



**Draft Model Agreement:  
International Investment Agreement for  
Sustainable Development**

**Consultations Draft**

**January 2005**

## **TABLE OF CONTENTS**

### **Preamble**

### **PART 1: GENERAL PROVISIONS**

**Article 1: Objective**

**Article 2: Principles**

**Article 3: Definitions**

**Article 4: Scope of coverage**

**Article 5: Denial of benefits**

### **PART 2: STANDARDS OF TREATMENT OF FOREIGN INVESTORS**

**Article 6: National treatment**

**Article 7: Most-favored nation treatment**

**Article 8: Fair and equitable treatment**

**Article 9: Expropriation**

**Article 10: Senior management and boards of directors**

**Article 11: Transfers of assets**

**Article 12: Investor rights in the pre-operational period**

### **PART 3: FOREIGN INVESTOR OBLIGATIONS AND DUTIES**

**Article 13: General obligations**

**Article 14: Pre-establishment obligations**

**Article 15: Post-establishment obligations**

**Article 16: Corporate governance and practices**

**Article 17: Corporate social responsibility**

**Article 18: Investor liability**

**Article 19: Relation of this Part to use of investor-state dispute settlement**

**Article 20: Choice of home country**

### **PART 4: HOST STATE OBLIGATIONS**

**Article 21: Due process and Right of appeal**

**Article 22: Maintenance of environmental and other standards**

**Article 23: Minimum standards for environmental, labour and human rights protection**

**Article 24: Anti-corruption**

**Article 25: Development of domestic institutions**

### **PART 5: HOST STATE RIGHTS**

**Article 26: The right to development and sustainable development**

**Article 27: The right to regulate**

- Article 28: Performance requirements**
- Article 29: Investment promotion and facilitation**
- Article 30: Access to investor information**

#### **PART 6: HOME STATE RIGHTS AND OBLIGATIONS**

- Article 31: Assistance and facilitation for foreign investment**
- Article 32: Information**
- Article 33: Investor liability in home state**
- Article 34: Anti-corruption**

#### **PART 7: RELATION TO OTHER AGREEMENTS**

- Article 35: Relation to other investment agreements and obligations**
- Article 36: Relation to multilateral or other trade and/or investment agreements**

#### **PART 8: INSTITUTIONS**

- Article 37: Secretariat**
- Article 38: Conference of the Parties**
- Article 39: Dispute Settlement Body**
- Article 40: Legal Assistance Centre**
- Article 41: Financial mechanism**

#### **PART 9: DISPUTE SETTLEMENT**

- Article 42: State to state disputes**
- Article 43: Investor-state disputes**
- Article 44: Governing law in disputes**

#### **PART 10: GENERAL EXCEPTIONS**

- Article 45: National security**
- Article 46: Rules for taxation measures**
- Article 47: General reservations and exceptions**

#### **PART 11: FINAL PROVISIONS**

- Article 48: Regional cooperation**
- Article 49: Amendment**
- Article 50: Annexes, Appendices and Notes**
- Article 51: Protocols**
- Article 52: Entry into force**
- Article 53: Withdrawal**
- Article 54: Authentic texts**
- Article 55: Depositary**

## **ANNEXES**

### **Annex A: Investor-State Dispute Settlement**

**Article 1: Consultation and negotiation**

**Article 2: Submission of a claim to arbitration**

**Article 3: Consent of each party to arbitration**

**Article 4: Conditions and limitations on consent of each party**

**Article 5: Selection of arbitrators**

**Article 6: Conduct of the arbitration**

**Article 7: Amicus curiae**

**Article 8: Transparency of arbitral proceedings**

**Article 9: Interpretation of Annexes**

**Article 10: Expert reports**

**Article 11: Consolidation**

**Article 12: Awards**

**Article 13: Service of documents**

**Article 14: Appellate process**

**Annex B: List of contact points of all Parties for dispute settlement purposes.**

**Annex C: National lists of excluded sectors from coverage of all or part of the Agreement.**

**Annex D: National list of grandfathered non-complying measures, from all or part of the Agreement.**

**Annex E: National list of sectors subject to establishment rights of foreign investors under domestic law.**

## **INTERNATIONAL INVESTMENT AGREEMENT FOR SUSTAINABLE DEVELOPMENT**

### **PREAMBLE**

The Parties,

- Seeking to promote sustainable development at the national, regional and global levels,
- Recognizing that the promotion of economically and environmentally sustainable investments is critical for the future of national and global development,
- Recognizing further that the promotion of sustainable investments is a critical factor in the pursuit of national and global environmental objectives,
- Understanding that the promotion of sustainable investments requires cooperative efforts of investors, host governments and home governments, and desiring to pursue such efforts,
- Seeking an overall balance of rights and obligations between and among investors and host countries;
- Committing to the principle that international investment agreements must contribute to the creation of the necessary institutions to ensure a proper balance between investor rights, development objectives, and the protection of public goods; and
- Recognizing that an international investment agreement should reflect the basic principles of legitimacy, transparency and accountability for all participants in foreign investment processes,

Have agreed as follows:

### **PART 1: GENERAL PROVISIONS**

#### **Article 1: Objective**

The objective of this agreement is to promote long term foreign investment that supports sustainable development, in particular in developing and least developed countries.

#### **Article 2: Principles**

Domestic and international measures relating to foreign investment shall

- A) recognize the legitimate role of the rights of investors, development objectives of host states and the protection of public goods in a rules based framework; and
- B) be developed and implemented through transparent and accountable processes and mechanisms.

**Article 3: Definitions**

(A) "company" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled;

(B) "national" of a Party means a natural person who is a national of that Party under its applicable law;

(C) "investment" of a national or company means an enterprise consisting or taking the form of:

(i) a company;

(ii) shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;

(iii) contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;

(iv) tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges;

(v) intellectual property, including copyrights and related rights, patents, rights in plant varieties, industrial designs, rights in semiconductor layout designs, trade secrets, including know-how and confidential business information, trade and service marks, and trade names; and

(vi) rights conferred pursuant to law, such as licenses and permits

provided that such investments are not in the nature of portfolio investments which shall not be covered by this agreement.

