

**CHILEAN PROPOSAL  
CHAPTER XX  
INVESTMENT**

SECTION A

**SUBSTANTIVE DISPOSITIONS**

*Article X.1*

**Definitions**

For the purposes of this Chapter:

**claimant** means an investor of a Party that is party to an investment dispute with another Party. If that investor is a natural person, who is a permanent resident of a Party and a national of another Party, that natural person may not submit a claim to arbitration against that latter Party;

**covered investment** means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or the investments established, acquired or expanded thereafter;

**disputing parties** means the claimant and the respondent;

**disputing party** means either the claimant or the respondent;

**enterprise** means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization, and a branch of an enterprise;

**enterprise of a Party** means an enterprise constituted or organized under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there;

**freely usable currency** means “freely usable currency” as determined by the International Monetary Fund under its Articles of Agreement;

**ICSID** means the International Centre for Settlement of Investment Disputes, established by the ICSID Convention;

**ICSID Additional Facility Rules** means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

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

**Inter-American Convention** means the Inter-American Convention on International Commercial Arbitration, done at Panama on 30 January 1975;

**investment** means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock and other forms of equity participation in an enterprise;
- (c) bonds, debentures or other debt instruments issued by an enterprise<sup>1</sup>;

but it does not include debt instruments issued by a Party or a State-owned enterprise, or loans to a Party or to a State-owned enterprise, regardless of the original expiry date;

- (d) futures, options and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts, including those that involve the presence of the property of an investor in the territory of the Parties;
- (f) intellectual property rights;
- (g) licences, authorisations, permits and similar rights conferred under domestic law;<sup>2</sup> and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges;

but investment does not include an order or judgement entered in a judicial or administrative action;

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<sup>1</sup> It is more likely for some forms of debt, such as bonds, debentures and long-term notes to have the characteristics of an investment, while it is less likely for other forms of debt, such as claims to payment that are immediately due and result from the sale of goods and services, to have those characteristics.

<sup>2</sup> Whether a type of licence, authorisation, permit or similar instrument (including a concession to the extent that it has the nature of this type of instrument) has the characteristics of an investment depends on factors such as the nature and extent of the rights that the holder has under that Party's law. Among such licences, authorisations, permits or similar instruments without the characteristics of an investment are those that do not create rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether an asset associated with such licence, authorisation, permit or similar instrument has the characteristics of an investment.

**investor of a non-Party** means, with respect to a Party, an investor who attempts to make<sup>3</sup>, is making or has already made an investment in the territory of that Party, and that is not an investor of any of the Parties;

**investor of a Party** means a Party or State-owned enterprise thereof, or a national or enterprise of such Party, that attempts to make<sup>4</sup>, is making or has made an investment in the territory of another Party; considering, however, that a natural person with double nationality shall be deemed exclusively a national of the State of its dominant and effective nationality;

**monopoly** means an entity, including a consortium or governmental agency, that in the relevant market of the territory of a Party, has been designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an intellectual property right solely by reason of such designation;

**New York Convention** means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958;

**non-disputing Party** means a Party that is not a party to an investment dispute under Section B of this Chapter;

**protected information** means confidential commercial information, confidential business information or privileged information or otherwise protected from disclosure under a Party's laws;

**respondent** means the Party that is a party to an investment dispute;

**Secretary-General** means the Secretary-General of ICSID;

**tribunal** means an arbitration tribunal established under Articles X.19 (Selection of Arbitrators) or X.25 (Consolidation of Proceedings);

**TRIPS Agreement** means the Agreement on Trade-Related Aspects of Intellectual Property Rights, set out in the WTO Agreement; and

**UNCITRAL Arbitration Rules** means the Arbitration Rules of the United Nations Commission on International Trade Law, as revised in 2010.

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<sup>3</sup> For greater certainty, an investor attempts to make an investment when that investor has taken concrete actions to make an investment, such as channelling resources or capital in order to set up a business, or obtaining permits or licences, among others.

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*Article X.2*

**Scope of Application**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of another Party;
  - (b) covered investments; and
  - (c) with respect to Articles X.8 (Performance Requirements) and X.31 (Investment and Measures related to Health, the Environment and other Regulatory Objectives), all investments in the territory of the Party.
  
2. A requirement of a Party that a service provider of another Party post a bond or other form of financial security as a condition for the cross-border supply of a service in its territory, does not of itself make this Chapter applicable to such cross-border supply of that service. This Chapter applies to measures adopted or maintained by the Party relating to the bond or financial security, when such bond or financial security constitutes a covered investment.
  
3. This Chapter shall not apply to:
  - (a) measures adopted or maintained by a Party relating to financial institutions of another Party, investors of the other Party and to the investments of such investors, in financial institutions in the territory of the Party, as defined in Article X.1 (Financial Services Chapter - Definitions);
  - (b) any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement, regardless of the consequences of such facts, acts or situations.
  
4. The obligations of a Party under this Section shall apply to a State-owned enterprise or another person when it exercises any regulatory or administrative authority or other governmental authority delegated to them by that Party, such as the authority to expropriate, issue licences, approve commercial transactions or impose quotas, fees or other charges.
  
