

CHAPTER 17
INVESTMENT

SECTION A
General Provisions

Article 17.1

Scope

This Chapter does not apply to measures adopted or maintained by a Party relating to financial institutions of the other Party, to investors of the other Party or to the investments of such investors in financial institutions in the territory of that Party, as defined in Article 25.2.

Article 17.2

Definitions

For the purposes of this Chapter and Annexes 17-A, 17-B and 17-C:

- (a) 'activities performed in the exercise of governmental authority' means activities performed, including services supplied, neither on a commercial basis nor in competition with one or more economic operators;
- (b) 'aircraft repair and maintenance services' means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;
- (c) 'computer reservation system (CRS) services' means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (d) 'covered investment' means an investment which is owned or controlled, directly or indirectly, by one or more investors of a Party in the territory of the other Party, made in accordance with the applicable law, and which is in existence as at the date of entry into force of this Agreement or is established thereafter;
- (e) 'cross-border supply of services' means the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party; or
 - (ii) in the territory of a Party to a service consumer of the other Party;
- (f) 'economic activities' means activities of an industrial, commercial or professional character or activities of craftsmen, including the supply of services, except for activities performed in the exercise of governmental authority;
- (g) 'enterprise' means a juridical person, branch or representative office set up through establishment;
- (h) 'establishment' means the setting up, including the acquisition ⁽²⁴⁾ of, an enterprise by an investor of a Party in the territory of the other Party;
- (i) 'freely convertible currency' means a currency which can be freely exchanged against currencies which are widely traded in international foreign exchange markets and widely used in international transactions;

⁽²⁴⁾ The term 'acquisition' is understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

- (j) 'ground handling services' means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except for the preparation of food; air cargo and mail handling; fuelling of an aircraft, aircraft servicing and cleaning; surface transport; and flight operation, crew administration and flight planning; ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;
- (k) 'investment' means any asset that an investor owns or controls, directly or indirectly, which has the characteristics of an investment, including a certain duration, 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:
- (i) an enterprise;
 - (ii) shares, stocks and other forms of equity participation in an enterprise;
 - (iii) bonds, debentures and other debt instruments of an enterprise;
 - (iv) futures, options and other derivatives;
 - (v) concessions, licences, authorisations, permits, and similar rights conferred pursuant to domestic law ⁽²⁵⁾;
 - (vi) turnkey, construction, management, production, concession, revenue-sharing contracts, and other similar contracts including those that involve the presence of the property of an investor in the territory of a Party;
 - (vii) intellectual property rights;
 - (viii) any other moveable or immovable, tangible or intangible property, and related property rights, such as leases, mortgages, liens and pledges;
- for greater certainty:
- (i) returns that are invested are treated as investments, and any alteration of the form in which assets are invested or reinvested does not affect their qualification as investments, provided that the form taken by any investment or reinvestment maintains its compliance with the definition of investment;
 - (ii) investment does not include an order or judgment entered in a judicial or administrative action;
- (l) 'investor of a Party' means a natural or juridical person of a Party that seeks to establish, is establishing or has established an enterprise in accordance with subparagraph (h);
- (m) 'juridical person of a Party' means ⁽²⁶⁾:
- (i) for the EU Party:
 - (A) a juridical person constituted or organised under the law of the European Union or of at least one of its Member States and engaged in substantive business operations ⁽²⁷⁾ in the territory of the European Union; and

⁽²⁵⁾ For greater certainty, whether a concession, licence, authorisation, permit or similar instrument has the characteristics of an investment depends, *inter alia*, on factors such as the nature and extent of the rights that the holder has under that Party's law.

⁽²⁶⁾ For greater certainty, the shipping companies referred to in this definition are only considered as juridical persons of a Party with respect to their activities relating to the supply of maritime transport services.

⁽²⁷⁾ In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the EU Party understands that the concept of 'effective and continuous link' with the economy of a Member State enshrined in Article 54 of the TFEU is equivalent to the concept of 'substantive business operations'.

- (B) shipping companies established outside the European Union, and controlled by natural persons of a Member State, whose vessels are registered in, and fly the flag of, a Member State;
- (ii) for Chile:
- (A) a juridical person constituted or organised under the law of Chile and engaged in substantive business operations in the territory of Chile; and
- (B) shipping companies established outside Chile, and controlled by natural persons of Chile, whose vessels are registered in, and fly the flag of, Chile;
- (n) 'operation' means the conduct, management, maintenance, use, enjoyment, sale or other form of disposal of an enterprise by an investor of a Party, in the territory of the other Party;
- (o) 'returns' means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, payments in connection with intellectual property rights, payments in kind and all other lawful income;
- (p) 'selling and marketing of air transport services' means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution; these activities do not include the pricing of air transport services nor the applicable conditions;
- (q) 'service' means any service in any sector except for services supplied in the exercise of governmental authority; and
- (r) 'Tribunal' means the Tribunal of first instance established pursuant to Article 17.34.

Article 17.3

Right to regulate

The Parties affirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, education, safety, the environment, including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.

Article 17.4

Relation to other chapters

1. In the event of inconsistency between this Chapter and Chapter 25, the latter shall prevail to the extent of the inconsistency.
2. A requirement of a Party that a service supplier of the other Party posts a bond or other form of financial security as a condition for the cross-border supply of a service in its territory does not in itself make this Chapter applicable to such cross-border supply of that service. This Chapter applies to measures adopted or maintained by the Party relating to the bond or financial security, if such bond or financial security constitutes a covered investment.

Article 17.5

Denial of benefits

A Party may deny an investor of the other Party or a covered investment the benefits of this Chapter if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

- (a) prohibit transactions with that investor or covered investment; or
- (b) would be violated or circumvented if the benefits of this Chapter were accorded to that investor or covered investment, including if the measures prohibit transactions with a person who owns or controls either of them.

Article 17.6

Sub-Committee on Services and Investment

The Sub-Committee on Services and Investment ('Sub-Committee') is established pursuant to Article 8.8(1). When addressing matters related to investment, the Sub-Committee shall monitor and ensure proper implementation of this Chapter and of Annexes 17-A, 17-B and 17-C.

SECTION B

Liberalisation of Investments and Non-Discrimination

Article 17.7

Scope

1. This Section applies to measures, adopted or maintained by a Party in its territory, affecting the establishment of an enterprise or the operation of a covered investment in all economic activities by an investor of the other Party.
2. This Section does not apply to:
 - (a) audio-visual services;
 - (b) national maritime cabotage ⁽²⁸⁾; or
 - (c) domestic and international air services or related services in support of air services ⁽²⁹⁾, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services; and
 - (iv) ground handling services.
3. Articles 17.8, 17.9, 17.11, 17.12 and 17.13 do not apply with respect to public procurement.
4. Articles 17.8, 17.9, 17.11 and 17.13 do not apply with respect to subsidies granted by a Party, including government-supported loans, guarantees and insurances.

⁽²⁸⁾ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Chile or a Member State and another port or point located in Chile or that same Member State, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in Chile or a Member State.

⁽²⁹⁾ For greater certainty, air services or related services in support of air services include the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; the rental of aircraft with crew; and airport operation services.

*Article 17.8***Market access**

In the sectors or subsectors where market access commitments are undertaken, a Party shall not adopt or maintain, with respect to market access through establishment or operation by investors of the other Party or by enterprises constituting a covered investment, either on the basis of its entire territory or on the basis of a territorial subdivision, a measure that:

- (a) limits the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirement of an economic needs test;
- (b) limits the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limits the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test ⁽³⁰⁾;
- (d) restricts or requires specific types of legal entity or joint venture through which an investor of the other Party may carry out an economic activity; or
- (e) limits the total number of natural persons who may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

*Article 17.9***National treatment**

1. Each Party shall accord to investors of the other Party and to enterprises constituting a covered investment with respect to the establishment, treatment no less favourable than the treatment it accords, in like situations ⁽³¹⁾, to its own investors and to their enterprises.

2. Each Party shall accord to investors of the other Party and to covered investments, with respect to the operation, treatment no less favourable than the treatment it accords, in like situations ⁽³²⁾, to its own investors and to their investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means:

- (a) with respect to a regional or local government of Chile, treatment no less favourable than the most favourable treatment accorded, in like situations, by that level of government to investors of Chile and to their investments in its territory;
- (b) with respect to a government of, or in, a Member State, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors of that Member State and to their investment in its territory ⁽³³⁾.

⁽³⁰⁾ Subparagraphs (a), (b) and (c) do not cover measures taken in order to limit the production of an agricultural or fishery product.

⁽³¹⁾ For greater certainty, whether treatment is accorded in 'like situations' requires a case-by-case, fact-based analysis and depends on the totality of the situations.

⁽³²⁾ For greater certainty, whether treatment is accorded in 'like situations' requires a case-by-case, fact-based analysis and depends on the totality of the situations.

⁽³³⁾ For greater certainty, the treatment accorded by a government of, or in, a Member State includes the regional and local level of government, when applicable.

*Article 17.10***Public procurement**

1. Each Party shall ensure that enterprises constituting a covered investment are accorded treatment no less favourable than that accorded, in like situations, to its own enterprises with respect to any measure regarding the purchase of goods or services by a procuring entity for governmental purposes.
2. The application of the national treatment obligation provided for in this Article is subject to security and general exceptions as set out in Article 28.3.

