

UNCTAD/DITE/3(Vol. VIII)

United Nations Conference on Trade and Development

International Investment Instruments: A Compendium

Volume VIII

PART TWO
BILATERAL INSTRUMENTS



United Nations
New York and Geneva, 2002

**PARTNERSHIP AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN
COMMUNITIES AND THEIR MEMBER STATES AND THE REPUBLIC OF
KAZAKHSTAN^{*}
[excerpts]**

The Partnership and Cooperation Agreement between the European Communities and Their Member States and the Republic of Kazakhstan was on 9 February 1995. It entered into force on 1 July 1999. The member States of the European Communities are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

TITLE IV

PROVISIONS AFFECTING BUSINESS AND INVESTMENT

CHAPTER II

**CONDITIONS AFFECTING THE ESTABLISHMENT AND OPERATION OF
COMPANIES**

Article 23

1.
 - (a) The Community and its Member States shall grant for the establishment of Kazakh companies in their territories treatment no less favourable than that accorded to companies of any third country, and this in conformity with their legislation and regulations.
 - (b) Without prejudice to the reservations listed in Annex II, the Community and its Member States shall grant to subsidiaries of Kazakh companies established in their territories a treatment no less favourable than that granted to any Community companies, in respect of their operation, and this in conformity with their legislation and regulations.
 - (c) The Community and its Member States shall grant to branches of Kazakh companies established in their territories a treatment no less favourable than that accorded to branches of companies of any third country, in respect of their operation, and this in conformity with their legislation and regulations.
2. Without prejudice of the provisions of Articles 34 and 85, the Republic of Kazakhstan shall grant to Community companies and their branches treatment no less favourable than that

^{*} *Source:* European Communities (1999). "Partnership and Cooperation Agreement between the European Communities and Their Member States and the Republic of Kazakhstan", *Official Journal of the European Communities*, L 196, 28 July 1999, pp. 3 - 45; available also on the Internet (<http://www.europa.eu.int>). [Note added by the editor.]

accorded to companies of the Republic of Kazakhstan and their branches or to any third-country companies and their branches, whichever is the better, in respect of their establishment and operations, as defined in Article 25, on its territory and this in conformity with its legislation and regulations.

Article 24

1. The provisions of Article 23 shall not apply to air transport, inland waterways transport and maritime transport.

2. However, in respect of activities undertaken by shipping agencies for the provision of international maritime transport services, including intermodal activities involving a sea leg, each Party shall permit to the companies of the other Party their commercial presence in its territory in the form of subsidiaries or branches, under conditions of establishment and operation no less favourable than those accorded to its own companies or to subsidiaries or branches of companies of any third country, whichever are the better.

Such activities include, but are not limited to:

- (a) marketing and sales of maritime transport and related services through direct contact with customers, from quotation to invoicing, whether these services are operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business arrangements;
- (b) purchase and use, on their own account or on behalf of their customers (and to resale to their customers) of any transport and related services, including inward transport services by any mode, particularly inland waterways, road and rail, necessary for the supply of an integrated service;
- (c) preparation of documentation concerning transport documents, customs documents, or other documents related to the origin and character of the goods transported;
- (d) provision of business information by any means, including computerised information systems and electronic data interchange (subject to any non-discriminatory restrictions concerning telecommunications);
- (e) setting up of any business arrangement, including participation in the company's stock and the appointment of personnel recruited locally (or, in the case of foreign personnel, subject to the relevant provisions of this Agreement), with any locally established shipping agency;
- (f) acting on behalf of the companies, organising the call of the ship or taking over cargoes when required.

Article 25

For the purpose of this Agreement:

- (a) a "Community company" or a "Kazakh company" respectively shall mean a company set up in accordance with the laws of a Member State or of the Republic of Kazakhstan respectively and having its registered office or central administration, or principal place of business in the territory of the Community or the Republic of Kazakhstan respectively. However, should the company be set up in accordance with the laws of a Member State or the Republic of Kazakhstan respectively, the company shall be considered a Community or Kazakh company respectively if its operations possess a real and continuous link with the economy of one of the Member States or the Republic of Kazakhstan respectively;
- (b) "subsidiary" of a company shall mean a company which is effectively controlled by the first company;
- (c) "branch" of a company shall mean a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension;
- (d) "establishment" shall mean the right of Community or Kazakh companies as referred to in point (a) to take up economic activities by means of the setting up of subsidiaries and branches in the Republic of Kazakhstan or in the Community respectively;
- (e) "operation" shall mean the pursuit of economic activities;
- (f) "economic activities" shall mean activities of an industrial, commercial and professional character;
- (g) With regard to international maritime transport, including intermodal operations involving a sea leg, nationals of the Member States or of the Republic of Kazakhstan established outside the Community or the Republic of Kazakhstan respectively, and shipping companies established outside the Community or the Republic of Kazakhstan and controlled by nationals of a Member State or nationals of the Republic of Kazakhstan respectively, shall also be beneficiaries of the provisions of this Chapter and Chapter III if their vessels are registered in that Member State or in the Republic of Kazakhstan respectively in accordance with their respective legislation.

Article 26

1. Notwithstanding any other provisions of the Agreement, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the obligations of a Party under the Agreement.

2. Nothing in the Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 27

The provisions of this Agreement shall not prejudice the application by each Party of any measure necessary to prevent the circumvention of its measures concerning third-country access to its market, through the provisions of this Agreement.

Article 28

1. Notwithstanding the provisions of Chapter I of this Title, a Community company or a Kazakh company established in the territory of the Republic of Kazakhstan or the Community respectively shall be entitled to employ, or have employed by one of its subsidiaries or branches, in accordance with the legislation in force in the host country of establishment, in the territory of the Republic of Kazakhstan and the Community respectively, employees who are nationals of Community Member States and the Republic of Kazakhstan respectively, provided that such employees are key personnel as defined in paragraph 2, and that they are employed exclusively by companies, or branches. The residence and work permits of such employees shall only cover the period of such employment.

2. Key personnel of the abovementioned companies herein referred to as "organisations" are "intra-corporate transferees" as defined in (c) in the following categories, provided that the organisation is a legal person and that the persons concerned have been employed by it or have been partners in it (other than majority shareholders), for at least the year immediately preceding such movement:

- (a) persons working in a senior position with an organisation, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:
 - directing the establishment or a department or subdivision of the establishment,
 - supervising and controlling the work of other supervisory, professional or managerial employees,
 - having the authority personally to hire and fire or recommend hiring, firing or other personnel actions;
- (b) persons working within an organisation who possess uncommon knowledge essential to the establishment's service, research equipment, techniques or management. The assessment of such knowledge may reflect, apart from knowledge specific to the establishment, a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession;

- (c) an "intra-corporate transferee" is defined as a natural person working within an organisation in the territory of a Party, and being temporarily transferred in the context of pursuit of economic activities in the territory of the other Party; the organisation concerned must have its principal place of business in the territory of a Party and the transfer to be an establishment (branch, subsidiary) of that organisation, effectively pursuing like economic activities in the territory of the other Party.

Article 29

1. The Parties shall use their best endeavours to avoid taking any measures or actions which render the conditions for the establishment and operation of each other's companies more restrictive than the situation existing on the day preceding the date of signature of the Agreement.
2. The provisions of this Article are without prejudice to those of Article 37: the situations covered by such Article 37 shall be solely governed by its provisions to the exclusion of any other.
3. Acting in the spirit of partnership and cooperation and in the light of the provisions of Article 43 the Government of the Republic of Kazakhstan shall inform the Community of its intentions to submit new legislation or adopt new regulations which may render the conditions for the establishment or operation in the Republic of Kazakhstan of subsidiaries and branches of Community companies more restrictive than the situation existing on the day preceding the date of signature of the Agreement. The Community may request the Republic of Kazakhstan to communicate the drafts of such legislation or regulations and to enter into consultations about those drafts.
4. Where new legislation or regulations introduced in the Republic of Kazakhstan would result in rendering the conditions for operation of subsidiaries and branches of Community companies established in the Republic of Kazakhstan more restrictive than the situation existing on the day of signature of the Agreement, such legislation or regulations shall not apply during three years following the entry into force of the relevant act to those subsidiaries and branches already established in the Republic of Kazakhstan at the time of entry into force of the relevant act.

CHAPTER III

CROSS BORDER SUPPLY OF SERVICES BETWEEN THE COMMUNITY AND THE REPUBLIC OF KAZAKHSTAN

Article 30

1. The Parties undertake in accordance with the provisions of this Chapter to take the necessary steps to allow progressively the supply of services by Community or Kazakh companies who are established in a Party other than that of the person for whom the services are intended taking into account the development of the services sectors in the Parties.

2. The Cooperation Council shall make recommendations for the implementation of paragraph 1.

Article 31

The Parties shall cooperate with the aim of developing a market-oriented service sector in the Republik of Kazakhstan.

Article 32

1. The Parties undertake to apply effectively the principle of unrestricted access to the international maritime market and traffic on a commercial basis:

- (a) the above provision does not prejudice the rights and obligations arising from the United Nations Convention on a Code of Conduct for Liner Conferences, as applicable to one or other Contracting Party to this Agreement. Non-conference lines will be free to operate in competition with a conference line as long as they adhere to the principle of fair competition on a commercial basis;
- (b) the Parties affirm their commitment to a freely competitive environment as being an essential feature of the dry and liquid bulk trade.

2. In applying the principles of paragraph 1, the Parties shall:

- (a) not apply, as from entry into force of this agreement, any cargo sharing provisions of bilateral agreements between any Member States of the Community and the former Soviet Union;
- (b) not introduce cargo sharing clauses into future bilateral agreements with third countries, other than in those exceptional circumstances where liner shipping companies from one or other Party to this Agreement would not otherwise have an effective opportunity to ply for trade to and from the third country concerned;
- (c) prohibit cargo sharing arrangements in future bilateral agreements concerning dry and liquid bulk trade;
- (d) abolish upon entry into force of this Agreement, all unilateral measures, administrative, technical and other obstacles which could have restrictive or discriminatory effects on the free supply of services in international maritime transport.

Each Party shall grant, inter alia, no less favourable treatment, for the ships operated by nationals or companies of the other Party, than that accorded to a Party's own ships, with regard to access to ports open to international trade, the use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

3. Nationals and companies of the Community providing international maritime transport services shall be free to provide international sea-river services in the inland waterways of the Republic of Kazakhstan and vice versa.

Article 33

With a view to assuring a coordinated development of transport between the Parties, adapted to their commercial needs, the conditions of mutual market access and provision of services in transport by road, rail and inland waterways and, if applicable, in air transport may be dealt with by specific agreements where appropriate negotiated between the Parties after entry into force of this Agreement.

CHAPTER IV

GENERAL PROVISIONS

Article 34

1. The provisions of this Title shall be applied subject to limitations justified on grounds of public policy, public security or public health.
2. They shall not apply to activities which in the territory of either Party are connected, even occasionally, with the exercise of official authority.

Article 35

For the purpose of this Title, nothing in the Agreement shall prevent the Parties from applying their laws and regulations regarding entry and stay, work, labour conditions and establishment of natural persons and supply of services, provided that, in so doing, they do not apply them in a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific provision of the Agreement. The above provision does not prejudice the application of Article 34.

Article 36

Companies which are controlled and exclusively owned by Kazakh companies and Community companies jointly shall also be beneficiaries of the provisions of Chapters II, III and IV.

Article 37

Treatment granted by either Party to the other hereunder shall, as from the day one month prior to the date of entry into force of the relevant obligations of the General Agreement on Trade in Services (GATS), in respect of sectors or measures covered by the GATS, in no case be more favourable than that accorded by such first Party under the provisions of GATS and this in respect of each service sector, sub-sector and mode of supply.

Article 38

For the purposes of Chapters II, III and IV, no account shall be taken of treatment accorded by the Community, its Member States or the Republic of Kazakhstan pursuant to commitments entered into in economic integration agreements in accordance with the principles of Article V of GATS.

Article 39

1. The most-favoured-nation treatment granted in accordance with the provisions of this Title shall not apply to the tax advantages which the Parties are providing or will provide in the future on the basis of agreements to avoid double taxation, or other tax arrangements.
2. Nothing in this Title shall be construed to prevent the adoption or enforcement by the Parties of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation and other tax arrangements, or domestic fiscal legislation.
3. Nothing in this Title shall be construed to prevent Member States or the Republic of Kazakhstan from distinguishing, in the application of the relevant provisions of their fiscal legislation, between tax payers who are not in identical situations, in particular as regards their place of residence.

Article 40

Without prejudice to Article 28, no provision of Chapters II, III and IV shall be interpreted as giving the right to:

- nationals of the Member States or of the Republic of Kazakhstan respectively to enter, or stay in, the territory of the Republic of Kazakhstan or the Community respectively in any capacity whatsoever, and in particular as a shareholder or partner in a company or manager or employee thereof or supplier or recipient of services,
- Community subsidiaries or branches of Kazakh companies to employ or have employed in the territory of the Community nationals of the Republic of Kazakhstan,
- Kazakh subsidiaries or branches of Community companies to employ or have employed in the territory of the Republic of Kazakhstan nationals of the Member States,
- Kazakh companies or Community subsidiaries or branches of Kazakh companies to supply Kazakh persons to act for and under the control of other persons by temporary employment contracts,
- Community companies or Kazakh subsidiaries or branches of Community companies to supply workers who are nationals of the Member States by temporary employment contracts.

CHAPTER V

CURRENT PAYMENTS AND CAPITAL

Article 41

1. The Parties undertake to authorise in freely convertible currency, any payments on the current account of balance of payments between residents of the Community and of the Republic
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of Kazakhstan connected with the movement of goods, services or persons made in accordance with the provisions of this Agreement.

2. With regard to transactions on the capital account of balance of payments, from entry into force of this Agreement, the free movement of capital relating to direct investments made in companies formed in accordance with the laws of the host country and investments made in accordance with the provisions of Chapter II, and the liquidation or repatriation of these investments and of any profit stemming therefrom shall be ensured.

3. Without prejudice to paragraph 2 or to paragraph 5, as from entry into force of this Agreement, no new foreign exchange restrictions on the movement of capital and current payments connected therewith between residents of the Community and the Republic of Kazakhstan shall be introduced and the existing arrangements shall not become more restrictive.

4. The Parties shall consult each other with a view to facilitating the movement of forms of capital other than those referred to in paragraph 2 between the Community and the Republic of Kazakhstan in order to promote the objectives of this Agreement.

5. With reference to the provisions of this Article, until a full convertibility of the Kazakh currency within the meaning of Article VIII of the Articles of Agreement of the International Monetary Fund (IMF) is introduced, the Republic of Kazakhstan may in exceptional circumstances apply exchange restrictions connected with the granting or taking up of short and medium-term financial credits to the extent that such restrictions are imposed on the Republic of Kazakhstan for the granting of such credits and are permitted according to the Republic of Kazakhstan's status under the IMF. The Republic of Kazakhstan shall apply these restrictions in a non-discriminatory manner. They shall be applied in such a manner as to cause the least possible disruption to this Agreement. The Republic of Kazakhstan shall inform the Cooperation Council promptly of the introduction of such measures and of any changes therein.

6. Without prejudice to paragraphs 1 and 2, where, in exceptional circumstances, movements of capital between the Community and the Republic of Kazakhstan cause, or threaten to cause, serious difficulties for the operation of exchange rate policy or monetary policy in the Community or the Republic of Kazakhstan, the Community and the Republic of Kazakhstan, respectively, may take safeguard measures with regard to movements of capital between the Community and the Republic of Kazakhstan for a period not exceeding six months if such measures are strictly necessary.