5. For greater certainty, nothing in this Chapter shall be construed as imposing an obligation to a Party to privatise any investment owned or controlled by that Party or as prohibiting a Party from designating or establishing a monopoly. If a Party adopts or maintains a measure to privatise such investment or a measure to designate or establish a monopoly, this Chapter shall apply to said measure.
  
6. For the purposes of this Chapter, the Parties reaffirm the right of each Party to regulate within its territory to achieve legitimate policy objectives, such as the protection of health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.

7. For greater certainty, the mere fact that a Party takes or fails to take an action, including through a modification to its laws or regulations, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, even if there is loss or damage to the covered investment as a result, does not amount to a breach of an obligation under this Chapter.

8. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party:

- (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, modification, reduction or maintenance of that subsidy or grant,

does not constitute a breach of obligations of this Chapter, even if there is loss or damage to the covered investment as a result.

### *Article X.3*

#### **Relation to Other Chapters**

In the event of inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.

### *Article X.4*

#### **National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances<sup>5</sup>, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

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

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<sup>5</sup> For greater certainty, whether treatment is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

3. Treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a regional or state government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional or state level of government to investors and to investments of investors, of the Party of which it forms a part.

#### *Article X.5*

### **Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors of another Party treatment no less favourable than it accords, in like circumstances<sup>6</sup>, to investors of any non-Party, with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

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

3. For greater certainty, this Article does not encompass dispute resolution procedures or mechanisms, such as those provided in Section B of this Chapter, that are included in international trade or investment agreements. Substantive obligations in other international investment treaties and other trade agreements do not in themselves constitute “treatment” and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party.

#### *Article X.6*

### **Minimum Standard of Treatment<sup>7</sup>**

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes that the minimum standard of treatment of aliens under customary international law is the minimum standard of treatment that shall be accorded to covered 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. The obligation in paragraph 1 to provide:

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<sup>6</sup> For greater certainty, whether treatment is accorded in “like circumstances” depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

<sup>7</sup> For greater certainty, this Article shall be interpreted in accordance with Annex X.6 (Customary International Law).

- (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings, in accordance with the principle of due process embodied in the principal legal systems of the world; and
  - (b) “full protection and security” requires each Party to provide the level of police protection required under customary international law.
3. A determination that there has been a breach of another provision of this Agreement or another international agreement, does not establish that there has been a breach of this Article.
4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

*Article X.7*

**Treatment in Case of Strife**

1. Notwithstanding Article X.10.7(b) (Non-Conforming Measures), each Party shall accord, with respect to measures such as restitution, indemnification, compensation and other arrangements, to investors of another Party that have suffered losses by its investments in the territory of such Party due to armed conflict or civil strife, treatment no less favourable than it accords to its own investors or to investors of a non-Party,
2. Paragraph 1 does not apply to existing measures related to subsidies or grants that would be inconsistent with Article X.4 (National Treatment), except for Article X.10.7(b) (Non-Conforming Measures).

*Article X.8*

**Performance Requirements**

1. A Party shall not, in connection with the establishment, acquisition, expansion, management, conduct, operation or sale or other disposition of an investment of a Party or of a non-Party in its territory, impose or enforce any of the following requirements, or enforce any commitment or undertaking<sup>8</sup>, to:
- (a) export a given level or percentage of goods or services;
  - (b) achieve a given level or percentage of domestic content;

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<sup>8</sup> For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “commitment or undertaking” for the purposes of paragraph 1.

- (c) purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) restrict sales of goods or services in its territory that such investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) transfer technology,<sup>9</sup> a production process or other proprietary knowledge to a person in its territory; or
- (g) supply exclusively from the territory of the Party the goods it produces or the services it supplies to a specific regional market or to the world market.

2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation or sale or other disposition of an investment in its territory, of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

- (a) achieve a given level or percentage of domestic content;
- (b) purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (c) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
- (d) restrict sales of goods or services in its territory that such investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings.

3. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with the an investment in its territory by an investor of a Party or a non-Party, on compliance with a requirement to locate production, supply services, train or employ workers, construct or expand particular facilities or carry out research and development, in its territory.

4. Paragraph 1 (f) does not apply:

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<sup>9</sup> The Parties may require an investment to use a certain technology to fulfil health, safety or environmental requirements. For greater certainty, Articles X.4 (National Treatment) and X.5 (Most-Favoured-Nation Treatment) apply to the aforementioned measure.

- (a) if a Party authorises use of an intellectual property right in accordance with Article 31<sup>10</sup> of the TRIPS Agreement or to measures requiring the disclosure of propriety information that fall within the scope of, and are consistent with, Article 39 of the such Agreement; or
- (b) if the requirement is imposed or the commitment or undertaking is enforced by a judicial or administrative tribunal, or a competition authority, to remedy a practice determined after a judicial or administrative proceeding to be anticompetitive under the Party's competition laws.<sup>11</sup>

5. Provided that such measures are not applied in an arbitrary or unjustifiable manner and do not constitute a disguised restriction on international trade or investment, nothing in paragraphs 1(b), 1(c), 1(f), 2(a) and 2(b) shall be construed to prevent a Party from adopting or maintaining measures, including those of an environmental nature:

- (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;
- (b) necessary for protecting human, animal or plant life or health; or
- (c) related to the conservation of living or non-living exhaustible natural resources.