For greater certainty, an investment does not include: market share based on foreign-origin trade; claims to money deriving solely from commercial contracts for the sale of goods and services by an enterprise in the territory of a Party to an enterprise in the territory of another Party or a loan to a Party or to a State enterprise; or the extension of credit in connection with a commercial transaction, such as trade financing.

(D) "investor" is a national or company of a Party that makes or is making an investment into the territory of another Party

(E) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

- (F) "Centre" means the International Centre for Settlement of Investment Disputes Established by the ICSID Convention;
- (G) "measures" includes any final legal, administrative, legislative, judicial or policy decision directly relating to an investment or investor taken by the host state.
- (H) "Home state" means the state declared by the investor in accordance with Article 20.
- (I) "Host state" is the country where the investment is located.

**Article 4: Scope of coverage**

- A) Subject to paragraphs (B)-(C), this Agreement applies to all investments by an investor, whether the investment is made before or after the entry into force of this Agreement.
- B) This Agreement applies to any measure directly relating to an investment or an investor taken after the entry into force of this Agreement by a governmental authority of the host state.
- C) This Agreement applies to measures taken by government authorities at the non-national level.
- D) Notwithstanding the above, this Agreement does not apply as follows:
- i) For investments in any economic sectors in a host state, including service sectors, listed in Annex C to this Agreement by that host state, except that pre-existing rights under other international agreements shall continue to be subject to such agreements, and that Article 9 of this Agreement shall apply to all investment.
  - ii) The application of any measures, including measures at a sub-national level, not conforming to this Agreement that are listed in Annex D
  - iii) The continuation of, or any amendments or other alterations to, measures listed in Annex D, providing that such continuation, amendment, or alteration shall not create any greater degree of non-conformity than the measure presently exhibits.
- E) i) Notwithstanding any other provision of this Agreement, this Agreement does not apply so as to create a right of establishment for investors in a potential host state. Parties wishing to list sectors in which they have under their domestic law removed any barriers to foreign investors, including in services sectors, may list these in Annex E to this Agreement.
- ii) Sectors listed in Annex E shall then be covered by the provisions of this agreement including for the establishment and acquisition of an investment.

**Article 5: Denial of benefits**

A Party may deny the benefits of this Agreement to an investor of another Party that is an enterprise of such Party and to investments of such investor if investors of a non Party own or control the enterprise and the denying Party:

- A) does not maintain diplomatic relations with the non-Party; or
- B) adopts or maintains measures with respect to the non Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

**PART 2: STANDARDS OF TREATMENT OF FOREIGN INVESTORS**

**Article 6: National treatment**

- A) Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
- B) Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
- C) The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favorable than that government accords, in like circumstances, to investors and to investments of the Party of which it forms a part.
- D) For greater certainty, the concept of “in like circumstances” requires an overall examination, on a case by case basis, of all the circumstances of an investment, including its external impacts, and shall not be limited to or biased toward any one factor.

**Article 7: Most-favored nation treatment**

- A) This Article applies to provisions of domestic law, and to the provisions of other international agreements relating to investment that enter into force after this agreement has entered into force.

- B) Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
- C) Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
- D) Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by this Article and the national treatment obligation.
- E) Paragraphs (B) and (D) do not oblige one Party to extend to the investors of another Party the benefit of any treatment, preference or privilege contained in
  - i) any existing or future customs union, bilateral investment treaty, free trade area, common market, any similar international agreement, any international environmental agreement, or any interim arrangement leading up to such agreements to which either of the Parties is or may become a party, or
  - ii) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

**Article 8: Fair and equitable treatment**

- A) Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
- B) For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.
- C) The obligation in paragraph 1 to provide:
  - i) “fair and equitable treatment” includes the obligation of the host state to provide due process in criminal, civil, or administrative adjudicatory proceedings, and in other administrative decision-making, in accordance with the principle of due process embodied in the principal legal systems of the world; and

- ii) “full protection and security” requires each Party to provide the level of police protection required under customary international law.
- D) Each Party shall accord to investors of the other Party, and to covered investments, national treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
- E) Notwithstanding paragraph D, if an investor of a Party, in the situations referred to in that paragraph, suffers a loss in the territory of the other Party resulting from:
- i) requisitioning of its covered investment or part thereof by the latter’s forces or authorities; or
  - ii) destruction of its covered investment or part thereof by the latter’s forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution or compensation, which in either case shall be prompt, adequate, and effective, and, with respect to compensation, shall be in readily convertible form.

### **Article 9: Expropriation**

- A) No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory ("expropriation"), except:
- i. for a public purpose;
  - ii. on a nondiscriminatory basis;
  - iii. in accordance with due process of law ; and
  - iv. on payment of compensation in accordance with paragraphs B-F.
- B) Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
- C) Compensation shall be paid without delay and be fully realizable.
- D) If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.
- E) If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate

of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

- F) On payment, compensation shall be freely transferable. Awards that are significantly burdensome on a host state may be paid over a period of three years or such other period as agreed by the parties, subject to interest at the rate established by agreement of the disputants or by a Tribunal.
- G) This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with applicable international agreements on Intellectual Property.
- H) For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.
- I) For greater certainty, *bona fide*, non-discriminatory regulatory measures taken by a Party in accordance with the provisions of Part 5 of this Agreement that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute an expropriation under this Article.
- J) An investor affected by an expropriation shall have a right, under the domestic law of the country of the Party making the expropriation, to prompt review, by a court of law or other independent and impartial forum of that Party, of its case and of the valuation of the investment in accordance with the principles referred to in paragraph (A).