*Article 17.11***Most-favoured-nation treatment**

1. Each Party shall accord to investors of the other Party and to enterprises constituting a covered investment, with respect to the establishment, treatment no less favourable than the treatment it accords, in like situations ⁽³⁴⁾, to investors of a third country and to their enterprises.
2. Each Party shall accord to investors of the other Party and to covered investments, with respect to the operation, treatment no less favourable than the treatment it accords, in like situations ⁽³⁵⁾, to investors of a third country and to their investments.
3. Paragraphs 1 and 2 shall not be construed as obliging a Party to extend to investors of the other Party or to covered investments the benefit of any treatment resulting from measures providing for the recognition of standards, including of the standards or criteria for the authorisation, licensing or certification of a natural person or an enterprise for carrying out an economic activity, or of prudential measures.
4. For greater certainty, the treatment referred to in paragraphs 1 and 2 does not include investment dispute resolution procedures or mechanisms provided for in other international investment treaties or trade agreements. The substantive provisions in other international investment treaties or trade agreements do not in themselves constitute 'treatment' as referred to in paragraphs 1 and 2, and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party. Measures of a Party applied pursuant to such substantive provisions may constitute 'treatment' under this Article and thus give rise to a breach of this Article.

*Article 17.12***Performance requirements**

1. A Party shall not, in connection with the establishment of an enterprise or the operation of an investment of a Party or of a third country in its territory, impose or enforce any requirement, or enforce any commitment or undertaking, to:
 - (a) export a given level or percentage of goods or services;
 - (b) achieve a given level or percentage of domestic content;
 - (c) purchase, use or accord a preference to goods produced or services provided in its territory, or purchase goods or services from natural persons or enterprises in its territory;
 - (d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise;
 - (e) restrict sales of goods or services in its territory that such enterprise produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

⁽³⁴⁾ For greater certainty, whether treatment is accorded in 'like situations' requires a case-by-case, fact-based analysis and depends on the totality of the situations.

⁽³⁵⁾ For greater certainty, whether treatment is accorded in 'like situations' requires a case-by-case, fact-based analysis and depends on the totality of the situations.

- (f) transfer technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory;
- (g) supply exclusively from the territory of that Party the goods it produces or the services it supplies to a specific regional or world market;
- (h) locate the headquarters of that investor for a specific region of the world, which is broader than the territory of the Party, or the world market in its territory;
- (i) hire a given number or percentage of its nationals;
- (j) restrict the exportation or sale for export; or
- (k) with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or to any future licence contract ⁽³⁶⁾ freely entered into between the investor and a natural or juridical person or any other entity in its territory, provided that the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes a direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party, adopt:
 - (i) a given rate or amount of royalty below a certain level under a licence contract; or
 - (ii) a given duration of the term of a licence contract.

2. For greater certainty, subparagraph (k) of paragraph 1 does not apply when the licence contract is concluded between the investor and a Party.

3. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of an enterprise in its territory, of a Party or of a third country, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises 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 such enterprise;
- (d) to restrict sales of goods or services in its territory that such enterprise produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings; or
- (e) to restrict the exportation or sale for export.

4. Paragraph 3 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of an enterprise in its territory by an investor of a Party or a third country, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.

5. Subparagraphs (f) and (k) of paragraph 1 do not apply if:

- (a) a Party authorises the use of an intellectual property right in accordance with Article 31 or 31bis of the TRIPS Agreement or adopts or maintains measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement; or

⁽³⁶⁾ A licence contract referred to in this subparagraph means a contract concerning the licensing of technology, production process, or other proprietary knowledge.

- (b) the requirement is imposed or enforced or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority in order to remedy a practice determined after judicial or administrative process as being a violation of the Party's competition law.
- 6. Subparagraphs (a), (b) and (c) of paragraph 1 and subparagraphs (a) and (b) of paragraph 3 do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.
- 7. Subparagraphs (a) and (b) of paragraph 3 do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
- 8. For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis where that Party adopts or maintains restrictions or prohibitions on such provision of services which are consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in Annexes 17-A, 17-B and 17-C.
- 9. This Article is without prejudice to commitments of a Party made under the WTO Agreement.

Article 17.13

Senior management and boards of directors

A Party shall not require that an enterprise of that Party that is a covered investment appoints natural persons of a particular nationality as members of boards of directors, or to a senior management position, such as executives or managers.

Article 17.14

Non-conforming measures

- 1. Articles 17.9, 17.11, 17.12 and 17.13 do not apply to:
 - (a) any existing non-conforming measure that is maintained by:
 - (i) for the EU Party:
 - (A) the European Union, as set out in Appendix 17-A-1;
 - (B) the central government of a Member State, as set out in Appendix 17-A-1;
 - (C) a regional level of government of a Member State, as set out in Appendix 17-A-1; or
 - (D) a local level of government; and
 - (ii) for Chile:
 - (A) the central government, as set out in Appendix 17-A-2;
 - (B) a regional level of government, as set out in Appendix 17-A-2; or
 - (C) a local level of government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a) of this paragraph; or
 - (c) a modification to any non-conforming measure referred to in subparagraph (a) of this paragraph, to the extent that the modification does not decrease the conformity of the measure, as it existed immediately before the modification, with Article 17.9, 17.11, 17.12 or 17.13.

2. Articles 17.9, 17.11, 17.12 and 17.13 do not apply to measures of a Party with respect to sectors, sub-sectors or activities as set out in its schedule in Annex 17-B.
3. A Party shall not, under any measure adopted after the date of entry into force of this Agreement and covered by its reservations set out in Annex 17-B, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of a covered investment existing at the time the measure becomes effective.
4. Article 17.8 does not apply to any measure of a Party which is consistent with the commitments set out in Annex 17-C.
5. Articles 17.9 and 17.11 do not apply to any measure of a Party that constitutes an exception to, or derogation from, Article 3 or 4 of the TRIPS Agreement, as specifically provided for in Articles 3, 4 and 5 of that Agreement.
6. For greater certainty, Articles 17.9 and 17.11 shall not be construed as preventing a Party from prescribing information requirements, including for statistical purposes, in connection with the establishment or operation of investors of the other Party or of a covered investment, provided that it does not constitute a means to circumvent that Party's obligations under those Articles.

SECTION C

Investment Protection

Article 17.15

Scope

This Section applies to measures adopted or maintained by a Party affecting:

- (a) covered investments; and
- (b) investors of a Party with respect to the operation of a covered investment.

Article 17.16

Investment and regulatory measures

1. Article 17.3 applies to this Section in accordance with this Article.
2. This Section shall not be interpreted as a commitment of a Party not to change its legal and regulatory framework, including in a manner that can negatively affect the operation of covered investments or the investor's expectations of profits.
3. 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 obligations under this Section, even if it results in loss or damage to the covered investment:
 - (a) in the absence of any specific commitment at law or under a contract to issue, renew or maintain that subsidy or grant; or
 - (b) in accordance with any terms or conditions attached to the issuance, renewal, maintenance, modification or reduction of that subsidy or grant.

4. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy ⁽³⁷⁾ or requesting its reimbursement, if such action has been ordered by one of its competent authorities ⁽³⁸⁾, or as requiring that Party to compensate the investor therefor.

Article 17.17

Treatment of investors and of covered investments

1. Each Party shall accord in its territory to covered investments and investors of the other Party, with respect to their covered investments, fair and equitable treatment and full protection and security in accordance with paragraphs 2 to 6.

2. A Party breaches the obligation of fair and equitable treatment referred to in paragraph 1 if a measure or series of measures constitute ⁽³⁹⁾:

- (a) denial of justice in criminal, civil or administrative proceedings;
- (b) a fundamental breach of due process in judicial and administrative proceedings;
- (c) manifest arbitrariness;
- (d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or
- (e) abusive treatment of investors, such as coercion, duress, harassment.

3. In determining the breach referred to in paragraph 2, the Tribunal may take into account specific and unambiguous representations made to an investor by a Party, which the investor reasonably relied upon in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.

4. Full protection and security as referred to in paragraph 1 refers to the Party's obligations relating to physical security of investors and covered investments ⁽⁴⁰⁾.

5. For greater certainty, a breach of another provision of this Agreement, or a breach of any other international agreement, does not constitute a breach of this Article.

6. The fact that a measure breaches the law of a Party does not, in and of itself, constitute a breach of this Article. In order to ascertain whether the measure breaches this Article, the Tribunal shall consider if a Party has acted inconsistently with paragraphs 1 to 4.

⁽³⁷⁾ In the case of the EU Party, 'subsidy' includes 'state aid' as defined in European Union law.

⁽³⁸⁾ In the case of the EU Party, the competent authorities entitled to order the actions referred to in this paragraph are the European Commission or a court or tribunal of a Member State, when applying European Union law on State aid.

