

CHAPTER 12

INVESTMENT

SECTION A

Article 1

Objectives

The objectives of this Chapter are to encourage and promote the flow of investment between the Parties on a mutually advantageous basis, under conditions of transparency within a stable framework of rules to ensure the protection and security of investments by investors of the other Party within each Party, while recognising the rights of Parties to regulate and the responsibility of governments to protect public health, safety and the environment.

Article 2

Definitions

For the purposes of this Chapter:

appointing authority means the Secretary General of the Permanent Court of Arbitration or any person as agreed by the disputing parties;

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

disputing investor means an investor of a Party that makes a claim against the other Party on its own behalf under Section B, and where relevant includes an investor of a Party that makes a claim on behalf of an enterprise of the disputing Party that the investor owns or controls directly or indirectly;

disputing parties means the disputing investor and the disputing Party;

disputing party means either the disputing investor or the disputing Party;

disputing Party means a Party against which a claim is made under Section B;

freely usable currency means “freely usable currency” as determined by the International Monetary Fund under its *Articles of Agreement* and amendments thereto, or any currency that is used to make international payments and is widely traded in the international principal exchange markets;

government procurement means any measure relating to the procurement by governmental agencies of goods or services or a combination of both for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale;

investment means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include, but are not limited to, the following:

- (a) an enterprise;
- (b) shares, stocks or other forms of equity participation in an enterprise, and rights derived therefrom;
- (c) bonds, including government issued bonds, debentures, loans and other forms of debt, and rights derived therefrom⁴;
- (d) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
- (e) claims to money or to any contractual performance related to a business and having an economic value⁵;
- (f) intellectual property rights and goodwill;
- (g) rights conferred pursuant to law or contract such as concessions, licences, authorisations, and permits⁶; and
- (h) other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

⁴ Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

⁵ For greater certainty, investment does not mean claims to money that arise solely from:

- a. commercial contracts for sale of goods or services; or
- b. the extension of credit in connection with such commercial contracts.

⁶ The term “investment” does not include an order or judgment entered in a judicial or administrative action.

investor of a Party means:

- (a) a Party;
- (b) an enterprise of a Party; or
- (c) a natural person of a Party;

that attempts to make, is making or has made an investment in the other Party;

measure adopted or maintained by a Party means any of those measures taken by a Party that are specified in paragraph 3(a) of Article 1 of GATS.

non-disputing Party means the Party of the disputing investor; and

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

Article 3

Scope

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

- (a) investors of the other Party;
- (b) covered investments; and

- (c) with respect to Article 7 (Performance Requirements), all investments in the Party.
2. For greater certainty, the provisions of this Chapter do not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.
 3. This Chapter does not apply to services supplied in the exercise of governmental authority, as defined in Article 3 (Definitions) of Chapter 13 (Cross-Border Trade in Services).

Article 4

Relation to Other Chapters

1. In the event of an inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to cross-border supply of the service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

Article 5
National Treatment

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

Article 6
Most-Favoured-Nation Treatment

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

3. For greater certainty, the obligation in this Article does not apply to dispute resolution procedures other than those set out in this Agreement.
4. Notwithstanding paragraphs 1 and 2, the Parties reserve the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.
5. For greater certainty, paragraph 4 includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.
6. The Parties reserve the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement involving:
 - (a) fisheries;
 - (b) maritime matters; or
 - (c) aviation.

Article 7

Performance Requirements

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party,

impose or enforce any requirement, or enforce any commitment or undertaking:⁷

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

2. Neither Party may condition the receipt or continued receipt of an advantage in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party on compliance with any of the following requirements:

⁷ For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “commitment or undertaking” for the purposes of paragraph 1.

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

3.

- (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its jurisdiction of an investor of a Party on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its jurisdiction.
- (b) Paragraph 1(f) does not apply:
 - (i) when a Party authorises use of an intellectual property right in accordance with Article 31⁸ of the TRIPS Agreement or any relevant amendment thereto, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

⁸ The reference to “Article 31” includes footnote 7 to Article 31.

- (ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.⁹
 - (c) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
 - (d) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to government procurement.
 - (e) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariff treatment or preferential quotas.
4. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

Article 8

Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

⁹ The Parties recognise that a patent does not necessarily confer market power.

2. Neither Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the Party.
3. Neither Party may require that less than a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the Party, where that requirement would materially impair the ability of the investor to exercise control over its investment.

Article 9

Non-Conforming Measures

1. Articles 5 (National Treatment), 6 (Most-Favoured-Nation Treatment), 7 (Performance Requirements) and 8 (Senior Management and Boards of Directors) shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party:
 - (i) as set out by that Party in its Schedule to Annex 4:I; or
 - (ii) maintained by a Party at a regional or local level of government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately

before the amendment, with Articles 5 (National Treatment), 6 (Most-Favoured-Nation Treatment), 7 (Performance Requirements) and 8 (Senior Management and Boards of Directors).

