pursuant to subparagraph 4(b) of Article 9.21 (Constitution of the Tribunal), to appoint a mediator at his or her own discretion, in consultation with the disputing parties, taking into account any individuals whose names appear on both lists proposed by the Parties pursuant to subparagraph 4(b) of Article 9.21 (Constitution of the Tribunal).

The Secretary-General of ICSID shall select the mediator within ten working days of the request by either disputing party.

3. A mediator shall not be a national of either Party, unless the disputing parties agree otherwise.

4. The mediator shall assist, in an impartial and transparent manner, the disputing parties in bringing clarity to the measure and its possible adverse effects on investment, and reaching a mutually agreed solution.

Article 4

Rules of the Mediation Procedure

1. Within ten days after the appointment of the mediator, the disputing party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other disputing party, in particular of the operation of the measure at issue and its adverse effects on investment. Within twenty days after the date of delivery of this submission, the other disputing party may provide, in writing, its comments to the description of the problem. Either disputing party may include in its description or comments any information that it deems relevant.

2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned, and its possible adverse effects on investment. In particular, the mediator may organise meetings between the disputing parties, consult the disputing parties jointly or individually, seek the assistance of or consult with relevant experts and stakeholders and provide any additional support requested by the disputing parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the disputing parties.

3. The mediator may offer advice and propose a solution for consideration of the disputing parties who may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with Section A (Investment Protection) of Chapter Nine (Investment Protection).

4. The procedure shall take place in the territory of the disputing party to which the request was addressed or by mutual agreement, in any other location or by any other means.

5. The disputing parties shall endeavour to reach a mutually agreed solution within sixty days from the appointment of the mediator. Pending a final agreement, the disputing parties may consider possible interim solutions.

6. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a disputing party has designated as confidential.

7. The procedure shall be terminated:

   (a) by the adoption of a mutually agreed solution by the disputing parties, on the date of adoption;

   (b) by a mutual agreement of the disputing parties at any stage of the procedure, on the date of that agreement;

   (c) by a written declaration of the mediator, after consultation with the disputing parties, that further efforts at mediation would be to no avail, on the date of that declaration;

   (d) by a written declaration of a disputing party after exploring mutually agreed solutions under the mediation procedure and after having considered any advice and proposed solutions by the mediator, on the date of that declaration.

SECTION B

Implementation

Article 5

Implementation of a Mutually Agreed Solution

1. Where the disputing parties have agreed to a solution, each disputing party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.

2. The implementing disputing party shall inform the other disputing party in writing of any steps or measures taken to implement the mutually agreed solution.

3. On request of the disputing parties, the mediator shall issue to the disputing parties, in writing, a draft factual report, providing a brief summary of:

   (a) the measure at issue in these procedures;

(b) the procedures followed; and

(c) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions.

The mediator shall provide the disputing parties fifteen working days to comment on the draft report. After considering the comments of the disputing parties submitted within the period, the mediator shall submit, in writing, a final factual report to the disputing parties within fifteen working days. The factual report shall not include any interpretation of this Agreement.

SECTION C

General Provisions

Article 6

Relationship to Investor-State Dispute Settlement

1. The mediation procedure is not intended to serve as a basis for investor-state dispute settlement procedures under this Agreement or another agreement. A disputing party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall any adjudicatory body, tribunal or panel take into consideration:

   (a) positions taken by the other disputing party in the course of the mediation procedure;

   (b) the fact that the other disputing party has indicated its willingness to accept a solution to the measure subject to mediation; or

   (c) advice given or proposals made by the mediator.

2. The mediation mechanism is without prejudice to the legal positions of the Parties and the disputing parties under Section B (Investor-State Dispute Settlement) of Chapter Nine (Investment Protection), and to the Parties' rights and obligations under Chapter Fifteen (Dispute Settlement).

3. Without prejudice to paragraph 6 of Article 4 (Rules of the Mediation Procedure) of this Annex and unless the disputing parties agree otherwise, all steps of the procedure, including any advice or proposed solution, shall be confidential. However, any disputing party may disclose to the public that mediation is taking place.

Article 7

Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the disputing parties.

Article 8

Costs

1. Each disputing party shall bear its own expenses derived from the participation in the mediation procedure.

2. The disputing parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. The fees and expenses of the mediators shall be in accordance with those applicable to arbitrators pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the initiation of the mediation.

ANNEX 9-B to the ISDS Section

CODE OF CONDUCT FOR ARBITRATORS AND MEDIATORS

Definitions

1. In this Code of Conduct:

"arbitrator" means a member of a tribunal established pursuant to Section B (Investor-State Dispute Settlement) of Chapter Nine (Investment Protection);

"mediator" means a person who conducts mediation in accordance with Section B (Investor-State Dispute Settlement) of Chapter Nine (Investment Protection);

"candidate" means an individual who is under consideration for selection as an arbitrator;

"assistant" means a person who, under the terms of appointment of an arbitrator, conducts, researches or provides assistance to the arbitrator;

"staff", in respect of an arbitrator, means persons under the direction and control of the arbitrator, other than assistants.

