

CHAPTER 3

INVESTMENT

Article 3.1

Definitions

For the purposes of this Chapter:

- (a) **“claimant”** means an investor of a Party that is a party to an investment dispute with the other Party;
- (b) **“disputing parties”** means the claimant and the respondent;
- (c) **“disputing party”** means either the claimant or the respondent;
- (d) **“freely usable currency”** means “freely usable currency” as determined by the IMF under the Articles of Agreement of the IMF and any amendments thereto;
- (e) **“ICSID”** means the International Centre for Settlement of Investment Disputes;
- (f) **“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, as amended and in effect on 10 April 2006;
- (g) **“ICSID Arbitration Rules”** means the Rules of Procedure for Arbitration Proceedings (Arbitration Rules), as amended and in effect on 10 April 2006;
- (h) **“ICSID Convention”** means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington on 18 March 1965;

- (i) **“investor of a non-party”** shall mean any natural or juridical person that is not from either Party;
- (j) **“New York Convention”** means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted at the United Nations in New York on 10 June 1958;
- (k) **“respondent”** means the Party that is a party to an investment dispute;
- (l) **“third-party funding”** means any funding provided by a natural or juridical person who is not a party to the dispute but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings, either:
 - (i) in the form of a donation or grant; or
 - (ii) in return for a remuneration dependent on the outcome of the proceeding; and
- (m) **“UNCITRAL Arbitration Rules”** means the Arbitration Rules of the United Nations Commission on International Trade Law, as adopted by the United Nations General Assembly on 15 December 1976.

Section A: Investment

Article 3.2

Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

- (a) investors of the other Party; and
- (b) investments of investors of the other Party made in the territory of the former Party, whether made before or after the entry into force of this Agreement.

2. This Chapter shall not apply to:

- (a) any taxation measure, except for Articles 3.10 (Expropriation) and 3.12 (Transfers);
- (b) services supplied in the exercise of governmental authority within the territory of the respective Party. For the purposes of this Chapter, a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers; and
- (c) any measures adopted or maintained by a Party affecting trade in services, regardless of whether the service sector is scheduled in the Party's Schedule of Specific Commitments in Annex 2 – 1. Notwithstanding the foregoing, Articles 3.3 (Promotion and Protection of Investments), 3.7 (Compensation for Losses), 3.10 (Expropriation), 3.11 (Subrogation), 3.12 (Transfers) and Section B (Investor-State Dispute Settlement) shall apply, *mutatis mutandis*, to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of the other Party pursuant to Chapter 2 (Trade in Services), but only to the extent that any such measures relate to an investment and an obligation under this Chapter, regardless of whether such a service sector is

scheduled in the Party's Schedule of Specific Commitments in Annex 2 – 1 (Schedules of Specific Commitments).

3. This Agreement shall not apply to claims arising out of events which had occurred¹ or claims which had been raised prior to the entry into force of this Agreement.

Article 3.3

Promotion and Protection of Investments

1. Each Party shall encourage and create favourable conditions for investors of the other Party to make investments in its territory in accordance with its laws and regulations and general economic policy.

2. Each Party shall accord to investments of investors of the other Party fair and equitable treatment and full protection and security in accordance with customary international law. The obligation to provide “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings. The obligation to provide “full protection and security” requires each Party to provide the level of police protection required under customary international law. 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 under customary international law and do not create additional substantive rights.

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

Article 3.4

Domestic Regulation

1. This Article shall apply to measures of the Parties relating to licensing requirements and procedures or qualification requirements and procedures that

¹ For greater certainty, this Agreement 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.

affect the constitution, acquisition or maintenance of juridical persons in their territory.

2. This Article shall not apply to:

(a) non-conforming measures adopted or maintained by a Party as set out by that Party in its Schedules to Annexes 3 – 1 and 3 – 2 (Non-Conforming Measures); and

(b) measures by a Party affecting trade in services in its territory by:

(i) an investor of the other Party; or

(ii) investments of investors of the other Party,

as defined in subparagraph (m) of Article 1.4 (Definitions of General Application).