CHAPTER VI

INTELLECTUAL, INDUSTRIAL AND COMMERCIAL PROPERTY PROTECTION

Article 42

1. Pursuant to the provisions of this Article and of Annex III, the Republic of Kazakhstan shall continue to improve the protection of intellectual, industrial and commercial property rights in order to provide, by the end of the fifth year after the entry into force of the Agreement, for a level of protection similar to that existing in the Community, including effective means of enforcing such rights.

2. By the end of the fifth year after entry into force of the Agreement, the Republic of Kazakhstan shall accede to the multilateral conventions on intellectual, industrial and commercial property rights referred to in paragraph 1 of Annex III to which Member States are parties or which are de facto applied by Member States, according to the relevant provisions contained in these conventions.

TITLE V

LEGISLATIVE COOPERATION

Article 43

1. The Parties recognise that an important condition for strengthening the economic links between the Republic of Kazakhstan and the Community is the approximation of the Republic of Kazakhstan's existing and future legislation to that of the Community. The Republic of Kazakhstan shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community.

2. The approximation of laws shall extend to the following areas in particular: customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition including any related issues and practices affecting trade, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations, transport.

3. The Community shall provide the Republic of Kazakhstan with technical assistance for the implementation of these measures, which may include, inter alia:

- the exchange of experts,
- the provision of early information especially on relevant legislation,
- organisation of seminars,
- training activities,
- aid for translation of Community legislation in the relevant sectors.

4. The Parties agree to examine ways to apply their respective competition laws on a concerted basis in such cases where trade between them is affected.

TITLE VI

ECONOMIC COOPERATION

Article 44

1. The Community and the Republic of Kazakhstan shall establish economic cooperation aimed at contributing to the process of economic reform and recovery and sustainable development of the Republic of Kazakhstan. Such cooperation shall strengthen existing economic links, to the benefit of both Parties.

2. Policies and other measures will be designed to bring about economic and social reforms and restructuring of the economic system in the Republic of Kazakhstan and will be guided by the requirements of sustainability and harmonious social development; they will also fully incorporate environmental considerations.

3. To this end the cooperation will concentrate, in particular, on economic and social development, human resources development, support for enterprises (including privatisation, investment and development of financial services), agriculture and food, energy and civil nuclear safety, transport, tourism, environmental protection and regional cooperation.

4. Special attention shall be devoted to measures capable of fostering cooperation between the Independent States with a view to stimulating a harmonious development of the region.

5. Where appropriate, economic cooperation and other forms of cooperation provided for in this Agreement may be supported by technical assistance from the Community, taking into account the Community's relevant Council regulation applicable to technical assistance in the Independent States, the priorities agreed upon in the indicative programme related to Community technical assistance to the Republic of Kazakhstan and its established coordination and implementation procedures.

Article 45 **Industrial cooperation**

1. Cooperation shall aim at promoting the following in particular:

- the development of business links between economic operators of both sides,
- Community participation in Kazakhstan's efforts to restructure its industry,
- the improvement of management,
- the improvement of the quality of industrial products,
- the development of efficient production and processing capacity in the raw materials sector,
- the development of appropriate commercial rules and practices including product marketing,
- environmental protection,
- defence conversion.

2. The provisions of this Article shall not affect the enforcement of Community competition rules applicable to undertakings.

Article 46 **Investment promotion and protection**

1. Bearing in mind the respective powers and competences of the Community and the Member States, cooperation shall aim to establish a favourable climate for private investment, both domestic and foreign, especially through better conditions for investment protection, the transfer of capital and the exchange of information on investment opportunities.

2. The aims of cooperation shall be in particular:

- the conclusion, where appropriate, between the Member States and the Republic of Kazakhstan of agreements for the promotion and protection of investment,
- the conclusion, where appropriate, between the Member States and the Republic of Kazakhstan of agreements to avoid double taxation,
- the creation of favourable conditions for attracting foreign investments into the Kazakh economy,
- to establish stable and adequate business law and conditions, and to exchange information on laws, regulations and administrative practices in the field of investment,
- to exchange information on investment opportunities in the form of, inter alia, trade fairs, exhibitions, trade weeks and other events.

Article 47
Public procurement

The Parties shall cooperate to develop conditions for open and competitive award of contracts for goods and services in particular through calls for tenders.

Article 49
Mining and raw materials

1. The Parties shall aim at increasing investment and trade in mining and raw materials.
2. The cooperation shall focus in particular on the following areas:
 - exchange of information on the prospects of the mining and non-ferrous metals sectors,
 - the establishment of a legal framework for cooperation,
 - trade matters,
 - the adoption and implementation of environmental legislation,
 - training,
 - safety in the mining industry.

Article 50
Cooperation in science and technology

1. The Parties shall promote cooperation in civil scientific research and technological development (RTD) on the basis of mutual benefit and, taking into account the availability of resources, adequate access to their respective programmes and subject to appropriate levels of effective protection of intellectual, industrial and commercial property rights (IPR).
2. Science and technology cooperation shall cover:
 - the exchange of scientific and technical information,
 - joint RTD activities,

- training activities and mobility programmes for scientists, researchers and technicians engaged in RTD in both sides.

Where such cooperation takes the form of activities involving education and/or training, it should be carried out in accordance with the provisions of Article 51.

The Parties, on the basis of mutual agreement, can engage in other forms of cooperation in science and technology.

In carrying out such cooperation activities, special attention shall be devoted to the redeployment of scientists, engineers, researchers and technicians which are or have been engaged in research on/and production of weapons of mass destruction.

3. The cooperation covered by this Article shall be implemented according to specific arrangements to be negotiated and concluded in accordance with the procedures adopted by each Party, and which shall set out, inter alia, appropriate IPR provisions.

Article 52 **Agriculture and the agro-industrial sector**

The purpose of cooperation in this area shall be the pursuance of agrarian reform, the modernisation, privatisation and restructuring of agriculture, the agro-industrial and services sectors in the Republic of Kazakhstan, development of domestic and foreign markets for the Kazakh products, in conditions that ensure the protection of the environment, taking into account the necessity to improve security of food supply as well as the development of agri-business, the processing and distribution of agricultural products. The Parties shall also aim at the gradual approximation of Kazakh standards to Community technical regulations concerning industrial and agricultural food products including sanitary and phytosanitary standards.

Article 53 **Energy**

1. Cooperation shall take place within the principles of the market economy and the European Energy Charter, against a background of the progressive integration of the energy markets in Europe.

2. The cooperation shall include among others the following areas:

- the environmental impact of energy production supply and consumption, in order to prevent or minimise the environmental damage resulting from these activities,
- improvement of the quality and security of energy supply, including diversification of supply, in an economic and environmentally sound manner,
- formulation of energy policy,
- improvement in management and regulation of the energy sector in line with a market economy,

- the introduction of the range of institutional, legal, fiscal and other conditions necessary to encourage increased energy trade and investment,
- promotion of energy saving and energy effectiveness,
- modernisation of energy infrastructure,
- improvement of energy technologies in supply and end use across the range of energy types,
- management and technical training in the energy sector,
- security in energy supply, transportation and transit of energy and energy materials.

Article 57
Postal services and telecommunications

Within their respective powers and competencies the Parties shall expand and strengthen cooperation in the following areas:

- the establishment of policies and guidelines for the development of the telecommunications sector and postal services,
- development of principles of a tariff policy and marketing in telecommunications and postal services,
- encouraging the development of projects for telecommunications and postal services and attracting investment,
- enhancing efficiency and quality of the provision of telecommunications and postal services, amongst others through liberalisation of activities of sub-sectors,
- advanced application of telecommunications, notably in the area of electronic funds transfer,
- management of telecommunications networks and their "optimisation",
- an appropriate regulatory basis for the provision of telecommunication and postal services and for the use of the radio frequency spectrum,
- training in the field of telecommunications and postal services for operations in market conditions.

Article 58
Financial services

Cooperation shall in particular aim at facilitating the involvement of the Republic of Kazakhstan in universally accepted systems of mutual settlements. Technical assistance shall focus on:

- the development of banking and financial services, the development of a common market of credit resources, the involvement of the Republic of Kazakhstan in a universally accepted system of mutual settlements,
- the development of the fiscal system, fiscal institutions in the Republic of Kazakhstan and the exchange of experience and personnel training in fiscal matters,
- the development of insurance services, which would, inter alia, create a favourable framework for Community companies participation in the establishment of joint ventures in the insurance sector in the Republic of Kazakhstan, as well as the development of export credit insurance.

This cooperation shall in particular contribute to foster the development of relations between the Republic of Kazakhstan and the Member States in the financial services sector.

Article 59 **Money laundering**

1. The Parties agree on the necessity of making efforts and cooperating in order to prevent the use of their financial systems for laundering of proceeds from criminal activities in general and drug offences in particular.
2. Cooperation in this area shall include administrative and technical assistance with the purpose of establishing suitable standards against money laundering equivalent to those adopted by the Community and international forums in this field, including the Financial Action Task Force (FATF).

Article 63 **Small and medium-sized enterprises**

1. The Parties shall aim to develop and strengthen small and medium-sized enterprises and their associations and cooperation between SMEs in the Community and the Republic of Kazakhstan.
2. Cooperation shall include technical assistance, in particular in the following areas:
 - the development of a legislative framework for SMEs,
 - the development of an appropriate infrastructure (an agency to support SMEs communications, assistance to the creation of a fund for SMEs),
 - the development of technology parks.

ANNEX III

INTELLECTUAL, INDUSTRIAL AND COMMERCIAL PROPERTY CONVENTIONS REFERRED TO IN ARTICLE 42

1. Paragraph 2 of Article 42 concerns the following multilateral conventions:
 - Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971),
 - International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961),
 - Protocol relating to the Madrid Agreement concerning the International Registration of Marks (Madrid, 1989),
 - Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks (Geneva 1977 and amended in 1979),
 - Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Procedures (1977, modified in 1980),
 - International Convention for the Protection of New Varieties of Plants (UPOV) (Geneva Act, 1991).
2. The Cooperation Council may recommend that paragraph 2 of Article 42 shall apply to other multilateral conventions. If problems in the area of intellectual, industrial and commercial property affecting trading conditions were to occur, urgent consultations will be undertaken, at the request of either Party, with a view to reaching mutually satisfactory solutions.
3. The Parties confirm the importance they attach to the obligations arising from the following multilateral conventions:
 - Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967 and amended in 1979),
 - Madrid Agreement concerning the International Registration of Marks (Stockholm Act, 1967 and amended in 1979),
 - Patent Cooperation Treaty (Washington, 1970, amended in 1979 and modified in 1984).
4. From the entry into force of this Agreement, the Republic of Kazakhstan shall grant to Community companies and nationals, in respect of the recognition and protection of intellectual, industrial and commercial property, treatment no less favourable than that granted by it to any third country under bilateral agreements.
5. The provisions of paragraph 4 shall not apply to advantages granted by the Republic of Kazakhstan to any third country on an effective reciprocal basis and to advantages granted by the Republic of Kazakhstan to another country of the former USSR.

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AGREEMENT BETWEEN THE REPUBLIC OF SINGAPORE AND JAPAN FOR A NEW-AGE ECONOMIC PARTNERSHIP*

The Agreement between the Republic of Singapore and Japan for a New-Age Economic Partnership was signed in Singapore on 13 January 2002.

PREAMBLE

The Republic of Singapore and Japan (hereinafter referred to in this Agreement as “the Parties”),

Conscious of their warm relations and strong economic and political ties, including shared perceptions on various issues, that have developed through many years of fruitful and mutually beneficial co-operation;

Recognising that a dynamic and rapidly changing global environment brought about by globalisation and technological progress presents many new economic and strategic challenges and opportunities to the Parties;

Acknowledging that encouraging innovation and competition and improving their attractiveness to capital and human resources can enhance their ability to respond to such new challenges and opportunities;

Recognising that the economic partnership of the Parties would create larger and new markets, and would improve their economic efficiency and consumer welfare, enhancing the attractiveness and vibrancy of their markets, and expanding trade and investment not only between them but also in the region;

Reaffirming that such partnership will provide a useful framework for enhanced regulatory co-operation between the Parties to meet new challenges posed by emerging market developments and to improve their market infrastructure;

Bearing in mind their rights and obligations under other international agreements to which they are parties, in particular those of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to in this Agreement as “the WTO Agreement”);

Reaffirming the importance of the multilateral trading system embodied by the World Trade Organization (hereinafter referred to in this Agreement as “the WTO”);

Recognising the catalytic role which regional and bilateral trade agreements that are consistent with the rules of the WTO can play in accelerating global and regional trade and investment liberalisation and rule-making;

* *Source:* The Government of Japan and The Government of Singapore (2002). "Agreement between the Republic of Singapore and Japan for a New-Age Economic Partnership", available on the Internet (http://www.mti.gov.sg/public/PDF/CMT/FTA_JSEPA_Agreement.pdf) and (<http://www.mofa.go.jp/region/asia-paci/singapore/jsesa.html>). [Note added by the editor.]

Realising that enhancing economic ties between the Parties would strengthen Japan's involvement in Southeast Asia;

Observing in particular that such ties would help catalyse trade and investment liberalisation in Asia-Pacific;

Convinced that stronger economic linkages between them would provide greater opportunities, larger economies of scale and a more predictable environment for economic activities not only for Japanese and Singapore businesses but also for other businesses in Asia;

Determined to create a legal framework for an economic partnership between the Parties;

HAVE AGREED as follows:

CHAPTER 1 GENERAL PROVISIONS

Article 1 Objectives

The objectives of this Agreement are:

- (a) to facilitate, promote, liberalise and provide a stable and predictable environment for economic activity between the Parties through such means as:
- (i) reducing or eliminating customs duties and other barriers to trade in goods between the Parties;
 - (ii) improving customs clearance procedures with a view to facilitating bilateral trade in goods;
 - (iii) promoting paperless trading between the Parties;
 - (iv) facilitating the mutual recognition of the results of conformity assessment procedures for products or processes;
 - (v) removing barriers to trade in services between the Parties;
 - (vi) mutually enhancing investment opportunities and strengthening protection for investors and investments;
 - (vii) easing the movement of business people including professionals;
 - (viii) developing co-operation between the Parties in the field of intellectual property;
 - (ix) enhancing opportunities in the government procurement market; and encouraging effective control of and promoting co-operation in the field of anti-competitive activities; and

(b) to establish a co-operative framework for further strengthening the economic relations between the Parties through such means as:

- (i) promoting regulatory co-operation in the field of financial services, facilitating development of financial markets, including capital markets in the Parties and in Asia, and improving the financial market infrastructure of the Parties;
- (ii) promoting the development and use of information and communications technology (hereinafter referred to in this Agreement as “ICT”) and ICT-related services;
- (iii) developing and encouraging co-operation in the field of science and technology;
- (iv) developing and encouraging co-operation in the field of human resource development;
- (v) promoting trade and investment activities of private enterprises of the Parties through facilitating their exchanges and collaboration;
- (vi) promoting, particularly, trade and investment activities of small and medium enterprises of the Parties through facilitating their close co-operation;
- (vii) developing and encouraging co-operation in the field of broadcasting; and
- (viii) promoting and developing tourism in the Parties.

Article 2 Transparency

1. Each Party shall promptly make public, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements which pertain to or affect the operation of this Agreement.