Responsibilities to the process

2. Throughout the proceedings, every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Arbitrators shall not take instructions from any organisation or government with regard to matters before a tribunal. Former arbitrators must comply with the obligations established in paragraphs 15, 16, 17 and 18 of this Code of Conduct.

Disclosure obligations

3. Prior to confirmation of his or her selection as an arbitrator under Section B (Investor-State Dispute Settlement) of Chapter Nine (Investment Protection), a candidate shall disclose any past or present interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

4. A candidate or arbitrator shall communicate matters concerning actual or potential violations of this Code of Conduct to the disputing parties and the non-disputing Party only.

5. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceeding at the earliest time the arbitrator becomes aware of it. The arbitrator shall disclose such interests, relationships or matters by informing the disputing parties and the non-disputing Party, in writing, for their consideration.

Duties of arbitrators

6. Upon selection, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding and with fairness and diligence.

7. An arbitrator shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.

8. An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with paragraphs 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.

9. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.

Independence and impartiality of arbitrators

10. An arbitrator must be independent and impartial and avoid creating an appearance of bias or impropriety and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a disputing party or a non-disputing Party or fear of criticism.

11. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere or appear to interfere, with the proper performance of his or her duties.

12. An arbitrator may not use his or her position on the tribunal to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him or her.

13. An arbitrator may not allow financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgement.

14. An arbitrator must avoid entering into any relationship or acquiring any financial interest that is likely to affect him or her impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of former arbitrators

15. All former arbitrators must avoid actions that may create the appearance that they were biased in carrying out their duties or derived any advantage from the decision or ruling of the tribunal.

Confidentiality

16. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding, except for the purposes of that proceeding, and shall not, in particular, disclose or use any such information to a personal advantage or an advantage for others or to affect the interest of others.

17. An arbitrator shall not disclose an arbitration ruling or parts thereof prior to its publication in accordance with Annex 9-C.

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18. An arbitrator or former arbitrator shall not at any time disclose the deliberations of a tribunal, or any arbitrator's view regarding the deliberations.

Expenses

19. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of the expenses incurred.

Mediators

20. The disciplines described in this Code of Conduct applying to arbitrators or former arbitrators shall apply, *mutatis mutandis*, to mediators.

ANNEX 9-C to the ISDS Section

RULES ON PUBLIC ACCESS TO DOCUMENTS, HEARINGS AND THE POSSIBILITY OF THIRD PERSONS TO MAKE SUBMISSIONS

Article 1

1. Subject to Articles 2 and 4 of this Annex, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Party and to the repository referred to in Article 5 of this Annex, who shall make them available to the public:

   (a) the request for consultations referred to in paragraph 1 of Article 9.16 (Consultations);

   (b) the notice of intent to arbitrate referred to in paragraph 1 of Article 9.18 (Notice of Intent to Arbitrate);

   (c) the determination of the respondent referred to in paragraph 2 of Article 9.18 (Notice of Intent to Arbitrate);

   (d) the submission of a claim to arbitration referred to in Article 9.19 (Submission of Claim to Arbitration);

   (e) pleadings, memorials, and briefs submitted to the tribunal by a disputing party, expert reports, and any written submissions submitted pursuant to Article 9.26 (The non-disputing Party to the Agreement) and Article 3 of this Annex;

   (f) minutes or transcripts of hearings of the tribunal, where available; and

   (g) orders, awards, and decisions of the tribunal or, where applicable, of the appointing authority.

2. Subject to the exceptions set out in Article 4 of this Annex, the tribunal may decide, on its own initiative or upon request from any person, and after consultation with the disputing parties, whether and how to make available any other documents provided to, or issued by, the tribunal not falling within paragraph 1. This may include, for example, making such documents available at a specified site or through the repository referred to in Article 5 of this Annex.

Article 2

The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so

advise the tribunal. The tribunal shall make appropriate arrangements to protect this information from disclosure.

Article 3

1. The tribunal may, after consultations with the disputing parties, allow a person that is not a disputing party and not a non-disputing Party to the Agreement (hereinafter referred to as "third person") to file a written submission with the tribunal regarding a matter within the scope of the dispute.

2. A third person wishing to make a submission shall apply to the tribunal, and shall provide the following written information in a language of the arbitration, in a concise manner, and within such page limits as may be set by the tribunal:

   (a) description of the third person, including, where relevant, its membership and legal status (e.g. trade association or other non-governmental organisation), its general objectives, the nature of its activities, and any parent organisation, including any organisation that directly or indirectly controls the third person;

   (b) disclosure of any connection, direct or indirect, which the third person has with any disputing party;

   (c) information on any government, person or organisation that has provided any financial or other assistance in preparing the submission or has provided substantial assistance to the third person in either of the two years preceding the application by the third person under this Article (e.g. funding around 20 per cent of its overall operations annually);

   (d) description of the nature of the interest that the third person has in the arbitration; and

   (e) identification of the specific issues of fact or law in the arbitration that the third person wishes to address in its written submission.