3. Each Party shall endeavour to ensure that measures relating to licensing requirements and procedures and qualification requirements and procedures are administered in a reasonable, objective and impartial manner.

4. Where authorisation is required for the constitution, acquisition or maintenance of a juridical person, the Party's competent authorities shall, within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application. To the extent practicable, the Party's competent authorities shall establish an indicative timeframe for the processing of an application. At the request of the applicant, the Party's competent authorities shall provide, without undue delay, information concerning the status of the application.

Article 3.5

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 investments of investors of the other Party 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.

Article 3.6

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 investments of investors of the other Party treatment no less favourable than that 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, paragraphs 1 and 2 shall not be construed as granting to investors options or procedures for the settlement of disputes other than those set out in Section B (Investor-State Dispute Settlement).

Article 3.7

Compensation for Losses

1. Investors of a Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or any other similar situations in the territory of the latter Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Party accords to investments of its own investors or investments of investors of any non-Party, whichever is more favourable, to the

investment of the investor of the former Party. Any resulting compensation shall be made in freely usable currency and be freely transferable in accordance with Article 3.12 (Transfers).

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

- (a) requisitioning of its investment or part thereof by the latter Party's forces or authorities; or
- (b) destruction of its investment or part thereof by the latter Party'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 such loss.

Article 3.8

Performance Requirements

The provisions of the WTO Agreement on Trade-Related Investment Measures, under Annex 1A of the WTO Agreement, which are not specifically mentioned in or modified by this Agreement, shall apply, *mutatis mutandis*, to this Agreement.

Article 3.9

Non-Conforming Measures

1. Articles 3.5 (National Treatment) and 3.6 (Most-Favoured-Nation Treatment) shall not apply to:

- (a) any existing non-conforming measure that is maintained by a Party as set out in its Schedule to Annex 3 – 1 (Non-Conforming Measures);
- (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 3.5 (National Treatment) and 3.6 (Most-Favoured-Nation Treatment).

2. Articles 3.5 (National Treatment) and 3.6 (Most-Favoured-Nation Treatment) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex 3 – 2 (Non-Conforming Measures).

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex 3 – 2 (Non-Conforming Measures), 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. Articles 3.5 (National Treatment) and 3.6 (Most-Favoured-Nation Treatment) shall not apply to any measure that is an exception to, or derogation from, a Party's obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as the "TRIPS Agreement"), as specifically provided for in that Agreement.

Article 3.10 **Expropriation²**

1. Neither Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") an investment of an investor of the other Party, unless such a measure is taken on a non-discriminatory basis, for a public purpose, in accordance with due process of law, and upon payment of compensation in accordance with this Article.

2. The expropriation shall be accompanied by the payment of prompt, adequate and effective compensation. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge, whichever is earlier. Such compensation shall be effectively realisable, freely usable, and freely transferable in accordance with Article 3.12 (Transfers) and made without undue delay. The compensation shall include interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

3. Notwithstanding paragraphs 1 and 2, any measure of expropriation relating to land shall be in accordance with the applicable laws and regulations of the expropriating Party.

4. Any measure of expropriation or valuation may, at the request of the investors affected, be reviewed by a judicial or other independent authority of the Party taking the measure in the manner prescribed by its laws and regulations.

² Article 3.10 (Expropriation) is to be interpreted in accordance with Annex 3 – 3 (Expropriation).

5. This Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with the TRIPS Agreement.³

Article 3.11

Subrogation

1. If a Party (or any agency, institution, statutory body or corporation designated by it) makes a payment to its own investors in respect of any of their claims under this Agreement as a result of an indemnity it has given in respect of an investment of an investor of the other Party or any part thereof, the other Party shall acknowledge that the former Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation or transfer of any right or title to exercise the rights and assert the claims of its own investors. The subrogated or transferred rights or claims shall not be greater than the original rights or claims of the said investor.

