

**CHAPTER 8**  
**INVESTMENT**  
**Section A**

**Article 8.1: Definitions**

For the purposes of this Chapter:

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

**claimant** means an investor of a Party that is party to an investment dispute with the other Party. If that investor is a natural person who is a permanent resident of a Party and a national of the other 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 the other Party in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter;

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

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

**enterprise** means an enterprise as defined in Article 2.1 (General Definitions), and a branch of an enterprise;

**enterprise of a Party** means an enterprise constituted or organised under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there;<sup>1</sup>

**financial institution** means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

**financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of the other Party;

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

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<sup>1</sup> For greater certainty, the inclusion of a “branch” in the definitions of “enterprise” and “enterprise of a Party” is without prejudice to a Party’s ability to treat a branch under its laws as an entity that has no independent legal existence and is not separately organised.

**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;

**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, other debt instruments and loans<sup>2,3</sup> of an enterprise but does not include debt instruments issued by a Party or a state enterprise, or loans issued to a Party or to a state enterprise, regardless of the original maturity of such debt instruments or loans as the case may be;
- (d) futures, options and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;
- (f) intellectual property rights;
- (g) licences, authorisations, permits and similar rights conferred pursuant to the Party's law,<sup>4</sup> and

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<sup>2</sup> Some forms of debt, such as bonds, debentures and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods and services, are less likely to have such characteristics.

<sup>3</sup> A loan issued by one Party to the other Party is not an investment.

<sup>4</sup> Whether a particular type of licence, authorisation, permit or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

- (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;

**investor of a non-Party** means, with respect to a Party, an investor who attempts to make<sup>5</sup>, is making or has already made an investment in the territory of that Party, and that is not an investor of either Party;

**investor of a Party** means a Party or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party. A natural person with dual nationality shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

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

**non-disputing Party** means a Party that is not a party to an investment dispute;

**protected information** means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's laws, including classified government information;

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

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

**Third party funding** means any funding that is provided by a person or enterprise who is not a disputing party in order to finance part or all of the cost of the proceedings including through a donation or a grant, or in return for a share or other interest in the proceeds or potential proceeds of the proceedings to which the disputing party may become entitled, including such remuneration that may be dependent on the outcome of the dispute.

**TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, set out in the WTO Agreement<sup>6</sup>, and

**UNCITRAL Arbitration Rules** means the Arbitration Rules of the United Nations Commission on International Trade Law.

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<sup>5</sup> For greater certainty, the Parties understand that, for the purposes of the definitions of “investor of a non-Party” and “investor of a Party”, an investor “attempts to make” an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.

<sup>6</sup> For greater certainty, TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

## **Article 8.2: Scope**

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party;
  - (b) covered investments; and
  - (c) with respect to Article 8.9, all investments in the territory of that Party.
2. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:
  - (a) the central, regional or local governments or authorities of that Party; and
  - (b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party.<sup>7</sup>
3. This Chapter does not apply to measures adopted or maintained by a Party relating to investors of the other Party, and investments of such investors, in financial institutions in the Party's territory.
4. For greater certainty, this Chapter shall not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement for that Party.

## **Article 8.3: Right to Regulate**

1. The Parties reaffirm their right to regulate within their respective territories to achieve legitimate policy objectives.
2. 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 environmental, health or other regulatory objectives.

## **Article 8.4: Relation to other Chapters**

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<sup>7</sup> For greater certainty, governmental authority is delegated under the Party's law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

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

2. A requirement of a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.

### **Article 8.5: National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable 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 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.

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

4. For greater certainty, whether treatment is accorded in “like circumstances” under this Article 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.

### **Article 8.6: Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of 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.

3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms such as those provided in Section B. 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 by a Party.

4. For greater certainty, the treatment accorded by a Party under this Article means, with respect to a regional level of government other than at the federal level, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors and to investments of such investors of any non-Party.

5. For greater certainty, whether treatment is accorded in “like circumstances” under this Article 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.

#### **Article 8.7: Minimum Standard of Treatment<sup>8</sup>**

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

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded 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:

- (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.