#### **Article 10: Senior management and boards of directors**

- A) No Party may require that an enterprise of a Party that is a covered investment appoint to senior management positions individuals of any particular nationality.
- B) A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
- C) Subject to generally applicable rules of entry, no Party may unduly restrict or prevent the cross-border movement of senior management and members of the boards of directors of an investment of another Party.

**Article 11: Transfers of assets**

- A) Each Party shall permit all transfers relating to an investment to be made freely and without delay. Such transfers include:
- i. profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
  - ii. proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
  - iii. payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
  - iv. payments made pursuant to Article 9; and
  - v. payments arising under any dispute settlement process.
- B) Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.
- C) No Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of another Party.
- D) Notwithstanding paragraphs A and B, a Party may prevent a transfer through the equitable, nondiscriminatory and good faith application of its laws relating to:
- i. bankruptcy, insolvency or the protection of the rights of creditors;
  - ii. issuing, trading or dealing in securities;
  - iii. criminal or penal offenses;
  - iv. reports of transfers of currency or other monetary instruments; or
  - v. ensuring the satisfaction of judgments in adjudicatory proceedings.
- E) Paragraph C shall not be construed to prevent a Party from imposing any measure through the equitable, nondiscriminatory and good faith application of its laws relating to the matters set out in paragraph D.
- F) Notwithstanding paragraph B, a Party may restrict transfers or returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph E.
- G) A Party may restrict transfers if confronted with a balance of payments emergency and the investor in question may otherwise transfer a significant level of funds from a balance of payments perspective. In the event of any such restriction, the Party and investor shall immediately enter into negotiations with a view to remove such restrictions at the earliest possible moment.

## **Article 12: Investor rights in the pre-operational period**

For greater certainty, an investor in the process of making an investment that it has the legal right to initiate in the territory of another Party shall enjoy the same rights and protections enunciated in this Part in relation to the ongoing development of that investment as if it were operational.

## **PART 3: FOREIGN INVESTOR OBLIGATIONS AND DUTIES**

### **Article 13: General obligations**

- A) Investments and investors are fully subject to the laws and regulations of the host states, including measures prescribing the formalities of establishing an investment and the legal personality of that investment as a national of the host state.
- B) A Party may require an investor or an investment, to provide information concerning that investment for purposes of decision-making in relation to that investment or solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its domestic law.

### **Article 14: Pre-establishment obligations**

Investors seeking to make an investment into the territory of another Party assume the following minimum responsibilities. Where the host state has measures applicable in relation to these responsibilities that exceed the requirements of this Part, the investor is responsible to comply with such measures.

- A) Environmental impact assessment and social impact assessment:
  - i) Investors shall apply environmental assessment screening criteria<sup>1</sup> and assessment processes to their proposed investments prior to their establishment, in accordance with the laws of the proposed host state where these laws meet or exceed the EIA standards in the home state or World Bank EAI processes.

---

<sup>1</sup> Screening criteria include issues related to the size of an enterprise, its inputs and its outputs, each of which impact the scope of an assessment that may be required. These will normally exempt small enterprises and many service-related enterprises from the application of a full assessment process. By contrast, resource related projects will rarely be exempted.

- ii) Where the proposed hosts state laws do not meet World Bank or home state standards, the investor shall apply the higher standard of the latter two regimes.
- B) Potential investors shall not participate in any manner in the payment of money or other assets, offers of employment or other offers or inducements to government officials at any level of government in order to achieve any favour in relation to a proposed investment or any licenses, permits, contracts or other rights in relation to an investment.

**Article 15: Post-establishment obligations**

- A) Investments shall, in keeping with good practice requirements relating to the size and nature of the investment, maintain an environmental management system. Companies over XXX employees, or in areas of resource exploitation or high-risk industrial enterprises shall have a current certification for ISO 14,000 or an equivalent environmental management standard.
- B) Investors and investments shall not participate in any manner in the payment of money or other assets to government officials at any level of government, offers of employment, or other offers in order to achieve any favour in relation to an investment or any licenses, permits, contracts or other rights in relation to an investment
- C) Investors and investments shall act in accordance with minimum international human rights standards as required by customary international law and reflected in such instruments as the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Rights of the Child*, and other human rights agreements applicable in the home or host states.
- A) Investors and investments shall not manage or operate the investments in a manner that circumvents international environmental,<sup>2</sup> labour and human rights obligations to which the host state and/or home state are Parties.
- D) Investors and investments shall act in accordance with core labour standards as required by customary international law and international agreements applicable in the home or host states.

---

<sup>2</sup> Several international environmental agreements have differentiated obligations. Circumvention of an agreement does not occur when the differentiated obligations of the host state under an agreement are not breached

**Article 16: Corporate governance and practices**

In accordance with the size and nature of an investment,

- A) Investors and investments shall meet or exceed internationally accepted standards of corporate governance, in particular for transparency and accounting practices.
- B) Investors and investments shall publish all information relating to payments made to host state public authorities, including taxes, royalties, surcharges, fees, and all other payments
- C) Investments shall establish and maintain, where appropriate, local community liaison processes, in accordance with internationally accepted standards when available.

**Article 17: Corporate social responsibility**

In addition to the obligation to comply with all applicable laws and regulations of the host state, and in accordance with the size and nature of an investment and taking into account the indicative list provided in Annex F, investors and their investments should strive to make positive contributions to the development of the host state and local community. At a minimum, investors should ensure that their proposed and ongoing investments do not conflict with host state development policies and objectives established in accordance with Part 5 of this Agreement

**Article 18: Investor liability**

Investors shall be subject to civil liability in the judicial process of their home state for decisions made in relation to the investment where such decisions lead to significant damage, personal injuries or loss of life in the host state.

