

CHAPTER TEN

INVESTMENT

Section A

Article 10.1 Definitions

For the purposes of this Chapter:

- (a) **Appointing Authority** means in the case of arbitration or conciliation under ICSID, the Secretary-General of ICSID; in the case of arbitration under UNCITRAL, the Secretary-General of the Permanent Court of Arbitration; or any person as agreed between the disputing parties;
- (b) **Covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and which, where applicable, has been admitted by the former Party, subject to its relevant laws, regulations and policies;
- (c) **Disputing investor** means an investor of a Party that makes a claim against the other Party under Section B;
- (d) **Disputing parties** means a disputing investor and a disputing Party;
- (e) **Disputing Party** means a Party against which a claim is made under Section B;
- (f) **Disputing party** means a disputing investor or a disputing Party;
- (g) **Freely useable currency** means a freely useable currency as determined by the International Monetary Fund under the *Articles of Agreement of the International Monetary Fund* and amendments thereafter, or any currency that is used to make international payments and is widely traded in the international principal exchange markets;
- (h) **Investment** means every kind of asset owned or controlled, directly or indirectly, by an investor of a Party in the territory of the other Party, and in particular, though not exclusively, includes:

- (i) shares, stocks or other forms of equity participation in an enterprise, and rights derived therefrom;
- (ii) bonds, including Government issued bonds, debentures, loans and other forms of debt, and rights derived therefrom;
- (iii) futures, options and other derivatives;
- (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
- (v) claims to money or to any contractual performance related to a business and having a financial value;
- (vi) intellectual property rights which are recognised pursuant to the laws and regulations of each Party and goodwill;
- (vii) rights conferred pursuant to law or contract such as concessions, licences, authorisations, and permits; and
- (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

For the purposes of this definition, investment also includes an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income. Such returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

(i) **Investor of a Party** means –

- (i) an enterprise of a Party; or
- (ii) a natural person who is a national or a citizen or permanent resident of a Party;

that has made, is in the process of making, or is seeking to make⁵ an investment in the territory of the other Party;

⁵ For greater certainty, the Parties understand that an investor that “is seeking to make” an investment refers to an investor of the other Party that has taken active steps to make an investment. Where a notification or approval process is required for making an investment, an investor that “is seeking to make” an investment refers to an investor of the other Party that has initiated such notification or approval processes.

- (j) **Measure adopted or maintained by a Party** means any measure of a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, practice, or other form, adopted or maintained by:

- (i) central, regional or local Governments or authorities; or
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local Governments or authorities;

In fulfilling its obligations under this Chapter, each Party is obliged to take such reasonable measures as may be available to it to ensure their observance by regional and local Governments and authorities and non-governmental bodies within its territories;

- (k) **New York Convention** means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York, June 10, 1958; and
- (l) **Non-disputing Party** means the Party of the disputing investor.

Article 10.2 Objectives

The objectives of this Chapter are to:

- (a) encourage and promote the open flow of investment between the Parties on investment-related matters;
- (b) to create a favourable environment for investors of the other Party and their investments; and
- (c) provide for protection of investors of the other Party and their investments within each Party's territory.

Article 10.3 Scope

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

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

2. This Chapter does not apply to measures adopted or maintained by a Party affecting trade in services.

3. Notwithstanding paragraph 2, the following Articles and Sections of this Chapter shall apply *mutatis mutandis*, to measures affecting the supply of services by a service supplier of a Party through commercial presence in the territory of the other Party pursuant to Chapter 8 (Trade in Services), but only to the extent that they relate to a covered investment and an obligation under this Chapter, regardless of whether or not such a service sector is scheduled in a Party's Schedule in Annex 4 (Schedules of Specific Services Commitments):

- (a) Article 10.7 (Transfers);
- (b) Article 10.8 (Expropriation);
- (c) Article 10.9 (Compensation for Losses);
- (d) Article 10.10 (Minimum Standard of Treatment);
- (e) Article 10.13 (Subrogation); and
- (f) Section B (Investor-State Dispute Settlement).

4. This Chapter shall not apply to:

- (a) subsidies or grants provided by a Party;
- (b) government procurement; or
- (c) services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this Chapter, a service supplied in the exercise of governmental authority means any service, which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

5. For greater certainty, this Chapter does not apply to claims or disputes in relation to events which occurred, or any situation that ceased to exist, before the date of entry into force of this Agreement.

Article 10.4 **National Treatment⁶**

Each Party shall accord to investors of the other Party and to covered

⁶ The application of this Article is subject to Article 10.17 (Work Programme).

investments in relation to establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer, or other disposition of investments, treatment no less favourable than it accords, in like circumstances, to its own investors and their investments.