2. Articles 5 (National Treatment), 6 (Most-Favoured-Nation Treatment), 7 (Performance Requirements) and 8 (Senior Management and Boards of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex 4:II.
3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex 4:II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Articles 5 (National Treatment) and 6 (Most-Favoured-Nation Treatment) do not apply to any measure that is an exception to, or derogation from, a Party's obligations under the TRIPS Agreement.
5. Articles 5 (National Treatment), 6 (Most-Favoured-Nation Treatment) and 8 (Senior Management and Boards of Directors) do not apply to:
 - (a) government procurement; or
 - (b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

Article 10
Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment, including fair and equitable treatment and full protection and security.
2. The obligation in paragraph 1 to provide:
 - (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process;
 - (b) “full protection and security” requires each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of covered investments.
3. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment, and do not create additional substantive rights.
4. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 11

Treatment in Case of Armed Conflict or Civil Strife

1. Notwithstanding paragraph 5 of Article 9 (Non-conforming Measures), each Party shall accord to investors of the other Party and to investments of an investor of the other Party with respect to measures it adopts or maintains relating to losses suffered by investments in its jurisdiction owing to armed conflict or civil strife, treatment no less favourable than that it accords, in like circumstances, to:

(a) its own investors and their investments; and

(b) investors of any non-Party and their investments.

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

(a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation;

the latter Party shall provide the investor with restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with paragraphs 2 to 4 of Article 13 (Expropriation), *mutatis mutandis*.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants provided by a Party, including government-supported loans,

guarantees, and insurance that would be inconsistent with Article 5 (National Treatment) but for paragraph 5(b) of Article 9 (Non-conforming Measures).

Article 12

Transfers

1. Each Party shall permit all transfers into and out of its jurisdiction relating to a covered investment to be made freely and without delay in a freely usable currency at the market rate of exchange at the time of transfer. Such transfers include:
 - (a) contributions to capital, including the initial contribution;
 - (b) profits, dividends, interest, capital gains, royalty payments, management fees, and technical assistance and other fees;
 - (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
 - (d) payments made under a contract, including payments made pursuant to a loan agreement;
 - (e) payments made pursuant to Article 11 (Treatment in Case of Armed Conflict or Civil Strife) and Article 13 (Expropriation);
 - (f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration, or the agreement of the parties to the dispute; and

- (g) earnings and other remuneration of personnel engaged from abroad in connection with that investment.
2. Notwithstanding paragraph 1, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:
- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
 - (b) issuing, trading, or dealing in securities, futures, or derivatives;
 - (c) criminal or penal offences;
 - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
 - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
 - (f) social security, public retirement, or compulsory savings schemes.
3. Neither Party may require its investors to transfer, or penalise its investors that fail to transfer, the income, earnings, profits, or other amounts derived from, or attributable to, investments in the other Party.

Article 13
Expropriation¹⁰

1. Neither Party shall nationalise, expropriate or subject to measures equivalent to nationalisation or expropriation a covered investment (“expropriation”), except:
 - (a) for a public purpose;
 - (b) in a non-discriminatory manner;
 - (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 to 4; and
 - (d) in accordance with due process of law.
2. Compensation shall:
 - (a) be paid without delay;
 - (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“the date of expropriation”);
 - (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
 - (d) be fully realisable and freely transferable.

¹⁰ This Article shall be interpreted in accordance with Annex 5 (Expropriation).

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:
 - (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus
 - (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 10 (Intellectual Property).

Article 14

Subrogation

1. If a Party (or any agency, institution, statutory body or corporation designated by it) makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity against non-commercial risks it has granted in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.
2. Where a Party (or any agency, institution, statutory body or corporation designated by it) has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party (or any agency, institution, statutory body or corporation designated by it) making the payment, pursue those rights and claims against the other Party.

Article 15

Special Formalities

1. Nothing in Article 5 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as residency requirements for registration or a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 5 (National Treatment) and 6 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or investments of an investor of the other Party. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 16

Investment and Environment

Nothing in this Chapter shall be construed to prevent either Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity is undertaken in a manner sensitive to environmental concerns.

Article 17

Denial of Benefits

Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to:

- (a) investors of the other Party where the investment is being made by an enterprise that is owned or controlled by persons of a non-Party

and the enterprise has no substantive business operations in the other Party; or

- (b) investors of the other Party where the investment is being made by an enterprise that is owned or controlled by persons of the denying Party and the enterprise has no substantive business operations in the other Party.

SECTION B: INVESTOR-PARTY DISPUTE SETTLEMENT

Article 18

Scope

For the purposes of this Chapter, an investment dispute is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation under Section A directly concerning a covered investment of the investor of that other Party.

Article 19

Consultation and Negotiation

Any investment dispute referred to in Article 18 (Scope) shall, as far as possible, be settled amicably through consultations and negotiations between the investor and the other Party, which may include the use of non-binding third-party procedures, where this is acceptable to both disputing parties. A request for consultations and negotiations shall be made in writing and shall state the nature of the dispute.