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<sup>8</sup> Article 8.7 shall be interpreted in accordance with Annex 8-A.

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

6. For greater certainty, the fact that a measure breaches domestic law does not, in and of itself, establish a breach of this Article.

### **Article 8.8: Treatment in Case of Armed Conflict or Civil Strife**

1. Notwithstanding Article 8.11.5(b), each Party shall accord to investors of the other Party and to covered investments non-discriminatory 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.

2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:

- (a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
- (b) 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, compensation or both, as appropriate, for that loss.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 8.5 but for Article 8.11.5(b).

### **Article 8.9: Performance Requirements**

1. No Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking<sup>9</sup>:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;

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<sup>9</sup> For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 3 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.

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

2. For greater certainty, a measure that requires an investment to use a technology to meet health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1. For greater certainty, Articles 8.5 and 8.6 apply to such a measure.

3. No Party shall 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, of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:

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

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

5. Paragraph 1(f) shall not apply:

- (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 TRIPS Agreement; or
- (b) if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after a judicial or administrative process to be anticompetitive under the Party's competition laws.<sup>11</sup>

6. 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), 3(a) and 3(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.

7. Paragraphs 1(a), 1(b), 1(c), 3(a) and 3(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.

8. Paragraphs 1(b), 1(c), 1(f), 1(g), 3(a) and 3(b) shall not apply to government procurement.

9. Paragraphs 3(a) and 3(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

10. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, from imposing or enforcing a requirement, or enforcing a commitment or undertaking, to employ or train workers in its territory provided that the employment or training does not require the transfer of a particular technology, production process or other proprietary knowledge to a person in its territory.

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<sup>10</sup> The reference to "Article 31" includes footnote 7 of Article 31. Additionally, the reference to "Article 31" includes any amendment to the TRIPS Agreement for the implementation 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.

11. For greater certainty, paragraphs 1 and 3 shall not apply to any commitment, undertaking or requirement other than those set out in those paragraphs.

12. 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.

### **Article 8.10: Senior Management and Boards of Directors**

1. No Party shall require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality.

2. 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.

### **Article 8.11: Non-Conforming Measures**

1. Articles 8.5, 8.6, 8.9 and 8.10 shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in its Schedule to Annex I;

(ii) a regional level of government, as set out by that Party in its Schedule to Annex I; or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 8.5, 8.6, 8.9 and 8.10.

2. Articles 8.5, 8.6, 8.9 and 8.10 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in its Schedule to Annex II.

3. No Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its

nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Articles 8.5 and 8.6 shall not apply to any measure that constitutes an exception or derogation from the Party's obligations provided in the TRIPS Agreement, as specifically provided for in the TRIPS Agreement.

5. Articles 8.5, 8.6 and 8.10 shall not apply to:

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

6. For greater certainty, any amendments or modifications to a Party's Schedules to Annex I or Annex II, pursuant to this Article, shall be made in accordance with Article 25.4 (Amendments).

#### **Article 8.12: 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;<sup>13</sup>
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;
- (c) proceeds from the sale of all or any part of the covered investment, or from the partial or complete liquidation of the covered investment;
- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Article 8.8 and Article 8.13; and
- (f) payments arising out of a dispute.

2. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

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<sup>12</sup> For greater certainty, this Article is subject to Annex 8-B.

<sup>13</sup> For greater certainty, contributions to capital include the initial contribution.

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 prevailing at the time of transfer.

4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws and regulations relating to:

- (a) bankruptcy, insolvency or protection of the rights of creditors;
- (b) ensuring compliance with orders or judgements in judicial or administrative proceedings;
- (c) issuing, trading, or dealing in securities, futures, options or derivatives;
- (d) criminal or penal offences; or
- (e) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities.

6. 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 4.

7. For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programs.

### **Article 8.13: Expropriation and Compensation<sup>1415</sup>**

1. No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation ("expropriation"), except:

- (a) for a public purpose;<sup>16</sup>
- (b) in a non-discriminatory manner;

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<sup>14</sup> Article 8.13 shall be interpreted in accordance with Annex 8-C.