2. Where a Party (or any agency, institution, statutory body or corporation designated by it) has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the designated agency of the Party making the payment, pursue those rights and claims against the other Party.

Article 3.12

Transfers

1. Each Party shall permit transfers relating to investments of an investor of the other Party in its territory to be made freely and without delay into and out of its territory. Such transfers include:

- (a) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;

³ For greater certainty, the term “revocation” of intellectual property rights includes the cancellation or nullification of such rights, and the term “limitation” of intellectual property rights includes exceptions to such rights.

- (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
- (c) interest, royalty payments, management fees, technical assistance fees and other fees;
- (d) payments made pursuant to Article 3.7 (Compensation for Losses) and Article 3.10 (Expropriation);
- (e) contributions to capital, including the initial contribution; and
- (f) payments arising under Section B (Investor-State Dispute Settlement).

2. Each Party gives permission on payments and transfers referred to in paragraph 1 in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

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

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

(f) social security, pensions and obligatory savings programmes; or

(g) taxation.

4. The Parties understand that subparagraph 3(d) can apply to measures taken in accordance with the international standards of the Financial Action Task Force to prevent money laundering, terrorism and proliferation financing.

5. Nothing in this Chapter shall affect the rights and obligations of a Party which is a member of the IMF under its Articles of Agreement, including the use of exchange actions which are in conformity with the said Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 7.6 (Restrictions to Safeguard the Balance-of-Payments) or at the request of the IMF.

Article 3.13

Special Formalities and Treatment of Information

1. Nothing in Article 3.5 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with an investment, such as a residency requirement for registration or a requirement that an investment be legally constituted under its laws and regulations, provided that these formalities do not materially impair the protections afforded by the Party to investors of the other Party and investments pursuant to this Chapter.

2. Notwithstanding Articles 3.5 (National Treatment) and 3.6 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party or its 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 investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws and regulations.

Section B: Investor-State Dispute Settlement

Article 3.14

Scope

1. This Section shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former under this Chapter which causes loss or damage to the investor or its investment.
2. 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.⁴
3. This Section shall not apply to any dispute concerning any matter arising under Article 3.4 (Domestic Regulation).

Article 3.15

Institution of Arbitral Proceedings

1. The disputing parties shall initially seek to resolve the dispute by consultations and negotiations.
2. Where the dispute cannot be resolved as provided for under paragraph 1 within six (6) months from the date of a written request for consultations and negotiations, the claimant may submit to arbitration:
 - (a) a claim, on its own behalf, that the respondent has breached an obligation under this Agreement and the claimant has incurred loss or damage by reason of, or arising out of, that breach; or
 - (b) a claim, on behalf of a juridical person of the respondent that is a juridical person that the claimant owns or controls,⁵ either directly

⁴ For the purposes of this Chapter, “tobacco or tobacco-related products” means products under Harmonized System Chapter 24 (Tobacco and Manufactured Tobacco Substitutes) and tobacco-related products falling outside Harmonized System Chapter 24 (Tobacco and Manufactured Tobacco Substitutes).

⁵ A juridical person is:

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

or indirectly, that the respondent has breached an obligation under this Agreement and the juridical person has incurred loss or damage by reason of, or arising out of, that breach.

3. A claimant may submit the claim to arbitration:
 - (a) under the ICSID Convention and the ICSID Arbitration Rules, provided that both Parties are parties to the ICSID Convention;
 - (b) under the ICSID Additional Facility Rules, provided that one of the Parties, but not both, is a party to the ICSID Convention;
 - (c) under the UNCITRAL Arbitration Rules; or
 - (d) to any other arbitral institutions or under any other arbitration rules, if the disputing parties so agree.
4. Each Party hereby consents to the submission of a dispute to arbitration under paragraphs 3(a), 3(b) and 3(c) in accordance with the provisions of this Section, conditional upon:
 - (a) the submission of the dispute to such arbitration taking place within three years of the time at which the claimant became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement causing loss or damage to the claimant or its investment;
 - (b) the claimant not being a juridical person of the respondent until the claimant refers the dispute for arbitration pursuant to paragraph 3;
 - (c) the claimant providing written consent to arbitration in accordance with the provisions set out in this Section; and