**Article 19: Relation of this Part to use of investor-state dispute settlement**

- A) Where an investor and investment have not complied with the obligations set out in this Part, such non-compliance may be taken into consideration in any dispute in accordance with the provisions on investor-state dispute mechanism in Part 9 of this agreement.
- D) A host state may raise breaches of the obligations in this Part as an objection to jurisdiction in an investor state proceeding initiated by an investor. A significant<sup>3</sup>

---

<sup>3</sup> Criteria for “significant will be developed by the Parties. Tribunals may, in the interim, apply this provision.

breach of an obligation in this Part shall vitiate the jurisdiction of a Tribunal, notwithstanding any other provision of this Agreement.

- B) A host state may initiate actions for damages under the domestic law of the host state or home state for an alleged breach of the obligations set out in this Part.
- C) A host state may raise an alleged breach of this Part of the Agreement as a counterclaim or offset in any legal process initiated by an investor under this Agreement against that host state.

**Article 20: Choice of home state**

- B) A foreign investor shall promptly choose its home state based on its principal place of business or a major centre of effective and sustained links with the home state economy and closely related to the investment, and shall notify the host state of its home state.
- C) Where an investor changes in relation to an investment, it shall so notify the host state and identify the home state of the new investor, based on its principal place of business or a major centre of actual operations closely related to the investment.
- D) Subject to prior notification and consultation with the new investor at the time notice is received, a Party may, within 90 days of such notice, deny the benefits of this Chapter to an investor of another Party that does not meet the requirements of paragraphs A or B, or if investors of a non-Party own or control the enterprise and the investing enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

**PART 4: HOST STATE OBLIGATIONS**

**Article 21: Due process and right of appeal**

- A) In accordance with the requirements of Article 8, host states shall ensure that administrative, legislative and judicial processes operate in a transparent manner that provides due process to investors and investments. The Parties understand that due process practices will vary among Parties on what can reasonably be expected in light of the Parties' respective economic and administrative realities, provided that investors and investments shall have a legitimate right to expect non-discriminatory and non-arbitrary process in all cases.
- B) Administrative decision-making processes shall include the right of administrative appeal of decisions, commensurate with the level of development of the host state. Judicial review of administrative decision should also be available through domestic judicial review processes.

**Article 22: Maintenance of environmental and other standards**

The Parties recognise that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures and thus shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in their territories, of an investment.

**Article 23: Minimum standards for environmental, labour and human rights protection**

- A) Recognizing the right of each party to establish its own level of domestic environmental protection and its own environmental development policies and priorities, and to adopt or modify its environmental laws and regulations, each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.
- B) Each Party shall ensure that its laws and regulations provide for high levels of labour and human rights protections appropriate to its economic and social situation, and shall strive to continue to improve these laws and regulations.
- C) All Parties shall at a minimum maintain legally applicable standards consistent with their international obligations in these areas.

**Article 24: Anti-corruption**

All host states shall ensure that the acceptance of bribes in monetary or non-monetary form, or of any other benefits in return for favourable decisions in respect of an investor or investment is made a criminal act in their domestic law. All such conduct shall be fully prosecuted in accordance with duly applicable rules and procedures.

**Article 25: Development of domestic institutions**

- A) Host states shall develop transparent, efficient and accountable legislative, regulatory and administrative processes, and ensure that they operate in accordance with applicable domestic laws and regulations.
- B) Host states shall develop independent, impartial and transparent judicial and quasi-judicial processes, including administrative review processes. Judicial and quasi-judicial processes shall be open to the public and documents shall be accessible by the public unless prohibited under due process of law.

## **PART 5: HOST STATE RIGHTS**

### **Article 26: The right to development and sustainable development**

- A) Host states have, in accordance with the general principles of international law, the right to pursue their own development objectives and priorities.
- B) Host states have, in accordance with the general principles of international law, the right to take measures to ensure that development in their territory is consistent with the goals and principles of sustainable development.
- C) Except where the rights of a host state are expressly stated as an exception to the obligations of this Agreement, the pursuit of these rights shall be understood as embodied within a balance of the rights and obligations of investors and investments and host states, as set out in this agreement, and consistent with other norms of customary international law.

### **Article 27: The right to regulate**

- A) In accordance with customary international law, states retain the inherent right to regulate in the public interest, except to the extent it has been limited by this Agreement.
- B) For greater certainty, host states may distinguish between investments for regulatory purposes when such distinctions relate to legitimate public interests associated with the investment (including its external impacts) and are not based on the nationality of the investor. *Bona fide* distinctions of this type shall not constitute a breach of provisions concerning national treatment, most-favoured nation treatment and minimum international standards of treatment.

### **Article 28: Performance requirements**

- A) The Parties recognize their obligations as regards trade-related investment measures established in other international agreements to which they are a Party.
- B) Recognizing that performance requirements may have significant negative impacts on the ability of host states to attract investors and that states should act prudently in this regard, but mindful that in appropriate circumstances the use of performance requirement tools may provide important development benefits to host countries, performance requirements not expressly prohibited in this agreement shall be available, as appropriate, for host states to employ, in accordance with domestic law.

**Article 29: Investment promotion and facilitation**

- A) Host states may maintain and develop investment promotion and facilitation agencies and services.
- B) Potential host states shall not compete for the achievement of foreign investment or investments through subsidies or other means, including tax relief, that distort international competition for investments. The Parties to this agreement shall initiate negotiations on more specific rules to this effect within one year of the entry into force of this agreement.

**Article 30: Access to investor information**

- A) Host states have the right to seek information from a potential investor or its home state about its corporate governance history and its practices as an investor, including in its home state.
- B) Host states shall protect confidential business information they receive in this regard.