6. Paragraphs 1(a), 1(b), 1(c), 2(a) and 2(b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.

7. Paragraphs 1(b), 1(c), 1(f), 1(g), 2(a) and 2(b) do not apply to government procurement.

8. Paragraphs 2(a) and 2(b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or quotas.

9. For greater certainty, paragraphs 1 and 2 do not apply to any other commitment, undertaking or requirement other than those set out in those paragraphs.

10. This Article does not preclude enforcement of any commitment, undertaking or requirement between private parties, if a Party did not impose or require the commitment, undertaking or requirement.

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<sup>10</sup> The reference to "Article 31" includes the footnote on page 7 of Article 31. Additionally, the reference to "Article 31" includes any amendment to the TRIPS Agreement for the Application of paragraph 6 of the *Doha Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2).

<sup>11</sup> The Parties recognise that a patent does not necessarily confer market power.

*Article X.9*

**Senior Management and Boards of Directors**

1. A Party shall not require that an enterprise of that Party that is a covered investment appoint to a senior management position natural persons of a particular nationality.
2. A Party may require that a majority of members 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.

*Article X.10*

**Non-Conforming Measures**

1. Articles X.4 (National Treatment), X.5 (Most-Favoured-Nation Treatment), X.8 (Performance Requirements) and X.9 (Senior Management and Boards of Directors) shall not apply to:
  - (a) any existing non-conforming measure that is maintained by the central, federal or regional of government of a Party, as set out in its schedule to Annex I;
  - (b) any existing non-conforming measure that is maintained by a Party at a local level of government;
  - (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or
  - (d) the amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), to the extent that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles X.4 (National Treatment), X.5 (Most-Favoured-Nation Treatment), X.8 (Performance Requirements) and X.9 (Senior Management and Boards of Directors).
2. Articles X.4 (National Treatment), X.5 (Most-Favoured-Nation Treatment), X.8 (Performance Requirements) and X.9 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains, with respect to sectors, subsectors or activities, as described in its Schedule to Annex II.
3. A Party may not, under any measure adopted after the date of entry into force of this Agreement and covered in its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. In the event that a Party modifies any existing non-conforming measure set out in its Schedule to Annex I in accordance to paragraph 1(c), after the date of entry into force of this Agreement, the Party shall notify such modification to the other Parties, as soon as possible.

5. In the event that a Party adopts any measure after the date of entry into force of this Agreement, with respect to sectors, subsectors or activities as set out in its Schedule to Annex II, the Party shall, to the extent possible, notify such measure to the Parties.

6. Articles X.4 (National Treatment) and X.5 (Most-Favoured-Nation Treatment) shall not apply to any measure that constitutes an exception or derogation from the obligations provided in the TRIPS Agreement, as specifically provided in such Agreement.

7. The provisions of Articles X.4 (National Treatment), X.5 (Most-Favoured-Nation Treatment) and X.9 (Senior Management and Boards of Directors) shall not apply with respect to:

- (a) government procurement; or
- (b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurances.

#### *Article X.11*

#### **Transfers<sup>12</sup>**

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

- (a) contributions to capital;
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees;
- (c) proceeds from the sale or liquidation, total or partial, of the covered investment;
- (d) payments made under a contract entered into by the investor or the covered investment, including payments made under a loan agreement;
- (e) payments made pursuant to Article X.7 (Treatment in Case of Strife) and Article X.12 (Expropriation and Compensation); and
- (f) payments arising under the application of Section B of this Chapter.

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<sup>12</sup> For greater certainty, this Article is subject to Annex X.11 (Transfers).

2. Each Party shall permit transfers of returns in kind relating to a covered investment to be made as authorised or specified in a written agreement<sup>13</sup> between the Party and a covered investment or an investor from another Party.
3. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange rate prevailing at the time of transfer.
4. A Party may not require its investors to make transfers of their income, earnings, profits or other amounts derived from, or attributable to, investments made in the territory of another Party, nor may it penalise investors that fail to make such transfer.
5. Notwithstanding paragraph 2, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 6.
6. Notwithstanding paragraphs 1, 2 and 3 of this Article, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:
  - (a) bankruptcy, insolvency or protection of the rights of creditors;<sup>14</sup>
  - (b) compliance with orders, judgements or awards issued in judicial, administrative or arbitral proceedings;<sup>15</sup>
  - (c) issuing, trading, or dealing in securities, futures or derivatives;
  - (d) criminal offences; or
  - (e) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities.

#### *Article X.12*

### **Expropriation and Compensation<sup>16</sup>**

1. No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (hereinafter referred to as “expropriation”) except:

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<sup>13</sup> Notwithstanding any other provision in this Chapter, this paragraph shall be effective from the date of entry into force of this Agreement.

<sup>14</sup> For greater certainty, insolvency proceedings are understood to be included in subparagraph (a).

<sup>15</sup> For greater certainty, this subparagraph includes compliance with orders, judgement and awards issued in judicial, administrative or arbitral proceedings relating to taxation.

<sup>16</sup> For greater certainty, Article X.12 (Expropriation) shall be interpreted in accordance with Annex X.12 (Expropriation).

