

PART FOUR

**INVESTMENT, SERVICES AND RELATED MATTERS**

**CHAPTER 10**

**INVESTMENT**

**Section A - Investment**

**Article 10.01      Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party with respect to all aspects of its investments;
  - (b) investments of investors of the other Party in the territory of the Party; and
  - (c) all investments of the investors of a Party in the territory of the other Party with regard to Article 10.07.
2. This Chapter does not apply to:
  - (a) measures adopted or maintained by a Party in relation to financial services;
  - (b) measures adopted by a Party to limit the participation of investment of investors of the other Party in its territory for reasons of public order or national security;
  - (c) economic activities reserved by each Party pursuant to its law in force on the date of the signing of this Agreement, as listed in Annex III on economic activities reserved to each Party;
  - (d) government services or functions such as law enforcement, correctional services, income security or unemployment insurance, social security services, social welfare, public education, public training, health, and child care;
  - (e) disputes or claims arising before the entry into force of this Agreement or relating to facts that occurred before it entered into force, even if their effects persist thereafter; and

- (f) government procurement.

3. This Chapter applies to the entire territory of the Parties and to any level of government regardless of any inconsistent measures that may exist in the law of these government levels.

4. Notwithstanding the provisions of paragraph 2(d), if a duly authorized investor from a Party provides services or carries out functions such as correctional services, income security or unemployment insurance, social security services, social welfare, public education, public training, health, and child care, the investment of this investor shall be protected by the provisions of this Chapter.

5. This Chapter shall apply to both investments made prior to and after the entry into force of this Agreement, by investors of a Party in the territory of the other Party.

#### **Article 10.02 National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favorable 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 investments of investors of the other Party treatment no less favorable 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 10.03 Most-Favored-Nation Treatment**

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

2. Each Party shall accord to investments of investors of the other Party treatment no less favorable 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.

#### **Article 10.04 Fair and Equitable Treatment**

Each Party shall accord to investors of the other Party and their investments treatment in accordance with international law, including fair and equitable treatment as well as full protection and security.

#### **Article 10.05          Standard of Treatment**

Each Party shall accord to investors of the other Party and to investments of investors of the other Party the better of the treatment required by Articles 10.02, 10.03 and 10.04.

#### **Article 10.06          Compensation for Losses**

Each Party shall accord the investors of the other Party whose investments have been adversely affected in its territory due to armed conflict, state of emergency, insurrection, or civil strife, non-discriminatory treatment on any measure adopted or maintained in relation to such losses.

#### **Article 10.07          Performance Requirements**

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of the other Party in its territory:

- (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 or services provided in its territory, or to purchase goods or services from persons in its territory; or
- (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.

This paragraph does not apply to any requirement other than indicated herein.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party, 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 in its territory, or to purchase goods from producers in its territory; or

- (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.

This paragraph does not apply to any requirements other than indicated herein.

3. The provisions included in:

- (a) paragraph 1(a), (b), and (c) and paragraph 2(a) and (b) do not apply to requirements relating to the qualification of goods and services for programs of export promotion and foreign aid programs;
- (b) paragraph 1(b) and (c) and paragraph 2(a) and (b) do not apply to the procurement by a Party or by a state enterprise; and
- (c) paragraph 2(a) and (b) does not apply to the requirements imposed by an importing Party related to the contents of a good necessary to qualify it for preferential tariffs or quotas.

4. 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 territory of an investor of the other Party, 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. Provided that these measures are not applied in an arbitrary or unjustified manner or do not constitute a disguised restriction to international trade or investment, nothing in paragraph 1(b) or (c) or 2(a) or (b) shall be construed to prevent a Party from adopting or maintaining measures, including environment measures, necessary to:

- (a) ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
- (b) protect human, animal or plant life or health; or
- (c) conserve living or non-living exhaustible natural resources.

6. In the case where, in opinion of a Party, the imposition by the other Party of any of the following requirements shall adversely affect trade flows or constitutes a significant barrier to investment by an investor of a Party, the matter shall be considered by the Commission:

- (a) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (b) to transfer technology, production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or
- (c) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

7. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 6(b). For greater certainty, Articles 10.02 and 10.03 apply to the measure.

8. If the Commission finds that the imposition of any of the above requirements adversely affects the trade flow, or represents a significant barrier to investment by an investor of the other Party, it shall recommend that the practice in question be suspended.

#### **Article 10.08 Senior Management and Boards of Directors**

1. No Party may require that an enterprise of that Party that is an investment of an investor of the other Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, of an enterprise of that Party that is an investment of an investor of the other Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

#### **Article 10.09 Reservations and Exceptions.**

1. Articles 10.02, 10.03, 10.07 and 10.08 do not apply to:

- (a) any existing non-conforming measure that is maintained by:
  - (i) a Party at the national level, as set out in its Schedule to Annex I or III, or

- (ii) a local or municipal government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) the amendment of any non-conforming measure referred to in subparagraph (a), provided that this amendment does not decrease the conformity of the measure as it existed before its amendment by Articles 10.02, 10.03, 10.07, and 10.08.
2. Articles 10.02, 10.03, 10.07 and 10.08 shall not apply to any measure adopted or maintained by a Party in relation to sectors, sub-sectors or activities, as are indicated in their Schedule to Annex II.
3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Article 10.03 does not apply to treatment accorded by a Party under agreements, or with respect to sectors included in its Schedule to Annex IV.
5. Articles 10.02, 10.03 and 10.08 do not apply to:
- (a) procurement by a Party or a state enterprise; and
  - (b) subsidies or grants provided by a Party or a state enterprise, including government supported loans, guarantees and insurance.

#### **Article 10.10 Transfers**

1. Each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:
- (a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
  - (b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

- (c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
  - (d) payments made pursuant to Article 10.11; and
  - (e) payments arising from the mechanism of dispute settlement under section B of this Chapter.
2. Each Party shall permit transfers to be made without delay in a freely convertible currency at the market rate of exchange prevailing on the date of transfer.
3. No Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.
4. Notwithstanding paragraphs 1 and 2, a Party may prevent 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) criminal or penal offenses;
  - (c) reports of transfers of currency or other monetary instruments;
  - (d) ensuring the satisfaction of judgments and arbitral awards in adjudicatory proceedings; or
  - (e) issuing, trading or dealing in securities.
5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

#### **Article 10.11 Expropriation and Compensation**

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of the other Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:
- (a) for a public purpose, or public order and social interest;

- (b) on a non-discriminatory basis;
- (c) in accordance with due process of law; and
- (d) on payment of compensation in accordance with this Article.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. The amount paid as compensation shall be no less than the equivalent amount that would have been paid on that date to the expropriated investor in a currency of free convertibility in the international financial market according to the exchange rate in force on the date in which the fair market price was determined. The compensation shall include the payment of interests computed from the day of dispossession of the expropriated investment until the day of payment, and shall be computed on the basis of a commercially applicable rate for this currency set by the national bank system of the Party where the expropriation occurred.

5. Upon payment, the compensation shall be freely transferable according to Article 10.10.

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

7. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

## **Article 10.12      Special Formalities and Information Requirements**

1. Nothing in Article 10.02 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as a requirement that investors be residents of the Party or that 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 investments of investors of the other Party pursuant to this Chapter.

2. Notwithstanding Articles 10.02 and 10.03, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

#### **Article 10.13            Relation to Other Chapters**

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

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provisions of that of cross border service. This Chapter applies to that Party's treatment of the posted bond or financial security.

#### **Article 10.14            Denial of Benefits**

Upon notification and consultation done according to Articles 17.04 (Provision of Information) and 19.06 (Consultations), a Party may deny the benefits under this Chapter to an investor of the other Party that is an enterprise of such other Party and to the investment of this investor, if investors of a non Party are owners of or control the enterprise under the terms set out in the definition "investment" of an investor of a Party according to Article 10.39 and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

#### **Article 10.15            Environmental Measures**

1. 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 under its ecological or environmental laws.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party.