Article 20
Consent to Submission of a Claim

1. If the dispute cannot be settled as provided for in Article 19 (Consultation and Negotiation) within six months from the date of request for consultations and negotiations then, unless the disputing parties agree otherwise, the dispute may be submitted to:

(a) arbitration under the UNCITRAL arbitration rules; or

(b) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules,

provided that the disputing investor shall, at least three months' prior to submitting the claim to arbitration under subparagraph (a) or (b), provide the disputing Party with written notice of its intention to submit a claim ("notice of intent"), and further provided that, prior to giving such notice, the disputing investor obtains the disputing Party's written consent to arbitration.

2. The notice of intent shall specify:

(a) the name and the address of the disputing investor and, where relevant, the enterprise;

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

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

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

3. A disputing Party may, as a condition of its consent under paragraph 1 of this Article, require the disputing investor and, where relevant, the enterprise, to provide a written waiver of its right to initiate or continue before any court or administrative tribunal under the law of either Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach in the dispute referred to in paragraph 1 of this Article.
4. The arbitration rules applicable under paragraph 1 of this Article, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Section.

Article 21

Admissibility of Claims and Preliminary Objections

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed between the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under Section A causing loss or damage to the disputing investor or enterprise and the date of submission of the claim.
2. A disputing Party may, no later than 30 days after the constitution of the tribunal, file an objection that a claim is manifestly without legal merit or is otherwise outside the jurisdiction or competence of the tribunal. The disputing Party shall specify as precisely as possible the basis for the objection.

3. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without legal merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render a decision to that effect.
4. The tribunal may, if warranted, award the prevailing disputing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without legal merit, and shall provide the disputing parties a reasonable opportunity to comment.
5. The disputing Party does not waive any objection as to jurisdiction or competence, or any argument on the merits merely because the disputing Party did or did not raise an objection under this Article.

Article 22

Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the arbitral tribunal shall be composed of three arbitrators.
2. Each disputing party shall appoint one arbitrator and the disputing parties shall agree upon a third arbitrator, who shall be the presiding arbitrator of the arbitral tribunal.
3. If an arbitral tribunal has not been established within 75 days from the date on which the claim was submitted to arbitration, the appointing authority, upon request of either disputing party, shall appoint, at its

own discretion, the arbitrator or arbitrators not yet appointed. The appointing authority shall not appoint a natural person of either Party as the presiding arbitrator unless the disputing parties agree otherwise.

Article 23

Place of Arbitration

Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in either Party or a state that is a party to the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.

Article 24

Interpretation of Agreement

1. The tribunal shall, on request of the disputing Party, request a joint interpretation of the Parties of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of delivery of the request.
2. A joint decision issued under paragraph 1 of this Article by the Parties shall be binding on the tribunal, and any award must be consistent with that joint decision. If the Parties fail to issue such a decision within 60 days, the tribunal shall decide the issue on its own account.
3. The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

Article 25
***Amicus Curiae* Submissions**

The tribunal shall have the authority to accept and consider written *amicus curiae* submissions that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party. The tribunal shall provide the disputing parties with an opportunity to respond to such written submissions.

Article 26
Consolidation of Claims

Where two or more investors notify an intention to submit claims to arbitration which have a question of law or fact in common and arise out of the same events or circumstances, and the disputing Party's written consent has been provided in each case, the disputing parties shall consult with a view to harmonising the procedures to apply, where all disputing parties agree to the consolidation of the claims, including with respect to the forum chosen to hear the dispute.

Article 27
Transparency of Arbitral Proceedings

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

(a) the notice of intent;

(b) the notice of arbitration;

(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to paragraph 3 of Article 24 (Interpretation of the Agreement) and Article 25 (*Amicus Curiae* Submissions); and

(d) orders, awards, and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure which may include closing the hearing for the duration of any discussion of protected information.
3. Nothing in this Section requires a disputing Party to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 2 (Security Exceptions) of Chapter 24 (General Exceptions) or Article 2 (Disclosure of Information) of Chapter 23 (General Provisions).
4. Any information specifically designated as protected information that is submitted to the tribunal or the disputing parties shall be protected from disclosure.
5. For greater certainty, a disputing party may disclose to persons directly connected with the arbitral proceedings such protected information as it considers necessary for the preparation of its case, but it shall require that such protected information is protected.

6. Nothing in this Section requires a disputing Party to withhold from the public information required to be disclosed by its laws.

Article 28

Awards

1. Where a tribunal makes a final award against a disputing Party, the tribunal may award, separately or in combination, only:
 - (a) monetary damages and any applicable interest; and/or
 - (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.
2. A tribunal may also award costs and fees in accordance with this Section and the applicable arbitration rules.
3. A tribunal may not award punitive damages.
4. An award made by a tribunal shall be final and binding on the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.
5. A disputing party may not seek enforcement of a final award until all applicable review procedures have been completed.
6. Subject to paragraph 5 of this Article, a disputing party shall abide by and comply with an award without delay.

7. Each Party shall ensure that an award can be recognised and enforced in its jurisdiction.