2. Each Party shall, upon request by the other Party, promptly respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1 above

Article 3 Confidential Information

1. Nothing in this Agreement shall be construed to require a Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

2. Nothing in this Agreement shall be construed to require a Party to provide information relating to the affairs and accounts of customers of financial institutions.

3. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement, including business-confidential information.

Article 4 Security and General Exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require a Party to furnish any information the disclosure of which it considers contrary to its essential security interests;
 - (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - (iii) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (iv) relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes; or
 - (v) taken in time of war or other emergency within that Party or in international relations; or
 - (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. In the application of paragraph 1 above, the relevant interpretations and operation of the WTO Agreement shall, where appropriate, be taken into account.

3. Nothing in this Agreement shall be construed to prevent a Party from taking any action necessary to protect communications infrastructure of critical importance from unlawful acts against such infrastructure.

Article 5 Taxation

1. Unless otherwise provided for in this Agreement, its provisions shall not apply to any taxation measures.

2. Articles 2, 3 and 4 above shall apply to taxation measures, to the extent that the provisions of this Agreement are applicable to such taxation measures.

Article 6
Relation to Other Agreements

1. In the event of any inconsistency between this Agreement and any other agreement to which both Parties are parties, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution, taking into consideration general principles of international law.
2. For the purposes of this Agreement, references to articles in the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement (hereinafter referred to in this Agreement as “GATT 1994”) include the interpretative notes, where applicable.

Article 7
Implementing Agreement

The Parties shall conclude a separate agreement setting forth the details and procedures for the implementation of this Agreement (hereinafter referred to in this Agreement as “the Implementing Agreement”).

Article 8
Supervisory Committee

1. A Supervisory Committee shall be established to ensure the proper implementation of this Agreement, to review the economic relationship and partnership between the Parties, and to consider the necessity of amending this Agreement for furthering its objectives.
 2. The functions of the Supervisory Committee shall include:
 - (a) reviewing the implementation of this Agreement;
 - (b) discussing any issues concerning trade-related and investment-related measures which are of interest to the Parties;
 - (c) encouraging each other to take appropriate measures which will lead to significant improvement of business environment between the Parties;
 - (d) considering and recommending further liberalisation and facilitation of trade in goods and services, and investment;
 - (e) considering and recommending ways of furthering the objectives of this Agreement through more extensive co-operation; and
 - (f) considering and recommending, at any time and whether or not in the context of the general review provided for in Article 10, any amendment to this Agreement or modification to the commitments herein.
 3. Where there are any amendments to the provisions of the WTO Agreement on which provisions of this Agreement are based, the Parties shall, through the Supervisory Committee, consider the possibility of incorporating such amendments to this Agreement.
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4. The Supervisory Committee:
 - (a) shall be composed of representatives of the Parties;
 - (b) shall be co-chaired by Ministers or senior officials of the Parties as may be delegated by them for this purpose; and
 - (c) may establish and delegate responsibilities to working groups.
5. To promote dialogue between the government, academia and business communities of the Parties, for the purpose of developing and enhancing the economic partnership between the Parties, the working groups may, where necessary, invite academics and business persons with the relevant expertise to participate in the discussions of the working groups.
6. The Supervisory Committee shall convene once a year in regular session alternately in each Party. Special meetings of the Supervisory Committee shall also convene, within 30 days, at the request of either Party.

Article 9 Communications

Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.

Article 10 General Review

The Parties shall undertake a general review of the operation of this Agreement in 2007 and every five years thereafter.

CHAPTER 7 TRADE IN SERVICES

Article 58 Scope of and Definitions under Chapter 7

1. This Chapter shall apply to measures by the Parties affecting trade in services.
2. In respect of air transport services, this Agreement shall not apply to measures affecting traffic rights, however granted; or to measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
 - (a) aircraft repair and maintenance services;
 - (b) the selling and marketing of air transport services; and
 - (c) computer reservation system services.
3. This Chapter shall not apply to cabotage in maritime transport services.

4. Annexes IVA and IVB provide supplementary provisions to this Chapter with respect to measures affecting the supply of financial services and of telecommunications services respectively.

5. Government procurement of services shall be governed by Chapter 11.

6. For the purposes of this Chapter:

- (a) the term “measure” means any measure by a Party, including those of taxation, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- (b) the term “supply of a service” includes the production, distribution, marketing, sale and delivery of a service;
- (c) the term “measures by a Party affecting trade in services” includes measures in respect of:
 - (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;
- (d) the term “commercial presence” means any type of business or professional establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person; or
 - (ii) the creation or maintenance of a branch or a representative office; within the territory of a Party for the purpose of supplying a service;
- (e) the term “sector” of a service means:
 - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party’s Schedule of specific commitments in Annex IVc; or
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (f) the term “service supplier” means any person that supplies a service;^(Note)

Note: Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

- (g) the term “service consumer” means any person that receives or uses a service;
- (h) the term “service of the other Party” means a service which is supplied:
 - (i) from or in the territory of the other Party, or in the case of maritime transport, by a vessel registered under the laws of the other Party, or by a person of the other Party which supplies the service through the operation of a vessel or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Party;
- (i) the term “person” means either a natural person or a juridical person;
- (j) the term “service supplier of the other Party” means any natural person of the other Party or juridical person of the other Party, that supplies a service;
- (k) the term “natural person of the other Party” means a natural person who resides in the territory of the other Party or elsewhere and who under the law of the other Party:
 - (i) in respect of Japan, is a national of Japan; and
 - (ii) in respect of Singapore, is a national of Singapore or has the right of permanent residence in Singapore;
- (l) the term “juridical person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (m) the term “juridical person of the other Party” means a juridical person which is either:
 - (i) constituted or otherwise organised under the law of the other Party and, if it is owned or controlled by natural persons of non-Parties or juridical persons constituted or otherwise organised under the law of non-Parties, is engaged in substantive business operations in the territory of either Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (A) natural persons of the other Party; or
 - (B) juridical persons of the other Party identified under sub-paragraph (i) above;
- (n) a juridical person is:

- (i) “owned” by persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by persons of that Party;
 - (ii) “controlled” by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) “owned by natural persons of non-Parties” if more than 50 percent of the equity interest in it is beneficially owned by natural persons of non-Parties;
 - (iv) “controlled by natural persons of non-Parties” if such natural persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (v) “affiliated” with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (o) the term “trade in services” means the supply of a service:
- (i) from the territory of one Party into the territory of the other Party (“cross-border mode”);
 - (ii) in the territory of one Party to the service consumer of the other Party (“consumption abroad mode”);
 - (iii) by a service supplier of one Party, through commercial presence in the territory of the other Party (“commercial presence mode”);
 - (iv) by a service supplier of one Party, through presence of natural persons of that Party in the territory of the other Party (“presence of natural persons mode”);
- (p) the term “measures by a Party” means measures taken by:
- (i) central or local governments; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central or local governments;
- in fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by its local governments and non-governmental bodies in the exercise of powers delegated by its central or local governments within its territory;
- (q) the term “services” includes any service in any sector except services supplied in the exercise of governmental authority;
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- (r) the term “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
- (s) the term “aircraft repair and maintenance services” means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;
- (t) the term “selling and marketing of air transport services” means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;
- (u) the term “computer reservation system services” means services provided by computerised systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (v) the term “traffic rights” means the rights for scheduled and non-scheduled services to operate or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control;
- (w) the term “monopoly supplier of a service” means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service; and
- (x) the term “direct taxes” comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Article 59 **Market Access**

1. With respect to market access through the modes of supply defined in sub-paragraph (o) of paragraph 6 of Article 58 above, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of specific commitments in Annex IVc. ^(Note)

Note: If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in (i) of sub-paragraph (o) of paragraph 6 of Article 58 above and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in (iii) of sub-paragraph (o) of paragraph 6 of Article 58 above, it is thereby committed to allow related transfers of capital into its territory.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule of specific commitments in Annex IVc, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (Note)

Note: Sub-paragraph (c) of paragraph 2 of Article 59 does not cover measures of a Party which limit inputs for the supply of services.

- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 60

National Treatment under Chapter 7

1. In the sectors inscribed in its Schedule of specific commitments in Annex IVc, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers. ^(Note)

Note: Specific commitments assumed under Article 60 shall not be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

2. A Party may meet the requirement of paragraph 1 above by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to like services or service suppliers of the other Party.

4. A Party may not invoke paragraphs 1, 2 and 3 above under Chapter 21 with respect to a measure of the other Party that falls within the scope of an international agreement between them relating to the avoidance of double taxation.

Article 61 **Additional Commitments**

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 59 and 60 above, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of specific commitments in Annex IVc.

Article 62 **Service Suppliers of Any Non-Party**

Each Party shall also accord treatment granted under this Chapter to a service supplier other than those of the Parties, that is a juridical person constituted under the laws of either Party, and who supplies a service through commercial presence, provided that it engages in substantive business operations in the territory of either Party.

Article 63 **Schedule of Specific Commitments under Chapter 7**

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 59, 60 and 61. With respect to sectors where such commitments are undertaken, each Schedule of specific commitments in Annex IVc shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments; and
- (d) where appropriate, the time-frame for implementation of such commitments.

2. Measures inconsistent with both Articles 59 and 60 shall be inscribed in the column relating to Article 59. This inscription will be considered to provide a condition or qualification to Article 60 as well. 3. Schedules of specific commitments shall be annexed to this Agreement as Annex IVc.

- 4. (a) If a Party has entered into an international agreement on trade in services with a non-Party, or enters into such an agreement after this Agreement comes into force, it shall favourably consider according to services and service suppliers of the other Party, treatment no less favourable than the treatment that it accords to like services and service suppliers of that non-Party pursuant to such an agreement.
- (b) An international agreement referred to in sub-paragraph (a) above shall not include an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

Article 64

Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
3. The provisions of paragraph 2 above shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
4. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under that Party's domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.
5. In sectors where a Party has undertaken specific commitments subject to any terms, limitations, conditions or qualifications set out therein, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:
 - (a) does not comply with the following criteria:
 - (i) based on objective and transparent criteria, such as competence and the ability to supply the service;
 - (ii) not more burdensome than necessary to ensure the quality of the service; or
 - (iii) in the case of licensing procedures, not in themselves a restriction on the supply of the service; and
 - (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.
6. In determining whether a Party is in conformity with its obligations under paragraph 5 above, account shall be taken of international standards of relevant international organisations^(Note) applicable to that Party.

Note: The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of both Parties.

Article 65
Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Party's specific commitments.
2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. If a Party has reason to believe that a monopoly supplier of a service of the other Party is acting in a manner inconsistent with paragraph 1 or 2 above, it may request the other Party to provide specific information concerning the relevant operations.
4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:
 - (a) authorises or establishes a small number of service suppliers; and
 - (b) substantially prevents competition among those suppliers in its territory.

Article 66
Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 65 above, may restrain competition and thereby restrict trade in services.
2. A Party shall, at the request of the other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1 above. The Party addressed shall accord full and sympathetic consideration to such a request and shall co-operate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its domestic law and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 67
Payments and Transfers

1. Except under the circumstances envisaged in Article 68 below, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund (hereinafter referred to in this Chapter as "the Fund") under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 68 below, or at the request of the Fund.

Article 68
Restrictions to Safeguard the Balance of Payments under Chapter 7

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments.
2. The restrictions referred to in paragraph 1 above:
 - (a) shall not discriminate between the Parties;
 - (b) shall ensure that the other Party is treated as favourably as any non-Party;
 - (c) shall be consistent with the Articles of Agreement of the Fund;
 - (d) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
 - (e) shall not exceed those necessary to deal with the circumstances described in paragraph 1 above; and
 - (f) shall be temporary and be phased out progressively as the situation specified in paragraph 1 above improves.
3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.
4. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the other Party.
5. Where a Party has adopted restrictions pursuant to paragraph 1 of this Article:
 - (a) that Party shall commence consultations with the other Party promptly in order to review the restrictions adopted by the former Party;
 - (b) the restrictions shall be subjected to annual review through further consultations, beginning one year after the date that the consultations referred to in subparagraph (a) above commenced. At these consultations, all restrictions applied for balance-of-payments purposes shall be reviewed. The Parties may also agree to a different frequency of such consultations;
 - (c) such consultations shall assess the balance-of-payments situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:
 - (i) the nature and extent of the balance-of-payments and the external financial difficulties;

- (ii) the external economic and trading environment of the consulting Party; and
- (iii) alternative corrective measures which may be available;
- (d) the consultations shall address the compliance of the restrictions with paragraph 2 of this Article, in particular the progressive phaseout of restrictions in accordance with sub-paragraph (f) of paragraph 2 of this Article; and
- (e) in such consultations, all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balance-of-payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Party.

Article 69 **General Exceptions under Chapter 7**

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services between the Parties, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or to maintain public order; (Note)

Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
- d) inconsistent with Article 60, provided that the difference in treatment is aimed at ensuring the equitable or effective ^(Note) imposition or collection of direct taxes in respect of services or service suppliers of the other Party.

Note: Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
- (iv) apply to consumers of services supplied in or from the territory of the other Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in sub-paragraph (d) of paragraph 1 of Article 69 and in this note are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

2. In the application of paragraph 1 above, the relevant interpretations and operation of the WTO Agreement shall, where appropriate, be taken into account.

Article 70 Denial of Benefits

A Party may deny the benefits of this Chapter:

- (a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;
- (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
 - (i) by a vessel registered under the laws of a non-Party, and
 - (ii) by a person which operates or uses the vessel in whole or in part but which is of a non-Party;
- (c) to any service supplier that is a juridical person, if it establishes that the service supplier is neither a "service supplier of the other Party" as defined in sub-paragraph (j) of paragraph 6 of Article 58 nor a "service supplier other than those of the Parties" granted benefits under Article 62.

CHAPTER 8 INVESTMENT

Article 71 Scope of Chapter 8

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party in the territory of the former Party; and
 - (b) investments of investors of the other Party in the territory of the former Party.
2. This Chapter shall not apply to government procurement.
3. Movement of natural persons who are investors shall be governed by Chapter 9.

Article 72 Definitions under Chapter 8

For the purposes of this Chapter:

- (a) the term “investments” means every kind of asset owned or controlled, directly or indirectly, by an investor, including:
 - (i) an enterprise;
 - (ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
 - (iii) bonds, debentures, and loans and other forms of debt, ^(Note) including rights derived therefrom;
 - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
 - (v) claims to money and claims to any performance under contract ^(Note) having a financial value;
- Note: For the purposes of this Chapter, “loans and other forms of debt” described in (iii) of sub-paragraph (a) of Article 72 and “claims to money and claims to any performance under contract” described in (v) of sub-paragraph (a) of Article 72 refer to assets which relate to a business activity and do not refer to assets which are of a personal nature, unrelated to any business activity.
- (vi) intellectual property rights, including trademarks, industrial designs, layout-designs of integrated circuits, copyrights, patents, trade names, indications of source or geographical indications and undisclosed information;
 - (vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations, and permits; and

- (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;
- (b) the term “investments” also includes amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments;
- (c) the term “investor” means any person that seeks to make, is making, or has made, investments;
- (d) the term “person” means either a natural person or an enterprise;
- (e) the term “investor of the other Party” means any natural person of the other Party or any enterprise of the other Party;
- (f) the term “natural person of the other Party” means a natural person who resides in the territory of the other Party or elsewhere and who under the law of the other Party:
 - (i) in respect of Japan, is a national of Japan; and
 - (ii) in respect of Singapore, is a national of Singapore or has the right of permanent residence in Singapore;
- (g) the term “enterprise” means any legal person or any other entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship, association, organisation, company or branch;
- (h) the term “enterprise of the other Party” means any enterprise duly constituted or otherwise organised under applicable law of the other Party, except an enterprise owned or controlled by persons of non-Parties and not engaging in substantive business operations in the territory of the other Party; and
 - (i) an enterprise is:
 - (i) “owned” by persons of non-Parties if more than 50 percent of the equity interest in it is beneficially owned by persons of non-Parties; and
 - (ii) “controlled” by persons of non-Parties if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

Article 73
National Treatment under Chapter 8

Each Party shall within its territory accord to investors of the other Party and to their investments in relation to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments, treatment no less favourable than the treatment which it accords in like circumstances to its own investors and investments (hereinafter referred to in this Chapter as “national treatment”).