- (a) for a public purpose;<sup>17</sup>
  - (b) in a non-discriminatory manner;
  - (c) on payment of compensation in accordance to paragraphs 2 to 4; and
  - (d) in accordance to due process of law principle and Article X.6 (Minimum Standard of Treatment).
2. Compensation referred to in paragraph 1(c) shall:
- (a) be paid without delay;
  - (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (hereinafter referred to as “the date of expropriation”);
  - (c) not reflect any change in value occurring because the intended expropriation had become known before the date of expropriation; and
  - (d) be fully realisable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c), converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:
- (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on the date of payment; plus
  - (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of such rights, to the extent that the issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.<sup>18</sup>

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<sup>17</sup> For greater certainty, for the purposes of this Article, the term “public purpose” refers to a concept in customary international law. Domestic law of a Party may express this or a similar concept by using different terms, such as “public necessity”, “public interest”, “public use” or “social interest”.

<sup>18</sup> For greater certainty, the term “revocation” of intellectual property rights referred to in this paragraph includes the cancellation or nullification of such rights, and the term “limitation” of intellectual property rights also includes exceptions to such rights.

*Article X.13*

**Denial of Benefits**

1. A Party may deny the benefits of this Chapter to:
  - (a) an investor of another Party that is an enterprise of that other Party and to investments of that investor, if an investor of a non-Party owns or controls the enterprise and it has no substantial business activities in the territory of the other Party;
  - (b) an investor of another Party that is an enterprise of that other Party and to investments of that investor, if an investor of the denying Party owns or controls the enterprise and it has no substantial business activities in the territory of the other Party.
  
2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

*Article X.14*

**Special Formalities and Information Requirements**

1. Nothing in Article X.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining any measure that prescribes special formalities in connection with a covered investment, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protection afforded by a Party to investors of another Party and covered investments pursuant to this Chapter.
  
2. Notwithstanding Articles X.4 (National Treatment) and X.5 (Most-Favoured-Nation Treatment), a Party may require an investor of another Party or a covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from obtaining or disclosing information in connection with the equitable and good faith application of its law.

## SECTION B

### SETTLEMENT OF DISPUTES BETWEEN A PARTY AND AN INVESTOR OF ANOTHER PARTY

#### *Article X.15*

##### **Consultations and Negotiation**

1. In the event of an investment dispute, the disputing parties should initially seek to resolve the dispute through consultations and negotiation, in order to resolve the dispute amicably, which may include the use of non-binding, third party procedures, such as good offices, conciliation and mediation.
2. The consultations and negotiation procedure shall be initiated by a written request delivered to the respondent setting out the information specified in Article X.16.2(a) and X.16.2(b) (Submission of a Claim to Arbitration), and a brief description of the facts that initiated the consultations.
3. Consultations shall be held for a period of at least six months.
4. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

#### *Article X.16*

##### **Submission of a Claim to Arbitration**

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of the written request for consultations pursuant to Article X.15 (Consultations and Negotiation):
  - (a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:
    - (i) that the respondent has breached an obligation under Section A; and
    - (ii) that the claimant has incurred losses or damages by reason of, or arising out of, that breach;
  - (b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:
    - (i) that the respondent has breached an obligation under Section A; and

- (ii) that the enterprise has incurred losses or damages by reason of, or arising out of, that breach.

For greater certainty, no claim may be submitted to arbitration under this Section that alleges a breach of any provision of this Agreement other than an obligation of Section A.

2. After the end of the period established in Article X.15.3 (Consultations and Negotiation), the claimant shall deliver to the respondent a written notice of its intent to submit a claim to arbitration (hereinafter referred to as “Notice of Intent”) at least 90 days before submitting the claim to arbitration in accordance with this Section. The notice shall specify:

- (a) the name and address of the claimant and, if the claim is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;
- (b) for each claim, the provisions of Section A of this Chapter alleged to have been breached and any other relevant provision;
- (c) the factual and legal basis for each claim; and
- (d) the relief sought and the approximate amount of damages claimed.

3. The claimant may submit a claim referred to in paragraph 1:

- (a) under the ICSID convention and the ICSID Rules of Procedure for Arbitration Proceedings (hereinafter referred to as “Arbitration Rules”), provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;
- (b) under the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant, but not both, is a party to the ICSID Convention;
- (c) under the UNCITRAL Arbitration Rules; or
- (d) if the disputing parties agree, any other arbitral institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section, when the claimant’s notice of or request for arbitration (hereinafter referred to as “Notice of Arbitration”):

- (a) referred to in the ICSID Convention, is received by the Secretary-General;
- (b) referred to in the ICSID Additional Facility Rules, is received by the Secretary-General;
- (c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or

- (d) referred to under any other arbitral institution or under any arbitration rules selected under paragraph 3(d), is received by the respondent.

5. A claim asserted by the claimant for the first time after the Notice of Arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitration rules.

6. The arbitration rules applicable under paragraph 3 that are in effect on the date the claim or claims were submitted to arbitration under this Section shall govern the arbitration except to the extent modified or supplemented by this Agreement.

7. The claimant shall provide with the Notice of Arbitration referred to in paragraph 4:

- (a) the name of the arbitrator that the claimant appoints; or
- (b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

#### *Article X.17*

#### **Consent of each Party to Arbitration**

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent referred to in paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements specified in:

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules, which require written consent of the parties to the dispute;
- (b) Article II of the New York Convention, which requires an "agreement in writing"; and
- (c) Article I of the Inter-American Convention, which requires an "agreement."