**PART 6: HOME STATE RIGHTS AND OBLIGATIONS**

**Article 31: Assistance and facilitation for foreign investment**

Home states should assist developing and least developed states in the promotion and facilitation of foreign investment into such states, in particular by their own investors. Such assistance shall be consistent with the development goals and priorities of the countries in question. Such assistance may include, *inter alia*,

- A) Capacity building with respect to host state agencies and programs on investment promotion and facilitation;
- B) insurance programs based on commercial principles for investments made from them as home state into a host state;
- C) direct financial assistance in support of the investment or of feasibility studies prior to the investment being established;
- D) technology transfer;
- E) Periodic trade missions, support for joint business councils, and other cooperative efforts to promote sustainable investments.

Home states shall inform host states of the form and extent of available assistance as appropriate for the type and size of different investments.

**Article 32: Information**

- A) Home states shall, on request, provide to a potential host state such information as is necessary for the purposes of the host state to meet its obligations and perform its duties in relation to an investor or investment. Home states shall protect confidential business information in this regard.
- B) Home states shall, on request, provide information relevant to the home state standards that might apply under like circumstances to the investment proposed by its investor.

**Article 33: Investor liability in home state**

Home states shall ensure that their legal systems and rules allow for, or do not prevent or unduly restrict, the bringing of cases on their merits before domestic courts relating to the civil liability of investors, including for complicity in human rights violations, for decisions made in relation to their investments in the territory of other Parties.

**Article 34: Anti-corruption**

Home states shall ensure that any effort to curry favour in regards to an investment in a host state by the giving of monetary or non-monetary bribes by investors of that state or representatives of such investors are defined as criminal offences under the law of the home state and subject to criminal sanctions. Home states shall make every effort to prosecute such activities in accordance with domestic law.

**PART 7: RELATION TO OTHER AGREEMENTS**

**Article 35: Relation to other investment agreements and obligations**

- A) Where the home and host state are Parties to this agreement, all pre-existing bilateral and regional investment treaties (including investment rights and obligations contained in other parts of free trade agreements) shall be terminated and all such rights and obligations shall be pursuant to this Agreement.
- B) Where states Party to this agreement have additional investment treaties (including in treaties establishing broader economic relations on trade, etc.) with other non-parties, they shall strive to renegotiate those agreements to make them consistent with the present agreement. They shall, accordingly, make their best efforts to phase out such pre-existing agreements.

- C) States Party to this agreement shall ensure that all future investment agreements to which they may become Party are fully consistent with the present agreement, in particular the balance of rights and obligations it establishes, and the principal features of the dispute settlement system.

**Article 36: Relation to multilateral or other trade and/or investment agreements**

- A) The Parties agree that the provisions of this agreement are consistent with the provisions of other international trade agreements to which they are a party.
- B) In the event of any dispute arising on this issue, the parties shall seek to resolve such dispute within the mechanisms of this agreement as a first step.
- C) The Parties hereby reaffirm their obligations under international environmental and human rights agreements to which they are a party.

**PART 8: INSTITUTIONS**

**Article 37: Secretariat**

- A) A Secretariat to the Agreement is hereby established. The Secretariat shall be headed by an Executive Director and an Associate Director, and such other senior officers as the Conference of the Parties may decide.
- B) The Secretariat shall be a neutral body and undertake such tasks as may be directed by the Conference of the Parties. Such tasks may include:
- i. To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required.
  - ii. To facilitate assistance to the Parties, particularly developing Parties and Parties with economies in transition, on request, in the implementation of this Convention.
  - iii. To ensure the necessary coordination with the secretariats of other relevant international bodies.
  - iv. To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions.
  - v. The Executive Director shall be responsible for appointing and managing an international staff capable of providing the necessary range of support of the Conference of the Parties and to meet its responsibilities.
  - vi. To collect and disseminate information on the functioning of this Agreement, including the implementation of its provisions and the rates of foreign direct investment under the Agreement.

- vii. To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.

**Article 38: Conference of the Parties**

- A) The Conference of the Parties will be the governing body of the Agreement. It shall meet within one year of the Agreement coming into force, and once every year after that.
- B) The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and financial rules for itself and any subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat
- C) All Parties shall have an equal voice on the Conference of the Parties. Decisions shall be taken by consensus. Where, after all efforts are exhausted, no consensus is deemed possible by the chair of a meeting, a decision may be taken by three-quarters of the Parties present and voting.
- D) The Conference of the Parties shall perform the tasks assigned by the Agreement and such additional tasks as it deems appropriate for the fulfillment of the purposes of the Agreement. These tasks shall include, inter alia:
  - i. Appoint the Executive Director and Associate Director, and instruct the Secretariat on its functions.
  - ii. As appropriate, adopt Protocols and Annexes to this Agreement.
  - iii. Promote the development of standards for sustainable investments
  - iv. Monitor the effectiveness of this Agreement, including a three year review of the operation and effectiveness of this Agreement and subsequent reviews every three years.
  - v. Appoint such sub-organs or committees as it determines necessary for the proper functioning of this Agreement, including an Executive Committee of regionally balanced representation to oversee the management and operation of this Agreement between meetings of the Conference of the Parties; a review and Monitoring body to assist in the monitoring of this Agreement; and a committee whose members shall have special expertise in the promotion of development and sustainable investments that can provide technical assistance to the Parties upon their request.
  - vi. Adopt interpretative decisions.
- E) The United Nations and its specialized agencies, the World Trade Organization, any other inter-governmental organization whose work is impacted by this Agreement, as well as any State not Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or

international, governmental or non-governmental, qualified in matters covered by the Convention, and which has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one half of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

### **Article 39: Dispute Settlement Body**

A dispute settlement body (DSB) is hereby established to manage the dispute settlement processes under this Agreement.