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

(d) the claimant providing written notice, which shall be delivered at least thirty (30) days before the claim is submitted, to the respondent of its intent to submit the dispute to such arbitration and which:

(i) states the name and address of the claimant and, where a dispute is submitted on behalf of a juridical person, the name, address, and place of constitution of the juridical person;

(ii) nominates one of the *fora* referred to in paragraph 3 as the forum for dispute settlement;

(iii) is accompanied,

(A) for claims submitted to arbitration under subparagraph 2(a), by the claimant's written waiver; and

(B) for claims submitted to arbitration under subparagraph 2(b), by the claimant's and the juridical person's written waivers,

of any right to initiate or continue any proceedings (excluding proceedings for interim measures of protection referred to in paragraph 1 of Article 3.20 (Interim Measures of Protection and Diplomatic Protection) before any of the other dispute settlement *fora* referred to in paragraph 3 in relation to the matter under dispute; and

(iv) briefly summarises the alleged breach of the respondent under this Agreement (including the provisions alleged to have been breached), the legal and factual basis for the dispute, and the loss or damage allegedly caused to the claimant or its investment by reason of that breach.

5. Upon request of the respondent, the tribunal shall decline jurisdiction where the claimant fails to respect any of the requirements referred to in paragraph 4.

6. The consent under paragraph 4 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

- (a) Chapter II (Jurisdiction of the Centre) of the ICSID Convention 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”.

7. A claim that is submitted for 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 3.16

Constitution of Arbitral Tribunal

1. Unless the disputing parties otherwise agree, the arbitral tribunal shall be composed of three arbitrators. Each disputing party shall appoint one arbitrator and the disputing parties shall agree upon a third arbitrator, who shall be the chairman of the arbitral tribunal. If an arbitral tribunal has not been established within ninety (90) days from the date on which the claim was submitted to arbitration, either because a disputing party failed to appoint an arbitrator or because the disputing parties failed to agree upon the chairman, the Secretary-General of ICSID, upon request of either disputing party, shall appoint, at his own discretion, the arbitrator or arbitrators not yet appointed.

2. For the purposes of paragraph 1, in the event that the Secretary-General of ICSID is a national or permanent resident of either Party, the Deputy Secretary-General of ICSID or the officer next in seniority who is not a national or permanent resident of either Party shall be requested to make the necessary appointment or appointments.

3. The arbitrators shall:

- (a) have experience or expertise in public international law or international investment law; and

- (b) be independent from the Parties and the disputing investor, and not be affiliated to or receive instructions from any of them.

Article 3.17

Rules of Interpretation

The Parties may adopt interpretations of provisions of this Agreement. A joint decision of the Parties on the interpretation of a provision of this Agreement shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that joint decision.

Article 3.18

Place of Arbitration

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

Article 3.19

Conduct of the Arbitration

1. A tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and the applicable rules and principles of international law.
2. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within 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 3.21 (Award).
 - (a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (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, 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 relevant facts not in dispute.
- (d) The respondent shall 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 3.

3. In the event that the respondent so requests within forty-five (45) days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 2 or any 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(s), stating the grounds therefor, no later than one hundred and fifty (150) days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional thirty (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 thirty (30) days.

4. When it decides a respondent's objection under paragraph 2 or 3, the tribunal 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.

Article 3.20

Interim Measures of Protection and Diplomatic Protection

1. Subparagraph 4(d)(iii) of Article 3.15 (Institution of Arbitral Proceedings) shall not prevent the claimant from seeking interim measures of protection, not involving the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the respondent, prior to the institution of proceedings before any of the dispute settlement *fora* referred to in paragraph 3 of Article 3.15 (Institution of Arbitral Proceedings), for the preservation of its rights and interests.