Article 74
Access to the Courts of Justice

Each Party shall within its territory accord to investors of the other Party treatment no less favourable than the treatment which it accords in like circumstances to its own investors, with respect to access to its courts of justice and administrative tribunals and agencies in all degrees of jurisdiction both in pursuit and in defence of such investors' rights.

Article 75
Prohibition of Performance Requirements

1. Neither Party shall impose or enforce any of the following requirements as a condition for the establishment, acquisition, expansion, management, operation, maintenance, use or possession of investments in its territory of an investor of the other Party:

- (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 or use goods produced or services provided in the territory of the former Party, or to purchase goods or services from natural or legal persons in the territory of the former Party;
- (d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investments;
- (e) to restrict sales of goods or services in the territory of the former Party that such investments produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer technology, a production process or other proprietary knowledge to a natural or legal person of the former Party, except when the requirement:
 - (i) is imposed or enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or
 - (ii) concerns the transfer of intellectual property which is undertaken in a manner not inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement;
- (g) to locate its headquarters for a specific region or the world market in the territory of the former Party;
- (h) to achieve a given level or value of research and development in the territory of the former Party; or
- (i) to supply one or more of the goods that it produces or the services that it provides to a specific region outside the territory of the former Party exclusively from the territory of the former Party.

2. Each Party is not precluded by paragraph 1 above from conditioning the receipt or continued receipt of an advantage, in connection with investments in its territory of an investor of the other Party, on compliance with any of the requirements set forth in sub-paragraphs (f) through (i) of paragraph 1 above.

3. Nothing in this Article shall be construed so as to derogate from the obligations of the Parties under the Agreement on Trade Related Investment Measures in Annex 1A to the WTO Agreement.

Article 76 **Specific Exceptions**

1. Articles 73 and 75 shall not apply to investors and investments, in respect of:
 - (a) any exception specified by the Parties in Annexes VA and VB; and
 - (b) an amendment or modification to any exception referred to in sub-paragraph (a) above, provided that the amendment or modification does not decrease the level of conformity of the exception with Articles 73 and 75.
2. The exceptions referred to in sub-paragraph (a) of paragraph 1 above shall include the following elements, to the extent that these elements are applicable:
 - (a) sector or matter;
 - (b) obligation or article in respect of which the exception is taken;
 - (c) legal source or authority of the exception; and
 - (d) succinct description of the exception.
3. If a Party makes an amendment or modification referred to in sub-paragraph (b) of paragraph 1 of this Article, that Party shall, prior to the implementation of the amendment or modification, or in exceptional circumstances, as soon as possible thereafter:
 - (a) notify the other Party of the elements set out in paragraph 2 above; and
 - (b) provide to the other Party, upon request, particulars of the amended or modified exception.
4. Each Party shall endeavour, where appropriate, to reduce or eliminate the exceptions specified in Annexes VA and VB respectively.

Article 77 **Expropriation and Compensation**

1. Each Party shall accord to investments in its territory of investors of the other Party fair and equitable treatment and full protection and security.

2. Neither Party shall expropriate or nationalise investments in its territory of an investor of the other Party or take any measure equivalent to expropriation or nationalisation (hereinafter referred to in this Chapter as “expropriation”) except for a public purpose, on a non-discriminatory basis, in accordance with due process of law, and upon payment of compensation in accordance with this Article.

3. Compensation shall be equivalent to the fair market value of the expropriated investments. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier, but may, insofar as such expropriation relates to land, reflect the market value before the expropriation occurred, the trend in the market value, and adjustments to the market value in accordance with the laws of the expropriating Party concerning expropriation.

4. The compensation shall be paid without delay and shall carry an appropriate interest taking into account the length of time from the time of expropriation until the time of payment. It shall be effectively realisable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of the expropriation, into the currency of the Party of the investors concerned and freely usable currencies defined in the Articles of Agreement of the International Monetary Fund.

5. The investors affected by expropriation shall have a right of access to the courts of justice or the administrative tribunals or agencies of the Party making the expropriation to seek a prompt review of the investor's case or the amount of compensation that has been assessed in accordance with the principles set out in this Article.

Article 78 Repurchase of Leases

If an agency of the government of a Party responsible for leasing industrial land repurchases a leasehold interest in land owned by an investor of the other Party, that agency shall take into consideration the following matters:

- (a) the value attributable to the remaining period of such leasehold interest;
- (b) priority allocation by the agency of a suitable, alternative property for the investor; and
- (c) reasonable relocation costs that would be incurred by the investor in relocating to the alternative property within the territory of the Party.

Article 79 Protection from Strife

1. Each Party shall accord to investors of the other Party that have suffered loss or damage relating to their investments in the territory of the former Party due to armed conflict, or state of emergency such as revolution, insurrection and civil disturbance, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors.

2. Any payments made pursuant to paragraph 1 above shall be effectively realisable, freely convertible and freely transferable.

Article 80
Transfers

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

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) profits, capital gains, dividends, royalties, interests and other current incomes accruing from investments;
- (c) proceeds from the total or partial sale or liquidation of investments;
- (d) payments made under a contract including loan payments in connection with investments;
- (e) earnings of investors of a Party who work in connection with investments in the territory of the other Party;
- (f) payments made in accordance with Articles 77 and 79; and
- (g) payments arising out of the settlement of a dispute under Article 82.

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

3. Notwithstanding paragraphs 1 and 2 above, a Party may delay or 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) the issuing, trading or dealing in securities;
- (c) criminal matters;
- (d) ensuring compliance with orders or judgements in adjudicatory proceedings; or
- (e) obligations of investors arising from social security and public retirement plans.

Article 81
Subrogation

1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or contract of insurance, arising from or pertaining to an investment of that investor within the territory of the other Party, the other Party shall:

- (a) recognise the assignment, to the former Party or its designated agency, of any right or claim of such investor that formed the basis of such payment; and

- (b) recognise the right of the former Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as the original right or claim of the investor.

2. Paragraphs 2 to 5 of Article 77, and Articles 79 and 80, shall apply mutatis mutandis as regards payment to be made to the Party or its designated agency first mentioned in paragraph 1 above by virtue of such assignment of right or claim, and the transfer of such payment.

Article 82

Settlement of Investment Disputes between a Party and an investor of the other Party

1. For the purposes of this Chapter, an investment dispute is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any right conferred by this Chapter with respect to the investments of the investor of that other Party.

2. In the event of an investment dispute, such investment dispute shall, as far as possible, be settled amicably through consultations between the parties to the investment dispute.

3. If an investment dispute cannot be settled through such consultations within five months from the date on which the investor requested for the consultations in writing, and if the investor concerned has not submitted the investment dispute for resolution (i) under administrative or judicial settlement, or (ii) in accordance with any applicable, previously agreed dispute settlement procedures, that investor may either:

- (a) request the establishment of an arbitral tribunal in accordance with the procedures set out in Annex Vc and submit the investment dispute to that tribunal;
- (b) submit the investment dispute to conciliation or arbitration in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington, March 18, 1965 (hereinafter referred to in this Chapter as “the ICSID Convention”), so long as the ICSID Convention is in force between the Parties, or conciliation or arbitration under the Additional Facility Rules of the International Centre for Settlement of Investment Disputes (hereinafter referred to in this Chapter as “ICSID”) so long as the ICSID Convention is not in force between the Parties; or
- (c) submit the investment dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law, adopted by the United Nations Commission on International Trade Law on April 28, 1976.

4. Each Party hereby consents to the submission of investment disputes to international conciliation or arbitration as provided for in paragraph 3 above, in accordance with the provisions of this Article, provided that:

- (a) less than three years have elapsed since the date the investor knew or ought to have known, whichever is the earlier, of the loss or damage which, it is alleged, has been incurred by the investor; and
- (b) in the case of arbitration in accordance with the provisions of the ICSID Convention referred to in sub-paragraph (b) of paragraph 3 above, if the Chairman of ICSID is asked to appoint an arbitrator or arbitrators pursuant to Article 38 or 56(3) of the ICSID Convention, the Chairman:
 - (i) allows both the Party and the investor to each indicate up to three nationalities, the appointment of arbitrators of which pursuant to Article 38 or 56(3) of the ICSID Convention is unacceptable to it; and
 - (ii) does not appoint as arbitrator any person who is, by virtue of sub-paragraph (i) above, excluded by either the Party or the investor or both the Party and the investor.

5. When the condition set out in sub-paragraph (a) of paragraph 4 above is not met, the consent given in paragraph 4 above shall be invalidated.

6. When the conditions set out in sub-paragraph (b) of paragraph 4 of this Article are not met, the consent to arbitration by ICSID given in paragraph 4 of this Article shall be invalidated. In such circumstances, a different method of dispute settlement can be chosen from among those methods provided for in paragraph 3 of this Article other than ICSID arbitration.

7. Paragraphs 3 and 4 of this Article shall not apply if an investor which is an enterprise of a Party owned or controlled by persons of non-Parties submits an investment dispute with respect to its investments in the territory of the other Party, unless the investments concerned have been established, acquired or expanded in the territory of that other Party.

8. An investor to an investment dispute who intends to submit an investment dispute pursuant to paragraph 3 of this Article shall give to the Party that is a party to the investment dispute written notice of intent to do so at least 90 days before the claim is submitted. The notice of intent shall specify:

- (a) the name and address of the investor concerned;
- (b) the specific measures of that Party at issue and a brief summary of the factual and legal basis of the dispute sufficient to present the problem clearly, including the provisions of this Chapter alleged to have been breached; and
- (c) the dispute settlement procedures set forth in sub-paragraph (a), (b) or (c) of paragraph 3 of this Article which the investor will seek.

9. When an investor of a Party submits an investment dispute pursuant to paragraph 3 of this Article and the disputing Party invokes Article 84 or 85, the arbitrators to be selected shall, on the request of the disputing Party or investor, have the necessary expertise relevant to the specific financial matters under dispute.

10. (a) The award shall include:

- (i) a judgement whether or not there has been a breach by a Party of any rights conferred by this Chapter in respect of the investor of the other Party and its investments; and
 - (ii) a remedy if there has been such breach.
- (b) The award rendered in accordance with sub-paragraph (a) above shall be final and binding upon the Party and the investor, except to the extent provided for in sub-paragraphs (c) and (d) below.
- (c) Where an award provides that there has been a breach by a Party of any rights conferred by this Chapter in respect of the investor of the other Party and its investments, the Party to the dispute is entitled to implement the award through one of the following remedies, in lieu of the remedy indicated pursuant to (ii) of sub-paragraph (a) of this paragraph:
- (i) pecuniary compensation, including interest from the time the loss or damage was incurred until time of payment;
 - (ii) restitution in kind; or
 - (iii) pecuniary compensation and restitution in combination, provided that:
 - (A) the Party notifies the investor, within 30 days after the date of the award, that it will implement the award through one of the remedies indicated in (i), (ii) or (iii) of this sub-paragraph; and
 - (B) where the Party chooses to implement the award in accordance with (i) or (iii) of this sub-paragraph, the Party and the investor agree as to the amount of pecuniary compensation, or in lieu of such agreement, a decision pursuant to sub-paragraph (d) below is made.
- (d) If the Party and the investor are unable to agree, within 60 days after the date of the award, as to the amount of pecuniary compensation as provided for in (B) of sub-paragraph (c) above, the matter may be referred, by either the Party or the investor, to the arbitral tribunal that rendered the award. The award on the amount of pecuniary compensation in accordance with this paragraph is final and binding on both the Party and the investor.
- (e) The award shall be executed by the applicable laws and regulations concerning the execution of such awards in force in the Party in whose territory such execution is sought.

11. Nothing in this Article shall be construed so as to prevent an investor to an investment dispute from seeking administrative or judicial settlement within the territory of the Party that is a party to the investment dispute.

12. Neither Party shall give diplomatic protection, or bring an international claim, in respect of an investment dispute which one of its investors and the other Party shall have consented to

submit or shall have submitted to arbitration under this Article, unless such other Party shall have failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 83 **General Exceptions under Chapter 8**

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on investments of investors of a Party in the territory of the other Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or to maintain public order;^(Note)

Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with the laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contract;
 - (ii) the protection of the privacy of the individual in relation to the processing and dissemination of personal data and the protection of confidentiality of personal records and accounts;
 - (iii) safety;
- (d) relating to prison labour;
- (e) imposed for the protection of national treasures of artistic, historic, or archaeological value;
- (f) to conserve exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. In cases where a Party takes any measure pursuant to paragraph 1 above or Article 4, which it implements after this Agreement comes into force, such Party shall make reasonable effort to notify the other Party of the description of the measure either before such measure is taken or as soon as possible thereafter, if such measure could affect investments or investors of the other Party in respect of obligations made under this Chapter.

Article 84
Temporary Safeguard

1. A Party may adopt or maintain measures inconsistent with its obligations provided for in Article 73 relating to cross-border capital transactions or Article 80:
 - (a) in the event of serious balance-of-payments or external financial difficulties or threat thereof; or
 - (b) where, in exceptional circumstances, movements of capital result in serious economic and financial disturbance in the Party concerned.
2. The measures referred to in paragraph 1 above:
 - (a) shall be consistent with the Articles of Agreement of the International Monetary Fund;
 - (b) shall not exceed those necessary to deal with the circumstances described in paragraph 1 above;
 - (c) shall be temporary and shall be eliminated as soon as conditions permit;
 - (d) shall promptly be notified to the other Party;
 - (e) shall not discriminate between the Parties;
 - (f) shall ensure that the other Party is treated as favourably as any non-Party; and
 - (g) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party.
3. Nothing in this Chapter shall be regarded as affecting the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

Article 85
Prudential Measures

1. Notwithstanding any other provisions of this Chapter, a Party shall not be prevented from taking measures for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system.
2. Where such measures do not conform with the provisions of this Chapter, they shall not be used as a means of avoiding the Party's commitments or obligations under this Chapter.

Article 86
Intellectual Property Rights

Notwithstanding the provisions of Article 73, the Parties agree in respect of intellectual property rights that national treatment as provided for in that Article shall apply only to the extent as provided for in the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement.

Article 87
Taxation Measures as Expropriation

1. Article 77 shall apply to taxation measures, to the extent that such taxation measures constitute expropriation as provided for in paragraph 2 of Article 77.
2. Where paragraph 1 above applies, Articles 74, 82, 88 and paragraph 1 of Article 89 shall also apply in respect of taxation measures.