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

**Article 10.16      Purpose**

Without prejudice to the rights and obligations of the Parties under Chapter 19 (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes arising from the violation of obligations established under Section A of this Chapter that assures both equal treatment among investors of the Parties in accordance with the principle of reciprocity and due process before an impartial tribunal.

**Article 10.17      Claim by an Investor of a Party on Its Own Behalf**

1. An investor of a Party may submit to arbitration under this Section a claim on the grounds that the other Party or an enterprise controlled directly or indirectly by the other Party, has breached an obligation under this Chapter if the investor has suffered losses or damages from the violation of this Chapter.
2. An investor may not make a claim if more than 3 years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has suffered losses or damages.

**Article 10.18      Claim by an Investor of a Party on Behalf of an Enterprise**

1. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party or an enterprise controlled directly or indirectly by that Party has breached an obligation under this Chapter, whenever the enterprise has suffered losses or damages due to that violation or arising therefrom.
2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than 3 years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has suffered losses or damages.
3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 10.17 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 10.21, the claims should be heard together by a Tribunal established under Article 10.27, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not submit a claim to arbitration under this Section.

#### **Article 10.19 Settlement of a Claim through Consultation and Negotiation**

The disputing parties should first attempt to settle a claim through consultation or negotiation.

#### **Article 10.20 Notice of Intent to Submit a Claim to Arbitration**

The disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least ninety (90) days before the claim is submitted, which notice shall specify:

- (a) the name and address of the disputing investor and, where a claim is made under Article 10.18, the name and address and the type of business of the enterprise;
- (b) the provisions of this Chapter alleged to have been breached and any other relevant provisions;
- (c) the issues and the factual basis for the claim; and
- (d) the relief sought and the approximate amount of damages claimed.

#### **Article 10.21 Submission of a Claim to Arbitration**

1. Provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

- (a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;
- (b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention;
- (c) the UNCITRAL Arbitration Rules; or
- (d) the ICC Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration established in this Chapter except to the extent modified by this Section.

#### **Article 10.22            Conditions Precedent to Submission of a Claim to Arbitration**

1. Consent of the disputing parties in the arbitration procedure according to this Chapter shall be considered as a consent to this arbitration that excludes any other procedure.

2. Each Party may demand the exhaustion of its local administrative remedies as a condition for consenting to the arbitration under this Chapter. Nevertheless, if 6 months have elapsed from the date on which the administrative remedies were lodged and the administrative authorities have not issued a final resolution, the investor may directly appeal to arbitration, according to the provisions of this Section.

3. A disputing investor may submit a claim under Article 10.17 to arbitration only if:

- (a) the investor consents to arbitration in accordance with the procedures set out in this Section; and
- (b) the investor and, where the claim is for losses or damages to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.17, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

4. A disputing investor may present a claim to the arbitration procedure according to Article 10.18 only if both investor and enterprise:

- (a) consent to submit the claim to arbitration in accordance with the procedures set out in this Section; and
- (b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.18, except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

5. The consent and the waiver required by this Article shall be stated in writing, delivered to the disputing Party and included in the submission of the claim to arbitration.

6. The waiver by the enterprise, under paragraphs 3(b) and 4(b), shall not be required if, and only if, the disputing Party had deprived the disputing investor of the control of an enterprise.

#### **Article 10.23          Consent to Arbitration**

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures and requirements set out in this Section.

2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration shall be deemed as having satisfied the requirement of:

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

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

#### **Article 10.24          Number of Arbitrators and Method of Appointment**

Except in respect of a Tribunal established under Article 10.27, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator of the Tribunal, appointed by agreement of the disputing parties.

#### **Article 10.25          Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator**

1. In the event a disputing party does not appoint an arbitrator or an agreement is not reached about the appointment of the presiding arbitrator of the Tribunal, the arbitrator or the presiding arbitrator of the Tribunal in the arbitration proceeding shall be designated, according to this Section.

2. Where a Tribunal, not being the one created according to Article 10.27, is not constituted within a period of ninety (90) days from the date on which the claim is submitted to arbitration, the Secretary-General of the ICSID, the Secretary-General of the ICC or an appropriate official at an international organization agreed upon by the disputing parties (hereinafter the Secretary-General), shall appoint the not yet appointed arbitrator or arbitrators, except for the presiding arbitrator of the Tribunal who shall be

appointed according to paragraph 3. In any case, the majority of arbitrators may not be nationals of the disputing Party or the Party of the disputing investor.

3. The Secretary-General shall appoint the presiding arbitrator of the Tribunal from the roster of arbitrators referred to in paragraph 4, ensuring that the presiding arbitrator of the Tribunal is not a national of the disputing Party or a national of the Party of the disputing investor. In case of not finding in the roster an available arbitrator to head the Tribunal, the Secretary-General shall appoint from the roster of arbitrators of the ICSID the presiding arbitrator of the Tribunal, provided that he or she is of a nationality different from the disputing Party or from the Party of the disputing investor.

4. On the date of entry into force of this Agreement, the Parties shall establish and maintain a roster of six (6) arbitrators as possible presiding arbitrators of the Tribunal, none of which may be national of a Party, who comply with the rules contemplated in Article 10.21 and have experience in International Law and in investment matters. The members of the roster shall be appointed by mutual agreement, regardless of nationality, for a period of two (2) years that may be extended if the Parties so decide. In case of death or resignation of one member of the roster, the Parties shall appoint by mutual agreement the other person to substitute him or her in its functions for the remaining period to which the former person was appointed.

#### **Article 10.26 Agreement to Appointment of Arbitrators**

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 10.25(3) or on a ground other than nationality:

- (a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a disputing investor referred to in Article 10.17 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and
- (c) a disputing investor referred to in Article 10.18(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

#### **Article 10.27 Consolidation**

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 10.21 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request:

- (a) the name of the disputing Party or disputing investors against which the order is sought;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

4. The disputing party shall deliver a copy of the request to the disputing Party or disputing investors against which the order is sought.

5. Within sixty (60) days of receipt of the request, the Secretary-General shall establish a Tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in Article 10.25(4). In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties. The Secretary-General shall appoint the two other members from the roster referred to in Article 10.25(4), and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 10.17 or 10.18 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

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

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 10.21 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 10.21 be stayed, unless the latter Tribunal has already adjourned its proceedings, until there is a decision about the propriety of consolidation.

10. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of:

- (a) a request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention;
- (b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules;
- (c) a notice of arbitration given under the UNCITRAL Arbitration Rules; or
- (d) a request for arbitration made under ICC Arbitration Rules.

11. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3:

- (a) within fifteen (15) days of receipt of the request, in the case of a request made by a disputing investor; or
- (b) within fifteen (15) days of making the request, in the case of a request made by the disputing Party.

12. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 within fifteen (15) days of receipt of the request.

13. The Secretariat shall maintain a public register of the documents referred to in paragraphs 10, 11 and 12.

#### **Article 10.28 Notice**

A disputing Party shall deliver to the other Party:

- (a) written notice of a claim that has been submitted to arbitration no later than thirty (30) days after the date that the claim is submitted; and
- (b) copies of all pleadings filed in the arbitration.

#### **Article 10.29 Participation by a Party**

On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

#### **Article 10.30 Documents**

1. A Party shall be entitled, at its own cost, to receive from the disputing Party a copy of:

- (a) the evidence that has been tendered to the Tribunal according to this Section; and
- (b) the written argument of the disputing parties.

2. A Party receiving information pursuant to paragraph 1 shall treat the confidential information as if it were a disputing Party.

#### **Article 10.31 Venue of Arbitration**

Unless the disputing parties agree otherwise, a Tribunal established under this Section shall hold an arbitration in the territory of a party to the New York Convention, selected in accordance with:

- (a) the ICSID Additional Facility Rules if the arbitration is under those Rules, or the ICSID Convention;
- (b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules; or
- (c) the ICC Arbitration Rules if the arbitration is under those Rules.

#### **Article 10.32                    Governing Law**

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

#### **Article 10.33                    Interpretation of Annexes**

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in those Annexes, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within sixty (60) days of delivery of the request, shall submit in writing its interpretation to the Tribunal.
2. Further to Article 10.32(2), a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal established under this Section. If the Commission fails to submit an interpretation within sixty (60) days, the Tribunal shall decide the issue.