⁽³⁹⁾ For greater certainty, in determining whether a measure or series of measures constitute a breach of the obligation of fair and equitable treatment, the Tribunal shall take into account, *inter alia*, the following:

- (i) with regard to subparagraphs (a) and (b), whether the measure or series of measures involve gross misconduct that offends judicial propriety; the mere fact that an investor's challenge of the impugned measure in domestic proceeding has been rejected or dismissed or has otherwise failed does not in itself constitute a denial of justice as referred to in subparagraph (a);
- (ii) with regard to subparagraphs (c) and (d), whether the measure or series of measures were patently not founded on reason or fact or were patently founded on illegitimate grounds such as prejudice or bias; the mere illegality of, or a merely inconsistent or questionable application of, a policy or procedure does not in itself constitute manifest arbitrariness referred to in subparagraph (c), while a total and unjustified repudiation of a law or regulation, or a measure without reason, or a conduct that is specifically targeted to the investor or its covered investment with the purpose of causing damage are likely to constitute manifest arbitrariness or discrimination as referred to in subparagraphs (c) and (d);
- (iii) with regard to subparagraph (e), whether a Party acted *ultra vires* and whether the episodes of alleged coercion or harassment were repeated and sustained.

⁽⁴⁰⁾ For greater certainty, full protection and security refers to a Party's obligations to act as may be reasonably necessary to protect physical security of investors and covered investments.

*Article 17.18***Treatment in case of strife**

1. Investors of a Party whose covered investments suffer losses as a consequence of war or other armed conflict, revolution or other civil strife, or a state of national emergency ⁽⁴¹⁾ in the territory of the other Party shall be accorded by that Party treatment no less favourable than that accorded by that Party to its own investors, or to the investors of any third country, with respect to restitution, indemnification, compensation or other forms of settlement.
2. Without prejudice to paragraph 1, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party shall be accorded by that Party prompt, adequate and effective restitution or compensation, if such losses result from:
 - (a) requisitioning of their covered investment or a part thereof by the other Party's armed forces or authorities; or
 - (b) destruction of their covered investment or a part thereof by the other Party's armed forces or authorities, which was not required by the necessity of the situation.
3. The amount of the compensation referred to in paragraph 2 of this Article shall be determined in accordance with Article 17.19(2) from the date of requisitioning or destruction until the date of actual payment.

*Article 17.19***Expropriation ⁽⁴²⁾**

1. A Party shall not nationalise or expropriate a covered investment, either directly or indirectly, through measures having an effect equivalent to nationalisation or expropriation ('expropriation'), except:
 - (a) for a public purpose;
 - (b) in a non-discriminatory manner;
 - (c) on payment of prompt, adequate and effective compensation; and
 - (d) in accordance with due process of law.
2. The compensation referred to in subparagraph (c) of paragraph 1 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') or the impending expropriation became known, whichever is earlier;
 - (c) be fully realisable and freely transferable in any freely convertible currency; and
 - (d) include interest at a normal commercial rate from the date of expropriation until the date of payment.
3. The investor affected shall have a right, under the law of the expropriating Party, to prompt review of its claim and of the valuation of its investment by a judicial or other independent authority of that Party, in accordance with the principles set out in this Article.
4. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, or to the revocation, limitation or creation of such rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement ⁽⁴³⁾.

⁽⁴¹⁾ For greater certainty, the sole declaration of a state of national emergency does not in itself constitute a breach of this provision.

⁽⁴²⁾ For greater certainty, this Article shall be interpreted in accordance with Annex 17-D.

⁽⁴³⁾ For greater certainty, revocation of intellectual property rights referred to in this paragraph includes the cancellation or nullification of such rights, and limitation of intellectual property rights includes exceptions to such rights.

*Article 17.20***Transfers ⁽⁴⁴⁾**

1. Each Party shall permit all transfers relating to a covered investment to be made in a freely convertible currency, freely and without delay and at the market rate of exchange prevailing on the date of transfer. Such transfers include:

- (a) contributions to capital;
- (b) profits, dividends, capital gains and other returns, proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the covered investment;
- (c) interest, royalty payments, management fees, technical assistance and other fees;
- (d) payments made under a contract entered into by the investor of the other Party, or by its covered investment, including payments made pursuant to a loan agreement;
- (e) earnings and other remuneration of personnel engaged from abroad and working in connection with a covered investment;
- (f) payments made pursuant to Article 17.18 and Article 17.19; and
- (g) payments arising under the application of Section D.

2. A Party may not require its investors to transfer, or penalise its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, covered investments in the territory of the other Party.

*Article 17.21***Subrogation**

If a Party, or any agency designated by that Party, makes a payment to an investor of that Party under a guarantee, a contract of insurance or other 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 not pursue those rights to the extent of the subrogation.

*Article 17.22***Termination**

1. If this Agreement is terminated pursuant to Article 41.13, this Section and Section D shall continue to be effective for a further period of five years from the date of termination with respect to investments made before the date of such termination.

2. The period referred to in paragraph 1 shall be extended for a single additional period of five years, provided that no other investment protection agreement between the Parties is in force.

3. This Article shall not apply if the provisional application of this Agreement is terminated and this Agreement does not enter into force.

*Article 17.23***Relationship with other agreements**

1. Upon entry into force of this Agreement, the agreements between Member States and Chile listed in Annex 17-F, including the rights and obligations derived therefrom, shall cease to have effect and shall be replaced and superseded by this Part of this Agreement.

⁽⁴⁴⁾ For greater certainty, this Article is subject to Annex 17-E.

2. In the case of provisional application of Sections C and D of this Chapter in accordance with Article 41.5(2), the application of the agreements listed in Annex 17-F, including the rights and obligations derived therefrom, shall be suspended as of the date from which the Parties provisionally apply Sections C and D of this Chapter in accordance with Article 41.5. If the provisional application of those Sections is terminated and this Agreement does not enter into force, the suspension shall cease and the agreements listed in Annex 17-F shall resume their effect.

3. Notwithstanding paragraphs 1 and 2, a claim pursuant to an agreement listed in Annex 17-F may be submitted in accordance with the rules and procedures established in that agreement, provided that:

- (a) the claim arises from an alleged breach of that agreement that took place prior to the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement is not suspended pursuant to paragraph 2, prior to the date of entry into force of this Agreement; and
- (b) no more than three years have elapsed from the date of suspension of the agreement pursuant to paragraph 2 or, if that agreement is not suspended pursuant to paragraph 2, from the date of entry into force of this Agreement until the date of submission of the claim.

4. Notwithstanding paragraphs 1 and 2, if the provisional application of Sections C and D of this Chapter is terminated and this Agreement does not enter into force, a claim pursuant to this Agreement may be submitted in accordance with the rules and procedures established in this Agreement, provided that:

- (a) the claim arises from an alleged breach of this Agreement that took place during the period of provisional application of Sections C and D of this Chapter; and
- (b) no more than three years have elapsed from the date of termination of the provisional application until the date of submission of the claim.

5. For the purposes of this Article, the definition of 'entry into force of this Agreement' provided for in Article 41.5 shall not apply.

Article 17.24

Responsible business conduct

1. Without prejudice to Chapter 33, each Party shall encourage covered investments to incorporate into their internal policies internationally recognised principles and guidelines of corporate social responsibility or responsible business conduct, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the UN Guiding Principles on Business and Human Rights.

2. The Parties reaffirm the importance of investors conducting a due diligence process to identify, prevent, mitigate, and account for the environmental and social risks and impacts of their investment.

SECTION D

Resolution of Investment Disputes and Investment Court System

Sub-Section 1

Scope and Definitions

Article 17.25

Scope and definitions

1. This Section applies to a dispute between a claimant of one Party and the other Party arising from an alleged breach under Article 17.9(2) or Article 17.11(2), or under Section C, which allegedly causes loss or damage to the claimant or its locally established enterprise.

2. This Section also applies to counterclaims in accordance with Article 17.31.

3. A claim with respect to the restructuring of debt of a Party shall be decided in accordance with Annex 17-G.
4. For the purposes of this Section:
- (a) 'claimant' means an investor of a Party that is a party to an investment dispute with the other Party and that seeks to submit or has submitted a claim, pursuant to this Section, either:
 - (i) acting on its own behalf; or
 - (ii) acting on behalf of a locally established enterprise which it owns or controls; the locally established enterprise shall be treated as a national of another Contracting State for the purposes of Article 25(2)(b) of the ICSID Convention;
 - (b) 'disputing parties' means the claimant and the respondent;
 - (c) '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;
 - (d) '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;
 - (e) 'locally established enterprise' means a juridical person established in the territory of a Party, and owned or controlled by an investor of the other Party ⁽⁴⁵⁾;
 - (f) 'New York Convention' means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958;
 - (g) 'non-disputing Party' means Chile, if the respondent is the EU Party, or the EU Party, if the respondent is Chile;
 - (h) 'proceedings', unless otherwise specified, means proceedings before the Tribunal or Appeal Tribunal under this Section;
 - (i) 'respondent' means Chile, if the claimant is an investor of the EU Party, or the European Union or the Member State concerned, as determined pursuant to Article 17.28, if the claimant is an investor of Chile;
 - (j) 'third-party funding' means any funding provided to a disputing party, by a person who is not a disputing party, to finance part or all of the cost of the proceedings in return for remuneration dependent on the outcome of the dispute or in the form of a donation or grant ⁽⁴⁶⁾;
 - (k) 'UNCITRAL Arbitration Rules' means the Arbitration Rules of the United Nations Commission on International Trade Law; and
 - (l) 'UNCITRAL Transparency Rules' means the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

⁽⁴⁵⁾ A juridical person is: (a) owned by a person of the other Party if more than 50 per cent of the equity interest in it is beneficially owned by a person of that Party; (b) controlled by a person of the other Party if such person has the power to name a majority of its directors or otherwise to legally direct its actions.