Article 88
Joint Committee on Investment

1. For the purposes of effective implementation of this Chapter, a Joint Committee on Investment (hereinafter referred to in this Article as “the Committee”) shall be established. The functions of the Committee shall be:
 - (a) reviewing and discussing the implementation and operation of this Chapter;
 - (b) reviewing the specific exceptions under paragraph 1 of Article 76 for the purpose of contributing to the reduction or elimination, where appropriate, of such exceptions, and encouraging favourable conditions for investors of both Parties; and
 - (c) discussing other investment related issues concerning this Chapter.
2. The Committee may decide to hold a joint meeting with the private sector.

Article 89
Application of Chapter 8

1. In fulfilling the obligations under this Chapter, each Party shall take such reasonable measures as are available to it to ensure observance by its local governments and non-governmental bodies in the exercise of power delegated by central or local governments within its territory.
2. If a Party has entered into an international agreement on investment with a non-Party, or enters into such an agreement after this Agreement comes into force, it shall favourably consider according to investors of the other Party and to their investments, treatment, in relation to the establishment, acquisition, expansion, management, operation, maintenance, use, possession, liquidation, sale, or other disposition of investments, no less favourable than the treatment that it accords in like circumstances to investors of that non-Party and their investments pursuant to such an agreement.

CHAPTER 9

MOVEMENT OF NATURAL PERSONS

Article 90 Scope of Chapter 9

1. This Chapter applies to measures affecting the movement of natural persons of a Party who enter the territory of the other Party for business purposes.
2. This Agreement shall not apply to measures regarding nationality or citizenship, residence on a permanent basis or employment on a permanent basis.

Article 91 Definitions under Chapter 9

The term “natural person of the other Party” means a natural person who resides in the territory of the other Party or elsewhere and who under the law of the other Party:

- (a) in respect of Japan, is a national of Japan; and
- b) in respect of Singapore, is a national of Singapore or has the right of permanent residence in Singapore.

Article 92 Specific Commitments under Chapter 9

1. Each Party shall set out in Part A of Annex VI the specific commitments it undertakes for:
 - (a) short-term business visitors of the other Party; and
 - (b) intra-corporate transferees of the other Party.
2. Each Party shall set out in Part B of Annex VI the specific commitments it undertakes, to be implemented in accordance with its laws and regulations, for:
 - (a) investors of the other Party; and
 - (b) natural persons of the other Party who engage in work on the basis of a personal contract with public or private organisations in its territory.
3. Natural persons covered by a specific commitment referred to in paragraphs 1 and 2 above shall be granted entry and stay in accordance with the terms and conditions of the specific commitment.
4. The specific commitments referred to in paragraphs 1 and 2 of this Article shall apply only to sectors where specific commitments referred to in Article 63 are undertaken under Chapter 7 and no specific exceptions are made under Chapter 8.

Article 93
Mutual Recognition of Professional Qualifications

1. A Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in the territory of the other Party for the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of natural persons with professional qualifications.
2. Recognition referred to in paragraph 1 above, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.
3. Where a Party recognises, by agreement or arrangement or unilaterally, the education or experience obtained, requirements met or licences or certifications granted in the territory of a non-Party, the Party shall accord the other Party an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the territory of the other Party should also be recognised.

Article 94
Joint Committee on Mutual Recognition of Professional Qualifications

1. For the purposes of effective implementation of Article 93 above, a Joint Committee on Mutual Recognition of Professional Qualifications (hereinafter referred to in this Article as “the Committee”) shall be established.

The functions of the Committee shall be:

- (a) reviewing and discussing the issues concerning the effective implementation of Article 93 above;
 - (b) identifying and recommending areas for and ways of furthering co-operation between the Parties; and
 - (c) discussing other issues relating to the implementation of Article 93 above.
2. The composition of the Committee shall be specified in the Implementing Agreement.

Article 95
General Provisions for Chapter 9

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party, or a disguised restriction on trade in services between the Parties or on investments of investors of a Party in the territory of the other Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public morals or to maintain public order;^(Note)

Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety.

2. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons of the other Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of a specific commitment. ^(Note)

Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

CHAPTER 10 INTELLECTUAL PROPERTY

Article 96 Areas and Forms of Co-operation under Chapter 10

1. The Parties, recognising the growing importance of intellectual property (hereinafter referred to in this Chapter as “IP”) as a factor of economic competitiveness in the knowledge-based economy, and of IP protection in this new environment, shall develop their co-operation in the field of IP.

2. The areas of the co-operation pursuant to paragraph 1 above may include:

- (a) patents, trade secrets and related rights;
- (b) trade marks and related rights;
- (c) repression of unfair competition;
- (d) copyright, designs and related rights;
- (e) IP brokerage or licensing, IP management, registration and exploitation, and patent mapping;

- (f) IP protection in the digital environment and the growth and development of e-commerce;
 - (g) technology and market intelligence; and
 - (h) IP education and awareness programmes.
3. The forms of the co-operation under paragraph 1 of this Article may include:
- (a) exchanging information and sharing experiences on IP and on relevant IP events, activities and initiatives organised in their respective territories;
 - (b) jointly undertaking training and exchanging of experts in the field of IP for the purposes of contributing to a better understanding of each Party's IP policies and experiences; and
 - (c) disseminating information, sharing experiences and conducting training on IP enforcement.

Article 97
Joint Committee on Intellectual Property

1. For the purposes of effective implementation of this Chapter, a Joint Committee on IP (hereinafter referred to in this Article as "the Committee") shall be established. The functions of the Committee shall be:
- (a) overseeing and reviewing the co-operation and implementation of this Chapter;
 - (b) providing advice to the Parties with regard to the implementation of this Chapter;
 - (c) considering and recommending new areas of co-operation under this Chapter; and
 - (d) discussing other issues relating to IP.
2. The composition of the Committee shall be specified in the Implementing Agreement.

Article 98
Facilitation of Patenting Process

1. Singapore shall, in accordance with its laws and regulations, take appropriate measures to facilitate the patenting process of an application filed in Singapore that corresponds to an application filed in Japan.
2. The details of such measures taken by Singapore pursuant to paragraph 1 above shall be specified in the Implementing Agreement.

Article 99
Facilitation of the Use of IP Databases

The Parties shall take appropriate measures, as set out in the Implementing Agreement, to facilitate the use of the Parties' IP databases open to the public.

Article 100
Costs of Co-operative Activities under Chapter 10

Costs of co-operative activities shall be borne in such manner as may be mutually agreed.

CHAPTER 11
GOVERNMENT PROCUREMENT

Article 101
Scope of Chapter 11

1. Paragraph 2 of Article I, and Article II to Article XXIII of the Agreement on Government Procurement in Annex 4 to the WTO Agreement (hereinafter referred to in this Agreement as "the GPA") (except for sub-paragraph (b) of paragraph 1 of Article III, Article V, paragraph 2 of Article XVI, paragraph 5 of Article XIX, Article XXI, Article XXII and paragraph 1 of Article XXIII) shall apply mutatis mutandis to procurement of goods and services specified in Annex VIIA, by entities specified in Annex VIIB. The threshold for a procurement covered by the provisions of this Chapter is SDR 100,000.
2. Where entities specified in Annex VIIB, in the context of procurement covered under this Agreement, require enterprises not included in Annex VIIB to award contracts in accordance with particular requirements, Article III of the GPA (except for sub-paragraph (b) of paragraph 1) shall apply mutatis mutandis to such requirements.
3. When an entity listed in Annex VIIB is privatised, this Chapter shall no longer apply to that entity. A Party shall notify the other Party of the name of such entity before it is privatised or as soon as possible thereafter.
4. For the purposes of paragraph 3 above, a government entity is construed as privatised if it has been re-constituted to be a legal person operating commercially and is no longer entitled to exercise governmental authority, even though the government possesses holdings thereof or appoints members of the board of directors thereto.
5. Nothing in this Chapter shall be construed so as to derogate from the obligations of the Parties as parties to the GPA.

Article 102
Exchange of Information on Government Procurement

The government officials of the Parties responsible for procurement policy shall meet upon the request of either Party and, subject to the laws and regulations of each Party, exchange information in respect of government procurement.

**CHAPTER 12
COMPETITION**

**Article 103
Anti-competitive Activities**

1. Each Party shall, in accordance with its applicable laws and regulations, take measures which it considers appropriate against anti-competitive activities, in order to facilitate trade and investment flows between the Parties and the efficient functioning of its markets.
2. Each Party shall, when necessary, endeavour to review and improve or to adopt laws and regulations to effectively control anti-competitive activities.

**Article 104
Co-operation on Controlling Anti-competitive Activities**

1. The Parties shall, in accordance with their respective laws and regulations, co-operate in the field of controlling anti-competitive activities subject to their available resources.
2. The sectors, details and procedures of co-operation under this Chapter shall be specified in the Implementing Agreement.
3. Pursuant to paragraph 1 of this Article, the Parties shall exchange information as provided for in the Implementing Agreement with respect to the implementation of this Chapter. Article 3 shall not apply to such exchange of information.

**Article 105
Dispute Settlement**

The dispute settlement procedures provided for in Chapter 21 shall not apply to this Chapter.

**CHAPTER 13
FINANCIAL SERVICES CO-OPERATION**

**Article 106
Co-operation in the Field of Financial Services**

The Parties shall co-operate in the field of financial services with a view to:

- (a) promoting regulatory co-operation in the field of financial services;
- (b) facilitating development of financial markets, including capital markets, in the Parties and in Asia; and
- (c) improving financial market infrastructure of the Parties.

Article 107
Regulatory Co-operation

1. The Parties shall promote regulatory co-operation in the field of financial services, with a view to:

- (a) implementing sound prudential policies, and enhancing effective supervision of financial institutions of either Party operating in the territory of the other Party;
- (b) responding properly to issues relating to globalisation in financial services, including those provided by electronic means;
- (c) maintaining an environment that does not stifle legitimate financial market innovations; and
- (d) conducting oversight of global financial institutions to minimise systemic risks and to limit contagion effects in the event of crises.

2. As a part of regulatory co-operation as set out in paragraph 1 above, the Parties shall, in accordance with their respective laws and regulations, co-operate in sharing information on securities markets and securities derivatives markets of the respective Parties as provided for in the Implementing Agreement, for the purposes of contributing to the effective enforcement of the securities laws of each Party.

3. Articles 2 and 3 and Chapter 21 shall not apply to the co-operation between the Parties in sharing information on securities markets and securities derivatives markets as set out in paragraph 2 above.

Article 108
Capital Market Development

The Parties, recognising a growing need to enhance the competitiveness of their capital markets and to preserve and strengthen their stability in rapidly evolving global financial transactions, shall co-operate in facilitating the development of the capital markets in the Parties with a view to fostering sound and progressive capital markets and improving their depth and liquidity.

Article 109
Improvement of Financial Market Infrastructure

The Parties, recognising that efficient and reliable financial market infrastructure will facilitate trade and investment, shall co-operate in strengthening their financial market infrastructure. -

Article 110
Development of Regional Financial Markets including Capital Markets

The Parties, recognising the importance of stable and well-functioning financial markets, including capital markets, shall co-operate with a view to contributing to further development of cross-border financial activities in Asia and to regional financial stability.

Article 111
Joint Committee on Financial Services Co-operation

1. For the purposes of effective implementation of this Chapter, a Joint Committee on Financial Services Co-operation (hereinafter referred to in this Article as “the Committee”) shall be established. The functions of the Committee shall include:
 - (a) reviewing and discussing issues concerning the effective implementation of this Chapter;
 - (b) identifying and recommending to the Parties areas for further co-operation; and
 - (c) discussing other issues relating to financial services co-operation between the Parties.
2. The Committee may establish expert working groups to examine specific issues and initiatives in detail.
3. The composition of the Committee shall be specified in the Implementing Agreement.

CHAPTER 14
INFORMATION AND COMMUNICATIONS TECHNOLOGY

Article 112
Co-operation in the Field of ICT

The Parties, recognising the rapid development, led by the private sector, of ICT and of business practices concerning ICT-related services both in the domestic and the international contexts, shall co-operate to promote the development of ICT and ICT-related services with a view to obtaining the maximum benefit of the use of ICT for the Parties.

Article 113
Areas and Forms of Co-operation under Chapter 14

1. The areas of co-operation pursuant to Article 112 above may include the following:
 - (a) promotion of electronic commerce;
 - (b) promotion of the use by consumers, the public sector and the private sector, of ICT-related services, including newly emerging services; and
 - (c) human resource development relating to ICT.
2. The Parties may set out, in the Implementing Agreement, specific areas of co-operation which they deem important.
3. The forms of co-operation pursuant to Article 112 above may include the following:
 - (a) promoting dialogue on policy issues;

- (b) promoting co-operation between the private sectors of the Parties;
- (c) enhancing co-operation in international fora relating to ICT; and
- (d) undertaking other appropriate co-operative activities.

Article 114
Joint Committee on ICT

1. For the purposes of effective implementation of this Chapter, a Joint Committee on ICT (hereinafter referred to in this Article as “the Committee”) shall be established. The functions of the Committee shall be:

- (a) reviewing and discussing issues concerning the effective implementation of this Chapter;
- (b) identifying ways of further co-operation between the Parties in the field of ICT; and
- (c) discussing other issues relating to ICT.

2. The composition of the Committee shall be specified in the Implementing Agreement.

CHAPTER 15
SCIENCE AND TECHNOLOGY

Article 115
Co-operation in the Field of Science and Technology

1. The Parties, recognising that science and technology, particularly in advanced areas, will contribute to the continued expansion of their respective economies in the medium and long term, shall develop and promote co-operative activities between the governments of the Parties (hereinafter referred to in this Chapter as “Co-operative Activities”) for peaceful purposes in the field of science and technology on the basis of equality and mutual benefit.

2. The Parties shall also encourage, where appropriate, other co-operative activities between parties, one or both of whom are entities in their respective territories other than the governments of the Parties (hereinafter referred to in this Chapter as “Other Co-operative Activities”).

Article 116
Areas and Forms of Co-operative Activities under Chapter 15

The Parties may agree on the areas and forms of Co-operative Activities, which are to be specified in the Implementing Agreement.

Article 117
Joint Committee on Science and Technology

1. For the purposes of effective implementation of this Chapter, a Joint Committee on Science and Technology (hereinafter referred to in this Article as “the Committee”) shall be established. The functions of the Committee shall be:
 - (a) reviewing and discussing the co-operative relationship in the field of scientific and technological development of the Parties and the progress of Co-operative Activities and Other Co-operative Activities;
 - (b) exchanging views and information on scientific and technological policy issues;
 - (c) providing advice to the Parties with regard to the implementation of this Chapter, which may include identification and recommendation of Co-operative Activities and encouragement of their implementation;
 - (d) discussing ways of encouraging Other Co-operative Activities, especially in the areas that the Parties consider important; and
 - (e) discussing other issues relating to science and technology.
2. The composition of the Committee shall be specified in the Implementing Agreement.

Article 118
**Protection and Distribution of Intellectual Property Rights
and other Rights of a Proprietary Nature**

1. Scientific and technological information of a non-proprietary nature arising from Co-operative Activities may be made available to the public by the government of either Party.
2. In accordance with the applicable laws and regulations of the Parties and with relevant international agreements to which the Parties are, or may become parties, the Parties shall ensure the adequate and effective protection, and give due consideration to the distribution, of intellectual property rights or other rights of a proprietary nature resulting from the Co-operative Activities undertaken pursuant to this Chapter. The Parties shall consult for this purpose as necessary.

Article 119
Costs of Co-operative Activities under Chapter 15

1. The implementation of this Chapter shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.
2. Costs of Co-operative Activities shall be borne in such manner as may be mutually agreed.