- A) The DSB shall be composed of a Council of the Parties open to all Parties, a panel division and an appellate division.
- C) The Council of the Parties shall establish a Secretariat to assist the dispute settlement body in its operation and the panel and appellate divisions in the management of their cases. The Secretariat shall be headed by a Director.<sup>4</sup>
- B) The Council shall oversee the operation of the dispute settlement body. It shall be responsible for ensuring the smooth operation of the dispute settlement processes as a whole. The Council may not interfere in any individual disputes between Parties or between an investor and a Party.
- C) There shall be a standing body of 25 panelists from which all panel members shall be drawn. The Director of the Council shall appoint all panelists on disputes on a strict rotational basis, providing that no panelist shall be from a state of a disputing party. Any panelist in a position of real or apparent conflict of interest shall recuse himself or herself from the panel in question.
- D) The Appellate Division shall be composed of nine individuals with recognized expertise in the matters covered by this Agreement. They shall be selected by the Council of the Parties. Appellate Body members shall be appointed on a full time basis and be free of any real or apparent conflict of interest in any case on which they sit.
- D) Members of the panel and appellate divisions shall be individuals of high repute with expertise in the matters covered by this Agreement. Each shall comply with a Code of Ethics that will establish the highest standards of conduct and ensure the absence of a

---

<sup>4</sup> The Council of the Parties may designate, subject to appropriate arrangements being agreed, the Centre to act as the Secretariat for the dispute settlement body if it becomes an independent body responsible only to the Council of the Parties.

real or apparent conflict of interest in all cases.<sup>5</sup> No Panel or Appellate body member may be an advocate in any arbitration cases at the same time as being a member of either division, or affiliated with other advocates in a similar situation.

**Article 40: Legal Assistance Centre**

- A) A Legal Assistance Centre to assist developing country parties, and especially least developed states, in responding to claims by an investor shall be established. This Centre shall be independent of the Secretariat and function as a self-directed body. Its legal advice shall be confidential and subject to the same standards of lawyer-client protection and service as a private law firm. The Legal Assistance Centre shall report to the Conference of the Parties on a yearly basis concerning its financing and a summary of its activities.
- B) The Legal Assistance Centre shall disclose all sources of funds. It may receive funds from states Party, other States, international organizations and non-governmental organizations as long as the receipt of such funds is public and does not compromise the integrity of the Centre.

**Article 41: Financial mechanism**

The Parties shall establish a financial mechanism with the objective of supporting institutional development and capacity building in host state developing countries, and in particular least developed countries. Support from this mechanism may be directed at investment promotion and facilitation capacity, and at the monitoring of the effectiveness of this agreement, and for the establishment and operation of the Legal Advisory Centre.

**PART 9: DISPUTE SETTLEMENT**

**Article 42: State to state disputes**

- A) In the event of any dispute between the Parties as to the application or interpretation of this Agreement, the Parties shall seek to settle the dispute through negotiation, mediation, the use of good offices or another peaceful means of their choice.
- B) Where, after a period of six months since the parties first initiated the negotiations or other means of dispute settlement, no settlement is possible, a disputing Party may initiate arbitration proceedings with the other disputing Party(ies) in accordance with the arbitration procedure set out in Article 43 and Annex A, applying it *mutatis*

---

<sup>5</sup> A minimum standard to be included in the Code of Ethics shall require that no Panel division member may be an advocate in any investment arbitration cases at the same time as being a member of either division, or directly affiliated with other advocates in a similar situation. (Appellate division appointments are full time and in a personal capacity, and hence encompass this rule by definition.)

*mutandis* as if one disputing Party were the investor-claimant and the other Party(ies) respondent states Party.

- C) Such a dispute should proceed to a panel, and may, at the discretion of a disputing Party, subsequently be taken to the Appellate division.

**Article 43: Investor-state disputes**

- A) Where a dispute concerning the application or interpretation of this Agreement arises between an investor and a host state, the investor may submit such a dispute to the investor-state dispute settlement process established pursuant to Article 39 and Annex A.
- B) A dispute between an investor and a host state may not be commenced until domestic remedies are exhausted in relation to the underlying issues pleaded in relation to a breach of the Agreement. Where such remedies are unavailable due to the subject of the dispute or an insufficiency, lack of independence, or lack of timeliness of the judicial or administrative processes in the host state, an investor may plead this in an application before a Panel as a preliminary matter. The decision of a panel on this issue shall be final. This Panel shall be chosen in accordance with Article 39.
- C) All documents relating to the initiation of a panel or appeal, or the pleadings and decisions in them, shall be available to the public through an Internet site. Procedural and substantive oral hearings shall be open to the public. A panel or appellate tribunal may take such steps as are necessary, by exception, to protect confidential business information.
- D) A panel or appellate process shall be open to the receipt of *amicus curiae* submissions in accordance with the process set out in Annex A.
- E) Use of the investor-state process by an investor is subject to Article 19.
- F) A disputing investor or Party may appeal, within 60 days, a panel decision on the basis of an error of law or a material and manifest error of fact. Such appeals shall proceed in accordance with Annex A. No other appeal or arbitration review process shall be applicable to arbitrations under this Agreement.
- G) Parties shall adopt such domestic rules as required to make final awards enforceable in domestic legal proceedings.

**Article 44: Governing law in disputes**

- A) When a claim is submitted to a dispute or an appeal, it shall be decided in accordance with this Agreement, national law of the host state, and the applicable rules of international law.
- B) The Interpretive Notes of the Parties attached to this Agreement shall be binding upon any Tribunal established under this Agreement, and any award must be consistent with such Notes.
- C) An interpretive statement adopted by the Conference of the Parties declaring its interpretation of a provision of this Agreement shall be binding upon any tribunal established under this Agreement, and any award must be consistent with that decision.
- D) A decision by the Appellate division on an interpretation of this Agreement shall be binding on subsequent panels and appellate tribunals, unless it is made inapplicable by virtue of an Interpretive Statement of an amendment to the Agreement.