#### **Article 10.34                    Expert Reports**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning the controversy.

#### **Article 10.35                    Interim Measures of Protection**

A Tribunal established under this Section may request, or the disputing parties may petition to, in accordance with domestic legislation, national courts for imposing an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach

referred to in Article 10.17 or 10.18.

#### **Article 10.36          Final Award**

1. Where a Tribunal established under this Section makes a final award against a Party, the Tribunal may award, only:

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

A tribunal may also award costs in accordance with the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is made under Article 10.18(1):

- (a) an award of restitution of property shall provide that restitution be made to the enterprise; or
- (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise.

3. The award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

#### **Article 10.37          Finality and Enforcement of an Award**

1. An award made by a Tribunal established under this Section shall have no binding force except between the disputing parties and in respect of the particular case.

2. Subject to paragraph 3 and the applicable review procedure for an award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

- (a) in the case of a final award made under the ICSID Convention
  - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

- (ii) explanation, revision or annulment proceedings have been completed; and
- (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules
  - (i) ninety (90) days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
  - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.
- 4. Each Party shall provide for the enforcement of an award in its territory.
- 5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 19.09 (Request for an Arbitral Group). The requesting Party may seek in such proceedings:
  - (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
  - (b) a recommendation that the Party abide by or comply with the final award.
- 6. A disputing investor may seek enforcement of an arbitration award under the New York Convention, or the ICSID Convention, regardless of whether proceedings have been taken under paragraph 5.
- 7. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

#### **Article 10.38      General Provision**

##### **Time when a Claim is Submitted to Arbitration**

- 1. A claim is submitted to arbitration under this Section when:
  - (a) the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention has been received by the Secretary-General;

- (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General;
- (c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party, or
- (d) the request for arbitration under Article 4 of the ICC Arbitration Rules has been received by the Secretariat.

#### Delivery of Notifications and Other Documents

- 2. Delivery of notifications and other documents on a Party shall be made to the place named for that Party in Annex 10.38(2).

#### Receipts under Insurance or Guarantee Contracts

- 3. In an arbitration under this Section, a Party shall not assert, as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

#### Publication of an Award

- 4. The awards shall be published only if there is an agreement in writing by the disputing parties.

### Section C - Definitions

#### Article 10.39 Definitions

For purposes of this Chapter, the following terms shall be understood as:

**Additional Facility Rules of ICSID:** Additional Facility Rules of ICSID established in 1978;

**claim:** the claim made by the disputing investor against a Party under Section B of this Chapter;

**disputing investor:** an investor that makes a claim under Section B of this Chapter;

**disputing parties:** the disputing investor and the disputing Party;

**disputing Party:** a Party against which a claim is made under Section B of this Chapter;

**disputing party:** the disputing investor or the disputing Party;

**enterprise:** an "enterprise" as defined in Chapter 2 (General Definitions), and a branch of an enterprise;

**enterprise of a Party:** an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

**ICC:** the International Chamber of Commerce;

**ICSID:** the International Centre for Settlement of Investment Disputes;

**ICSID Convention:** the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, March 18, 1965;

**investment:** any kind of goods or rights of any nature acquired or used with the purpose of obtaining an economic profit or other business objective, acquired with resources transferred or reinvested by an investor, and including:

- (a) an enterprise, shares in an enterprise, shares in the capital of an enterprise that allow the owner to participate in its income or profits. Debt instruments of an enterprise and loans to an enterprise where:
  - (i) the enterprise is an affiliate of the investor, or
  - (ii) the date of maturity of the debt instrument or loan is at least 3 years,
- (b) a stake in an enterprise that grants to the owner the right to participate in the assets of this enterprise in a liquidation, provided that they do not arise from a debt instrument or a loan excluded under subparagraph (a);
- (c) real estate or other properties, tangible or intangible, including rights in the intellectual property field, as well as any other proprietary right (such as mortgages, liens, usufruct and similar rights), acquired with the expectation of or used with the purpose of obtaining an economic benefit or other business objectives;

(d) share or benefits arising from the allocation of capital or other resources to the developing of an economic activity in the territory of a Party according, *inter alia*; to:

(i) contracts that involve the presence of the property of an investor in the territory of a Party, including concessions and construction and turnkey contracts, or

(ii) contracts where remuneration substantially depends on the production, income or profits of an enterprise,

but investment does not include:

(e) a payment obligation or a credit granted to the State or a state enterprise,

(f) monetary claims exclusively derived from:

(i) commercial contracts for the sale of goods or services by a national or an enterprise in the territory of a Party to an enterprise in the territory of the other Party, or

(ii) a credit granted in relation to a commercial transaction, of which expiration date is less than 3 years, such as trade financing, except a loan covered by the provisions of subparagraph (a); or

(g) any other monetary claim that does not involve the kinds of interests as set out in subparagraphs (a) through (d);

**investor of a Party:** a Party or a state enterprise of a Party or a national or an enterprise of a Party that makes or has made an investment in the territory of the other Party;

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

**Secretary-General:** the Secretary-General of the ICSID, or the ICC;

**transfers:** remittance and international payments;

**Tribunal:** an arbitration tribunal established under Article 10.21, and Article 10.27; and

**UNCITRAL Arbitration Rules:** the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

**ANNEX 10.38(2)**

**DELIVERY OF NOTIFICATIONS AND OTHER DOCUMENTS**

1. For purposes of the Article 10.38(2), the place for the delivery of notifications and other documents will be:

(a) in the case of Panama:

Ministry of Trade and Industries

Vice-ministry of Foreign Trade

Vía Ricardo J. Alfaro, Plaza Edison, Piso #3

Panamá, República de Panamá

(b) in the case of the ROC:

Ministry of Economic Affairs

No.15 Fu-Chou Street, Taipei

Taiwan

The Republic of China

2. The Parties shall communicate any change of the designated place for the delivery of notifications and other documents.

## CHAPTER 11

### CROSS-BORDER TRADE IN SERVICES

#### Article 11.01      Definitions

For purposes of this Chapter, the following terms shall be understood as:

**cross-border provision of a service or cross-border trade in services:** the provision of a service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party to the services consumer of the other Party; or
- (c) by a service provider of a Party, through presence of natural persons of a Party in the territory of the other Party, but does not include the provision of a service in the territory of a Party by an investment, as defined in Article 10.39 (Definitions), in that territory;

**enterprise:** an "enterprise" as defined in Chapter 2 (General Definitions);

**enterprise of a Party:** an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

**quantitative restriction:** a non-discriminatory measure that imposes limitations on:

- (a) the number of service providers, whether in the form of a quota, a monopoly or an economic needs test, or by any other quantitative means;  
or
- (b) the operations of any service provider, whether in the form of a quota or an economic needs test, or by any other quantitative means;

**services provided in the performing of government functions:** any cross-border service provided by a public institution in non-commercial conditions and without competing with one or more service providers; and.

**service provider of a Party:** a person of a Party that provides or seeks to provide a cross-border service.

## **Article 11.02      Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of the other Party, including measures respecting:

- (a) the production, distribution, marketing, sale and delivery of a service;
- (b) the purchase or use of, or payment for, a cross-border service;
- (c) the access to and use of distribution and transportation systems in connection with the provision of a cross-border service;
- (d) the access to networks and public services of telecommunication and its use;
- (e) the presence in its territory of a cross-border service provider of the other Party; and
- (f) the provision of a bond or other form of financial security as a condition for the provision of a cross-border service.

2. For purposes of this Chapter, it shall be understood that the measures adopted or maintained by a Party include measures adopted or maintained by non-governmental institutions or bodies in the performance of regulatory, administrative or other functions of a governmental nature delegated to them by the Party.

3. This Chapter does not apply to:

- (a) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance;
- (b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service,
  - (ii) the selling and marketing of air transport services, and

- (iii) computer reservation system (CRS) services;
- (c) government services or functions such as law enforcement, correctional services, income security or unemployment insurance or social security services, social welfare, public education, public training, health, and child care;
- (d) cross-border financial services; and
- (e) government procurement done by a Party or state enterprise.

4. Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment.

#### **Article 11.03      National Treatment**

1. Each Party shall accord to cross-border services and service providers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own services and service providers.
2. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

#### **Article 11.04      Most-Favored-Nation Treatment**

Each Party shall accord to cross-border services and service providers of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service providers of any non-Party.

#### **Article 11.05      Standard of Treatment**

Each Party shall accord to cross-border services and service providers of the other Party the better of the treatment required by Articles 11.03 and 11.04.

#### **Article 11.06      Local Presence**

No Party may require a service provider of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

#### **Article 11.07          Permission, Authorization, Licensing and Certification**

With a view to ensuring that any measure adopted or maintained by a Party relating to the permission, authorization, licensing or certification of nationals of the other Party does not constitute an unnecessary barrier to cross-border trade, each Party shall endeavor to ensure that any such measure:

- (a) is based on objective and transparent criteria, such as competence and the ability to provide a cross-border service;
- (b) is not more burdensome than necessary to ensure the quality of a cross-border service; and
- (c) does not constitute a disguised restriction on the cross-border provision of a service.

#### **Article 11.08          Reservations**

1. Articles 11.03, 11.04 and 11.06 do not apply to:

- (a) any existing non-conforming measure that is maintained by
  - (i) a Party at the national level, as set out in its Schedule to Annex I,
  - (ii) a local or municipal 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 11.03, 11.04 and 11.06.

2. Articles 11.03, 11.04 and 11.06 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.

#### **Article 11.09          Quantitative Restrictions**

1. Each Party shall set out in its Schedule to Annex V any quantitative restriction that it maintains.
2. Each Party shall notify the other Party of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule as referred to in paragraph 1.
3. Regularly, at least every 2 years, the Parties shall endeavour to negotiate with the aim of liberalizing or eliminating:
  - (a) existing quantitative restrictions maintained by a Party, according to the list referred to in paragraph 1; or
  - (b) quantitative restrictions adopted by a Party after the entry into force of this Agreement.

#### **Article 11.10 Denial of Benefits**

Subject to prior notification and consultation in accordance with Articles 17.04 (Provision of Information) and 19.06 (Consultations), a Party may deny the benefits of this Chapter to a service provider of the other Party where the Party decides, according to its effective law that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party having no substantial business activities in the territory of the other Party.

#### **Article 11.11 Future Liberalization**

The Parties, through future negotiations to be convened by the Commission, shall deepen the liberalization reached in different service sectors, with the aim of eliminating the remaining restrictions listed under Article 11.08(1) and (2).

#### **Article 11.12 Procedures**

The Parties shall establish procedures for:

- (a) a Party to notify and include in its relevant Schedule
  - (i) amendments of measures referred to in Article 11.08(1) and (2), and
  - (ii) quantitative restrictions in accordance with Article 11.09; and

- (b) consultations on reservations or quantitative restrictions for further liberalization, if any.

#### **Article 11.13          Disclosure of Confidential Information**

No provision in this Chapter may be construed as imposing on the Parties the obligation to provide confidential information of which the disclosure may be an obstacle to the observance of laws or otherwise be damaging to the public interest, or that may injure legitimate trade interests of state and private enterprises.

#### **Article 11.14          Committee on Investment and Cross-border Trade in Services**

1. The Parties hereby establish the Committee on Investment and Cross-border Trade in Services, as set out in Annex 11.14.

2. The Committee shall hear matters relating to this Chapter and Chapter 10 (Investment) and, without prejudice to the provisions of Article 18.05(2)(Committees), shall have the following functions:

- (a) supervising the implementation and administration of Chapters 10 (Investment) and 11 (Cross-border Trade in Services);
- (b) discussing matters relating to investment and cross-border trade in services presented by a Party;
- (c) analyzing matters that are discussed in other international fora;
- (d) facilitating the exchange of information between the Parties and cooperating in giving advice on investment and cross-border trade in services; and
- (e) establishing working groups or convening panels of experts on matters of interest to the Parties.

3. The Committee shall meet when necessary or at any other time at the request of either Party. Representatives of other institutions may also take part in its meetings if the relevant authorities deem it appropriate.

#### **ANNEX 11.14**

#### **COMMITTEE ON INVESTMENT AND CROSS-BORDER TRADE IN SERVICES**

The Committee on Investment and Cross-border Trade in Services set up under Article 11.14 shall be composed of:

- (a) in the case of Panama, the Ministry of Trade and Industries, represented by the Vice-ministry of Foreign Trade or its successor; and
- (b) in the case of the ROC, the Ministry of Economic Affairs, represented by the Bureau of Foreign Trade or its successor.

## CHAPTER 12

### FINANCIAL SERVICES

#### Article 12.01      Definitions

For purposes of this Chapter, the following terms shall be understood as:

**cross-border provision of financial services or cross-border trade of financial services:** the provision of a financial service:

- (a) from the territory of a Party to the territory of the other Party;
- (b) in the territory of a Party to a consumer of services of the other Party;  
or
- (c) by a service provider of a Party through the presence of natural persons of a Party in the territory of the other Party;

**disputing investor:** an investor that submits to arbitration a claim under Article 12.19 and Section B of Chapter 10 (Investment);

**enterprise:** “enterprise” defined in Chapter 2 (General Definitions);

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

**financial institution of the other Party:** a financial institution, including a branch, established under the existing law located in the territory of a Party that is owned or controlled by persons of the other Party;

**financial service:** a service of a financial nature, including bank, insurance, reinsurance, securities, futures, and a service related or auxiliary to a service of a financial nature;

**investment:** any kind of goods or rights of any nature acquired or used with the purpose of obtaining an economic profit or other business objective, acquired with resources transferred or reinvested by an investor, and including:

- (a) an enterprise, shares in an enterprise, shares in the capital of an enterprise that allow the owner to participate in its income or profits. Debt instruments of an enterprise and loans to an enterprise where:

- (i) the enterprise is an affiliate of the investor, or
  - (ii) the date of maturity of the debt instrument or loan is at least 3 years;
- (b) a stake in an enterprise that grants to the owner the right to participate in the assets of this enterprise in a liquidation, provided that they do not arise from a debt instrument or a loan excluded under subparagraph (a);
  - (c) real estate or other properties, tangible or intangible, including rights in the intellectual property field, as well as any other proprietary right (such as mortgages, liens, usufruct and similar rights), acquired with the expectation of or used with the purpose of obtaining an economic benefit or other business objectives;
  - (d) share or benefits arising from the allocation of capital or other resources to the developing of an economic activity in the territory of a Party according, *inter alia*, to:
    - (i) contracts that involve the presence of the propriety of an investor in the territory of a Party, including concessions and construction and turnkey contracts, or
    - (ii) contracts where remuneration substantially depends on the production, income or profits of an enterprise, and
  - (e) a loan granted by a provider of cross-border financial services or a debt instrument owned by the provider, except a loan to a financial institution or a debt instrument issued by it,

but investment does not include:

- (f) a payment obligation or a credit granted by the State or a state enterprise;
- (g) monetary claims exclusively derived from:
  - (i) commercial contracts for the sale of goods or services by a national or an enterprise in the territory of a Party to an enterprise in the territory of the other Party, or
  - (ii) a credit granted in relation to a commercial transaction, of which expiration date is less than 3 years, such as trade financing, except a loan covered by the provisions of subparagraph (a);

- (h) any other monetary claim that does not involve the kinds of interests as set out in subparagraphs (a) through (e); or
- (i) a loan to a financial institution or a debt instrument issued by a financial institution, except if it is a loan to or a debt instrument issued by a financial institution treated as capital for regulatory purposes by a Party in whose territory the financial institution is located;

**investment of an investor of a Party:** an investment owned or directly controlled by an investor of the Party. In the case of an enterprise, an investment is property of an investor of a Party if this investor holds more than fifty per cent (50%) of its equity interest. An investment is controlled by an investor of a Party if the investor has the power to:

- (a) designate a majority of directors; or
- (b) legally manage its operations in any other way;

**investor of a Party:** a Party or a state enterprise thereof, or a national or enterprise of the Party, that seeks to make, makes or has made an investment in the territory of the other Party. The intention of trying to realize an investment may demonstrate, among other forms, by means of juridical acts tending to materialize the investment, or being in process of compromising the necessary resources to realize it;

**new financial service:** a financial service not provided in the territory of a Party that is provided within the territory of the other Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the territory of a Party;

**provider of cross-border financial services of a Party:** a person authorized by a Party who undertakes the business of providing financial services in its territory and who tries to conduct or conducts cross-border financial services;

**provider of financial services of a Party:** a person of a Party who undertakes the business of providing some financial service in the territory of the other Party;

**public entity:** a central bank or monetary authority of a Party, or any financial institution of public nature owned or controlled by a Party, and does not have commercial functions;

**regulatory authorities:** any governmental body that exercises a supervising authority over providers of financial services or financial institutions; and

**self-regulatory organization:** any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that

exercises its own or delegated regulatory or supervisory authority over financial service providers or financial institutions.