⁽⁴⁶⁾ For greater certainty, such funding may be provided directly or indirectly, to a disputing party, its affiliate or representative.

Sub-Section 2

Alternative Dispute Resolution and Consultations

Article 17.26

Mediation

1. The disputing parties may at any time agree to have recourse to mediation.
2. Recourse to mediation is voluntary and without prejudice to the legal position of either disputing party.
3. Mediation procedures shall be governed by the rules set out in Annex 17-H and, where available, rules on mediation adopted by the Sub-Committee⁽⁴⁷⁾. The Sub-Committee shall make best efforts to ensure that the rules on mediation are adopted no later than the first day of the provisional application or entry into force of this Agreement, as the case may be, and in any event no later than two years after such date.
4. The Sub-Committee shall, upon the date of entry into force of this Agreement, establish a list of six individuals of high moral character and recognised competence in the fields of law, commerce, industry or finance who may be relied upon to exercise independent judgment and who are willing and able to serve as mediators.
5. The mediator shall be appointed by agreement of the disputing parties. The disputing parties may jointly request the President of the Tribunal to appoint a mediator from the list established pursuant to this Article or, in the absence of such list, from individuals proposed by either Party. Mediators shall comply with Annex 17-I, *mutatis mutandis*.
6. Once the disputing parties agree to have recourse to mediation, the time limits set out in Articles 17.27(5), 17.27(8), 17.54(10) and 17.55(5) shall be suspended from the date on which it was agreed to have recourse to mediation until the date on which either disputing party decides to terminate the mediation, by way of written notice to the mediator and the other disputing party. At the request of both disputing parties, the Tribunal or the Appeal Tribunal shall stay the proceedings.

Article 17.27

Consultations and amicable resolution

1. A dispute may, and should as far as possible, be settled amicably through negotiations, good offices or mediation and, where possible, before the submission of a request for consultations pursuant to this Article. Such settlement may be agreed at any time, including after proceedings pursuant to Sub-section 5 have commenced.
2. A mutually agreed solution between the disputing parties pursuant to paragraph 1 shall be notified to the non-disputing Party within 15 days of that mutually agreed solution being reached. Each disputing party shall abide by and comply with any mutually agreed solution reached in accordance with this Article or with Article 17.26. The Sub-Committee shall keep under surveillance the implementation of such mutually agreed solution, and the Party to the mutually agreed solution shall regularly report to the Sub-Committee on the implementation of such solution.
3. If a dispute cannot be settled as provided for in paragraph 1 of this Article, a claimant of a Party alleging a breach of the provisions referred to in Article 17.25(1) and seeking to submit a claim shall submit a request for consultations to the other Party.
4. The request shall contain the following information:
 - (a) the name and address of the claimant and, if such request is submitted on behalf of a locally established enterprise, the name, address and place of incorporation of the locally established enterprise;
 - (b) a description of the investment and of its ownership and control;
 - (c) the provisions referred to in Article 17.25(1) alleged to have been breached;

⁽⁴⁷⁾ Any time limit referred to in Annex 17-H may be modified by agreement between the disputing parties.

- (d) the legal and factual basis for the claim, including the measure alleged to be inconsistent with the provisions referred to in Article 17.25(1);
 - (e) the relief sought and the estimated amount of damages claimed; and
 - (f) information concerning the ultimate beneficial owner and corporate structure of the claimant and evidence establishing that the claimant is an investor of the other Party and that it owns or controls the investment and, if it acts on behalf of a locally established enterprise which it owns or controls, that locally established enterprise.
5. Unless the disputing parties agree to a longer period, consultations shall commence within 60 days of the date of submission of the request for consultations.
6. Unless the disputing parties agree otherwise, the place of consultations shall be:
- (a) Santiago, if the consultations concern an alleged breach by Chile;
 - (b) Brussels, if the consultations concern an alleged breach by the European Union; or
 - (c) the capital of the Member State concerned, if the consultations concern an alleged breach by that Member State exclusively.
7. The disputing parties may agree to hold consultations through videoconference or other means if appropriate.
8. The request for consultations shall be submitted:
- (a) within three years of the date on which the claimant or, if the claimant acts on behalf of the locally established enterprise, the date on which the locally established enterprise, first acquired, or should have first acquired, knowledge of the measure alleged to be inconsistent with the provisions referred to in Article 17.25(1) and of the loss or damage alleged to have been incurred thereby; or
 - (b) within two years of the date on which the claimant or, if the claimant acts on behalf of the locally established enterprise, the date on which the locally established enterprise ceases to pursue claims or proceedings before a domestic tribunal or court under the law of a Party, and, in any event, no later than five years after the date on which the claimant or, if the claimant acts on behalf of the locally established enterprise, the date on which the locally established enterprise first acquired, or should have first acquired, knowledge of the measure alleged to be inconsistent with the provisions referred to in Article 17.25(1) and of the loss or damage alleged to have been incurred thereby.
9. In the event that the claimant has not submitted a claim pursuant to Article 17.30 within 18 months of submitting the request for consultations, the claimant shall be deemed to have withdrawn its request for consultations and, if applicable, the notice requesting a determination of the respondent pursuant to Article 17.28, and may not submit a claim under this Section with respect to the same alleged breach. That period may be extended by agreement between the disputing parties involved in the consultations.
10. A continuing breach may not renew or interrupt the periods set out in paragraph 8.
11. If the request for consultations concerns an alleged breach of this Agreement by the EU Party, it shall be sent to the European Union. If an alleged breach of this Agreement by a Member State is identified in accordance with Article 17.28, the request for consultations shall also be sent to the Member State concerned.

Sub-Section 3

Submission of a Claim and Conditions Precedent*Article 17.28***Request for determination of the respondent**

1. If the dispute cannot be settled within 90 days of the submission of the request for consultations, the request concerns an alleged breach of this Agreement by the EU Party and the claimant intends to initiate proceedings pursuant to Article 17.30, the claimant shall deliver a notice to the European Union requesting a determination of the respondent.
2. The notice shall identify the measures in respect of which the claimant intends to initiate proceedings. If a measure of a Member State is identified, such notice shall also be sent to the Member State concerned.
3. The EU Party shall, after having made a determination, inform the claimant as soon as possible, and in any case no later than 60 days after the date of receipt of the notice referred to in paragraph 1, as to whether the European Union or a Member State shall be the respondent ⁽⁴⁸⁾.
4. If the claimant has not been informed of the determination within 60 days of delivering the notice referred to in paragraph 3, the respondent shall be:
 - (a) the Member State, if the measure or measures identified in the notice referred to in paragraph 1 are exclusively measures of a Member State; or
 - (b) the European Union, if the measure or measures identified in the notice referred to in paragraph 1 include measures of the European Union.
5. If the claimant submits a claim pursuant to Article 17.30, it shall do so on the basis of the determination communicated as referred to in paragraph 3 of this Article and, if no such determination has been communicated to the claimant, on the basis of paragraph 4 of this Article.
6. If either the European Union or a Member State acts as respondent following a determination made pursuant to paragraph 3, neither the European Union nor the Member State concerned may assert the inadmissibility of the claim or lack of jurisdiction of the Tribunal, or otherwise assert that the claim or award is unfounded or invalid, on the grounds that the proper respondent should be or should have been the European Union rather than the Member State, or vice versa.
7. The Tribunal and the Appeal Tribunal shall be bound by the determination made pursuant to paragraph 3 or, if no such determination has been communicated to the claimant, on the basis of paragraph 4.
8. Nothing in this Agreement or in the applicable rules on dispute settlement shall prevent the exchange of all information relating to a dispute between the European Union and the Member State concerned.

*Article 17.29***Requirements for a submission of a claim**

1. Before submitting a claim, the claimant shall:
 - (a) withdraw any pending claim or proceedings before any domestic or international court or tribunal under domestic or international law concerning any measure alleged to constitute a breach of the provisions referred to in Article 17.25(1);
 - (b) provide a written waiver that it will not initiate any claim or proceedings before any domestic or international court or tribunal under domestic or international law concerning any measure alleged to constitute a breach of the provisions referred to in Article 17.25(1);

⁽⁴⁸⁾ For greater certainty, the EU Party shall make such determination solely based on the application of Regulation (EU) No 912/2014 of the European Parliament and of the Council of 23 July 2014 establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party (OJ EU L 257, 28.8.2014, p. 121).