<sup>15</sup> For Singapore, notwithstanding paragraphs 1 and 2, any measure of expropriation relating to land, which shall be defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation.

<sup>16</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", "national security" or "social interest".

- (c) on payment of prompt, adequate and effective compensation in accordance to paragraphs 2, 3 and 4; and
- (d) in accordance with due process of law.

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 (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 that date; 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 shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that the issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.<sup>17</sup>

6. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant:

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<sup>17</sup> For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of such rights, and the term "limitation" of intellectual property rights also includes exceptions to such rights.

- (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 and maintenance of that subsidy or grant,

standing alone, does not constitute an expropriation.

#### **Article 8.14: Denial of Benefits<sup>18</sup>**

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

- (a) is owned or controlled by a person of a non-Party or of the denying Party; and
- (b) has no substantial business activities in the territory of the other Party.

#### **Article 8.15: Special Formalities and Information Requirements**

1. Nothing in Article 8.5 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 8.5 and 8.6, a Party may require an investor of the other 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 laws and regulations.

#### **Article 8.16: Subrogation**

If a Party, or any agency, institution, statutory body or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance or other

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<sup>18</sup> For greater certainty, the benefits of this Chapter may be denied under this provision at any time. Where an investor has submitted a claim to arbitration, under Article 8.14 any such denial of benefits should be made by the denying Party as soon as practicable after the filing of the Notice of Arbitration.

form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

### **Article 8.17: Corporate Social Responsibility**

The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility, such as the *OECD Guidelines for Multinational Enterprises*, that have been endorsed or are supported by that Party.

### **Section B: Settlement of Disputes between a Party and an Investor of the other Party**

This Section shall not apply to any dispute concerning any measure adopted or maintained or any treatment accorded to investors or investments by a Party in respect of tobacco or tobacco-related products.<sup>19</sup>

### **Article 8.18: Consultations**

1. In the event of an investment dispute, the disputing parties should initially seek to resolve the dispute amicably through consultations, which may include the use of non-binding, third party procedures, such as good offices, conciliation and mediation.
2. The consultations shall be initiated by a written request for consultations delivered to the respondent setting out a brief description of the facts regarding the measure or measures at issue, and the information specified below:
  - (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 alleged to have been breached.
  - (c) the factual and legal basis for each claim; and
  - (d) the relief sought and the approximate amount of damages claimed.

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<sup>19</sup> For the purposes of this Agreement, "tobacco or tobacco related products" means products under Harmonised System Chapter 24 (Tobacco and Manufactured Tobacco Substitutes) and tobacco-related products falling outside Harmonised System Chapter 24 (Tobacco and Manufactured Tobacco Substitutes).

3. Unless otherwise agreed by the disputing parties, the place of consultations shall be:
  - (a) Santiago, if the measures challenged are measures of Chile;
  - (b) Bogota, if the measures challenged are measures of Colombia;
  - (c) Mexico City, if the measures challenged are measures of Mexico;
  - (d) Lima, if the measures challenged are measures of Peru; and
  - (e) Singapore, if the measures challenged are measures of Singapore.
4. The disputing parties may hold the consultations through videoconference or other means, where appropriate.
5. For greater certainty, the initiation of consultations shall not be construed as recognition of the jurisdiction of the tribunal under this Section.

#### **Article 8.19: Mediation**

1. The disputing parties may at any time agree to have recourse to mediation.
2. The mediator shall be appointed by agreement of the disputing parties.
3. Recourse to mediation is without prejudice to the legal position or rights of a disputing party under this Chapter and is governed by the rules agreed to by the disputing parties including, if available, the rules for mediation adopted by the Free Trade Commission.
4. If mediation resolves the dispute, a consent award should be issued by the tribunal, if one has been constituted.
5. For greater certainty, the initiation of mediation shall not be construed as recognition of the jurisdiction of the tribunal under this Section.

#### **Article 8.20: 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 a written request for consultations pursuant to Article 8.18:
  - (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; and
- (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.