Article 10.5

Most Favoured Nation Treatment⁷

1. Each Party shall accord to investors of the other Party and to their investments treatment no less favourable than that it accords in like circumstances to investors of a third party and to their investments, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. For greater certainty, the obligation in this Article does not encompass a requirement to extend to the other Party dispute resolution procedures other than those set out in this Chapter.
3. Notwithstanding paragraph 1, the Parties reserve the right to adopt or maintain any measure that accords differential treatment to third parties under any free trade agreement or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.
4. For greater certainty, paragraph 3 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.

Article 10.6

Performance Requirements

1. For the purposes of this Chapter, the Parties reaffirm their commitments to the *WTO Agreement on Trade-Related Investment Measures* ("TRIMS") and hereby incorporate TRIMS, as may be amended, as part of this Chapter, *mutatis mutandis*.
2. The Parties shall undertake joint assessment of performance requirements no later than five years from the date of entry into force of this Agreement. The aim of such assessment shall include reviewing existing performance requirements and considering the need for additional commitments under this Article.

⁷ The application of this Article is subject to Article 10.17 (Work Programme).

Article 10.7

Transfers

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

- (a) contributions to capital, including the initial contribution;
- (b) profits, capital gains, dividends, royalties, license fees, technical assistance and technical and management fees, interest and other current income accruing from any covered investment;
- (c) proceeds from the total or partial sale or liquidation of any covered investment;
- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Articles 10.8 (Expropriation) and 10.9 (Compensation for Losses);
- (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. Each Party shall allow such transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

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

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offences and the recovery of the proceeds of crime;
- (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;

- (f) taxation; and
- (g) social security, public retirement or compulsory savings schemes.

4. Nothing in this Chapter shall affect the rights and obligations of each Party as a member of the International Monetary Fund (“the Fund”) under the *Articles of Agreement of the International Monetary Fund*, including the use of exchange actions which are in conformity with the *Articles of Agreement of the International Monetary Fund*, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Chapter regarding such transactions, except under Article 17.3 (Measures to Safeguard the Balance of Payments) or at the request of the Fund.

Article 10.8 Expropriation⁸

1. Neither Party shall nationalise, expropriate or subject to measures equivalent to nationalisation or expropriation a covered investment of an investor of the other Party (“expropriation”) except:

- (a) for a public purpose⁹;
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
- (d) in accordance with due process of law.

2. Compensation shall:

- (a) be paid without delay¹⁰;
- (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

⁸ This Article shall be interpreted in accordance with Annex 7 (Expropriation).

⁹ For the avoidance of doubt, where Malaysia is the expropriating Party, any measure of expropriation relating to land shall be for the purposes as set out in the Land Acquisition Act 1960, Land Acquisition Ordinance 1950 of the State of Sabah and the Land Code 1958 of the State of Sarawak.

¹⁰ The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

(d) be fully realisable and freely transferable.

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, unless such rate is prescribed by law¹¹. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account, where appropriate, the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors.

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 WTO TRIPS Agreement.

Article 10.9 Compensation for Losses

Each Party shall accord to investors of the other Party, and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife or state of emergency, treatment no less favourable than that it accords, in like circumstances, to:

- (a) its own investors and their investments; and
- (b) investors of a third party and their investments.

¹¹ In the case of Malaysia, the interest rates prescribed by law are as set out in the Land Acquisition Act 1960, Land Acquisition Ordinance 1950 of the State of Sabah and the Land Code 1958 of the State of Sarawak.

Article 10.10
Minimum Standard of Treatment

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security.
2. For greater certainty:
 - (a) fair and equitable treatment requires each Party not to deny justice in any legal or administrative proceedings;
 - (b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the covered investment; and
 - (c) the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 10.11
Non-Conforming Measures¹²

1. Articles 10.4 (National treatment) and 10.5 (Most Favoured Nation Treatment), shall not apply to:
 - (a) any existing non-conforming measure maintained by a Party at:
 - (i) the central and regional level of Government, as set out by that Party in its Schedule to Annex I; or
 - (ii) a local level of Government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measures referred to in subparagraph (a), provided that the amendment does not decrease the level of conformity of the measure as it existed at the date of entry into force of the Party's Schedule to Annex I with Articles 10.4

¹² The application of this Article is subject to Article 10.17 (Work Programme).

(National Treatment) and 10.5 (Most Favoured Nation Treatment).