#### *Article X.18*

#### **Conditions and Limitations on Consent of each Party**

1. No claim may be submitted to arbitration under this Section if more than three years and 6 months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article X.16.1 (Submission of a Claim to

Arbitration), and knowledge that the claimant, for claims brought under Article X.16.1(a), or the enterprise, for claims brought under Article X.16.1(b) (Submission of a Claim to Arbitration), has incurred losses or damages.

2. No claim may be submitted to arbitration under this Section unless:

- (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
- (b) the Notice of Arbitration referred to in Article X.16.4 (Submission of a Claim to Arbitration) is accompanied:
  - (i) by the claimant's written waiver, for claims submitted to arbitration under Article X.16.1(a) (Submission of a Claim to Arbitration);
  - (ii) by the claimant's and the enterprise's written waivers, for claims submitted to arbitration under Article X.16.1(b) (Submission of a Claim to Arbitration),

of any right to initiate before any judicial or administrative tribunal under the law of any of the Parties, or other dispute settlement procedures, any proceeding with respect to facts or measures alleged to constitute a breach referred to in Article X.16 (Submission of a Claim to Arbitration).

3. Notwithstanding paragraph 2(b), the claimant, for claims brought under X.16.1 (a), and the claimant or the enterprise, for claims brought under Article X.16.1(b) (Submission of a Claim to Arbitration), may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.<sup>19</sup>

4. No claim may be submitted to arbitration under this Section if the claimant, for claims brought under Article X.16.1(a), or the claimant or the enterprise, for claims brought under Article X.16.1(b) (Submission of a Claim to Arbitration), have previously submitted a claim of the same alleged breach before an administrative or judicial tribunal of the respondent, or any other binding dispute settlement procedure. For greater certainty, if an investor chooses to submit such a claim before a judicial or administrative tribunal of the Party of the respondent, that decision shall be final and the investor may not afterwards submit the claim to arbitration under this Section.

#### *Article X.19*

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<sup>19</sup> For greater certainty, in a proceeding where the application of an interim injunctive relief is requested, including measures that aim to preserve evidence and property while the proceeding of the claim submitted to arbitration is pending, a judicial or administrative tribunal of the respondent in a dispute submitted to arbitration under Section B of this Chapter, shall apply the laws of such Party.

## **Selection of Arbitrators**

1. Unless the disputing parties agree otherwise, the tribunal shall be comprised of three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The arbitrators shall have experience in public international law, international investment rules, or dispute settlement of international investment agreements; they shall not depend on any of the Parties or the claimant, nor receive instructions of any of them.
3. The Secretary-General shall serve as appointing authority for arbitrators in arbitration proceedings under this Section.
4. If a tribunal has not been constituted within a period of 90 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of any of the disputing parties, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. Unless the disputing parties agree otherwise, the president of the tribunal shall not be a national of any of the disputing parties.
5. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C of the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on grounds other than nationality:
  - (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or to the ICSID Additional Facility Rules;
  - (b) the claimant referred to in Article X.16.1(a) (Submission of a Claim to Arbitration) 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) the claimant referred to in Article X.16.1(b) (Submission of a Claim to Arbitration) 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 and the enterprise agree in writing to the appointment of each individual member of the tribunal.

### *Article X.20*

## **Conduct of the Arbitration**

1. The disputing parties may agree on the legal place of any arbitration should under the arbitration rules applicable under Article X.16.3 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place 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.

2. A non-disputing Party may make oral or written submissions to the tribunal regarding the interpretation of this Agreement.

3. After consultation with the disputing parties, the tribunal may accept and consider written amicus curiae submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. Submissions shall be provided in writing and in English, unless the disputing parties agree otherwise, and they shall identify the author of the submission and any Party or other government, person or organization, other than the author of the submission, that has provided or will provide any financial or other assistance in preparing the submission. Additionally, the author of the submission shall disclose any affiliation, direct or indirect, with any disputing party; and shall specify the nature of the interest that he or she has in the dispute.

5. When such submissions are admitted by the tribunal, it shall provide to the disputing parties an opportunity to respond to those submissions.

6. Without prejudice to the tribunal's authority to address other objections as preliminary questions, such as an objection that the dispute is not within the competence or jurisdiction of the tribunal, the tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, the claim submitted is not a claim for which an award in favour of the claimant may be made under Article X.26 (Awards).<sup>20</sup>

- (a) Such objection shall be submitted to the tribunal as soon as possible after its constitution, and under no event later than the date the tribunal fixes for the respondent to submit its counter-memorial, or in the case of an amendment to the Notice of Arbitration referred to in Article X.16.4 (Submission of a Claim to Arbitration), the date the tribunal fixes for the respondent to submit its response to the amendment.

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<sup>20</sup> For greater certainty, regarding the claims submitted under Article X.16 (Submission of a Claim to Arbitration), a procedural objection raised as a preliminary question may include, as appropriate, a non-judicial administrative remedy under the respondent's law, such as the submission of a remedy against administrative acts or other non-judicial administrative remedies. For international arbitration, the submission of such objections may only entail the suspension of the arbitration proceedings.

- (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits of the dispute, and establish a schedule for considering the objection consistent with any schedule established for considering any other preliminary question and it shall issue a decision or award on the objection, stating the grounds therefor.
- (c) In deciding an objection under this paragraph, the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the Notice of Arbitration, or any amendment thereof, and in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any other relevant facts that are 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 paragraph 7.