- (c) provide a declaration that it will not enforce any award rendered pursuant to this Section before such award has become final pursuant to Article 17.56, and that it will not seek to appeal, review, set aside, annul, revise or initiate any other similar proceedings before any domestic or international court or tribunal with respect to an award issued pursuant to this Section.
2. The Tribunal shall dismiss a claim by a claimant who has submitted another claim to the Tribunal or to any other domestic or international court or tribunal concerning the same measure as that alleged to be inconsistent with the provisions referred to in Article 17.25(1), unless the claimant withdraws such pending claim. This paragraph shall not apply if the claimant submits a claim to a domestic court or tribunal seeking interim injunctive or declaratory relief.
3. For the purposes of this Article, the claimant includes the investor and, if the investor acted on behalf of the locally established enterprise, the locally established enterprise. In addition, for the purposes of subparagraph (a) of paragraph 1 and paragraph 2, the claimant also includes:
- (a) if the claim is submitted by an investor acting on its own behalf, all persons who, directly or indirectly, have an ownership interest in, or are controlled by, the investor and claim to have suffered the same loss or damage ⁽⁴⁹⁾ as the investor; or
- (b) if the claim is submitted by an investor acting on behalf of a locally established enterprise, all persons who, directly or indirectly, have an ownership interest in, or are controlled by, the locally established enterprise and claim to have suffered the same loss or damage ⁽⁵⁰⁾ as the locally established enterprise.

Article 17.30

Submission of a claim

1. If the dispute cannot be settled within six months of the submission of the request for consultations and, if applicable, at least three months have elapsed from the submission of the notice requesting a determination of the respondent pursuant to Article 17.28, the claimant may, provided that it satisfies the requirements set out in this Article and in Article 17.32, submit a claim to the Tribunal.
2. A claim may be submitted to the Tribunal under one of the following sets of rules on dispute settlement:
- (a) the ICSID Convention, provided that both the respondent and the State of the claimant are parties to the ICSID Convention;
- (b) the ICSID Additional Facility Rules, provided that either the respondent or the State of the claimant is a party to the ICSID Convention;
- (c) the UNCITRAL Arbitration Rules; or
- (d) any other rules agreed by the disputing parties on request of the claimant.
3. The rules on dispute settlement referred to in paragraph 2 shall apply subject to the rules set out in this Section, as supplemented by any rules adopted by the Sub-Committee.
4. All the claims identified by the claimant in the submission of its claim pursuant to this Article shall be based on information identified in its request for consultations pursuant to subparagraphs (c) and (d) of Article 17.27(4).
5. Claims submitted in the name of a class composed of a number of unidentified claimants, or submitted by a representative intending to conduct the proceedings acting in the interests of a number of identified or unidentified claimants that delegate all decisions relating to the proceedings on their behalf, shall not be admissible.

⁽⁴⁹⁾ For greater certainty, the same loss or damage means loss or damage flowing from the same measure which the person seeks to recover in the same capacity as the claimant (e.g. if the claimant sues as a shareholder, this provision would cover a related person also pursuing recovery as a shareholder).

⁽⁵⁰⁾ For greater certainty, the same loss or damage means loss or damage flowing from the same measure which the person seeks to recover in the same capacity as the claimant (e.g. if the claimant sues as a shareholder, this provision would cover a related person also pursuing recovery as a shareholder).

6. For greater certainty, a claimant may not submit a claim under this Section if its investment has been made through fraudulent misrepresentation, concealment, corruption or conduct amounting to an abuse of process.

Article 17.31

Counterclaims

1. The respondent may submit a counterclaim on the basis of a claimant's failure to comply with an international obligation applicable in the territories of both Parties ⁽⁵¹⁾, arising in connection with the factual basis of the claim ⁽⁵²⁾.
2. The counterclaim shall be submitted no later than in the respondent's counter-memorial or statement of defence, or at a later stage in the proceedings if the Tribunal decides that the delay was justified in the circumstances.
3. For greater certainty, a claimant's consent to the procedures under this Section as referred to in Article 17.32 includes the submission of counterclaims by the respondent.

Article 17.32

Consent

1. The respondent consents to the submission of a claim under this Section.
2. The consent under paragraph 1 and the submission of a claim under this Section shall be deemed to satisfy the requirements of:
 - (a) Article 25 of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the disputing parties; and
 - (b) Article II of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958 (the 'New York Convention') for an agreement in writing.
3. The claimant is deemed to give consent in accordance with the procedures provided for in this Section at the time of submitting a claim pursuant to Article 17.30.

Article 17.33

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 disputing party benefiting from it shall disclose to the other disputing party and to the division of the Tribunal or, if the division of the Tribunal is not established, to the President of the Tribunal, the name and address of the third-party funder, and if applicable, of the ultimate beneficial owner and corporate structure.
2. The disputing party shall make the disclosure under paragraph 1 at the time of submission of a claim, or, if the third-party funding is arranged after the submission of a claim, without delay, as soon as the arrangement is concluded or the donation or grant is made. The disputing party shall immediately notify the Tribunal of any changes to the information disclosed.
3. The Tribunal may order disclosure of further information regarding the funding arrangement and the third-party funder if it deems it necessary at any stage of the proceedings.

⁽⁵¹⁾ For greater certainty, the obligations referred to in this paragraph shall be based on legal commitments that the Parties have consented to.

⁽⁵²⁾ The Joint Council shall, on request of a Party, issue binding interpretations pursuant to Article 17.38(6) to clarify the scope of international obligations that are referred to in this paragraph.

Sub-Section 4
Investment Court System

Article 17.34

Tribunal of first instance

1. A Tribunal of first instance ("Tribunal") is hereby established to hear claims submitted pursuant to Article 17.30.
2. The Joint Committee shall, upon the entry into force of this Agreement, appoint nine Judges to the Tribunal. Three of the Judges shall be nationals of a Member State, three shall be nationals of Chile and three shall be nationals of third countries. In appointing the Judges, the Joint Committee is encouraged to consider the need to ensure diversity and a fair gender representation.
3. The Joint Committee may decide to increase or to decrease the number of Judges by multiples of three. Additional appointments shall be made according to the criteria provided for in paragraph 2.
4. The Judges shall possess the qualifications required in the countries of which they are nationals for appointment to judicial office, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements.
5. The Judges shall be appointed for a five-year term. However, the terms of five Judges, namely two nationals of a Member State, two nationals of Chile and one national of a third country, of the nine appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to eight years. Vacancies shall be filled as they arise. A Judge appointed to replace another Judge whose term of office has not expired shall hold office for the remainder of the predecessor's term. A Judge who is serving on a division of the Tribunal when their term expires may, with the authorisation of the President of the Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Judge of the Tribunal.
6. The Tribunal shall have a President and Vice-President responsible for organisational issues, with the assistance of a Secretariat. The President and the Vice-President shall be selected by lot for a two-year term from among the Judges who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the co-Chairs of the Joint Committee. The Vice-President shall act as the President when the President is unavailable.
7. The Tribunal shall hear cases in divisions consisting of three Judges, of whom one shall be a national of a Member State, one a national of Chile and one a national of a third country. The division shall be chaired by the Judge who is a national of a third country.
8. When a claim is submitted pursuant to Article 17.30, the President of the Tribunal shall establish the composition of the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of the divisions is random and unpredictable, while giving equal opportunity to all Judges to serve.
9. Notwithstanding paragraph 7 of this Article, the disputing parties may agree that a case be heard by a sole Judge who is a national of a third country, to be appointed by the President of the Tribunal. The respondent shall give sympathetic consideration to such a request from the claimant, in particular if the compensation or damages claimed are relatively low. Such a request should be made at the same time as the filing of the claim pursuant to Article 17.30.
10. The Tribunal shall establish its own working procedures, after discussing with the Parties.
11. The Judges shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities under this Part of this Agreement.
12. In order to ensure their availability, the Judges shall be paid a monthly retainer fee to be determined by decision of the Joint Committee. The President of the Tribunal and, if applicable, the Vice-President shall receive a fee equivalent to the fee determined pursuant to Article 17.35(11) for each day worked in fulfilling the functions of President of the Tribunal pursuant to this Section.

13. The retainer fee shall be paid by the Parties, taking into account their respective levels of development, into an account managed by the Secretariat of the International Centre for Settlement of Investment Disputes (ICSID). If one Party fails to pay the retainer fee, the other Party may elect to pay that fee itself. Any such arrears will remain payable, with appropriate interest. The Joint Committee shall regularly review the amount and repartition of those fees and may recommend relevant adjustments.

14. Unless the Joint Committee adopts a decision pursuant to paragraph 15 of this Article, the amount of the other fees and expenses of the Judges on a division of the Tribunal shall be determined pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 17.54(5), (6) and (7).

15. Upon a decision by the Joint Committee, the retainer fee and other fees and expenses may be permanently transformed into a regular salary. In that event, the Judges shall serve on a full-time basis and the Joint Committee shall establish their remuneration and related organisational matters. The Judges receiving a regular salary shall not be permitted to engage in any occupation, whether gainful or not, unless an exemption is exceptionally granted by the President of the Tribunal.

16. The Secretariat of the ICSID shall act as Secretariat for the Tribunal and provide it with appropriate support. The expenses for such support shall be allocated by the Tribunal among the disputing parties in accordance with Article 17.54 (5), (6) and (7).