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

Article 3.21

Award

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

- (a) monetary damages and any applicable interest; 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 in accordance with this Section and the applicable arbitration rules.

2. Any arbitral award shall be final and binding upon the disputing parties. Each Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

3. Where a claim is submitted on behalf of a juridical person of the respondent, the arbitral award shall be made to the juridical person.

Article 3.22

Costs

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

2. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the tribunal determines that such apportionment is unreasonable in the circumstances of the case.

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

4. Upon request, the tribunal may order the claimant to post security for all or a part of the costs, if there are reasonable grounds to believe that the claimant risks not being able to honour a possible decision on costs issued against it.

5. If the security for costs is not posted in full within thirty (30) days after the tribunal's order or within any other time period set by the tribunal, the tribunal shall so inform the disputing parties. The tribunal may order the suspension or termination of the proceedings.

Article 3.23

Consolidation

1. Where two or more claims have been submitted separately to arbitration under this Section, 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 order or the terms of this Article.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General of ICSID and to all the disputing parties sought to be covered by the order, specifying the name and address of all the disputing parties sought to be covered by the order; the nature of the order sought; and the grounds on which the order is sought.

3. Unless the Secretary-General of ICSID finds within thirty (30) days after receiving a request in conformity with 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 otherwise agree, the tribunal established under this Article shall comprise three arbitrators:

- (a) one arbitrator appointed by agreement of the disputing investors;
- (b) one arbitrator appointed by the respondent; and
- (c) the chairman of the tribunal appointed by the Secretary-General of ICSID.

5. If, within the sixty (60) days after the Secretary-General receives a request made under paragraph 2, the respondent Party fails or the disputing investors 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. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration in accordance with Article 3.15 (Institution of Arbitral Proceedings), 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 claims whose determination it considers would assist in the resolution of the other claims; or
- (c) instruct a tribunal previously established under Article 3.16 (Constitution of the Arbitral Tribunal) to assume jurisdiction over and to hear and determine together all or part of the claims, provided that:
 - (i) that tribunal, at the request of any disputing investor, not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the disputing investors shall be appointed pursuant to subparagraph 4(a) and paragraph 5; and
 - (ii) that tribunal shall decide whether any previous hearing must be repeated.

7. Where a tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration pursuant to Article 3.15 (Institution of Arbitral Proceedings) 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 issued under paragraph 6, specifying:

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

The claimant shall provide the Secretary-General with a copy of his request.

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

9. A tribunal established under Article 3.16 (Constitution of the Arbitral Tribunal) shall not have jurisdiction to decide a claim or a 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 pursuant to this Article may, pending its decision under paragraph 6, order that the proceedings of a tribunal established under Article 3.16 (Constitution of the Arbitral Tribunal) be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 3.24

Third-Party Funding

1. In the case of third-party funding, the disputing party benefiting from it shall notify the other disputing party and the Tribunal of the name and address and, where applicable, the ultimate beneficial owner and corporate structure of the third-party funder.

2. Such notification shall be made at the time of submission of a claim, or, when the financing agreement is concluded or the donation or grant is made after the submission of a claim, immediately after the agreement is concluded or the donation or grant is made.

3. In apportioning the cost of the proceedings pursuant to Article 3.22 (Costs), the Tribunal may take into account any third-party funding arrangements, including whether the requirements provided for in paragraphs 1 and 2 of this Article have been respected.

Section C: Final Provisions

Article 3.25

Publication of International Agreements

1. Each Party shall ensure that international agreements pertaining to or affecting investors or investment activities to which it is a signatory shall be promptly published or otherwise made available in such a manner as to enable interested persons or Parties to become acquainted with them.
2. To the extent possible, each Party shall make the international agreements of the kind referred to in paragraph 1 available on the Internet. Each Party shall, upon request by the other Party, promptly respond to specific questions from and provide information to the other Party with respect to the international agreements referred to in paragraph 1.