2. For greater certainty, objections that a respondent may raise in any proceedings under this Section, would include, but not be limited to, objections on the ground that an investment has been made, established, acquired or admitted through fraud or misrepresentation, concealment, corruption or conduct amounting to an abuse of process.

3. After the end of the six-month period as provided for under paragraph 1, and at least 90 days before submitting any claim to arbitration under this Section, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (“Notice of Intent”). The Notice of Intent 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 alleged to have been breached;
- (c) the factual and legal basis for each claim; and
- (d) the relief sought and the approximate amount of damages claimed.

4. For greater certainty, when a Notice of Intent is submitted by more than one claimant or on behalf of more than one enterprise, the information in paragraph 3 shall be submitted for each claimant or each enterprise, as the case may be.

5. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:

- (a) the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings*, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;
- (b) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;

- (c) the UNCITRAL Arbitration Rules; or
- (d) if the disputing parties agree, any other arbitral institution or under any other arbitration rules.

6. A claim shall be deemed submitted to arbitration under this Section, when the claimant's notice of or request for arbitration ("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 5(d), is received by the respondent.

7. 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.

8. The arbitration rules applicable under paragraph 5 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 by this Agreement.

9. The claimant shall provide with the Notice of Arbitration:

- (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 8.21: 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 of:

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

- (b) Article II of the New York Convention for an “agreement in writing”.

### **Article 8.22: Conditions and Limitations on Consent of each Party**

1. A claim may not be submitted to arbitration under this Section 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 8.20.1 and knowledge that the claimant (for claims brought under Article 8.20.1(a)) or the enterprise (for claims brought under Article 8.20.1(b)) has incurred loss or damage.

2. A claim may not 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 is accompanied:
  - (i) by the claimant’s written waiver, for claims submitted to arbitration under Article 8.20.1(a);
  - (ii) by the claimant’s and the enterprise’s written waivers, for claims submitted to arbitration under Article 8.20.1(b),

of any right to initiate or continue before any court or administrative tribunal under the law of a Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 8.20.

3. Notwithstanding paragraph 2 (b), the claimant (for claims brought under 8.20.1(a)) and the claimant or the enterprise (for claims brought under Article 8.20.1(b)) 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.

4. Upon request of the respondent, the tribunal shall decline jurisdiction if any of the claimants fails to fulfil any of the requirements established under this Article and Article 8.20.

### **Article 8.23: Third Party Funding**

1. If a disputing party has received or is receiving third party funding, or has arranged to receive third party funding, the said disputing party shall file a written notice disclosing the name and address, and where applicable, ultimate beneficial owner and corporate structure, of any third party

from which the disputing party, its affiliate or its representative, individually or collectively, has, directly or indirectly, received funds for the pursuit or defence of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding.

2. The disputing party shall make the disclosure, under paragraph 1, at the time of the submission of a claim, or within ten days after any third party funding is arranged, donated or granted, as applicable, if such arrangement, donation or grant is made after the submission of a claim.

3. The disputing party's obligation to disclose information relating to third party funding referred to in paragraph 1, including the termination or any changes regarding the third party funding, shall continue throughout the course of the proceedings.

#### **Article 8.24: 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. In selecting arbitrators, disputing Parties shall take into account, amongst other things, whether potential candidates have experience in public international law or international investment law.

3. The Secretary-General shall serve as appointing authority for an arbitration 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 a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either the respondent or the Party of the claimant as the presiding arbitrator unless the disputing parties agree otherwise.

5. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on 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 8.20.1(a) 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 8.20.1(b) 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.

6. In addition to any applicable arbitral rules regarding independence and impartiality of arbitrators, arbitrators shall comply with the Code of Conduct for Arbitrators established by the Free Trade Commission under Article 22.3.1(d) (Functions of the Free Trade Commission) and any other guidance on the application of relevant rules or guidelines on conflicts of interest in international arbitration that the Parties may provide.