Article 17.35

Appeal Tribunal

1. A permanent Appeal Tribunal is hereby established to hear appeals of the awards issued by the Tribunal.
2. The Joint Committee shall, upon the entry into force of this Agreement, appoint six Members to the Appeal Tribunal. Two of the Members shall be nationals of a Member State, two shall be nationals of Chile and two shall be nationals of third countries. In appointing the Members of the Appeal Tribunal, the Joint Committee is encouraged to consider the need to ensure diversity and a fair gender representation.
3. The Joint Committee may decide to increase the number of the Members of the Appeal Tribunal by multiples of three. Additional appointments shall be made in accordance with the criteria provided for in paragraph 2.
4. The Members of the Appeal Tribunal shall possess the qualifications required in the countries of which they are nationals for appointment to the highest judicial office, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements.
5. Members of the Appeal Tribunal shall be appointed for a five-year term. However, the terms of three of the six Members appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to eight years. Vacancies shall be filled as they arise. A Member appointed to replace another Member whose term of office has not expired shall hold office for the remainder of the predecessor's term. A Member who is serving on a division of the Appeal Tribunal when their term expires may, with the authorisation of the President of the Appeal Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Appeal Tribunal.
6. The Appeal Tribunal shall have a President and Vice-President responsible for organisational issues, with the assistance of a Secretariat. The President and the Vice-President shall be selected by lot for a two-year term from among the Members who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the co-Chairs of the Joint Committee. The Vice-President shall act as the President when the President is unavailable.
7. The Appeal Tribunal shall hear appeals in divisions consisting of three Members, of whom one shall be a national of a Member State, one a national of Chile and one a national of a third country. The division shall be chaired by the Member who is a national of a third country.

8. The President of the Appeal Tribunal shall establish the composition of the division hearing each appeal on a rotation basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to serve.
9. The Appeal Tribunal shall establish its own working procedures, after discussing with the Parties.
10. All Members serving on the Appeal Tribunal shall be available at all times and on short notice, and shall stay abreast of other dispute settlement activities under this Part of this Agreement.
11. In order to ensure their availability, the Members of the Appeal Tribunal shall be paid a monthly retainer fee and receive a fee for each day worked as a Member, to be determined by decision of the Joint Committee. The President of the Appeal Tribunal and, if applicable, the Vice-President, shall receive a fee for each day worked in fulfilling the functions of President of the Appeal Tribunal pursuant to this Section.
12. The remuneration of the Members of the Appeal Tribunal shall be paid by the Parties, taking into account their respective levels of development, into an account managed by the ICSID Secretariat. If one Party fails to pay the retainer fee, the other Party may elect to pay that fee itself. Any such arrears will remain payable, with appropriate interest. The Joint Committee shall regularly review the amount and repartition of those fees and may recommend relevant adjustments.
13. Upon a decision by the Joint Committee, the retainer fee and the fees for days worked may be permanently transformed into a regular salary. In that event, the Members of the Appeal Tribunal shall serve on a full-time basis and the Joint Committee shall establish their remuneration and related organisational matters. The Members of the Appeal Tribunal receiving a regular salary shall not be permitted to engage in any occupation, whether gainful or not, unless an exemption is exceptionally granted by the President of the Appeal Tribunal.
14. The ICSID Secretariat shall act as Secretariat for the Appeal Tribunal and provide it with appropriate support. The expenses for such support shall be allocated by the Appeal Tribunal among the disputing parties in accordance with Article 17.54(5), (6) and (7).

Article 17.36

Ethics

1. The Judges of the Tribunal and the Members of the Appeal Tribunal shall be chosen among persons whose independence is beyond doubt. They shall not be affiliated with any government ⁽³³⁾. They shall not take instructions from any government or organisation on matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. They shall comply with Annex 17-I. Upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new investment dispute under this Agreement or any other agreement or national legal system.
2. If a disputing party considers that a Judge of the Tribunal or a Member of the Appeal Tribunal does not meet the requirements set out in paragraph 1, it shall send a notice of challenge to the appointment to the President of the Tribunal or to the President of the Appeal Tribunal, as applicable. The notice of challenge shall be sent within 15 days of the date on which the composition of the division of the Tribunal or of the Appeal Tribunal has been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge if they could not have reasonably been known at the time of the composition of the division. The notice of challenge shall state the grounds for the challenge.
3. If, within 15 days of the date of the notice of challenge, the challenged Judge of the Tribunal or Member of the Appeal Tribunal has elected not to resign from that division, the President of the Tribunal or the President of the Appeal Tribunal, as applicable, shall, after hearing the disputing parties and after providing the Judge of the Tribunal or the Member of the Appeal Tribunal with an opportunity to submit observations, issue a decision within 45 days of receipt of the notice of challenge and immediately notify the disputing parties and the other Judges or Members of that division.

⁽³³⁾ For greater certainty, the fact that a person receives an income from the government, or was formerly employed by the government, or has a family relationship with a government official, does not in itself render that person ineligible.

4. Challenges to the appointment to a division of the President of the Tribunal shall be decided by the President of the Appeal Tribunal and vice versa.

5. Upon a reasoned recommendation from the President of the Appeal Tribunal ⁽⁵⁴⁾, the Parties, by decision of the Joint Committee, may decide to remove a Judge from the Tribunal or a Member from the Appeal Tribunal where their behaviour is inconsistent with the obligations set out in paragraph 1 of this Article and incompatible with their continued membership of the Tribunal or Appeal Tribunal. If the alleged behaviour in question is that of the President of the Appeal Tribunal, the President of the Tribunal shall submit the reasoned recommendation. Articles 17.34(2) and 17.35(2) shall apply *mutatis mutandis* for filling vacancies that may arise pursuant to this paragraph.

Article 17.37

Multilateral dispute settlement mechanisms

The Parties shall endeavour to cooperate for the establishment of a multilateral investment tribunal and appellate mechanism for the resolution of investment disputes. Upon the entry into force between the Parties of an international agreement providing for such a multilateral mechanism applicable to disputes under this Part of this Agreement, the relevant parts of this Section shall cease to apply. The Joint Committee may adopt a decision specifying any necessary transitional arrangements.

Sub-Section 5

Conduct of Proceedings

Article 17.38

Applicable law and rules of interpretation

1. The Tribunal shall determine whether the measure in respect of which the claimant is submitting a claim is inconsistent with any of the provisions referred to in Article 17.25(1).

2. In making such a determination, the Tribunal shall apply this Agreement and other rules of international law applicable between the Parties. It shall interpret this Agreement in accordance with customary rules of interpretation of public international law, as codified in the Vienna Convention on the Law of Treaties.

3. For greater certainty, in determining the consistency of a measure with the provisions referred to in Article 17.25(1), the Tribunal shall consider, when relevant, the law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to such law by the courts or authorities of that Party and any meaning given to such law by the Tribunal shall not be binding upon the courts or authorities of that Party.

4. For greater certainty, the Tribunal shall not have jurisdiction to determine the legality of a measure alleged to constitute a breach of the provisions referred to in Article 17.25(1) under the law of the disputing party.

5. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 17.17, the burden of proof relating to that claim lies on the investor, in line with the general principles of international law applicable to the dispute.

6. Where serious concerns arise as regards matters of interpretation relating to Section C ⁽⁵⁵⁾ or D, the Joint Council may adopt decisions interpreting this Agreement. Any such interpretation shall be binding on the Tribunal and the Appeal Tribunal. The Joint Council may decide that an interpretation shall have binding effect from a specific date.

⁽⁵⁴⁾ This recommendation is without prejudice to the ability of the Joint Committee to draw the attention of the President of the Appeal Tribunal to the behaviour of a Judge of the Tribunal or a Member of the Appeal Tribunal that may be inconsistent with the obligations set out in paragraph 1 and incompatible with their continued membership of the Tribunal or Appeal Tribunal.

⁽⁵⁵⁾ As referred to in Article 17.25.

*Article 17.39***Interpretation of annexes**

1. Following a request for consultations pursuant to Article 17.27(3), the respondent may request, in writing, the Sub-Committee to determine whether, and, if so, to what extent, the measure which is the subject of the request for consultations falls within the scope of a non-conforming measure set out in Annex 17-A or 17-B.
2. The request to the Sub-Committee shall be submitted as soon as possible after the reception of the request for consultations. Upon the request to the Sub-Committee, the periods of time referred to in Articles 17.27(5), 17.27(8), 17.54(10) and 17.55(5) shall be suspended.
3. The Sub-Committee shall, in good faith, attempt to make the requested determination. Any such determination shall be transmitted promptly to the disputing parties.
4. If the Sub-Committee has not made a determination within three months of the request of the matter, the suspension of those periods of time ceases to apply.

*Article 17.40***Other claims**

If claims are brought pursuant to this Section, to Chapter 38 or to another international agreement concerning the same alleged breach of the provisions referred to in Article 17.25(1), and there is a potential for overlapping compensation, or the claim pursuant to the other international agreement could have a significant impact on the resolution of the claim brought pursuant to this Section, the Tribunal shall, if relevant, after hearing the disputing parties, take into account proceedings pursuant to Chapter 38 or the other international agreement in its decision, order or award. To that end, it may also stay its proceedings. In acting pursuant to this Article, the Tribunal shall respect Article 17.54(10).

*Article 17.41***Anti-circumvention**

For greater certainty, the Tribunal shall decline jurisdiction if the dispute had arisen, or was reasonably foreseeable, at the time when the claimant acquired ownership or control of the investment subject to the dispute or engaged in a corporate restructuring, provided that the Tribunal determines, on the basis of the facts of the case, that the claimant acquired ownership or control of the investment or engaged in the corporate restructuring for the main purpose of submitting the claim under this Section. The possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the Tribunal.