#### **Article 12.02      Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:
  - (a) financial institutions of the other Party;
  - (b) investors of the other Party, and investments of such investors, in financial institutions in the territory of the Party; and
  - (c) cross-border trade in financial services.
2. Nothing in this Chapter shall be construed to prevent a Party, or its public entities, from exclusively conducting or providing in its territory:
  - (a) activities conducted by the monetary authorities or by any other public institution with the aim of implementing monetary or exchange policies;
  - (b) activities or services forming part of a public retirement plan or statutory system of social security; or
  - (c) other activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.
3. The provisions of this Chapter shall prevail upon those of other Chapters, except where there is an explicit reference to these Chapters.
4. Article 10.11 (Expropriation and Compensation) forms a part of this Chapter.

#### **Article 12.03      Self-regulatory Organizations**

Where a Party requires a financial institution or a cross-border financial service provider of the other Party to be a member of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such self-regulatory organization.

#### **Article 12.04      Right of Establishment**

1. The Parties recognize the principle that investors of a Party shall be permitted to establish a financial institution in the territory of the other Party through any forms of establishment and operation that the law of that Party permits.
2. Each Party may impose terms and conditions on establishment of a financial institution that are consistent with Article 12.06.

#### **Article 12.05      Cross-border Trade**

1. No Party may adopt any measure restricting any type of cross-border trade in financial services by cross-border financial service providers of the other Party that the Party permits on the date of entry into force of this Agreement, except to the extent set out in Section B of the Schedule to Annex VI of the Party.
2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service providers of the other Party located in the territory of that other Party. This obligation does not require a Party to permit such providers to do business or solicit in its territory. The Parties may define "solicitation" and "doing business" for purposes of this obligation.
3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service providers of the other Party and of financial instruments.

#### **Article 12.06      National Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of similar financial institutions and investments in similar financial institutions in its territory.
2. Each Party shall accord to financial institutions of the other Party and to investments of investors of the other Party in financial institutions treatment no less favorable than that it accords to its own similar financial institutions and to investments of its own investors in similar financial institutions, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.
3. Subject to Article 12.05, where a Party permits the cross-border provision of a financial service it shall accord to the cross-border financial service providers of the other Party treatment no less favorable than that it accords to its own similar financial service providers, with respect to the provision of such service.

4. A Party's treatment of similar financial institutions and similar cross-border financial service providers of the other Party, whether different or identical to that accorded to its own institutions or providers in like circumstances, is consistent with paragraphs 1 through 3 if the treatment affords equal competitive opportunities.

5. A Party's treatment does not afford equal competitive opportunities if it disadvantages similar financial institutions and similar cross-border financial service providers of the other Party in their ability to provide financial services as compared with the ability of the Party's own financial institutions and similar financial service providers to provide such services.

#### **Article 12.07      Most-Favored-Nation Treatment**

Each Party shall accord to investors, financial institutions, investments of investors in financial institutions and cross-border financial service providers of the other Party treatment no less favorable than that it accords in similar circumstances to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service providers of any non-Parties.

#### **Article 12.08      Recognition and Harmonization**

1. Where a Party applies measures included in this Chapter it may recognize the prudential measures of the other Party or of a non-Party. This recognition may be:

- (a) unilaterally granted;
- (b) reached through harmonization or other means; or
- (c) based on an agreement or arrangement with the other Party or with the non-Party.

2. The Party that grants the recognition of prudential measures according to paragraph 1, shall give the other Party appropriate opportunities to show the existence of circumstances in which there are or shall be equivalent regulations, supervision and implementation of regulations and, as appropriate, procedures to share information between the Parties.

3. Where a Party grants recognition to the prudential measures according to paragraph 1(c) and the circumstances of paragraph 2 exist, this Party shall give appropriate opportunities to the other Party to negotiate the accession to the agreement or arrangement, or to negotiate a similar agreement or arrangement.

4. No provision of this Article shall be construed as the application of a mandatory procedure of review of the financial system or the prudential measures of a Party by the other Party.

#### **Article 12.09        Exceptions**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining prudential measures such as:

- (a) the protection of fund administrators, investors, depositors, financial market participants, policyholders, policy claimants, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service provider;
- (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers; and
- (c) ensuring the integrity and stability of the financial system of a Party.

2. Nothing in this Chapter applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations of Investment Performance Requirements with respect to measures covered by Chapter 10 (Investment) or Article 12.17.

3. Article 12.06 shall not apply to the granting by a Party to a financial institution of an exclusive right to provide a financial service referred to in Article 12.02 paragraph 2(b).

4. Notwithstanding Article 12.17(1), (2) and (3), a Party may prevent or limit transfers by a financial institution or cross-border financial service provider to, or for the benefit of, an affiliate of or person related to such institution or service provider, through the equitable, and non-discriminatory application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

#### **Article 12.10        Transparency**

In addition to the Article 17.03 (Publication), each Party shall undertake the following:

1. Each Party's regulatory authorities shall make available to interested persons all related information for completing applications relating to the provision of financial services.
2. On the request of an applicant, the regulatory authorities shall inform the applicant of the status of its application. If such authorities require additional information from the applicant, they shall notify the applicant without undue delay.
3. Each regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service provider of the other Party relating to the provision of a financial service within 120 days. The authority shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within 60 days thereafter.
4. Nothing in this Chapter requires a Party to disclose or allow access to:
  - (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service providers; or
  - (b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.

#### **Article 12.11      Committee on Financial Services**

1. The Parties hereby establish the Committee on Financial Services, as set out in Annex 12.11.
2. The Committee shall hear matters relating to this Chapter and, without prejudice to the provisions of Article 18.05(2) (Committees), shall have the following functions:
  - (a) supervising the implementation of this Chapter and its further elaboration;
  - (b) considering issues regarding financial services that are referred to it by a Party;
  - (c) participating in the dispute settlement procedures in accordance with Articles 12.18 and 12.19; and

- (d) facilitating the exchange of information between the supervising authorities, cooperating on advising about prudential regulation and endeavoring to harmonize the normative frameworks for regulations as well as the other policies, if it considers appropriate.

3. The Committee shall meet as necessary or by request of either Party to assess the implementation of this Chapter.

#### **Article 12.12 Consultations**

1. Without prejudice to Article 19.06 (Consultations), a Party may request consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee at its meeting.

2. Consultations under this Article shall include officials of the authorities specified in Annex 12.11.

3. A Party may request that regulatory authorities of the other Party participate in consultations under this Article regarding measures of general application of that other Party which may affect the operations of financial institutions or cross-border financial service providers in the territory of the requesting Party.

4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 3 to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in the territory of the other Party or a cross-border financial service provider in the territory of the other Party, the Party may approach the competent regulatory authority of the other Party to seek the information.