## **PART 10: GENERAL EXCEPTIONS**

### **Article 45: National security**

Nothing in this Agreement shall be construed:

- A) to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
- B) to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

### **Article 46: Rules for taxation measures**

- A) Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
- B) Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

- C) National Treatment and Most-Favored-Nation Treatment shall apply to all taxation measures, other than those on income, capital gains, or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers, except that nothing in those Articles shall apply:
- i) in the case of a most-favored-nation obligation, with respect to an advantage accorded by a Party pursuant to a tax convention;
  - ii) to a non-conforming provision of any existing taxation measure;
  - iii) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
  - iv) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;
  - v) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of GATS);
  - vi) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan; or
- D) Article 9 shall apply to a taxation measure alleged to be an expropriation. However, no investor may invoke Article 9 as the basis of a claim where it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 9 with respect to a taxation measure must first refer to the Executive Director of the Secretariat at the time that it gives its notice of intent to arbitrate under Article 43 the issue of whether that taxation measure involves an expropriation. The Executive Director shall ask the competent authorities of the host state and home state whether they do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, in which case the investor may submit its claim to arbitration.

#### **Article 47: General reservations and exceptions**

The provisions of this Agreement, except Article 9, do not apply to any law or other measure of a host state the purpose of which is to promote the achievement of equality in its territory, or designed to protect or advance persons, or categories of persons, disadvantaged by historic discrimination in its territory, provided that such law or other measure is fully compatible with the requirements of Art. 21.

### **PART 11: FINAL PROVISIONS**

#### **Article 48: Regional Cooperation**

Where appropriate, the Parties shall cooperate in the negotiation of regional cooperation agreements on matters covered by this agreement, and the development of regional capacity in this field.

**Article 49: Amendment**

- A) The Parties may agree on any modification of, or addition to, this Agreement, through the Conference of the Parties.
- B) When so agreed, and approved in accordance with the applicable legal procedures of each Party, and any provisions on entry into force with the amendment, a modification or addition shall constitute an integral part of this Agreement for those Parties that become Party to the amendment.

**Article 50: Annexes, Appendices and Notes**

- A) The Annexes, Appendices, and notes to this Agreement constitute an integral part of this Agreement.
- B) The national lists in Annex E may be amended by each Party at their discretion. Any such amendments shall be without prejudice to, or impact upon, the rights of investment and investors for investments initiated or established while a sector was listed or otherwise accepted to be established by a host state.

**Article 51: Protocols**

The Parties may, at a Conference of the Parties, adopt a protocol to this Agreement.

**Article 52: Entry into force**

This Agreement shall enter into force 90 days after the receipt by the depository of the 40<sup>th</sup> instrument of ratification or accession to this Agreement.

**Article 53: Withdrawal**

- 1) Any Party may withdraw from this Agreement by written notification to the other Parties. This Agreement shall expire for that Party 180 days after the date of such notification.
- 2) Notwithstanding paragraph A, the rights of investors and investments where an investment is substantially in progress of being established or has been established shall survive for a period of five years from such a withdrawal. The

five year period shall be extended to the full period of any investment contract, agreement or authorization if one is in existence at the time of the withdrawal.

**Article 54: Authentic texts**

The English language text of this Agreement shall be its authentic language.

**Article 55: Depositary**

The Depositary of this Agreement shall be the Secretary General of the United Nations.

## **ANNEX A: INVESTOR-STATE DISPUTE SETTLEMENT**

### **Article 1. Consultation and negotiation**

In the event of an investment dispute, the investor or investment (claimant) and the host state (respondent) should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

### **Article 2: Submission of a claim to arbitration**

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the investment, on its own behalf, may submit to arbitration under this Section a claim that the respondent has breached an obligation under this Agreement and that the investment has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the investor, on its own or on behalf of the investment, may submit to arbitration under this Section a claim that the respondent has breached an obligation under Part 2 or 3 or 4, and that the claimant has incurred loss or damage by reason of, or arising out of, that breach.

2. For greater certainty, a claimant may submit to arbitration under this Section a claim referred to in paragraph 1 that the respondent has breached an obligation through the actions of a designated monopoly or a state enterprise exercising delegated government authority.

3. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration (“notice of intent”). The notice shall specify:

(a) the name and address of the claimant and, where a claim is submitted on behalf of an investment, the name, address, and place of incorporation of the enterprise;

(b) for each claim, the provision of this Agreement alleged to have been breached and any other relevant provisions;

(c) the legal and factual basis for each claim; and

(d) the relief sought and the approximate amount of damages claimed.

4. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1 to the dispute settlement body, panel division, established by this Agreement.

5. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration") is submitted to the Secretariat of the dispute settlement body and to the designated contact person of the host state.

6. The Council of the parties shall establish Rules of Arbitration consistent with the provisions of this Agreement. Until the adoption of such Rules, the Rules of Arbitration of the Centre in effect on the date the claim or claims were submitted to arbitration under this Agreement, shall govern the arbitration except to the extent modified by this Agreement, irrespective of whether the host and home states are parties to the ICSID Convention.

### **Article 3: Consent of each party to arbitration**

Each state Party consents to the submission of a claim to arbitration under this Agreement in accordance with its provisions.

### **Article 4: Conditions and limitations on consent of each Party**

1. No claim may be submitted to arbitration if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 2 and knowledge that the claimant, or the investment it is claiming on behalf of, has incurred loss or damage.

2. No claim may be submitted to arbitration unless the claimant has demonstrated that the requirement for the exhaustion of local remedies has been complied with or has filed a request to a panel for a finding that it is not in a viable position to exhaust local remedies. The latter shall be accompanied by an express written waiver of any such rights conditional on the initiation of an arbitration.

### **Article 5: Selection of arbitrators**

1. The Director shall, within 75 days of the filing of a notice of arbitration, appoint the panel members from the standing roster of panelists. No panel member shall be from the host or home state.

2. A panel shall be composed of three members, with one designated as President of the panel.

3. A disputing party may contest the nomination of an arbitrator for good cause, including real or apparent conflict of interest. Any challenges shall be decided by the remaining two designated arbitrators.