7. 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 6 and any other objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits of the dispute and issue a decision or award on the objection, stating the grounds therefor, 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, which may not exceed 30 days.

8. When the tribunal decides a respondent's objection under paragraphs 6 or 7, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

9. The respondent shall not assert 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 for all or part of the alleged damages, pursuant to an insurance or guarantee contract.

10. The tribunal may recommend 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. The tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article X.16 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.

11. At the request of any of the disputing parties, a tribunal shall, before issuing a decision or award on liability, communicate its proposed decision or award to the disputing parties and the non-disputing Party. Within 60 days of communicating such proposed decision or award, the

disputing parties may submit written comments to the tribunal concerning any aspect of its proposed award. The tribunal shall consider such comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period. This paragraph shall not apply to any arbitration where an appeal is available pursuant to paragraph 12.

12. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body to review awards issued by tribunals constituted in accordance with international trade or investment agreements to address investment disputes, the Parties shall evaluate the possibility of reaching an agreement that considers such appellate body for the review of awards issued under Article X.26 (Awards) for arbitrations initiated after the multilateral treaty enters into force between the Parties.

#### *Article X.21*

### **Transparency of Arbitral Proceedings**

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly deliver them to the non-disputing Parties and make them available to the public:

- (a) the Notice of Intent referred to in Article X.16.2 (Submission of a Claim to Arbitration);
- (b) the Notice of Arbitration referred to in Article X.16.4 (Submission of a Claim to Arbitration);
- (c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submission made pursuant to Article X.20.2 and X.20.3 (Conduct of the Arbitration), and Article X.25 (Consolidation of Proceedings);
- (d) minutes or transcripts of hearings of the tribunal, if available; and
- (e) orders, awards and decisions of the tribunal.

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 in a hearing that is designated as protected information shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect information from disclosure, including closing the hearing for the duration of any discussion regarding confidential information.

3. Nothing in this Section requires the respondent to make available protected information or to furnish or allow access to information that it may withhold in accordance with Article X

(Security Exceptions-General Exceptions Chapter) or Article X (Disclosure of Information-General Exceptions Chapter)<sup>21</sup>.

4. Any protected information that is submitted to the tribunal shall 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 protected information, if the disputing party that provided the information clearly designates it as such in accordance with subparagraph (b);
- (b) any disputing party claiming that certain information constitutes protected information, shall clearly designate it as such when it is submitted to the tribunal;
- (c) a disputing party shall, at the same time of submitting a document that contains information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be disclosed to the non-disputing parties and made public in accordance with paragraph 1; and
- (d) the tribunal shall decide any objection regarding the designation of information claimed to be protected information. 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 the 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 Section requires the respondent to withhold from the public information required to be disclosed by its law.

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<sup>21</sup> For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article X (Security Exceptions - General Exceptions Chapter) or Article X (Disclosure of Information - General Exceptions Chapter), the respondent may still withhold that information from disclosure to the public.

*Article X.22*

**Governing Law**

1. Subject to paragraph 2, when a claim is submitted under Article X.16.1(a) or X.16.1 (b) (Submission of a Claim to Arbitration), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
2. A decision by the Free Trade Commission issuing its interpretation of a provision of this Agreement under Article X (Functions of the Free Trade Commission - General Provisions Chapter), shall be binding on a tribunal established under this Section and any decision or award issued by a tribunal must be consistent with that decision.

*Article X.23*

**Interpretation of Annexes on Non-Conforming Measures**

1. When a respondent asserts as a defence that the measure alleged to be a breach is within the scope set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Free Trade Commission on the issue. The Free Trade Commission shall submit in writing any decision on its interpretation under Article X (Functions of the Free Trade Commission-General Provisions Chapter) to the tribunal within 60 days of delivery of the request.
2. A decision issued by the Free Trade Commission under paragraph 1 shall be binding on the tribunal and any decision or award issued by the tribunal must be consistent with that decision. If the Free Trade Commission fails to issue such a decision within 60 days, the tribunal shall decide the issue.

*Article X.24*

**Expert Reports**

Without prejudice to the appointment of other kinds of experts when authorised by the applicable arbitration rules, a tribunal, on 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, security or other scientific matters raised by a disputing party in a proceeding, subject to the terms and conditions that the disputing parties may agree.

*Article X.25*

**Consolidation of Proceedings**

1. If two or more claims have been submitted separately to arbitration under Article X.16.1 (Submission of a Claim to Arbitration), 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, in accordance with the agreement of all the disputing parties sought to be covered by the consolidation order or the terms of paragraphs 2 through 10.

2. The disputing party that seeks a consolidation order under this Article shall deliver a written request to the Secretary-General and to all the disputing parties sought to be covered by the consolidation order and shall specify in the request:

- (a) the names and addresses of all the disputing parties sought to be covered by the consolidation order;
- (b) the nature of the consolidation order sought; and
- (c) the grounds on which the order is sought.

3. Unless the Secretary-General determines, within 30 days after receiving a request under paragraph 2, that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the consolidation order agree otherwise, the tribunal established under this Article 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, who shall not be a national of any of the disputing parties.

5. If, within a period of 60 days after the Secretary-General's receives a request made under paragraph 2, the respondent or claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the consolidation order, shall appoint the arbitrator or arbitrators not yet appointed.