*Article 17.42***Claims manifestly without legal merit**

1. The respondent may, no later than 30 days after the constitution of the division of the Tribunal pursuant to Article 17.34(7), and in any event before the first session of the division of the Tribunal, or no later than 30 days after the respondent became aware of the facts on which the objection is based, file an objection that a claim is manifestly without legal merit.
2. The respondent shall specify as precisely as possible the basis for the objection.
3. The Tribunal, after giving the disputing parties an opportunity to present their observations on the objection, shall, at the first session of the division of the Tribunal or promptly thereafter, issue a decision or provisional award on the objection, stating the grounds therefor. In the event that the objection is received after the first session of the division of the Tribunal, the Tribunal shall issue such decision or provisional award as soon as possible, and in any event no later than 120 days after the objection was filed. In deciding on the objection, the Tribunal shall assume the facts as alleged by the claimant to be true and may also consider any relevant facts which are not in dispute.

4. The decision of the Tribunal shall be without prejudice to the right of a disputing party to object, pursuant to Article 17.43 or in the course of the proceedings, to the legal merits of a claim and without prejudice to the Tribunal's authority to address other objections as a preliminary question.

Article 17.43

Claims unfounded as a matter of law

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at any appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that a claim, or any part thereof, submitted under this Section, as a matter of law is not a claim for which an award in favour of the claimant may be made under Article 17.54, even if the facts as alleged by the claimant were assumed to be true. The Tribunal may also consider any relevant facts which are not in dispute.

2. An objection pursuant to paragraph 1 of this Article shall be submitted to the Tribunal as soon as possible after the division of the Tribunal is constituted, and in any event no later than the date the Tribunal sets for the respondent to submit its counter-memorial or statement of defence. An objection pursuant to paragraph 1 may not be submitted as long as proceedings under Article 17.42 are pending, unless the Tribunal, after having taken due account of the circumstances of the case, grants leave to file an objection under this Article.

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

Article 17.44

Transparency

1. The UNCITRAL Transparency Rules shall apply to disputes under this Section *mutatis mutandis*, in addition to the following rules.

2. The following documents shall be included in the list of documents referred to in Article 3(1) of the UNCITRAL Transparency Rules: the agreement to have recourse to mediation referred to in Article 17.26 of this Agreement, the request for consultations referred to in Article 17.27 of this Agreement, the notice requesting a determination of the respondent, and the determination of the respondent, referred to in Article 17.28 of this Agreement, the notice of challenge, and the decision on the challenge, referred to in Article 17.36 of this Agreement, and the consolidation request referred to in Article 17.53 of this Agreement.

3. For greater certainty, exhibits may be made available to the public in accordance with Article 3(3) of the UNCITRAL Transparency Rules.

4. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, the EU Party or Chile, as the case may be, shall make publicly available in a timely manner and prior to the constitution of the division, the request for consultations referred to in Article 17.27 of this Agreement, the notice requesting a determination of the respondent, and the determination of the respondent, referred to in Article 17.28 of this Agreement, subject to the redaction of confidential or protected information⁽⁵⁶⁾. Such documents may be made publicly available by communication to the repository referred to in the UNCITRAL Transparency Rules.

5. Any disputing party that intends to use in a hearing information designated as confidential or protected shall inform the Tribunal thereof.

6. Any disputing party claiming that certain information constitutes confidential or protected information shall clearly designate it as such when it is submitted to the Tribunal.

7. For greater certainty, nothing in this Section requires the respondent to withhold from the public any information required to be disclosed by its law.

⁽⁵⁶⁾ For greater certainty, confidential or protected information shall be understood as defined in and determined pursuant to Article 7 of the UNCITRAL Transparency Rules.

*Article 17.45***Interim measures**

The Tribunal may order interim measures 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 possession or control of a disputing party, or to protect the Tribunal's jurisdiction. The Tribunal shall not order the seizure of assets or prevent the application of the treatment alleged to constitute a breach.

*Article 17.46***Discontinuance**

If, following the submission of a claim under this Section, the claimant fails to take any steps in the proceedings for 180 consecutive days after that submission, or for such period 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 having given 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. The claimant may not subsequently submit a claim on the same matter.

*Article 17.47***Security for costs**

1. For greater certainty, on request of the respondent, the Tribunal may order the claimant to provide 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.
2. If the security for costs is not provided in full within 30 days of the Tribunal's order or within any other time period set by the Tribunal, the Tribunal shall inform the disputing parties thereof and may order the suspension or termination of the proceedings.
3. The Tribunal shall consider all evidence provided in relation to the circumstances referred to in paragraph 1, including the existence of third-party funding.

*Article 17.48***The non-disputing Party**

1. The respondent shall, no later than 30 days after receipt of or promptly after any dispute concerning confidential or protected information has been resolved, deliver to the non-disputing Party:
 - (a) the request for consultations referred to in Article 17.27, the notice requesting a determination referred to in Article 17.28, the claim referred to in Article 17.30 and any other documents that are appended to such documents;
 - (b) on request of the non-disputing Party:
 - (i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;
 - (ii) written submissions made to the Tribunal by a third person;
 - (iii) minutes or transcripts of hearings of the Tribunal, if available; and
 - (iv) orders, awards and decisions of the Tribunal; and
 - (c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been submitted to the Tribunal.
2. The non-disputing Party has the right to attend a hearing held under this Section.

3. The Tribunal shall accept or, after consultation with the disputing parties, may invite written or oral submissions on issues relating to the interpretation of this Agreement from the non-disputing Party. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the non-disputing Party.

Article 17.49

Intervention by third parties

1. The Tribunal shall allow any person which can establish a direct and present interest in the specific circumstances of the dispute ('the intervener') to intervene as a third party. The intervention shall be limited to supporting, in whole or in part, the legal position of one of the disputing parties.

2. An application to intervene must be lodged within 90 days of the publication of submission of the claim pursuant to Article 17.30. The Tribunal shall rule on the application within 90 days of the date when that application was lodged, after giving the disputing parties an opportunity to submit their observations.

3. If the application to intervene is granted, the intervener shall receive a copy of every procedural order served on the disputing parties, except, if applicable, confidential or protected information. The intervener may submit a statement in intervention within a time period set by the Tribunal after the communication of the procedural orders. The disputing parties shall have an opportunity to reply to the statement in intervention. The intervener shall be permitted to attend the hearings held under this Section and to make an oral statement.

4. In the event of an appeal, the intervener shall be entitled to intervene before the Appeal Tribunal. Paragraph 3 shall apply *mutatis mutandis*.

5. The right of intervention conferred by this Article is without prejudice to the possibility for the Tribunal to accept *amicus curiae* briefs from third persons that have a significant interest in the proceedings, in accordance with Article 4 of the UNCITRAL Transparency Rules.

6. For greater certainty, the fact that a person is a creditor of the claimant shall not be considered in itself sufficient to establish that that person has a direct and present interest in the specific circumstances of the dispute.

Article 17.50

Expert reports

Without prejudice to the appointment of other kinds of experts, when authorised by the applicable rules referred to in Article 17.30(2), the Tribunal, on request of a disputing party or on its own initiative after consulting the disputing parties, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other matters raised by a disputing party in the proceedings.

Article 17.51

Indemnification and other compensation

The Tribunal shall not accept as a valid defence or similar claim the fact that the claimant or the locally established enterprise has received, or will receive, indemnification or other compensation pursuant to an insurance or guarantee contract in respect of all or part of the compensation sought in a dispute initiated pursuant to this Section.

Article 17.52

Role of the Parties

1. A Party shall not bring an international claim in respect of a dispute submitted pursuant to Article 17.30, unless the other Party has failed to abide by and comply with the award rendered in such dispute. This shall not exclude the possibility of dispute settlement under Chapter 38 in respect of a measure of general application, even if that measure is alleged to have

violated this Agreement as regards a specific investment in respect of which a dispute has been initiated pursuant to Article 17.30. This paragraph is without prejudice to Article 17.48.

2. Paragraph 1 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 17.53

Consolidation

1. If two or more claims that have been submitted separately under this Section have a question of law or fact in common and arise from the same events and circumstances, the respondent may submit to the President of the Tribunal a request for the consolidated consideration of all such claims or parts thereof. The request shall stipulate:

- (a) the names and addresses of the disputing parties to the claims sought to be consolidated;

- (b) the scope of the consolidation sought; and

- (c) the grounds for the request sought.

2. The respondent shall also deliver the request to each claimant in the claims which the respondent seeks to consolidate.

3. If all disputing parties to the claims sought to be consolidated agree on the consolidated consideration of the claims, those disputing parties shall submit a joint request to the President of the Tribunal pursuant to paragraph 1. Unless the President of the Tribunal determines that the request is manifestly unfounded, the President of the Tribunal shall, within 30 days of receiving such request, constitute a new division (the 'consolidating division') of the Tribunal pursuant to Article 17.34, which shall have jurisdiction over some or all of the claims, in whole or in part, which are subject to that request.

4. If the disputing parties referred to in paragraph 3 of this Article have not reached an agreement on consolidation within 30 days of the receipt of the request for consolidation referred to in paragraph 1 of this Article by the last claimant to receive it, the President of the Tribunal shall constitute a consolidating division of the Tribunal pursuant to Article 17.34. The consolidating division shall assume jurisdiction over some or all of the claims, in whole or in part, if, after considering the views of the disputing parties, it is satisfied that the claims submitted pursuant to Article 17.30 have a question of law or fact in common and arise from the same events or circumstances, and that consolidation would best serve the interests of fair and efficient resolution of the claims, including the interest of consistency of awards.