Article 120
Implementing Arrangements

Implementing arrangements setting forth the details and procedures of Co-operative Activities under this Chapter may be made between the government agencies of the Parties.

CHAPTER 17
TRADE AND INVESTMENT PROMOTION

Article 126
Co-operation in the Field of Trade and Investment Promotion

The Parties shall co-operate in promoting trade and investment activities by private enterprises of the Parties, recognising that efforts of the Parties to facilitate exchange and collaboration between private enterprises of the Parties will act as a catalyst to promote trade and investment in Japan, Singapore and Asia.

Article 127
Review and Recommendation under Chapter 17

1. The Parties recognise that certain co-operation between parties, one or both of whom are entities in their respective territories other than the governments of the Parties, could contribute to trade and investment promotion between the Parties. Such co-operation shall be specified in the Implementing Agreement.
2. The Parties shall review the co-operation set forth in paragraph 1 above and, where appropriate, recommend ways or areas of further co-operation between the parties to such co-operation.

Article 128
Joint Committee on Trade and Investment Promotion

1. For the purposes of effective implementation of this Chapter, a Joint Committee on Trade and Investment Promotion (hereinafter referred to in this Article as “the Committee”) shall be established. The functions of the Committee shall be:
 - (a) exchanging views and information on trade and investment promotion;
 - (b) reviewing and discussing issues concerning the effective implementation of this Chapter;
 - (c) identifying and recommending ways of further co-operation between the Parties; and
 - (d) discussing other issues relating to co-operation in trade and investment promotion.
 2. The composition of the Committee shall be specified in the Implementing Agreement.
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CHAPTER 18
SMALL AND MEDIUM ENTERPRISES

Article 129
Co-operation in the Field of Small and Medium Enterprises

The Parties, recognising the fundamental role of small and medium enterprises (hereinafter referred to in this Chapter as “SMEs”) in maintaining the dynamism of their respective national economies, shall co-operate in promoting close co-operation between SMEs of the Parties.

Article 130
Review and Recommendation under Chapter 18

1. The Parties recognise that certain co-operation between parties, one or both of whom are entities in their respective territories other than the governments of the Parties, could contribute to close co-operation between SMEs of the Parties. Such co-operation shall be specified in the Implementing Agreement.

2. The Parties shall review the co-operation set forth in paragraph 1 above and, where appropriate, recommend ways or areas of further co-operation between the parties to such co-operation.

Article 131
Facilitation of SMEs Investment

The Parties, recognising the geographical position of Singapore in Southeast Asia, shall co-operate in facilitating investments of Japanese SMEs in Singapore, with a view to enabling SMEs of both Parties to co-operate in their businesses, especially in Southeast Asia. The Parties shall likewise co-operate to facilitate investments of Singapore SMEs in Japan.

Article 132
Joint Committee on SMEs

1. For the purposes of effective implementation of this Chapter, a Joint Committee on SMEs (hereinafter referred to in this Article as “the Committee”) shall be established. The functions of the Committee shall be:

- (a) reviewing and discussing issues concerning the effective implementation of this Chapter;
- (b) exchanging views and information on the promotion of SMEs co-operation;
- (c) identifying and recommending ways of further co-operation between the Parties; and
- (d) discussing other issues relating to SMEs co-operation.

2. The composition of the Committee shall be specified in the Implementing Agreement.

CHAPTER 21
DISPUTE AVOIDANCE AND SETTLEMENT

Article 139
Scope of Chapter 21

1. This Chapter shall apply with respect to the avoidance and settlement of disputes between the Parties concerning the interpretation or application of this Agreement or the Implementing Agreement.
2. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which they are parties.
3. Notwithstanding paragraph 2 above, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which the Parties are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute. However, this does not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.
4. Paragraph 3 above shall not apply where the Parties expressly agree to the use of more than one dispute settlement procedure in respect of a particular dispute.

Article 140
General Consultations for the Avoidance and Settlement of Disputes

1. For the purpose of avoiding disputes, a Party may request consultations with the other Party with regard to any matter on the interpretation or application of this Agreement or the Implementing Agreement.
2. When a Party requests consultations pursuant to paragraph 1 above, the other Party shall afford adequate opportunity for consultations and shall reply promptly to the request and enter into consultations in good faith.
3. If the Parties fail to resolve any matter through consultations, either Party may request a meeting of the Consultative Committee established pursuant to paragraph 4 below. The Consultative Committee shall convene within 30 days after the date of receipt of the request, with a view to a prompt and satisfactory resolution of the matter.
4. To facilitate the implementation of this Chapter, the Parties establish the Consultative Committee, which shall consist of representatives of each Party, including one legal expert designated by each Party.
5. The procedure provided for in this Article shall not be applicable if, in respect of the same dispute, the procedure provided for in Article 142 has already been initiated.

Article 141
Good Offices, Conciliation or Mediation

1. Good offices, conciliation or mediation may be requested at any time by either Party. They may begin at any time if the Parties agree. The use of good offices, conciliation or mediation may be terminated at any time at the request of either Party.
2. If the Parties agree, good offices, conciliation or mediation may continue while procedures of the arbitral tribunal provided for in this Chapter are in progress.

Article 142
Special Consultations for Dispute Settlement

1. For the purpose of settling disputes, either Party may make a request in writing for consultations to the other Party if the requesting Party considers that any benefit accruing to it directly or indirectly under this Agreement or the Implementing Agreement is being nullified or impaired, as a result of failure of the requested Party to carry out its obligations, or as a result of the application by the requested Party of measures which conflict with its obligations, under this Agreement or the Implementing Agreement.
2. Unless the Parties agree otherwise, the requested Party shall:
 - (a) enter into consultations within 30 days after the date of receipt of the request for consultations made pursuant to paragraph 1 above; or
 - (b) enter into consultations within 10 days after the date of receipt of the request for consultations made pursuant to paragraph 1 above if the procedure provided for in Article 140 was utilised in respect of the same dispute and 60 days or more have elapsed from the date of the initiation of consultations under that Article.
3. The Parties shall make every effort to reach a mutually satisfactory resolution through consultations.
4. Where there is an infringement of the obligations assumed under this Agreement or the Implementing Agreement, such infringement is considered *prima facie* to constitute a case of nullification or impairment.

Article 143
Establishment of Arbitral Tribunals

1. Unless otherwise agreed by the Parties, if the Parties fail to resolve a dispute through consultations provided for in Article 142 above, either Party may request the establishment of an arbitral tribunal in respect of that dispute:
 - (a) after 60 days from the date on which the requested Party receives the request for consultations made pursuant to subparagraph (a) of paragraph 2 of Article 142 above; or

- (b) after 30 days from the date on which the requested Party receives the request for consultations made pursuant to subparagraph (b) of paragraph 2 of Article 142 above.
- 2. Any request to establish an arbitral tribunal pursuant to this Article shall identify:
 - (a) the legal basis of the complaint including the provisions of this Agreement or the Implementing Agreement alleged to have been breached and any other relevant provisions; and
 - (b) the factual basis for the complaint.
- 3. The Parties shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator each. If one Party fails to so appoint an arbitrator, the legal expert designated by that Party pursuant to paragraph 4 of Article 140 shall be appointed as an arbitrator.
- 4. The Parties shall agree on and designate a third arbitrator, who shall chair the arbitral tribunal. If the Parties fail to agree on the third arbitrator, each Party shall prepare and exchange with the other Party, a list of five persons whom that Party can accept as the third arbitrator. The third arbitrator shall be chosen in the following manner:
 - (a) if only one name is common to both lists, that person, if available, will be chosen as the third arbitrator;
 - (b) if more than one name appears on both lists, the Parties shall consult for the purpose of agreeing on the third arbitrator from such names;
 - (c) if the Parties are not able to reach agreement in accordance with sub-paragraph (b) above or if there is no name common to both lists, or the arbitrator agreed upon or chosen is not available and the Parties cannot decide on a replacement for the arbitrator that is not available, then the two arbitrators appointed pursuant to paragraph 3 above shall agree on the third arbitrator; and
 - (d) if the arbitrators are not able to reach agreement on the third arbitrator, the third arbitrator shall be chosen by random drawing in accordance with the procedure agreed to by the Parties for this purpose in the Implementing Agreement.
- 5. The third arbitrator shall be appointed within 40 days after the date of appointment of the second arbitrator.
- 6. The third arbitrator shall not, unless the Parties agree otherwise, be a national of either of the Parties, nor have his or her usual place of residence in the territory of either of the Parties, nor be employed by either Party, nor have dealt with the dispute in any capacity.
- 7. The arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

Article 144
Functions of Arbitral Tribunals

1. The arbitral tribunal established pursuant to Article 143 above:
 - (a) should consult with the Parties as appropriate and provide adequate opportunities for the development of a mutually satisfactory resolution;
 - (b) shall make its award in accordance with this Agreement, the Implementing Agreement, and applicable rules of international law;
 - (c) shall set out, in its award, its findings of law and fact, together with the reasons therefor; and
 - (d) may, apart from giving its findings, include in its award suggested implementation options for the Parties to consider in conjunction with Article 147.
2. The Parties agree that the award of the arbitral tribunal shall be final and binding on the Parties.
3. The arbitral tribunal may seek, from the Parties, such relevant information as it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.
4. The arbitral tribunal may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to factual issues concerning a scientific or other technical matter raised by a Party, the arbitral tribunal may request advisory reports in writing from an expert or experts. The arbitral tribunal may, at the request of a Party or proprio motu, select, in consultation with the Parties, no fewer than two scientific or technical experts who shall assist the arbitral tribunal throughout its proceedings, but who shall not have the right to vote in respect of any decision to be made by the arbitral tribunal, including its award.
5. The deliberations of the arbitral tribunal shall be confidential. The award of the arbitral tribunal shall be drafted without the presence of the Parties, and in the light of the information provided and the statements made.
6. The arbitral tribunal shall issue its award within 120 days of its establishment, unless the dispute is settled otherwise or the proceeding of the arbitral tribunal is terminated in accordance with Article 146. When the arbitral tribunal is unable to issue its award within 120 days, the arbitral tribunal may, in consultation with the Parties, agree to delay the issuance of its award by no more than 30 days.
7. The arbitral tribunal shall accord equal opportunity to the Parties to review the award in draft form.
8. The arbitral tribunal shall attempt to make its decisions, including its award, by consensus but may also make such decisions, including its award, by majority vote.

Article 145
Proceedings of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session.
2. The deliberations of the arbitral tribunal and the documents submitted to it shall be kept confidential.
3. Notwithstanding paragraph 2 above, either Party may make public statements as to its views regarding the dispute, but shall treat as confidential, information and written submissions submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. Where a Party has provided information or written submissions designated to be confidential, the other Party may request a non-confidential summary of the information or written submissions which may be disclosed publicly. The Party to whom such a request is made may agree to such a request and submit such a summary, or refuse the request without needing to ascribe any reasons or justification.
4. The Parties shall be given the opportunity to attend any of the presentations, statements or rebuttals in the proceeding. Any information or written submissions submitted by a Party to the arbitral tribunal, including any comments on the descriptive part of the draft award and responses to questions put by the arbitral tribunal, shall be made available to the other Party.

Article 146
Termination of Proceedings

Even if the arbitral tribunal has been established and is proceeding with the procedure provided for in Article 145 above, the Parties may agree to terminate the proceedings at any time by jointly so notifying the chair of the arbitral tribunal.

Article 147
Implementation of Chapter 21

1. The award of the arbitral tribunal made pursuant to Article 144 (hereinafter referred to in this Chapter as “the original award”) shall be complied with promptly. A Party which is required by the arbitral tribunal to comply with its award (hereinafter referred to in this Chapter as “the implementing Party”) shall, within 20 days after the date of issuance of the original award, notify the other Party (hereinafter referred to in this Chapter as “the other Party”) as to the period which it assesses to be reasonable and necessary in order to implement the original award. Such period may:
 - (a) extend to 12 months only if administrative or legislative measures have to be undertaken;
 - (b) be extended or shortened if the Parties agree that special circumstances so justify; or
 - (c) give rise to a request for consultations if the other Party considers the period notified to be unacceptable, in which case the Parties shall enter into consultations within 10 days after the date of receipt of the request.

2. If the implementing Party considers that compliance with the original award is impracticable, it shall, instead of notifying the period for implementing the award in accordance with paragraph 1 above, promptly enter into consultations with the other Party, with a view to developing a mutually acceptable resolution, through compensation or any alternative arrangement, and agreeing on a reasonable period to implement such resolution.

3. If the other Party considers that the measures taken by the implementing Party to comply with the original award do not comply with the original award, it may request consultations.

4. Either Party may refer matters arising from the implementation of the original award to an arbitral tribunal if:

- (a) consultations were initiated under sub-paragraph (c) of paragraph 1 of this Article, and the Parties fail to reach agreement on the period for implementation within 20 days after the date of receipt of the request;
- (b) consultations were initiated under paragraph 2 of this Article, and the Parties fail to reach agreement on a mutually acceptable resolution or the period for its implementation within 30 days after the date of the initiation of consultations;
- (c) consultations were initiated under paragraph 3 above, and the Parties fail to resolve the matter, and at least 30 days have elapsed since the date of the expiration of the period for implementation provided for in paragraph 1 of this Article; or
- (d) the Party that is requested to enter into consultations refuses to do so where required pursuant to paragraph 1, 2 or 3 above.

5. If the arbitral tribunal convened pursuant to sub-paragraph (c) of paragraph 4 above confirms that the implementing Party has failed to comply with the original award within the implementation period as determined pursuant to paragraph 1 or sub-paragraph (a) of paragraph 4 above, the other Party may, within 30 days from the date of such confirmation by the arbitral tribunal, notify the implementing Party that it intends to suspend the application to the implementing Party of the obligations of the other Party under this Agreement or the Implementing Agreement.

6. If the implementing Party has failed to implement the compensation or other alternative arrangement within the implementation period as determined pursuant to paragraph 2 or sub-paragraph (b) of paragraph 4 of this Article, the other Party may, within 30 days from the date of the expiration of such implementation period, notify the implementing Party that it intends to suspend the application to the implementing Party of the obligations of the other Party under this Agreement or the Implementing Agreement.

7. Suspension pursuant to paragraphs 5 and 6 above may only be implemented at least 30 days after the date of the notification in accordance with that paragraph. Such suspension:

- (a) shall not be effected if, in respect of the dispute to which the suspension relates, consultations, or proceedings before an arbitral tribunal are in progress;

- (b) shall be temporary, and shall be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the original award is effected;
- (c) shall be restricted to the level of nullification or impairment that is attributable to the failure to comply with the original award; and
- (d) shall be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend obligations in such sector or sectors.

8. If the implementing Party considers that the requirements in paragraph 5, 6 or 7 above have not been met, it may request consultations with the other Party. The other Party shall enter into consultations within 10 days after the date of receipt of the request. If the Parties fail to resolve matters within 30 days after the date of receipt of the request for consultations pursuant to this paragraph, either Party may refer the matter to an arbitral tribunal.

9. The arbitral tribunal that is convened for the purpose of this Article shall, wherever possible, have as its members, the members of the original arbitral tribunal. If this is not possible, then the members to the arbitral tribunal shall be appointed pursuant to paragraphs 3 to 7 of Article 143.

Unless the Parties agree to a different period, such arbitral tribunal shall issue its award within 60 days after the date when the matter is referred to it.

Article 148 Expenses

Unless the Parties agree otherwise, the expenses of the arbitral tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.