#### **Article 12.13 New Financial Services and Data Processing**

1. Each Party shall allow a financial institution of the other Party to provide any new financial service of a type similar to those that the Party allows to its own financial institutions according to its law. The Party may decide the institutional and juridical forms through which this service shall be offered and may require authorization for the provision of the service. Where an authorization is required, the relevant dispositions shall be issued in a reasonable period of time and may only be denied for prudential reasons, provided that the reasons are not contrary to the law of the Party, and to Articles 12.06 and 12.07.

2. Each Party shall allow the financial institutions of the other Party to transfer information for processing into or out of the territory of the Party, using any means authorized within it, if this is necessary to conduct regular business activities in these institutions.

3. Each Party commits itself to respecting the confidentiality of the information processed within its territory and originating in a financial institution located in the other Party.

#### **Article 12.14 Senior Management and Board of Directors**

1. No Party may require financial institutions of the other Party to engage individuals of any particular nationality as senior managerial or other essential personnel.

2. No Party may require that the board of directors or administrative council of a financial institution of the other Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

#### **Article 12.15 Reservations and Specific Commitments**

1. Articles 12.04 through 12.07, 12.13 and 12.14 do not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at the national level, as set out in Section A of its Schedule to Annex VI;
- (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 12.04 through 12.07, 12.13 and 12.14.

2. Articles 12.04 through 12.07, 12.13 and 12.14 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section B of its Schedule to Annex VI.

3. Section C of each Party's Schedule to Annex VI sets out certain specific commitments by that Party.

4. In Chapters 10 (Investment) and 11 (Cross-border Trade in Services) a reservation on matters relating to local presence, national treatment, most-favored-nation treatment, senior management and board of directors and administrative council

shall be deemed to constitute a reservation from Article 12.04 through 12.07, 12.13 and 12.14, as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

#### **Article 12.16 Denial of Benefits**

A Party may partially or wholly deny the benefits arising from this Chapter to a provider of financial services of the other Party or to a provider of cross-border financial services of the other Party, upon notification and consultations, according to Articles 12.10 and 12.12, if the Party determines that the service is being provided by an enterprise that does not conduct substantial trade activities in the territory of the other Party and is owned by persons of a non-Party or is under their control.

#### **Article 12.17 Transfers**

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

- (a) profits, dividends, interests, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
- (b) proceeds from the sale or liquidation of all or part of the investment;
- (c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
- (d) payments made pursuant to Article 10.11 (Expropriation and Compensation); and
- (e) proceeds from a dispute settlement procedure between a Party and an investor of the other Party pursuant to this Chapter and Section B of Chapter 10 (Investment).

2. Each Party shall permit transfers to be made without delay in a currency of free convertibility at the market rate of exchange prevailing on the date of transfer.

3. No Party may require its investors to transfer, or penalize its investors that fail to transfer the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the fair and non-discriminatory application of its laws in cases of:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) criminal or penal offenses or confirmed administrative resolutions;
- (c) non-compliance with the requirement to report on currency transfers or other monetary instruments;
- (d) ensuring the satisfaction of judgments and awards in adjudicatory proceedings; or
- (e) ensuring the enforcement of laws and regulations on issues, trade and operations of securities.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the fair and non-discriminatory application of its laws relating to the matters set out in paragraph 4.

#### **Article 12.18      Dispute Settlement Between the Parties**

1. Chapter 19 (Dispute Settlement) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Committee on Financial Services shall maintain by consensus a roster of up to eighteen (18) individuals including five (5) individuals of each Party, who are willing and able to serve as arbitrators in disputes related to this Chapter. The roster members shall meet the quality set out in Chapter 19 (Dispute Settlement) and have broad practicing experience in financial sectors or financial regulation.

3. For purposes of constituting the arbitral group, the roster referred to in paragraph 2 shall be used, unless the disputing Parties agree that the arbitral group may comprise individuals not included in this roster, provided that they conform to the requirements under paragraph 2. The president shall always be elected from that roster.

4. In any dispute where the arbitral group finds a measure to be inconsistent with the obligations of this Chapter when a suspension of benefits is processed under Chapter 19 (Dispute Settlement) and the measure affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in this sector;

- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the purpose of the measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

**Article 12.19            Investment Disputes Settlement in Financial Services Between an Investor of a Party and the Other Party**

1.     Section B of Chapter 10 (Investment) shall be incorporated into this Chapter and be made as a part of it.
2.     Where an investor of the other Party submits a claim under Article 10.17 (Claim by an Investor of a Party on Its Own Behalf) or 10.18 (Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section B of Chapter 10 (Investment) against a Party and the disputing Party invokes Article 12.09, on request of the disputing Party, the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed before the receipt of a decision under this Article.
3.     In a referral pursuant to paragraph 2, the Committee shall decide the issue of whether and to what extent Article 12.09 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.
4.     Where the Committee has not decided the issue within sixty (60) days of the receipt of the referral under paragraph 2, the disputing Party or the Party of the disputing investor may request the establishment of an arbitral group under Article 19.09 (Request for an Arbitral Group). The arbitral group shall be constituted in accordance with Article 12.18 and shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.
5.     Where no request for the establishment of an arbitral group pursuant to paragraph 4 has been made within ten (10) days of the expiration of the 60-day period referred to that paragraph, the Tribunal may proceed to decide the matter.

**ANNEX 12.11**  
**COMMITTEE ON FINANCIAL SERVICES**

The Committee on Financial Services, established under Article 12.11, shall be composed of:

- (a) in the case of Panama, the Ministry of Trade and Industries through the Vice-ministry of Foreign Trade, or its successor, in consultation with the competent authority as appropriate (Superintendence of Banks, Superintendence of Insurance, Reinsurance and National Commission of Securities); and
- (b) in the case of the ROC, the Ministry of Economic Affairs through the Bureau of Foreign Trade, or its successor, in consultation with the competent authorities as appropriate.

## CHAPTER 13 TELECOMMUNICATIONS

### Article 13.01      Definitions

For purposes of this Chapter, the following terms shall be understood as:

**authorized equipment:** terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

**conformity assessment procedure:** "conformity assessment procedure" as defined in Article 9.01 (Definitions), and includes the procedures referred to in Annex 13.01(A);

**enhanced or value-added services:** those telecommunications services employing computer processing applications that:

- (a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;
- (b) provide a customer with additional, different or restructured information; or
- (c) involve customer interaction with stored information;

**Intra-corporate communications:** subject to Annex 13.01(B), telecommunications through which an enterprise communicates:

- (a) internally, with or among its subsidiaries, branches or affiliates, as defined by each Party, or
- (b) on a non-commercial basis with other persons that are fundamental to the economic activity of the company and that have a continuing contractual relationship with it,

but does not include telecommunications services provided to persons other than those described herein;

**main provider or dominant operator:** a provider with the capacity to deeply affect the conditions of participation (from the point of view of prices and supply) of the telecommunication services in a given market due to its control of essential infrastructure or the use of its market position;

**monopoly:** a body, including a consortium or a governmental body, maintained or designed according to its law, if so allowed, as the exclusive provider of telecommunication networks or public services in any relevant market in the territory of a Party;

**network termination point:** the final demarcation of the public telecommunications transport network at the customer's premises;

**private telecommunications network:** subject to Annex 13.01(B), a telecommunications transport network that is used exclusively for intra-corporate communications or between predetermined persons;

**protocol:** a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling or data information;

**public telecommunications transport network:** public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

**public telecommunications transport service:** any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer information;

**standards-related measure:** a "standards-related measure" as defined in Article 9.01 (Definitions);

**telecommunications:** any transmission, emission or reception of signs, signals, writings, images, sounds and information of any kind, through a physical line, radio-electricity, optical means or other electromagnetic systems;

**telecommunications service:** a service supplied by signal transmission and reception through physical lines, radio-electricity, optical means or other electromagnetic systems, but does not mean distribution by cable, radio broadcasting or other kind of electromagnetic distribution of radio and television programmes; and

**terminal equipment:** any analog or digital device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

## **Article 13.02      Scope and Coverage**

1. This Chapter applies to:

- (a) subject to Annex 13.01(A), measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of the other Party, including prices fixing and access and use by such persons operating private networks for intra-corporate communications;
- (b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of the other Party in the territory, or across the borders, of a Party; and
- (c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.