**Article 6: Conduct of the arbitration**

1. Unless otherwise agreed, the place of arbitration shall be at the Secretariat to the dispute settlement body or a regional affiliate in the region of the disputing Party. The disputing parties may agree on another legal place of arbitration within 30 days of the notice of arbitration being filed.
2. Any non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.
3. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within a tribunal's competence, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made.
  - (a) Such objection 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.
  - (b) On receipt of an objection under this paragraph, 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 therefore.
  - (c) In deciding an objection under this paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration. The tribunal may also consider any relevant facts not in dispute.
  - (d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in the following paragraph.
4. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 3 or any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefore, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period of time, which may not exceed 30 days.

5. When it decides a respondent's objection under paragraph 3 or 4, the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider *inter alia* whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

6. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

7. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach of the relevant Parts of this Agreement. The protection of the public welfare and public interests shall be considered when any interim measures are requested.

#### **Article 7: Amicus curiae**

- A) The tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party (the "submitter").
- B) The submissions shall be provided in English or in the principal language of the host state, and shall identify the submitter and any Party, other government, person, or organization, other than the submitter, that has provided, or will provide, any financial or other assistance in preparing the submission.
- C) The Council may establish and make available to the public a standard form for applying for status as *amicus curiae*. This may include specific criteria which will help guide a tribunal in determining whether to accept a submission in any given instance.

#### **Article 8: Transparency of arbitral proceedings**

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the Secretariat of the dispute settlement body which shall make them available to the public, including by Internet:

- (a) the notice of intent
- (b) the notice of arbitration
- (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to this Annex or the Rules of Arbitration

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

(e) all orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct all hearings open to the public and shall determine, in consultation with the disputing parties and the dispute settlement Secretariat the appropriate logistical arrangements. However, any disputing party that intends to use information designated as confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Nothing in this Section requires a respondent to disclose confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law or to furnish or allow access to information that it may withhold in accordance with this Agreement.

4. Confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law shall, if such information is submitted to the tribunal, be protected from disclosure in accordance with the following procedures:

(a) Subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);

(b) Any disputing party claiming that certain information constitutes confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law shall clearly designate the information at the time it is submitted to the tribunal;

(c) A disputing party shall, at the same time that it submits a document containing information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Party and made public in accordance with paragraph 1; and

(d) The tribunal shall decide any objection regarding the designation of information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may:

(i) withdraw all or part of its submission containing such information; or

(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).

In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

5. Nothing in this Agreement authorizes a respondent to withhold from the public information required to be disclosed by its laws.

### **Article 9: Interpretation of Annexes**

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an excluded sector in Annex C or is a non-conforming measure set out in Annex D, the tribunal shall, on request of the respondent, request the interpretation of the home and host state on the issue. The home and host state shall submit in writing any decision declaring its interpretation under this Article the tribunal within 60 days of delivery of the request.

2. A decision issued under paragraph 1 shall be binding on the tribunal, and any award must be consistent with that decision. If the home and host state fails to issue such a decision within 60 days, the tribunal shall decide the issue.

### **Article 10: Expert reports**

Without prejudice to the appointment of other kinds of experts where authorized by the arbitration rules, a tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

### **Article 11: Consolidation**

1. Where two or more claims have been submitted separately to arbitration under this Agreement and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Director and to all the disputing parties sought to be covered by the order and shall specify in the request:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
  - (b) the nature of the order sought; and
  - (c) the grounds on which the order is sought.
3. Unless the Director finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a separate tribunal shall be established under this Article by the Director solely to consider the issue of consolidation.
4. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:
- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
  - (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; or
  - (c) instruct a tribunal previously established to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that that tribunal shall decide whether any prior hearing shall be repeated.
5. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 4, and shall specify in the request:
- (a) the name and address of the claimant;
  - (b) the nature of the order sought; and
  - (c) the grounds on which the order is sought.
6. On application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 4, may order that the proceedings of another tribunal be stayed, unless the latter tribunal has already adjourned its proceedings.

## **Article 12: Awards**

1. Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest;
  - (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution. A tribunal may also award costs and attorneys' fees in accordance with this Section and the applicable arbitration rules.
2. Subject to paragraph 1, where a claim is submitted to arbitration on behalf of an investment:
- (a) an award of restitution of property shall provide that restitution be made to the enterprise;
  - (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
  - (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.
3. A tribunal may not award punitive damages.
4. An award made by a panel tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
5. Subject to paragraph 6 and the applicable appeal procedure, a disputing party shall abide by and comply with an award without delay.
6. A disputing party may not seek enforcement of a final award until :
- (a) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to appeal the award, or
  - (b) the appellate division has rejected an appeal.
7. Each Party shall provide for the enforcement of an award in its territory and make the appropriate legal proceedings available for this purpose.

### **Article 13: Service of documents**

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex B.

### **Article 14: Appellate process**

- 1) The Appellate process shall apply, *mutatis mutandis*, the rules of procedure for the panel division, subject to such modifications as required by this Agreement.

- 2) A disputing party may appeal on the basis of an error of law or a manifest and material error of fact.
- 3) The appeal must be filed within 60 days of the decision being appealed.
- 4) The Dispute Settlement Body shall establish, at its first meeting, the timelines for the appellate process.
- 5) The decision on appeal shall be final and binding and not subject to further appeal or judicial review.

**ANNEX B**

List of contact points of all Parties for dispute settlement purposes.

**ANNEX C**

National lists of excluded sectors from coverage of all or part of the Agreement.

**ANNEX D**

National list of grandfathered non-complying measures, from all or part of the Agreement.

**ANNEX E**

National list of sectors subject to establishment rights of foreign investors under domestic law.

**ANNEX F**

Indicative List of Corporate Social Responsibility Measures