5. If the claimants have not agreed on the dispute settlement rules provided for in the list set out in Article 17.30(2) within 30 days of the date of receipt of the request for consolidated consideration by the last claimant to receive it, the consolidated consideration of the claims shall be submitted to the consolidating division of the Tribunal under application of the UNCITRAL Arbitration Rules subject to the rules set out in this Section.

6. Divisions of the Tribunal constituted pursuant to Article 17.34 shall cede jurisdiction in relation to the claims, or parts thereof, over which the consolidating division has jurisdiction, and the proceedings of such divisions shall be suspended. The award of the consolidating division of the Tribunal in relation to the parts of the claims over which it has assumed jurisdiction shall be binding on the divisions which have jurisdiction over the remainder of the claims as of the date on which the award becomes final pursuant to Article 17.56.

7. A claimant whose claim is subject to consolidation may withdraw its claim, or the part thereof subject to consolidation, from the dispute settlement proceedings under this Article, and, in that event, such claim or part thereof may not be resubmitted pursuant to Article 17.30.

8. At the request of the respondent, the consolidating division of the Tribunal, on the same basis and with the same effect as in paragraphs 3 to 6, may decide whether it shall have jurisdiction over all or part of a claim falling within the scope of paragraph 1 which is submitted after the initiation of the consolidation proceedings.

9. On request of one of the claimants, the consolidating division of the Tribunal may take measures in order to preserve the confidentiality of confidential or protected information of that claimant vis-à-vis other claimants. Such measures may include the submission of redacted versions of documents containing confidential or protected information to the other claimants, or arrangements to hold parts of the hearing in private.

*Article 17.54***Provisional award**

1. If the Tribunal concludes that the respondent has breached any of the provisions referred to in Article 17.25(1) as alleged by the claimant, the Tribunal may, on the basis of a request from the claimant and after hearing the disputing parties, award 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, determined in accordance with Article 17.19.

Where the claim was submitted on behalf of a locally established enterprise, any award under this paragraph shall provide that:

- (a) any monetary damages and interest shall be paid to the locally established enterprise;
- (b) any restitution of property shall be made to the locally established enterprise.

For greater certainty, the Tribunal may not award remedies other than those referred to in the first subparagraph, nor may order the repeal, cessation or modification of the measure concerned.

2. Monetary damages shall not be greater than the loss suffered by the claimant or, if the claimant acted on behalf of the locally established enterprise, by the locally established enterprise as a result of the breach of the relevant provisions referred to in Article 17.25(1), reduced by any prior damages or compensation already provided by the Party concerned. The Tribunal shall establish such monetary damages on the basis of the submissions of the disputing parties, and shall consider, if applicable, contributory fault, whether deliberate or negligent, or failure to mitigate damages.

3. For greater certainty, if an investor of a Party submits a claim pursuant to Article 17.30, it may recover only loss or damage that it has incurred in its capacity as an investor of a Party.

4. The Tribunal may not award punitive damages.

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

6. The Tribunal shall also allocate other reasonable costs, including the reasonable costs of legal representation and assistance, to be borne by the unsuccessful disputing party when it dismisses a claim and renders an award pursuant to Article 17.42 or 17.43. In other circumstances, the Tribunal shall determine the allocation of other reasonable costs, including the reasonable costs of legal representation and assistance among the disputing parties, taking into consideration the outcome of the proceedings and other relevant circumstances, such as the conduct of the disputing parties.

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

8. The Appeal Tribunal shall establish and apportion costs in accordance with this Article.

9. No later than one year after the date of entry into force of this Agreement, the Joint Committee shall adopt supplementary rules on fees for the purpose of determining the maximum amount of costs of legal representation and assistance that may be borne by specific categories of unsuccessful disputing parties, taking into account their financial resources.

10. The Tribunal shall issue a provisional award within 24 months of the date of submission of the claim. If that deadline cannot be respected, the Tribunal shall adopt a decision to that effect, which shall specify to the disputing parties the reasons for such delay and indicate an estimated date for the issuance of the provisional award.

*Article 17.55***Appeal procedure**

1. Either disputing party may appeal a provisional award before the Appeal Tribunal within 90 days of its issuance. The grounds for appeal are:
 - (a) that the Tribunal has erred in the interpretation or application of the applicable law;
 - (b) that the Tribunal has manifestly erred in the appreciation of the facts, including, if relevant, the appreciation of the law of a Party; or
 - (c) those provided for in Article 52 of the ICSID Convention, in so far as they are not covered by subparagraph (a) or (b) of this paragraph.
2. The Appeal Tribunal shall reject the appeal if it finds that the appeal is unfounded. It may also reject the appeal on an expedited basis if it is clear that the appeal is manifestly unfounded.
3. If the Appeal Tribunal finds that the appeal is well founded, the decision of the Appeal Tribunal shall modify or reverse the legal findings and conclusions in the provisional award in whole or part. Its decision shall specify precisely how it has modified or reversed the relevant findings and conclusions of the Tribunal.
4. If the facts established by the Tribunal so permit, the Appeal Tribunal shall apply its own legal findings and conclusions to such facts and render a final decision. If that is not possible, it shall refer the matter back to the Tribunal.
5. As a general rule, the appeal proceedings shall not exceed 180 days from the date of formal notification of a disputing party's decision to appeal until the date of issuance of the decision of the Appeal Tribunal. In the event that the Appeal Tribunal considers that it cannot issue its decision within that 180-day period, it shall inform the disputing parties in writing of the reasons for the delay together with an estimate of the period within which it shall issue its decision. The proceedings shall not, in any case, exceed 270 days.
6. A disputing party lodging an appeal shall provide security for the costs of appeal.
7. Articles 17.33, 17.44, 17.45, 17.46, 17.48 and, if relevant, other provisions of this Section, shall apply *mutatis mutandis* in respect of the appeal procedure.

*Article 17.56***Final award**

1. A provisional award issued pursuant to this Section shall become final if neither disputing party has appealed the provisional award pursuant to Article 17.55.
2. If a provisional award has been appealed and the Appeal Tribunal has rejected the appeal pursuant to Article 17.55, the provisional award shall become final on the date of rejection of the appeal by the Appeal Tribunal.
3. If a provisional award has been appealed and the Appeal Tribunal has rendered a final decision, the provisional award as modified or reversed by the Appeal Tribunal shall become final on the date of issuance of the final decision of the Appeal Tribunal.
4. If a provisional award has been appealed and the Appeal Tribunal has modified or reversed the legal findings and conclusions of the provisional award and referred the matter back to the Tribunal, the Tribunal shall, after hearing the disputing parties, if appropriate, revise its provisional award to reflect the findings and conclusions of the Appeal Tribunal. The Tribunal shall be bound by the findings of the Appeal Tribunal. The Tribunal shall seek to issue its revised award within 90 days of receiving the decision of the Appeal Tribunal. The revised provisional award shall become final 90 days after the date of its issuance.

5. The final award shall include any final decision of the Appeal Tribunal rendered pursuant to Article 17.55.

Article 17.57

Enforcement of awards

1. An award rendered pursuant to this Section shall not be enforceable until it has become final pursuant to Article 17.56. Final awards issued pursuant to this Section shall be binding upon the disputing parties and shall not be subject to appeal, review, setting aside, annulment or any other remedy ⁽⁵⁷⁾.
2. Each Party shall recognise an award rendered pursuant to this Section as binding and enforce the pecuniary obligation within its territory as if it were a final judgement of a domestic tribunal or court of that Party.
3. The execution of the award shall be governed by the laws and regulations concerning the execution of judgments or awards in force where such execution is sought.
4. For greater certainty, Article 41.10 shall not prevent the recognition, execution and enforcement of awards rendered pursuant to this Section.
5. For the purposes of Article 1 of the New York Convention, final awards issued pursuant to this Section are arbitral awards relating to claims that are considered to arise from a commercial relationship or transaction.
6. For greater certainty, and subject to paragraph 1 of this Article, if a claim has been submitted to dispute settlement pursuant to subparagraph (a) of Article 17.30(2) of this Agreement, a final award issued pursuant to this Section shall qualify as an award under Section 6 of the ICSID Convention.

CHAPTER 18

CROSS-BORDER TRADE IN SERVICES

Article 18.1

Scope

1. This Chapter applies to measures of a Party affecting cross-border trade in services supplied by service suppliers of the other Party. Such measures include measures that affect:
 - (a) the production, distribution, marketing, sale and delivery of a service;
 - (b) the purchase or use of, or payment for, a service;
 - (c) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally, including distribution, transport and telecommunications networks; and
 - (d) the provision of a bond or other form of financial security, as a condition for the supply of a service.
2. This Chapter does not apply to:
 - (a) financial services, as defined in Article 25.2;
 - (b) audio-visual services;

⁽⁵⁷⁾ For greater certainty, this does not prevent a disputing party from requesting the Tribunal to revise an award or to interpret an award in accordance with the applicable rules on dispute settlement where this possibility is available under the applicable rules.