2. Articles 10.4 (National Treatment) and 10.5 (Most Favoured Nation Treatment) 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 II.

3. The Parties will endeavour to progressively remove the non-conforming measures.

4. Neither Party may, under any measure adopted after the date of entry into force of the Schedules referred to in Article 10.17 (Work Programme) and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

Article 10.12

Special Formalities and Disclosure of Information

1. Nothing in Article 10.4 (National Treatment) or 10.5 (Most Favoured Nation Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, including a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not substantially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 10.4 (National Treatment) or 10.5 (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 receiving such information shall protect, to the extent possible, any confidential information which has been provided from any disclosure that would prejudice legitimate commercial interests of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.13

Subrogation

1. If a Party or its designated agency makes a payment to an investor of that Party under a guarantee, a contract of insurance against non-commercial risks or other form of indemnity 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 its designated agency has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the designated agency of the Party making the payment, pursue those rights and claims against the other Party.

3. In any proceeding involving an investment dispute, a Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Article 10.14 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 third party and the enterprise has no substantive business operations in the territory of 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 territory of the other Party.

Article 10.15 Investment and Environment

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

Article 10.16 Promotion and Facilitation of Investment

The Parties shall seek to strengthen and build on existing cooperative arrangements in the promotion and facilitation of investment where this is of mutual benefit, including through:

- (a) supporting joint investment promotion activities, including

collaboration in third markets;

- (b) facilitating the provision and exchange of investment information including laws, regulations and policies to increase awareness of investment opportunities; and
- (c) fostering technical cooperation in mutually agreed sectors.

Article 10.17 Work Programme

1. The Parties shall enter into negotiations on Schedules of non-conforming measures within three months of entry into force of this Agreement, unless the Parties otherwise agree.
2. The Parties shall conclude the negotiations referred to in paragraph 1, no later than six months from the date of entry into force of this Agreement, unless the Parties otherwise agree. These discussions shall be overseen by the Committee on Investment established under Article 10.18 (Committee on Investment).
3. Schedules of non-conforming measures referred to in paragraph 1 shall enter into force by exchange of notes on a date agreed to by the Parties.
4. Articles 10.4 (National Treatment), 10.5 (Most Favoured Nation Treatment) and 10.11 (Non-Conforming Measures) shall not apply until the Parties' Schedules of non-conforming measures have entered into force in accordance with paragraph 3.

Article 10.18 Committee on Investment

1. For the purposes of effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Investment. The functions of the Committee on Investment shall be to:
 - (a) exchange information on and discuss issues related to this Chapter;
 - (b) review and monitor the implementation and operation of this Chapter;
 - (c) undertake consultations to review the issues pertaining to the prohibition of performance requirements;
 - (d) oversee the negotiations referred to in Article 10.17(1) (Work

Programme);

- (e) report the findings and the outcome of discussions of this Committee to the Joint Commission; and
- (f) carry out other functions as may be delegated by the Joint Commission in accordance with Article 15.1 (Institutional Provisions).

2. The Committee on Investment shall meet at such venues and times as may be agreed by the Parties.

Section B: Investor-State Dispute Settlement

Article 10.19 Scope

1. 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 right conferred by this Chapter directly concerning a covered investment of the investor of that other Party.
2. A natural person possessing the nationality or citizenship of a Party may not pursue a claim against that Party under this Section.

Article 10.20 Consultations and Negotiations

1. Any investment dispute referred to in Article 10.19(1) (Scope) shall, as far as possible, be settled amicably through consultations and negotiations between the investor and that other Party, which may include the use of non-binding third party procedures.
2. A request for consultations and negotiations shall be made in writing and shall state the legal and factual basis of the investment dispute.

Article 10.21 Submission of a Claim to Arbitration

1. If the dispute cannot be resolved as provided for in Article 10.20 (Consultations and Negotiations) within 180 days from the date of the request for consultations and negotiations then, unless the parties to the dispute agree otherwise, the dispute shall, at the choice of the disputing investor, be submitted to:
 - (a) conciliation or arbitration by the International Centre for the Settlement of Investment Disputes ("ICSID") under the *Convention on the Settlement of Investment Disputes between States and National of other States*, done at Washington on 18 March 1965;
 - (b) arbitration under the rules of the United Nations Commission on International Trade Law ("UNCITRAL") adopted by the United Nations General Assembly on 15 December 1976; or
 - (c) if the disputing parties agree, any other arbitration institution, including conciliation or arbitration at the Regional Centre for

Arbitration, Kuala Lumpur ("RCAKL");

provided that resort to one of the fora under subparagraphs (a) to (c) shall exclude resort to the others.