### **Article 8.25: Conduct of the Arbitration**

1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 8.20.5. 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. Without prejudice to the tribunal's authority to address other objections as a preliminary question, such as an objection that the dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, 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 favour of the claimant may be made under Article 8.32, or that the claim is manifestly without legal merit:

- (a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after it has been constituted, and in 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, the date the tribunal fixes for the respondent to submit its response to the amendment.

- (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 therefor.
- (c) In deciding an objection under this paragraph: that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 8.32, 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 not in dispute.
- (d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, 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 5.

5. 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 4 or any other objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits 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.

6. When the tribunal decides a respondent's objection under paragraphs 4 or 5, 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 either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 8.7, the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.

8. A 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.

9. 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 referred to in Article 8.20. For the purposes of this paragraph, an order includes a recommendation.

10. For greater certainty, upon request by the respondent, the tribunal may order the claimant to provide security for all or part of the costs, if there are reasonable grounds to believe that there is a risk the claimant may not be able to honour a potential costs award against it. In considering that request, the tribunal may take into account evidence of third party funding. If the security for costs is not posted in full within 30 days after the tribunal makes that order, or within any other time period set by the tribunal, the tribunal shall so inform the disputing parties and may order the suspension or termination of the proceedings.

11. In any arbitration conducted under this Section, at the request of any of the disputing parties, a tribunal shall, before issuing a decision or award, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 days comment period.

12. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 8.32 should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 8.26.

#### **Article 8.26: Transparency of Arbitral Proceedings**

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

- (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 submission submitted pursuant to Article 8.25.2 and 8.25.3, and Article 8.31;
- (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. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3, it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.

3. Nothing in this Section requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 24.2 (Security Exceptions) or Article 24.4 (Disclosure of Information).<sup>20</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 the information according to any schedule set by the tribunal;
- (c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1, and
- (d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:
  - (i) withdraw all or part of its submission containing that 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

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<sup>20</sup> For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 24.2 (Security Exceptions) or Article 24.4 (Disclosure of Information), the respondent may still withhold that information from disclosure to the public.

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. The respondent should endeavour to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.

### **Article 8.27: Discontinuance**

If, following the submission of a claim under this Section, the claimant fails to take any steps in the proceeding during 180 consecutive days or such periods as the disputing parties may agree, the claimant shall be deemed to have withdrawn its claim and to have discontinued the proceedings. The tribunal shall, at the request of the respondent, and after notice to the disputing parties, take note of the discontinuance in an order and issue an award on costs. After such an order has been rendered the authority of the tribunal shall lapse. Unless the claimant's failure to take steps in the proceedings was despite its best endeavors to comply with the requirements under Section B, the claimant may not subsequently submit a claim on the same matter.

### **Article 8.28: Governing Law**

1. Subject to paragraph 2, when a claim is submitted under Article 8.20.1(a) or 8.20.1(b), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.<sup>21</sup>

2. A decision of the Free Trade Commission on the interpretation of a provision of this Agreement under Article 22.3 (Functions of the Free Trade Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

3. For greater certainty, the tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the laws and regulations of the respondent.

### **Article 8.29: Interpretation of Annexes on Non-Conforming Measures**

1. If a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the

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<sup>21</sup> For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent when it is relevant to the claim as a matter of fact.

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 22.3.2(f) (Functions of the Free Trade Commission) to the tribunal within 90 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 90 days, the tribunal shall decide the issue.

### **Article 8.30: 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, safety or scientific matters raised by a disputing party in a proceeding, subject to the terms and conditions that the disputing parties may agree.

### **Article 8.31: Consolidation**

1. If two or more claims have been submitted separately to arbitration under Article 8.20.1, 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. A 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 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 finds, within 30 days after receiving a written 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 provided that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.

5. If, within a period of 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the 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 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 8.20.1 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 8.24 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 8.20.1 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. The request shall specify:

- (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.

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 8.24 shall not have jurisdiction 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 8.24 be stayed, unless the latter tribunal has already adjourned its proceedings.

### **Article 8.32: Awards**

1. When a tribunal makes a final award, 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.

2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 8.20.1(a), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.

3. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance with this Section and the applicable arbitration rules.

4. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award to the respondent reasonable costs and attorney's fees.

5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 8.20.1(b) and the award is made in favour of the enterprise:

- (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 under applicable domestic law with respect to the relief provided in the award.
6. A tribunal may not award punitive damages.
7. An award made by a tribunal shall have no binding force except between the disputing parties and only in respect of the particular case.
8. Subject to paragraph 9 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
9. A 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 8.20.5(d):
    - (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 an application to revise, set aside or annul the award and there is no further appeal.
10. Each Party shall provide for the due enforcement of an award in its territory.
11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 23.8 (Establishment of a Panel). 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 23.17 (Initial Report of the Panel), a recommendation that the respondent abide by or comply with the final award.

12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 11.

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

### **Article 8.33: Service of Documents**

Delivery of notices and other documents to a Party shall be made to the place designated in Annex 8-F. A Party shall promptly make publicly available and notify the other Party of any change to the place referred to in that Annex.

## **Section C: Complementary Provisions**

### **Article 8.34: 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.

## **ANNEX 8-A**

### **CUSTOMARY INTERNATIONAL LAW**

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 8.7, results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

## **ANNEX 8-B**

### **TRANSFERS**

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 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 Singapore and any third country with respect to transactions of the same nature.

## ANNEX 8-C

### EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right, or property interest in an investment.
2. Article 8.13 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 8.13 is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.
  - (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 and its duration, 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, reasonable investment-backed expectations<sup>1</sup>; and
    - (iii) the character of the government action.
  - (b) For greater certainty, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations.

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<sup>1</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 for governmental regulation or the potential for government regulation in the relevant sector.

## **ANNEX 8-D**

### **EXEMPTIONS TO DISPUTE RESOLUTION MEXICO**

The resolutions of the National Commission on Foreign Investments (*Comisión Nacional de Inversiones Extranjeras*), established in existing measures 2 and 3 of Mexico's Schedule to Annex I, shall not be subject to the provisions established in the dispute settlement mechanism between a Party and an investor of the other Party established in Section B of this Chapter and the dispute settlement mechanism of Chapter 23 (Dispute Settlement).

## **ANNEX 8-E**

### **SUBMISSION OF A CLAIM TO ARBITRATION**

1. An investor of a Party may not submit to arbitration under Section B a claim that Chile, Colombia, Mexico, or Peru has breached an obligation under Section A either:

- (a) on its own behalf under Article 8.20.1(a); or
- (b) on behalf of an enterprise of Chile, Colombia, Mexico or Peru that is a juridical person that the investor owns or controls directly or indirectly under Article 8.20.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of Chile, Colombia, Mexico, or Peru.

2. For greater certainty, if an investor of a Party elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of the other Party, that election shall be definitive and exclusive, and the investor may not thereafter submit the claim to arbitration under Section B.

## **ANNEX 8-F**

### **SERVICE OF DOCUMENTS ON A PARTY UNDER SECTION B**

Notices and other documents in disputes under Section B shall be served by delivery to:

- (a) For Chile:  
Dirección de Asuntos Jurídicos  
Subsecretaría de Relaciones Económicas Internacionales  
Ministerio de Relaciones Exteriores de la República de Chile  
Teatinos No. 180  
Santiago, Chile
- (b) For Colombia:  
Dirección de Inversión Extranjera y Servicios  
Ministerio de Comercio, Industria y Turismo  
Calle 28 No. 13 A – 15, piso 3  
Bogotá D.C. – Colombia
- (c) For Mexico:  
Dirección General de Consultoría Jurídica de Comercio Internacional  
Secretaría de Economía  
Pachuca No. 189, piso 19  
Delegación Cuauhtémoc  
México D.F.  
C.P.06140
- (d) For Peru:  
Dirección General de Asuntos de Economía Internacional, Competencia y Productividad  
Ministerio de Economía y Finanzas  
Jirón Lampa No. 277, piso 5  
Lima 1, Perú
- (e) For Singapore:  
Permanent Secretary  
Ministry of Trade & Industry  
100 High Street #09-01  
Singapore 179434  
Singapore