3. In determining whether to allow such a submission, the tribunal shall take into consideration, among other things:

   (a) whether the third person has a significant interest in the arbitral proceedings; and

   (b) the extent to which the submission would assist the tribunal in the determination of a factual or legal issue related to the arbitral proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties.

4. The submission filed by the third person shall:

(a) be dated and signed by the person filing the submission on behalf of the third person;

(b) be concise, and in no case longer than as authorised by the tribunal;

(c) set out a precise statement of the third person's position on issues; and

(d) only address matters within the scope of the dispute.

5. The tribunal shall ensure that such submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party. The tribunal may adopt any appropriate procedures where necessary to manage multiple submissions.

6. The tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by a third person.

Article 4

1. Confidential or protected information, as defined in paragraph 2 and as identified pursuant to paragraphs 3 to 9, shall not be made available to the public.

2. Confidential or protected information consists of:

(a) confidential business information;

(b) information which is protected against being made available to the public under this Agreement;

(c) information which is protected against being made available to the public, in the case of information of the respondent, under the law of the respondent and in the case of other information, under any law or rules determined to be applicable to the disclosure of such information by the tribunal.

3. When a document other than an order or decision of the tribunal is to be made available to the public pursuant to paragraph 1 of Article 1 of this Annex, the disputing party, non-disputing Party or third person who submits the document shall, at the time of submission of the document:

(a) indicate whether it contends that the document contains information which must be protected from publication;

(b) clearly designate the information at the time it is submitted to the tribunal; and

(c) promptly or within the time set by the tribunal, submit a redacted version of the document that does not contain the said information.

4. When a document other than an order or decision of the tribunal is to be made available to the public pursuant to a decision of the tribunal under paragraph 2 of Article 1 of this Annex, the disputing party, non-disputing Party or third person who has submitted the document shall, within thirty days of the tribunal's decision that the document is to be made available to the public, indicate whether it contends that the document contains information which must be protected from disclosure and submit a redacted version of the document that does not contain the said information.

5. Where a redaction is proposed under paragraph 3 or 4, any disputing party other than the person who submitted the document in question may object to the proposed redaction and/or propose that the document be redacted differently. Any such objection or counter-proposal shall be made within thirty days of receipt of the proposed redacted document.

6. When an order, decision or award of the tribunal is to be made available to the public pursuant to paragraph 1 of Article 1 of this Annex, the tribunal shall give all disputing parties an opportunity to make submissions as to the extent to which the document contains information which must be protected from publication and to propose redaction of the document to prevent the publication of the said information.

7. The tribunal shall rule on all questions relating to the proposed redaction of documents under paragraphs 3 to 6, and shall determine, in the exercise of its discretion, the extent to which any information contained in documents which are to be made available to the public, should be redacted.

8. If the tribunal determines that information should not be redacted from a document pursuant to paragraphs 3 to 6 or that a document should not be prevented from being made available to the public, any disputing party, non-disputing Party or third person that voluntarily submitted the document into the record may, within thirty days of the tribunal's determination:

   (a) withdraw all or part of the document containing such information from the record of the arbitral proceedings; or

   (b) resubmit the document in a form which complies with the tribunal's determination.

9. Any disputing party that intends to use information which it contends to be confidential or protected information in a hearing shall so advise the tribunal. The tribunal shall, after consultation with the disputing parties, decide whether that information should be protected and shall make arrangements to prevent any protected information from becoming public in accordance with Article 2 of this Annex.

10. Information shall not be made available to the public where the information, if made available to the public, would jeopardise the integrity of the arbitral process as determined pursuant to paragraph 11.

11. The tribunal may, on its own initiative or upon the application of a disputing party, after consultation with the disputing parties where practicable, take appropriate measures to restrain or delay the publication of information where such publication would jeopardise the integrity of the arbitral process:

    (a) because it could hamper the collection or production of evidence; or

    (b) because it could lead to the intimidation of witnesses, lawyers acting for disputing parties, or members of the tribunal; or

    (c) in comparably exceptional circumstances.

Article 5

The Secretary-General of the United Nations, through the UNCITRAL Secretariat, shall act as repository and shall make available to the public information pursuant to this Annex.

Article 6

Where this Annex provides for the tribunal to exercise discretion, the tribunal shall exercise that discretion, taking into account:

(a) the public interest in transparency in treaty-based Investor-State arbitration and of the particular arbitral proceedings; and

(b) the disputing parties' interest in a fair and efficient resolution of their dispute.