2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.

3. Nothing in this Chapter shall be construed to:

- (a) require a Party to authorize a person of the other Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;
- (b) require a Party, or require a Party to oblige any person, to establish, construct, acquire, lease, operate or supply telecommunications transport networks or telecommunications transport services not offered to the public generally;
- (c) prevent a Party from prohibiting persons operating private telecommunication networks from using their networks to provide public telecommunications transport networks or services to third persons; or
- (d) require a Party to oblige a person engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

**Article 13.03            Access to and Use of Public Telecommunications Transport Networks and Services**

1. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favorable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

2. Each Party shall ensure that persons of the other Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in the rest part of this Article.

3. Subject to paragraphs 7, 8 and Annex 13.01(B), each Party shall ensure that such persons are permitted to:

- (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;
- (b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by those persons, according to those set out in Annex 13.01(B);
- (c) perform switching, signaling and processing functions; and
- (d) use operating protocols of their choice, according to the technical plans of each Party.

4. Without prejudice to its applicable law, each Party shall ensure that the pricing of public telecommunications transport services reflects economic costs directly related to providing the services. Nothing in this paragraph shall be construed to permit a party to establish cross-subsidization between public telecommunications transport services.

5. Under Annex 13.01(B), each Party shall ensure that persons of the other Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for Intra-corporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

6. Further to Article 20.02 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

- (a) ensure the security and confidentiality of messages; or

- (b) protect the privacy of subscribers to public telecommunications transport networks or services.

7. Further to Article 13.05, each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

- (a) safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or
- (b) protect the technical integrity of public telecommunications transport networks or services.

8. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 7, such conditions may include:

- (a) a restriction on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
- (c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where the circuits are used in the provision of public telecommunications transport networks or services; and
- (d) a licensing, permit, concession, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

#### **Article 13.04      Conditions for the Provision of Enhanced or Value-added Services**

1. Each Party shall ensure that:

- (a) any licensing, permit, concession, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed diligently; and

- (b) information required under such procedures, adjustable under the existing law of the Parties, to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations.

2. Without prejudicing the law of either Party, neither Party may require a service provider of enhanced or value-added services to:

- (a) provide those services to the public generally;
- (b) adjust its rates or price on cost base;
- (c) file a tariff or price;
- (d) interconnect its networks with any particular customer or network; or
- (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:

- (a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or
- (b) a monopoly, main provider, incumbent carrier to which Article 13.06 applies.

#### **Article 13.05          Standards-Related Measures**

1. Each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including those measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

- (a) prevent technical damage to public telecommunications transport networks;
- (b) prevent technical interference with, or degradation of, public telecommunications transport services;

- (c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;
- (d) prevent billing equipment malfunction;
- (e) ensure users' safety and access to public telecommunications transport networks or services; or
- (f) ensure electromagnetic spectrum's efficiency.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for that approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. Neither Party may require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

5. Each Party shall:

- (a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;
- (b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and
- (c) ensure that any measure that it adopts or maintains requiring to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.

6. When the condition allows it, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from

laboratories or testing facilities in the territory of the other Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.

#### **Article 13.06          Monopolies or Anti-competition Practice**

1. Where a Party maintains or designates a monopoly, or main provider or incumbent carrier, to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly, main provider or incumbent carrier does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of the other Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.

2. To prevent such anticompetitive conduct, each Party shall make efforts to conform with or maintain effective measures as referred to paragraph 1, such as:

- (a) accounting requirements;
- (b) requirements for structural separation;
- (c) rules to ensure that the monopoly, main provider or incumbent carrier accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; or
- (d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

#### **Article 13.07          Transparency**

Further to Article 17.03 (Publication), each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

- (a) tariffs, price and other terms and conditions of service;
- (b) specifications of technical interfaces with the networks or services;
- (c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;

- (d) conditions applying to attachment of terminal or other equipment to the networks; and
- (e) notification, permit, registration, certificate licensing or concession requirements.

#### **Article 13.08          Relation to Other Chapters**

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

#### **Article 13.09          Relation to Other International Organizations and Agreements**

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

#### **Article 13.10          Technical Cooperation and Other Consultations**

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.
2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

**ANNEX 13.01 (A)**  
**CONFORMITY ASSESSMENT PROCEDURE**

For purposes of this Chapter, conformity assessment procedures include:

In the case of Panama:

- (a) Act No. 31, February 8, 1996, on the rules governing telecommunications in the Republic of Panama;
- (b) Executive Decree No. 73, April 9, 1997, Telecommunication Rules;
- (c) Resolution JD-119, October 28, 1997, by which the Regulatory Body prohibits the importation into the Republic of Panama of telephonic equipment and wireless intercommunication equipment that do not comply with the National Scheme of Frequency Assignment;
- (d) Resolution JD-952, August 11, 1998, by which the Regulatory Body adopts procedures to test new technology equipment that use frequencies of the radio-electric spectrum; and
- (e) Resolution JD-1785, January 3, 2000, that establishes the procedure for registering and authorizing the introduction in Panamanian territory of wireless intercommunication telephones or equipment.

In the case of the ROC:

- (a) Telecommunications Act, May 21, 2003;
- (b) Compliance Approval Regulations of Telecommunications Terminal Equipment, June 28, 2000;
- (c) Regulations on Inspection and Certification of Controlled Telecommunications Equipment, August 30, 2002;
- (d) Administrative Regulations on Low-Power Radio Waves Radiated Devices, October 23, 2002;
- (e) Administrative Regulations on Controlled Telecommunications Equipment Radio-Frequency Devices, September 14, 2000;

- (f) Rules Governing the Third Generation (3G) Mobile Telecommunications Service, March 6, 2003;
- (g) Administrative Regulations governing 1900Mhz Digital Low-Tier Cordless Telephony Business, March 6, 2003;
- (h) Regulations Governing Fixed Network Telecommunications Businesses, March 6, 2003;
- (i) Administrative Rules on Satellite Communication Services, March 6, 2003;
- (j) Regulations Governing Mobile Telecommunications Businesses, March 6, 2003; and
- (k) Administrative Regulations On Amateur Radios, October 11, 2000.

## **ANNEX 13.01 (B)**

### **PRIVATE NETWORKS INTERCONNECTION (PRIVATE CIRCUITS)**

1. In the case of both Panama and the ROC, it shall be understood that the private telecommunication networks used in the private communications of a company may not be connected with public telecommunications transport networks nor may be used to provide telecommunication services, even free of charge, to third persons who are not subsidiaries, branch offices or affiliates of a company or that are not owned by it nor are under its control.

2. The provisions of paragraph 1 shall no longer be effective in Panama or the ROC after its present legal conditions change and it allows the interconnection of the private telecommunication networks used in the internal communications of enterprises to the public telecommunication transport networks and the provision to third persons of services that are key for the economic activities of an enterprise and that maintain a continued contractual relation with it.

## CHAPTER 14 TEMPORARY ENTRY FOR BUSINESS PERSONS

### Article 14.01      Definitions

1. For purposes of this Chapter, the following terms shall be understood as:

**business activities:** legitimate commercial activities undertaken and operated with the purpose of obtaining profits in the market, not including the possibility of obtaining employment, wages or remuneration from a labour source in the territory of a Party;

**business person:** a national of a Party who is engaged in trade of goods, provision of services or conduct of investment activities;

**national:** "national" as defined in Chapter 2 (General Definitions), but not including those permanent residents or definitive residents;

**labour certification:** procedure applied by the competent administrative authority with the purpose of determining if a national of a Party who seeks a temporary entry into the territory of the other Party displaces national workers in the same domestic industry or noticeably harms labour conditions in it;

**pattern of practice:** a practice repeatedly followed by the immigration authorities of one Party during the representative period immediately before the execution of the same;

**temporary entry:** entry into the territory of a Party by a business person of the other Party without the intention to establish permanent residence.

2. For purposes of Annex 14.04:

**executive functions:** functions assigned in an organization to a person who shall have the following basic responsibilities:

- (a) managing the administration of the organization, or of a relevant component, or function within it;
- (b) establishing the policies and objectives of the organization, component or function; or

- (c) receiving supervision or general direction only from executives in a higher level, the board of directors or the administrative council of the organization or its shareholders.