ANNEX IVA FINANCIAL SERVICES

I. Scope and Definitions

1. This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in sub-paragraph (o) of paragraph 6 of Article 58.

2. (a) For the purposes of this Annex:
- (i) the term “financial service” means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

(A) Insurance and Insurance-Related Services

(AA) direct insurance (including co-insurance):

- (aa) life
 - (bb) non-life
 - (BB) reinsurance and retrocession;
 - (CC) insurance intermediation, such as brokerage and agency;
 - (DD) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
- (B) Banking and Other Financial Services (Excluding Insurance)
- (AA) acceptance of deposits and other repayable funds from the public;
 - (BB) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - (CC) financial leasing;
 - (DD) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
 - (EE) guarantees and commitments;
 - (FF) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (aa) money market instruments (including cheques, bills, certificates of deposits);
 - (bb) foreign exchange;
 - (cc) derivative products including, but not limited to, futures and options;
 - (dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (ee) transferable securities;
 - (ff) other negotiable instruments and financial assets, including bullion;

- (GG) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 - (HH) money broking;
 - (II) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (JJ) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (KK) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 - (LL) advisory, intermediation and other auxiliary financial services on all the activities listed in sub-paragraphs (AA) through (KK) above, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (ii) the term “financial service supplier” means any natural or juridical person of a Party wishing to supply or supplying financial services, but the term “financial service supplier” does not include a public entity;
 - (iii) the term “public entity” means:
 - (A) a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 - (B) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;
 - (iv) for the purposes of sub-paragraph (q) of paragraph 6 of Article 58, the term “services supplied in the exercise of governmental authority” means the following:
 - (A) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
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- (B) activities forming part of a statutory system of social security or public retirement plans; and
 - (C) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
- (b) For the purposes of sub-paragraph (q) of paragraph 6 of Article 58, if a Party allows any of the activities referred to in (iv)(B) of sub-paragraph (a) or (iv)(C) of sub-paragraph (a) above to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, the term “services” shall include such activities.
- (c) Sub-paragraph (r) of paragraph 6 of Article 58 shall not apply to services covered by this Annex.

II. Domestic Regulation

1. Notwithstanding any provisions of Chapter 7, a Party shall not be prevented from taking measures for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of Chapter 7, they shall not be used as a means of avoiding the Party's commitments or obligations under Chapter 7.
2. Nothing in Chapter 7 shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

III. Recognition

1. A Party may recognise the prudential measures of any international regulatory body or non-Party in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international regulatory body or non-Party concerned or may be accorded autonomously.
2. A Party that is a party to such an agreement or arrangement referred to in paragraph 1 above, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

IV. Dispute Settlement

Arbitral tribunals established under Article 143 for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

V. New Financial Services

1. Each Party shall give due consideration to applications by financial service suppliers of the other Party to offer in the territory of the former Party any new financial service that is regulated by the other Party within the territory of the other Party. Where an application is approved, the provision of the new financial service is subject, on a non-discriminatory basis, to relevant licensing, institutional and juridical form requirements of the former Party.

2. For the purposes of paragraph 1 above, the term “new financial service” shall include services related to existing and new products or services, or the manner in which such products or services are delivered, that are not supplied in the territory of a Party but are supplied in the territory of the other Party.

VI. Modification of Schedules

The Parties shall, on the request in writing by either Party, hold consultations to consider any modification or withdrawal of a commitment in the Schedule of specific commitments on trade in financial services. Such consultations shall be held within three months after the requesting Party makes such a request.

In such consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments not less favourable to trade than that provided for in the Schedule of specific commitments in Annex IVC prior to such consultations is maintained.

ANNEX IVB TELECOMMUNICATIONS SERVICES

I. Scope and Definitions

1. This Annex applies to measures affecting telecommunications services where specific commitments are undertaken.

2. For the purposes of this Annex:

- (a) the term “telecommunications” means the transmission and reception of signals by any electromagnetic means;
- (b) the term “public telecommunications transport service” means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include, inter alia, telegraph, telephone, telex, and data transmission typically involving 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’s information;
- (c) the term “public telecommunications transport network” means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

- (d) the term “essential facilities” means facilities of a public telecommunications transport network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (e) the term “major supplier” means a supplier that has the ability to materially affect the terms of participation having regard to price and supply in the relevant market for basic telecommunications services as a result of:
 - (i) control over essential facilities; or
 - (ii) use of its position in the market;
- (f) the term “facilities-based suppliers” means:
 - (i) for Japan, Type 1 Telecommunications Carriers provided for in Article 12 of the Telecommunications Business Law (Law No. 86, 1984); or
 - (ii) for Singapore, Facilities-Based Operators; and
- (g) the term “services-based suppliers” means:
 - (i) for Japan, Type 2 Telecommunications Carriers provided for in Articles 22 and 27 of the Telecommunications Business Law (Law No. 86, 1984); or
 - (ii) for Singapore, Services-Based Operators.

II. Competitive Safeguards

Prevention of Anti-competitive Practices in Telecommunications

1. Each Party shall maintain appropriate measures for the purpose of preventing suppliers, who alone or together are a major supplier, from engaging in or continuing anti-competitive practices.

Safeguards

2. The anti-competitive practices referred to in paragraph 1 above shall include in particular:
- (a) engaging in anti-competitive cross-subsidisation or pricing services in a manner that gives rise to unfair competition;
 - (b) discriminating unfairly in providing telecommunications services;
 - (c) using information obtained from competitors with anti-competitive results; and

- (d) not making available to other service suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Asymmetric Regulation

- 3. Each Party may, in accordance with its laws and regulations, determine the appropriate level of regulation required to promote fair competition.

III. Public Availability of Licensing Criteria

- 1. Where a licence is required, each Party shall make publicly available the following:
 - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
 - (b) the terms and conditions of individual licences.
- 2. Each Party shall make known to the applicant the reasons for the denial of a licence upon request.

IV. Interconnection

Interconnection to be ensured

- 1. Each Party shall ensure interconnection between a facilities-based supplier and any other facilities-based supplier or a services-based supplier to the extent provided for in its laws and regulations.

Interconnection with Major Suppliers

- 2. Each Party shall ensure that a major supplier is required to provide interconnection at any technically feasible point in the network. Such interconnection is provided:
 - (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services, for like services of non-affiliated service suppliers or for like services of its subsidiaries or other affiliates;
 - (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled ^(Note) so that the supplier need not pay for network components or facilities that it does not require for the services to be provided; and

Note: “Sufficiently unbundled” network components or facilities include unbundled local loop (including line sharing).

- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

3. Each Party shall ensure that a major supplier is required to allow other suppliers who interconnect with the major supplier:

- (a) to locate their equipment which is essential for interconnection within the major supplier's buildings;^(Note 1) or
- (b) to install their cables and lines which are essential for interconnection within the major supplier's buildings,^(Note 1) conduits,^(Note 2) cable tunnels or telephone poles;

where physically feasible and where no practical or viable alternatives exist, in order to interconnect smoothly with the essential facilities of the major supplier.

Note 1: Buildings used for communications that house a point of interconnection.

Note 2: Underground communications facilities installed to accommodate or protect underground cables and to connect manholes, etc.

Interconnection Pursuant to an Approved Reference Interconnection Offer

4. Each Party shall ensure that major suppliers are required to provide a reference interconnection offer for approval by the relevant regulatory authorities. The reference interconnection offer shall be consistent with the principles of II of this Annex and shall contain written statements of the charges and conditions on which a major supplier will interconnect with suppliers. At a minimum, the reference interconnection offer shall be required to contain the following:

- (a) a list and description of the interconnection-related services offered, the terms and conditions for such services, the operational and technical requirements, and the procedures or processes that will be used to order and provide such services;
- (b) a list of cost-based prices that a major supplier offers for all its interconnection-related services. Where feasible, the major supplier shall be required to use an established methodology based on incremental forward-looking economic cost;
- (c) standard periods between the dates of request and commencement which are stipulated in a clear manner and are reasonable; and
- (d) a statement regarding the duration of the proposed interconnection agreement, if it is fixed.

5. Paragraphs 2, 3 and 4 of IV of this Annex are applied only to a major supplier which has control over essential facilities.

Public Availability of the Procedures for Interconnection Negotiations

6. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

Transparency of Interconnection Arrangements

7. Each Party shall ensure that a major supplier makes publicly available either its interconnection agreements or reference interconnection offer.

V. Interconnection Dispute Settlement

A service supplier requesting interconnection with a major supplier shall have recourse, either:

- (a) at any time; or
- (b) after a reasonable period of time which has been made publicly known;

to an independent domestic body, which may be a regulatory body as referred to in VII of this Annex, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

VI. Universal Service

Each Party shall have the right to define the kind of universal service obligation it wishes to maintain. Such obligations shall not be regarded as anti-competitive per se, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

VII. Independent Regulators

The regulatory body shall be separate from, and not accountable to, any supplier of telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

VIII. Allocation and Use of Scarce Resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. Each Party shall make publicly available the current state of allocated frequency bands.

Each Party shall not be required to make publicly available detailed identification of frequencies allocated for specific government uses.

ANNEX VA

LIST OF EXCEPTIONS IN THE AREA OF INVESTMENT (Japan)

Horizontal Exceptions

- 1. (a) Matter: Land Transaction
- (b) Legal Source or Authority: Alien Land Law (Law No. 42, 1925)

- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: With respect to acquisition or lease of land properties in Japan, prohibitions or restrictions may be imposed by Cabinet Ordinances on Singapore nationals or entities, where Japanese nationals or entities are placed under identical or similar prohibitions or restrictions in Singapore.
2. (a) Matter: Prior Notification
- (b) Legal Source or Authority : Foreign Exchange and Foreign Trade Law (Law No. 228, 1949)
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description:
- The prior notification requirement under Article 27 of the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949) shall apply to the following sectors:
- Primary Industry related to Agriculture, Forestry and Fisheries
 - Oil Industry
 - Leather and Leather Products Manufacturing Industry
 - Heat Supply Industry
 - Biological Preparations Manufacturing Industry
 - Water Supply and Water Works Industry
 - Railway Transport Industry
 - Omnibus Industry
 - Water Transport Industry
 - Telecommunications Industry
 - Security Industry.
- Note 1: All organic chemicals such as ethylene, ethylene glycol and polycarbonates are outside the scope of the “Oil Industry”. Therefore, prior notification under the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949) is not required for the investment in manufacturing these products.
- Note 2: Biological Preparations Manufacturing Industry deals with establishments which mainly produce vaccine, serum, toxoid, antitoxin and some preparations similar to the aforementioned products, or blood products.
- Note 3: Freight Forwarding Industry is not included in any of Railway Transport, Omnibus or Water Transport Industry.
- Note 4: The manufacture of vehicles, parts and components for the Railway Transport Industry is not included in Railway Transport Industry and is exempted from prior notification requirements.
- Note 5: The manufacture of vehicles, parts and components is not included in Omnibus Industry and is exempted from prior notification requirements.
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Note 6: Water Transport Industry refers to Oceangoing/Seagoing Transport, Coastwise Transport (i.e. maritime transport between ports in Japan), Inland Water Transport and Ship Leasing Industry. However, Oceangoing/Seagoing Transport Industry and Ship Leasing Industry excluding Coastwise Ship Leasing Industry are exempted from prior notification requirements.

3. (a) Matter: Formalities
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description:

Formalities may be prescribed in connection with the investment-related activities of Singapore investors, provided that such formalities:

- (i) only require the notification of facts or the submission of documents for proof;
- (ii) do not impair the substance of the rights provided for in this Chapter;
- (iii) do not entail any discretionary approval; and
- (iv) are not implemented in an arbitrary or discriminatory manner.

Such formalities include:

- (A) Article 479 and paragraph 1 of Article 481 of the Commercial Code (Law No. 48, 1899)

According to the Commercial Code (Law No. 48, 1899), if a foreign company intends to engage in commercial transactions as a continuing business in Japan, it shall appoint a representative in Japan and establish an office of business at the residence of such representative or at any other place. The foreign company has to register its office of business in accordance with the same procedures as those required for the registration of a branch office of a company established in Japan which is either of the same nature or of the kind which it most closely resembles. The full name and permanent residence of its representative in Japan must also be registered.

- (B) Article 55-5 of the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949)

Article 55-5 of the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949) requires foreign investors to submit ex post facto reports to the Minister of Finance and the Minister(s) in charge of the industry involved after implementing a foreign

investment in Japan. (This shall not apply to the foreign investment for which prior notification is required.)

4. (a) Matter : Public Monopoly and State Enterprise
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description:
- National treatment shall not apply to:
- (i) the disposal of a public monopoly or a state enterprise either at one time or in stages; (Note) and
- Note: Paragraph (i) above includes the liberalising of certain activities restricted to that public monopoly or that state enterprise by laws and regulations.
- (ii) the establishment of successor public monopolies or successor state enterprises in the same sector as the public monopoly or state enterprise which has been disposed of.

5. (a) Matter: Subsidies
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: National treatment may not be accorded in the case of subsidies designed for research and development investments.

6. (a) Matter : Permanent Residents
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description:

There may be limitations on the treatment accorded to the investors who have the right of permanent residence in Singapore, where Japan adopts or maintains measures pursuant to its domestic laws and regulations whose implementation would be prejudiced if the treatment accorded to the investors who have the right of permanent residence in Singapore is equivalent to the treatment accorded to the investors who are nationals of Singapore.

Such measures include those pursuant to Article 27 of the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949).

In respect of the investors who have the right of permanent residence in Singapore, to whom sub-paragraph 2 of paragraph 3 of Article 27 of the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949) is applicable on the basis of their nationality, the notification to competent authorities is required prior to investment in all sectors.

- (e) Others:
 - (i) In cases where Japan takes any measures mentioned above, Japan will notify Singapore of the description of the measure before such measure is taken;
 - (ii) with reference to the Foreign Exchange and Foreign Trade Law (Law No. 228, 1949), Japan will notify Singapore before any new country is added to the list of countries to which sub-paragraph 2 of paragraph 3 of Article 27 of the above Law applies; and
 - (iii) Japan will receive the views of Singapore on such measure in writing before implementing the measure in question and will take such views into consideration. Japan will promptly notify Singapore if Japan thereafter intends to proceed with the implementation of the measure in question.

Sectoral Exceptions

- 7. (a) Sector: Agriculture, Plant Breeder's Right
- (b) Legal Source or Authority: Seeds and Seedlings Law (Law No. 83, 1998), Seeds and Seedlings Law Enforcement Regulation
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description:
 - (i) According to Article 10 of the Seeds and Seedlings Law (Law No. 83, 1998), a foreigner who has neither a domicile nor residence (nor establishment, in the case of a legal person) in Japan cannot enjoy a breeder's right except in any of the following cases:
 - (A) where the State of which the person is a national or the State in which the person has a domicile or residence (or its establishment, in the case of a legal person) is a contracting party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972 on October 23, 1978 and on March 19, 1991 (hereinafter referred to in this Annex as "the 1991 UPOV Convention");
 - (B) where the State of which the person is a national or the State in which the person has a domicile or residence (or its establishment, in the case of a legal person) is a contracting party to the

International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972 and on October 23, 1978 (hereinafter referred to in this Annex as “the 1978 UPOV Convention”) and further provides the protection for plant genus and species to which the person's applied variety belongs; or

- (C) where the State of which the person is a national provides Japanese nationals with the protection of varieties under the same condition as its own nationals and further provides the protection for plant genus and species to which the person's applied variety belongs.