6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article X.16.1 (Submission of a Claim 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 established under Article X.19 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:
  - (i) that tribunal, on request of any claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to subparagraph 4 (a) and paragraph 5; and
  - (ii) that tribunal shall decide whether any prior hearing should be repeated.

7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article X.16.1 (Submission of 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 6 and shall specify in the request:

- (a) the name and address of the claimant;
- (b) the nature of the consolidation order sought; and
- (c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article X.19 (Selection of Arbitrators) shall not have jurisdiction or competence to decide a claim, or part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article X.19 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.

#### *Article X.26*

#### **Awards**

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

- (a) monetary damages and applicable interest; and

- (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 attorney's fees under this Section and the applicable arbitration rules.

2. The allocation of costs between the disputing parties, including, where appropriate, the fees under Article X.20 (Conduct of the Arbitration), resulting from its participation in the arbitration, must be established:

- (a) by the arbitral institution where the claim was submitted for arbitration, in accordance with its procedural rules; or
- (b) in accordance with the procedural rules agreed by the disputing parties, when appropriate.

3. For greater certainty, when a claim is submitted to arbitration under Article X.16.1(a) (Submission of a Claim to Arbitration), the only damages or losses that may be awarded are those incurred by the claimant as an investor concerning an investment that it attempts to make, is making or has made in the territory of the respondent.

4. Subject to paragraph 1, when a claim is submitted to arbitration under Article X.16.1(b) (Submission of a Claim to Arbitration):

- (a) the award of restitution of property shall provide that restitution be made to the enterprise;
- (b) the 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 to the relief under applicable domestic law .

5. A tribunal may not award punitive damages.

6. The award made by a tribunal shall have no binding force except between the disputing parties and only in respect of the particular case.

7. Subject to paragraph 8 and the applicable review procedure for an interim award, the disputing party shall abide by and comply with the award without delay.

8. The disputing Party shall not seek enforcement of the final award until:

- (a) in the case of a final award made under the ICSID Convention:

- (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
    - (ii) revision or annulment proceedings have been completed; and
  - (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules or the rules selected pursuant to Article X.16.4(d) (Submission of a Claim to Arbitration):
    - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or
    - (ii) a court has dismissed or allowed a request to revise, set aside or annul the award and there is no further appeal.
9. Each Party shall provide for the due enforcement of an award in its territory.
10. If the respondent fails to abide or comply with a final award, on delivery of a request by the Party of the claimant, an arbitral tribunal shall be established under Article X (Establishment of an Arbitral Tribunal - Dispute Settlement Chapter). The requesting Party may seek in those proceedings:
- (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
  - (b) in accordance with Article X (Draft Award of the Arbitral Tribunal - Dispute Settlement Chapter), a decision that the respondent abide by or comply with the final award.
11. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention, if both Parties are party to such agreements, or the Inter-American Convention, regardless of whether proceedings under paragraph 10 have been initiated.
12. For the purposes of Article I of the New York Convention and Article I of the Inter-American Convention, a claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction.

*Article X.27*

**Service of Documents**

Delivery of notice and other documents to a Party shall be made to the place designated in Annex X.27 (Service of Documents to a Party under Section B).

## SECTION C

### COMPLEMENTARY PROVISIONS

#### *Article X.28*

##### **Relation to Other Sections**

This Section is not subject to the dispute settlement mechanism of Section B of this Chapter, nor is it subject to the dispute settlement mechanism of Chapter XX (Dispute Settlement). For greater certainty, nothing in this Section may be used by an investor as a basis of the dispute nor may it be used by an arbitral tribunal as part of its considerations in any decision or award that it may render.

#### *Article X.29*

##### **Promotion of Investments**

The Parties reaffirm the importance of encouraging investment promotion activities carried out through each Party's investment promotion organisations.

#### *Article X.30*

##### **Social Responsibility Policies**

1. The Parties recognise the importance of encouraging enterprises operating within their territories or subject to their jurisdiction to apply policies concerning sustainability and social responsibility and policies that promote the development of the investment host country of the investment.
2. Each Party shall encourage enterprises operating within their territory or subject to their jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards of corporate social responsibility, such as declarations of principles that have been approved or that are endorsed by the Parties. The Parties remind those enterprises the importance of incorporating such standards of corporate social responsibility into their internal policies, including among others standards on human rights, labour rights, environment, anti-corruption practices, consumer rights, science and technology, competition and taxation.
3. Taking into account the *OECD Guidelines for Multinational Enterprises* of the Organisation for Economic Cooperation and Development, the Parties undertake to identify and share best practices implemented by the Parties to enable the commitments of the Guidelines and in doing so, maximise the contribution of multinational enterprises to sustainable development.

*Article X.31*

**Investment and Measures related to Health, the Environment and Other Regulatory Objectives**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure, otherwise consistent with this Chapter, that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to health, environmental or other regulatory objectives.
2. The Parties recognise that it is not appropriate to encourage investment by relaxing domestic policies relating to health, the environment or other regulatory objectives. Accordingly, no Party shall waive or otherwise derogate, relax or offer to relax or waive such measures in order to incentivise the establishment, acquisition, expansion or management of the investment of an investor in its territory.