**management functions:** functions assigned in an organization to a person who shall have the following basic responsibilities:

- (a) managing the organization or an essential function within it;
- (b) supervising and controlling the work of other professional employees, supervisors or administrators;
- (c) having the authority to engage and dismiss or to recommend these actions, and to undertake other actions related to management of the personnel directly supervised by this person, and to perform senior functions within the organization hierarchy or functions related to his position; or
- (d) performing discretionary actions related to the daily operation of the function over which this person has the authority; and

**functions requiring specialized knowledge:** functions that require special knowledge of goods, services, research, equipment, techniques, management of an organization or of its interests and their application in international markets, or an advanced level of knowledge or experience in the processes and procedures of the organization.

#### **Article 14.02      General Principles**

This Chapter reflects the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the necessity to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

#### **Article 14.03      General Obligations**

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 14.02 and, in particular, shall apply expeditiously those measures so as to avoid unduly delaying or impairing trade in goods or services or conduct of investment activities under this Agreement.

2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

#### **Article 14.04          Grant of Temporary Entry**

1. Each Party shall grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security, in accordance with this Chapter, including the provision of Annex 14.04 and 14.04(1).

2. A Party may refuse a temporary entry to a business person where the temporary entry of that person might affect adversely:

(a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or

(b) the employment of any person who is involved in such dispute.

3. When a Party refuses a temporary entry in accordance with paragraph 2, the Party shall:

(a) inform in writing the business person of the reasons for the refusal; and

(b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal.

4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

5. An authorization of temporary entry under this Chapter, does not supersede the requirements demanded by the exercise of a profession or activity according to the specific rules in force in the territory of the Party authorizing the temporary entry.

#### **Article 14.05          Provision of Information**

1. Further to Article 17.03 (Publication), each Party shall:

(a) provide to the other Party such materials as will enable it to become acquainted with its measures relating to this Chapter; and

(b) no later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territory of the other Party, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such

a manner as will enable business persons of the other Party to become acquainted with them.

2. Each Party shall collect, maintain, and make available to the other Party the information respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation, including data specific to each authorized category.

#### **Article 14.06          Dispute Settlement**

1. A Party may not initiate proceedings under Article 19.06 (Consultations) regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 14.03 unless:

- (a) the matter involves a pattern of practice; and
- (b) the business person has exhausted the available administrative review regarding the particular matter.

2. The administrative review referred to in paragraph 1(b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within 6 months of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

#### **Article 14.07          Relation to Other Chapters**

Except for this Chapter, Chapters 1 (Initial Provisions), 2 (General Definitions), 18 (Administration of the Agreement) and 21 (Final Provisions) and Articles 17.02 (Information Centre), 17.03 (Publication), 17.04 (Provision of Information) and 17.06 (Administrative Proceedings for Adopting Measures of General Applications), no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

**ANNEX 14.04**  
**TEMPORARY ENTRY FOR BUSINESS PERSONS**

**Section A - Business Visitors**

1. Each Party shall grant temporary entry and expedite document verification to a business person seeking to engage in a business activity set out in Appendix 14.04(A)(1), without other requirements than those established by the existing immigration measures applicable to temporary entry, on presentation of:

- (a) proof of nationality of a Party;
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry, and evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall consider that a business person satisfies the requirements of paragraph 1(b) by demonstrating that:

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
- (b) the business person's principal place of business and the actual place of accrual of most of the profits remain outside such territory.

For purpose of this paragraph, a Party that authorizes temporary entry shall normally accept a declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it should be conducted according to its law.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Appendix 14.04(A)(1), on a basis no less favorable than that provided under the existing provisions of the measures set out in Appendix 14.04(A)(3).

4. No Party may:

- (a) as a condition for temporary entry under paragraph 1 or 3, require prior approval procedures, petitions, labor certification tests or other procedures of similar effect; or

- (b) impose or maintain any numerical restriction relating to temporary entry in accordance with paragraph 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider removing their visa or equivalent document requirement.

### **Section B - Traders and Investors**

1. Each Party shall grant temporary entry and provide documentation verification to a business person, who in a capacity that is supervisory, managerial, executive or requiring specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, and seeks to:

- (a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the other Party into which entry is sought; or
- (b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

2. No Party may:

- (a) as a condition for authorizing temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry in accordance with paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

### **Section C - Intra-corporate Transferees**

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render management, executive or functions requiring specialized knowledge to that enterprise or a subsidiary or affiliate thereof, provided that the business person otherwise complies with effective immigration measures applicable to temporary entry. A Party may require the person to

have been employed continuously by the enterprise for 1 year immediately preceding the date of the application for admission.

2. No Party may:

- (a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or its equivalent prior to entry. The Parties shall consider avoiding or removing their visa or equivalent document requirement.

**ANNEX 14.04 (1)**  
**SPECIAL PROVISION REGARDING TEMPORARY ENTRY OF BUSINESS**  
**PERSONS**

For Panama:

1. It shall be considered that the business persons who enter Panama under any of the categories established in Annex 14.04 carry out activities that are useful or beneficial to the country.
2. The business persons who enter Panama under any of the categories of Annex 14.04 shall hold a temporary residence permit and may renew this permit for consecutive periods as long as the conditions are maintained. Such persons may not request permanent residence nor change their immigration status, unless they comply with the general provisions of the Migration Law, Decree No. 16, June 30, 1960 and its amendments and of the Decree of the Cabinet No. 363, December 17, 1970.

For the ROC:

1. The business person shall obtain a visitor or resident visa prior to entry. A visitor visa of which validity no longer than 1 year, multiple entry and 90- day duration of stay may be issued. The business person in possession of a resident visa may stay in the ROC provided the work permit remains valid. The duration of stay may be extendable for consecutive periods as long as the conditions justifying it are maintained. Such a person may not require permanent residence unless satisfying the provisions of the Immigration Law.
2. If a business person is defined as a resident in the Mainland China area by the Statute Governing the Relations Between the People of the Taiwan Area and the Mainland Area and its Regulations, the person must apply for entry permit according to the said Statute and Regulations.

## **APPENDIX 14.04(A)(1)**

### **BUSINESS VISITORS**

#### **Research and Design**

- Technical, scientific and statistical researchers conducting independent research or research for an enterprise established in the territory of the other Party.

#### **Cultivation, Manufacture and Production Purchasing**

- Purchasing and production personnel at managerial level conducting commercial operation for an enterprise established in the territory of the other Party.

#### **Marketing**

- Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise established in the territory of the other Party.
- Trade fair and promotional personnel attending a trade convention.

#### **Sales**

- Sales representatives and agents taking orders or negotiating contracts on goods or services for an enterprise established in the territory of the other Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise established in the territory of the other Party.

#### **After-sale Service**

- Installation, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

#### **General Service**

- Consultants conducting business activities at the level of the provision of cross-border services.
- Management and supervisory personnel engaging in a commercial operation for an enterprise established in the territory of the other Party.
- Financial services personnel engaging in commercial operation for an enterprise established in the territory of the other Party.
- Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.
- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

**APPENDIX 14.04(A)(3)**  
**EXISTING IMMIGRATION MEASURES**

In the case of Panama, the Migration Law, Decree No.16, June 30, 1960, and the amendment, published by the Official Gazette 14,167, on July 05, 1960 ; the Cabinet Decree No.363, December 17, 1970, published by the Official Gazette 16,758, on December 24, 1970.

In the case of the ROC, the Immigration Law, promulgated No. 8800119740 on May 21, 1999; the Statute Governing Issuance of ROC Visas on Foreign Passports, promulgated on June 02, 1999, and the Regulations for Issuance of ROC Visas on Foreign Passports, promulgated on May 31, 2000. Employment Service Act, Promulgated on May 8, 1992, amended on January 21, 2002 ; Enforcement Rules of the Employment Service Act, amended by the Council of Labor Affairs on October 31, 2001.