2. The arbitration rules applicable under paragraph 1, and in effect on the date the claim was submitted to arbitration under this Article, shall govern the arbitration except to the extent modified by this Section.

3. The disputing investor shall provide written notice, at least three months before the claim is submitted, to the disputing Party of its intent to submit the dispute to such arbitration and which:

- (a) provides the name and address of the disputing investor and, if any, its legal representative;
- (b) nominates the forum for dispute settlement from paragraph 1; and
- (c) briefly summarises the alleged breach of the disputing Party under this Chapter (including the Articles alleged to have been breached) and the loss or damage allegedly caused to the investor or its investment.

4. A claim shall be deemed submitted to arbitration under this Article when the disputing investor's notice of arbitration made in accordance with this Article is received under the applicable arbitral rules.

5. The disputing investor shall provide with the notice of arbitration:

- (a) the name of the arbitrator that the disputing investor appoints; or
- (b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

6. Upon the receipt of a notice referred to in paragraph 3, the disputing Party may require the disputing investor to go through any applicable domestic administrative review procedures specified by the laws and regulations of the disputing Party, which may not exceed three months from the receipt of such notice, before the submission of the claim to arbitration under paragraph 1.

7. Once a dispute has been submitted to international arbitration in accordance with this Section, the disputing investor waives its right to initiate or continue before any competent court or tribunal of a Party, or other dispute settlement procedures, any further proceedings with respect to the same dispute.

Article 10.22

Admissibility of Claims

1. No claim may be submitted to arbitration under this Chapter if more than three years have elapsed from the time at which the disputing investor became aware, or should reasonably have become aware, whichever is the earlier, of a breach of obligation under this Chapter causing loss or damage to the investor or its investments.
2. Notwithstanding Article 10.21(7) (Submission of a Claim to Arbitration), no Party shall prevent the disputing investor from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving its rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the disputing Party.
3. No Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party have submitted to conciliation or arbitration under this Section, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.
4. A dispute arising between a Party and an investor of the other Party on any right or obligation conferred or created by Article 10.6 (Performance Requirements) may not be submitted for arbitration but may be subject to consultations or negotiations in accordance with Article 10.20 (Consultations and Negotiations).

Article 10.23

Location

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

Article 10.24

Preliminary Objections

1. A disputing Party may, no later than 30 days after the constitution of the Tribunal, file an objection that a claim is manifestly without 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.

2. 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 merit, or is otherwise not within the jurisdiction or competence of the Tribunal, it shall render an award to that effect.

3. The Tribunal may, if warranted, award the prevailing 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 merit, and shall provide the disputing parties a reasonable opportunity to comment.

4. Where an investor claims that the disputing Party has breached Article 10.8 (Expropriation) by the adoption or enforcement of a taxation measure, the disputing Party and the non-disputing Party shall, upon request from the disputing Party, hold consultations with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation. Any Tribunal that may be established under this Section shall accord serious consideration to the decision of both Parties under this paragraph.

5. If both Parties fail either to initiate such consultations, or to determine whether such taxation measure has an effect equivalent to expropriation or nationalisation within the period of 180 days from the date of the receipt of request for consultation referred to in Article 10.21(1) (Submission of a Claim to Arbitration), the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Section.

Article 10.25

Submissions and Reports

1. On written notice to the disputing parties, the non-disputing Party may make a submission to the Arbitral Tribunal on a question of interpretation of this Agreement.

2. Without prejudice to the appointment of other kinds of experts where authorised by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue raised by a disputing party in a proceeding, subject to such terms and conditions, including the cost of such appointments, as the disputing parties may agree.

Article 10.26
Interpretation of Agreement

1. The Tribunal shall, on its own account or at the request of the disputing investor or 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 by the Parties declaring their interpretation of any provision of this Agreement 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.

Article 10.27
Consolidation of Claims

Where two or more investors notify an intention to submit claims, or have submitted claims, separately to arbitration under Article 10.21 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate, including with respect to the forum chosen.

Article 10.28
Transparency of Arbitral Proceedings

1. Subject to paragraph 2, the disputing Party may make publicly available the tribunal awards and decisions as well as its written submissions to the Tribunal.

2. Any information that is submitted to the Tribunal and that is designated as confidential information by either disputing party shall be protected from disclosure.

Article 10.29
Awards

1. Where a Tribunal makes a final award against either of the disputing parties, the Tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and

- (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.
- 2. A Tribunal may also award costs and attorney's 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, the disputing parties shall abide by and comply with the award without undue or unreasonable delay.