*Article X.32*

**Implementation**

The Parties shall consult with each other annually or as otherwise agreed, to review the implementation of this Chapter and consider investment matters of mutual interest, including amongst others, the extent to which the private sector takes advantage of the commitments established in this Chapter.

*Article X.33*

**Committee on Investment**

1. The Parties establish a Committee on Investment
2. The Committee shall monitor, implement and administrate this Chapter, and shall discuss related matters that are of interest to the Parties through the exchange of information and cooperation on these matters.
3. The Committee shall be comprised of:
  - (a) in the case of Chile, the General Directorate of International Economic Relations of the Ministry of Foreign Affairs, or its successor; and
  - (b) in the case of the European Union, [XX], or its successor;

4. The Committee shall meet at the request of any Party or of the Free Trade Commission, and shall issue recommendations on the matters falling within its jurisdiction.

5. The Committee shall have the following functions:

- (a) sharing information and promoting cooperation on matters related to investment and the improvement of the investment climate between the Parties;
- (b) discussing any other matter related to the investment climate between the Parties, including, when appropriate, the involvement of the private sector;
- (c) making proposals to the Free Trade Commission for the effective operation of the Committee or in order to achieve its objectives; and
- (d) discussing any other matter relating to investment.

## ANNEX X.6

### **CUSTOMARY INTERNATIONAL LAW**

The Parties confirm their shared understanding that “customary international law” as referenced in Article X.6 (Minimum Standard of Treatment), results from a general and consistent practice of States that they follow from a sense of legal obligation. With respect to Article X.6 (Minimum Standard of Treatment), the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights of aliens.

## ANNEX X.11

### TRANSFERS-CHILE

1. Chile reserves the right of the Central Bank of Chile (*Banco Central de Chile*) to maintain or adopt measures in conformity with Law 18.840, Constitutional Organic Law of the Central Bank of Chile (*Ley 18.840, Ley Orgánica Constitucional del Banco Central de Chile*) or other legislation, in order to ensure currency stability and the normal operation of domestic and foreign payments. For this purpose, the Central Bank of Chile is empowered to regulate the supply of money and credit in circulation and international and credit in circulation and international credit and foreign exchange operations. The Central Bank of Chile is empowered as well to issue regulations governing monetary, credit, financial, and foreign exchange matters. Such measures include, *inter alia*, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement (*encaje*).
2. Notwithstanding paragraph 1, the reserve requirement that the Central Bank of Chile can apply pursuant to Article 49 N°2 of Law 18.840, shall not exceed 30 percent of the amount transferred and shall not be imposed for a period which exceeds two years.
3. When applying measures under this Annex, Chile, as established in its legislation, shall not discriminate between the European Union and any non-Party with respect to transactions of the same nature.

## ANNEX X.12

### EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or series of actions by a Party cannot constitute an expropriation unless it substantially interferes with a tangible or intangible property right, or property interest in an investment.
2. Article X.12 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article X.12 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
  - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
    - (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
    - (ii) the extent to which the government action or series of actions interferes with the distinct and reasonable expectations of the investment<sup>22</sup>; and
    - (iii) the character of the government action.
  - (b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives do not constitute indirect expropriations.<sup>23</sup>

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<sup>22</sup> For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

<sup>23</sup> For greater certainty, examples of legitimate public welfare objectives include, among others, public health, safety and the environment.

ANNEX X.27

**SERVICE OF DOCUMENTS TO A PARTY UNDER SECTION B**

1. Documents shall be submitted to the place specified by each Party. A Party must notify and make public any change to the place specified in this Annex.

2. The place for submission of the Notice of Intent and other documents regarding the settlement of disputes relating to Section B shall be:

- (a) For Chile:  
Dirección General de Relaciones Económicas Internacionales  
Ministerio de Relaciones Exteriores de la República de Chile  
Teatinos N° 180  
Santiago, Chile

or its successor.

- (b) For the European Union  
[XX]

or its successor.

## ANNEX ON DECREE LAW 600

### CHILE

1. Decree Law 600 (1974), Foreign Investment Statute (*Estatuto de la Inversión Extranjera*), is a voluntary and special investment regime for Chile.
2. As an alternative to the common regime for the entry of capital into Chile, potential investors may apply to the Foreign Investment Committee (*Comité de Inversiones Extranjeras*) to be subject to the regime set out in Decree Law 600.
3. The obligations and commitments contained in this Chapter do not apply to Decree Law 600, Foreign Investment Statute, to Law 18.657 on Foreign Capital Investment Funds, to the continuation or prompt renewal of such laws and to amendments of those laws, or to any special and/or voluntary investment regime that may be adopted in the future by Chile.
4. For greater certainty, the Foreign Investment Committee of Chile has the right to reject applications to invest through Decree Law 600 and Law 18.657. Additionally, the Foreign Investment Committee of Chile has the right to regulate the terms and conditions of foreign investment under Decree Law 600 and Law 18.657.
5. For greater certainty, once an application for foreign investment submitted by an investor under Decree Law 600, its amendments, continuation or prompt renewal, or under any special and/or voluntary investment regime that may be adopted in the future by Chile, has been accepted by the Foreign Investment Committee of Chile through a foreign investment contract, the disciplines established in this Chapter shall be applicable to the investment made under the respective contract.
6. For greater certainty, nothing in paragraphs 1 to 4 of this Annex may be subject to the provisions of Section B.