Since Singapore is not a contracting party to either the 1991 UPOV Convention or to the 1978 UPOV Convention, and does not provide Japanese nationals with the protection of varieties, the person who is a national of Singapore or has a domicile or residence (or its establishment, in the case of a legal person) in Singapore (excluding the cases provided for in (i)(A), (i)(B) and (i)(C)) cannot enjoy plant breeder's right in Japan. This paragraph shall cease to apply if Singapore becomes a contracting party to the 1991 UPOV Convention or provides Japanese nationals with the protection of varieties under the same conditions as its own nationals and further provides the protection for plant genus and species to which the person's applied variety belongs.

- (ii) The Seeds and Seedlings Law Enforcement Regulation requires foreign applicants to attach a document certifying his or her nationality and any one of the documents set out below:
 - (A) a document certifying the fact that the applicant has a domicile or residence (or its establishment, in the case of a legal person) in Japan; or
 - (B) a document certifying the fact that the applicant has a domicile or residence (or its establishment, in the case of a legal person) in the territory of a contracting party to the 1991 UPOV Convention or to the 1978 UPOV Convention, other than Japan..

- 8. (a) Sector: Mining Industry including Oil and Natural Gas Exploration and Development
- (b) Legal Source or Authority: Mining Law (Law No. 289, 1950)
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description:

Persons other than Japanese nationals and Japanese legal persons are not allowed to have mining rights or mining lease rights.

- 9. (a) Sector: Water Transport Industry ^(Note)
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- (b) Legal Source or Authority: Ship Law (Law No. 46, 1899)
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description:

In accordance with the Ship Law (Law No. 46, 1899), the Japanese nationality shall be given to a ship whose owner is a natural person with Japanese nationality, or a legal person established under Japanese law, with all representatives (“daihyosha”) and not less than two-thirds of executives administering the affairs of the legal person (“gyomu-wo-shikkosuru-yakuin”) having Japanese nationality. This law prevents ships not flying the Japanese flag from entering Japanese ports which are not open to foreign commerce and from carrying cargoes or passengers between Japanese ports.

Note: Water Transport Industry refers to Oceangoing/Seagoing Transport, Coastwise Transport (i.e. maritime transport between ports in Japan), Inland Water Transport and Ship Leasing Industry.

- 10. (a) Sector: Telecommunications Industry
 - (b) Legal Source or Authority: Law concerning Nippon Telegraph and Telephone Corporation, etc. (Law No. 85, 1984)
 - (c) Relevant Obligation: National Treatment (Article 73)
 - (d) Description:
 - (i) Nippon Telegraph and Telephone Corporation (NTT) shall not enter the name and address in its register of shareholders if the aggregate of the ratio of the voting rights directly and/or indirectly held by the person set forth in item (A) through (C) below reaches or exceeds one third:
 - (A) a person who does not have Japanese nationality;
 - (B) a foreign government or its representative; or
 - (C) a foreign legal person or association;
 - (ii) NTT shall always hold all shares of the Regional Companies; and
 - (iii) any person who does not have Japanese nationality shall not assume the office of director or auditor of NTT and the Regional Companies.
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- 11. (a) Sector: Financial Services
 - (b) Legal Source or Authority: Deposit Insurance Law (Law No. 34, 1971)
 - (c) Relevant Obligation: National Treatment (Article 73)

(d) Description:

The deposit insurance system only covers financial institutions which have their head offices within the jurisdiction of Japan.

12. (a) Sector: Investment in specific sectors

(b) Legal Source or Authority: N/A

(c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)

(d) Description:

National treatment and prohibition of performance requirements shall not apply to the following sectors:

- Fisheries within the territorial sea, internal waters and Exclusive Economic Zones
- Explosive Manufacturing Industry
- Nuclear Energy Industry
- Aircraft Industry
- Arms Industry
- Space Industry
- Electric Utility Industry, Gas Utility Industry
- Broadcasting Industry.

ANNEX VB

LIST OF EXCEPTIONS IN THE AREA OF INVESTMENT

(Singapore)

Horizontal Exceptions

1. (a) Matter: Subsidies/Incentives for all sectors

(b) Legal Source or Authority: Economic Expansion Incentives (Relief from Income Tax) Act (Cap. 86), Income Tax Act (Cap.134), Relevant Government Agencies

(c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)

(d) Description: National Treatment
National treatment may not be accorded in the provision of the following:

- (A) subsidies/incentives or programmes to help develop local entrepreneurs and to assist local companies to expand and upgrade their operations;
- (B) subsidies/incentives pertaining to the supply of service.

Prohibition of Performance Requirements

- (i) Conditions that are inconsistent with subparagraphs (a) through (e) of paragraph 1 of Article 75 may be imposed for the receipt or continued receipt of any advantage in connection with an investment in the services sector in Singapore.
- (ii) For the avoidance of doubt, conditions or requirements that are not listed in Article 75 may be imposed for the receipt or continued receipt of any advantage in connection with an investment in Singapore.

- 2. (a) Matter: Company registration formalities for all sectors
- (b) Legal Source or Authority: Companies Act (Cap. 50)
- (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
- (d) Description: Compliance by foreign companies with the Companies Act in their establishment, and reporting and filing of accounts
 - (i) Commercial presence, right of establishment and movement of legal persons are subject to compliance with the following provisions:
 - (A) a foreigner who wishes to register a business firm must have a local manager who should be:
 - (AA) a Singapore citizen;
 - (BB) a Singapore permanent resident; or
 - (CC) a Singapore employment pass holder.

However, a foreigner who is a Singapore permanent resident or a Singapore employment pass holder can register a business without appointing a local manager;

(B) at least one director of the company must be locally resident;

(C) all branches of foreign companies registered in Singapore must have at least two locally resident agents. (To qualify as locally resident, a person should be either a Singapore citizen or a Singapore permanent resident or a Singapore employment pass holder).

(ii) Establishment of a foreign company's branch is subject to the filing of necessary documents.

3. (a) Matter: Ownership of Residential Land/Property
- (b) Legal Source or Authority: Residential Property Act (Cap. 274), Banking Act (Cap. 19), Finance Companies Act (Cap. 108), Monetary Authority of Singapore Act (Cap. 186)
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description:
- (i) Ownership of residential land: non-citizens cannot own residential land.
 - (ii) Ownership of residential property:
 - (A) non-citizens are restricted from purchasing landed residential property and residential property in a building of less than 6 levels;
 - (B) non-citizens and non-Singapore permanent residents cannot own residential property under government public housing schemes.
 - (iii) Housing loans: banks, finance companies and merchant banks are:
 - (A) not allowed to extend Singapore Dollar (S\$) loans to non-Singapore citizens (excluding Singapore permanent residents) and non-Singapore companies for the purpose of purchasing residential properties in
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Singapore. A company is considered a Singapore company only if it is incorporated in Singapore and majority-owned by Singapore citizens.

Any company which is incorporated outside Singapore is considered a non-Singapore company. A company incorporated in Singapore and majority-owned by non-Singapore citizens and/or Singapore permanent residents is considered a non-Singapore company;

- (B) allowed to grant Singapore permanent residents only one S\$ loan each for the purchase of a residential property in Singapore which must be for owner-occupation.

- 4. (a) Matter: Regulation on Singapore dollar transactions
- (b) Legal Source or Authority: Banking Act (Cap. 19), MAS Notice 757 to Banks, Securities Industry Act (Cap. 289), MAS Notice 1201 to Securities Dealers, Finance Companies Act (Cap. 108), MAS Notice 816 to Finance Companies, Insurance Act (Cap. 142), MAS Notice 109 to Insurers, Monetary Authority of Singapore Act (Cap. 186), MAS Notice 1105 to Merchant Banks
- (c) Relevant Obligation: National Treatment (Article 73)
- (d) Description: (i) Where amounts exceed S\$5 million per entity, ^(Note 1) banks ^(Note 2) may extend S\$ credit facilities to non-residents for any purpose in Singapore or overseas, subject to the following conditions:

Note 1: For financial institutions seeking to obtain S\$ credit facilities, each subsidiary is considered a separate entity while the head office and all overseas branches are collectively regarded as one entity.

Note 2: The restrictions in paragraph 4 of this Annex describe the measures in MAS Notice 757 to Banks. Similar measures are set out in MAS Notice 1201 to Securities Dealers, MAS Notice 816 to Finance Companies, MAS Notice 109 to Insurers, and MAS Notice 1105 to Merchant Banks.

- (A) for S\$ investments in financial assets and real estate, banks are required to ensure that the S\$ credit facilities are withdrawn when the investments, or part thereof, are in any way converted into S\$ cash proceeds;
- (B) where the S\$ proceeds are to be used offshore, the proceeds should be swapped into foreign currency upon draw-down. In this instance, banks are not allowed to convert the S\$ proceeds into foreign currency via the spot or forward market. For S\$ equity listings and bond issues by non-residents wishing to tap S\$ markets to finance their activities offshore, non-residents are required to swap or convert the S\$ proceeds into foreign currency for use offshore;

(Notification is required for bond issues by residents as well as non-residents.)

- (ii) where the bond issuer is an unrated foreign entity, banks may place or sell the S\$ bonds to sophisticated investors^(Note) only;

Note: "Sophisticated investors" is as defined in the Companies Act (Cap. 50).

- (iii) banks should not extend S\$ credit facilities to non-residents for speculative activities in the S\$ currency market;
- (iv) banks may lend in any amount S\$-denominated securities to non-residents as long as it is fully collateralised with S\$ cash or other S\$ assets upon the extension of the S\$-denominated securities loan;
- (v) banks may transact with non-residents S\$ currency options as long as there is a requirement to hedge the S\$ exchange rate risks arising from trade with, or economic and financial activities in, Singapore. This is subject to the following conditions:

- (A) the S\$ option should have cashflows matching the S\$/foreign currency flows if the option is exercised;
- (B) the S\$ option offered must not be combined with a spot or any other transaction to constitute a S\$ credit facility that would not be permitted under MAS Notice 757;
- (C) there must be documentary evidence of the non-resident's need to hedge its trade with, or its economic and financial activities in, Singapore.

(The above limitation shall not be construed as causing a delay in transfers as defined in Article 80.)

- 5. (a) Matter: Privatisation
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
- (d) Description: National treatment and prohibition of performance requirements shall not apply to the privatisation or divestment of assets owned by the Government.

Sectoral Exceptions

- 6. (a) Sector: Investments in Services
- (b) Legal Source or Authority: N/A
- (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
- (d) Description:
 - (i) National treatment and prohibition of performance requirements shall not apply to services sectors not scheduled in Chapter 7.

Where a service sector is scheduled in Chapter 7, the provisions, terms, limitations, conditions and qualifications in Chapter 7 (including market access measures) shall apply to investments in that service sector under Chapter 8.

- (ii) For the avoidance of doubt, the scheduled services in the telecommunications and financial sectors shall also be interpreted in accordance with Annexes IVA and IVB.
7. (a) Sector: Printing and Publishing Sector
- (b) Legal Source or Authority: Newspaper and Printing Presses Act (Cap. 206), Ministry of Information, Communications and the Arts
- (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
- (d) Description: National treatment and prohibition of performance requirements shall not apply to the printing and publishing sector.
8. (a) Sector: Arms and Explosives Sector
- (b) Legal Source or Authority: Arms and Explosives Act (Cap. 13)
- (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
- (d) Description: National treatment and prohibition of performance requirements shall not apply to the arms and explosives sector.
9. (a) Sector: Manufacturing Sector
- (b) Legal Source or Authority: Control of Manufacture Act (Cap. 57)
- (c) Relevant Obligation: National Treatment (Article 73), Prohibition of Performance Requirements (Article 75)
- (d) Description: Statutory licensing requirements and conditions that are inconsistent with Article 73 or subparagraphs (f) to (i) of paragraph 1 of Article 75 may be imposed in connection with the manufacture of the following:
- (i) firecrackers;
 - (ii) drawn steel products;
 - (iii) pig iron and sponge iron;
 - (iv) rolled steel products;
 - (v) steel ingots, billets, blooms and slabs;
 - (vi) beer and stout;
 - (vii) CD, CD-ROM, VCD;
 - (viii) DVD, DVD-ROM;
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- (ix) chewing gum, bubble gum, dental chewing gum or any like substance;
- (x) cigarettes;
- (xi) matches;
- (xii) cigars;
- (xiii) refrigerators;
- (xiv) air-conditioners.

ANNEX VC

INVESTOR-TO-STATE DISPUTE SETTLEMENT SPECIAL ARBITRATION PROCEDURE

1. Any request to establish an arbitral tribunal pursuant to this Annex shall identify:
 - (a) the name and address of the investor concerned;
 - (b) the legal basis of the complaint including the provisions of Chapter 8 alleged to have been breached; and
 - (c) the factual basis for the complaint.
 2. The investor and the Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator each. If the Party fails to so appoint an arbitrator, the legal expert designated by that Party pursuant to paragraph 4 of Article 140 shall be appointed as an arbitrator. If the investor fails to so appoint an arbitrator, the legal expert designated by the Party of which the investor is a national pursuant to paragraph 4 of Article 140 shall be appointed as an arbitrator.
 3. The investor and the Party shall agree on and designate a third arbitrator, who shall chair the arbitral tribunal. If they fail to agree on the third arbitrator, they shall separately prepare and exchange a list of five persons whom they can accept as the third arbitrator. The third arbitrator shall be chosen in the following manner:
 - (a) if only one name is common to both lists, that person, if available, will be chosen as the third arbitrator;
 - (b) if more than one name appears on both lists, the investor and the Party shall consult for the purpose of agreeing on the third arbitrator from such names;
 - (c) if they are not able to reach agreement in accordance with sub-paragraph (b) above or if there is no name common to both lists, or the arbitrator agreed upon or chosen is not available and the investor and the Party cannot decide on a replacement for the arbitrator that is not available, then the two arbitrators appointed pursuant to paragraph 2 above shall agree on the third arbitrator; and
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- (d) if the arbitrators are not able to reach agreement on the third arbitrator, the third arbitrator shall be chosen by random drawing in accordance with the procedure set out in the Appendix to this Annex.
4. The third arbitrator shall be appointed within 40 days after the date of appointment of the second arbitrator.
5. The third arbitrator shall not, unless the investor and the Party agree otherwise, be of the same nationality as the investor, nor be a national of the Party, nor have his or her usual place of residence in the territory of either of the Parties, nor be employed by either the investor or the Party, nor have dealt with the investment dispute in any capacity.
6. The arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

APPENDIX TO ANNEX VC

PROCEDURE FOR SELECTION OF THIRD ARBITRATOR FOR SPECIAL ARBITRATION PROCEDURE FOR INVESTOR-TO-STATE DISPUTE SETTLEMENT

The following procedure applies for the random drawing for a third arbitrator, as provided for in Annex VC pertaining to Investor-to-State Dispute Settlement (hereinafter referred to in this Appendix as “Annex VC”):

- (a) for the purposes of this Appendix, the investor that is requesting the establishment of the arbitral tribunal pursuant to Article 82 is hereinafter referred to as the “investor” and the Party to the investment dispute is hereinafter referred to as the “Party”;
- (b) unless the investor and the Party agree otherwise, the drawing takes place in the territory of the Party, in the presence of representatives of both the investor and the Party;
- (c) the Party prepares a container with ten sealed envelopes, each of which has, inside it, the name of one of the persons listed on the lists of the investor and the Party, prepared pursuant to paragraph 3 of Annex VC, such that there is exactly one envelope corresponding to each of these persons;
- (d) a representative of the investor shall remove, from the container, one envelope, randomly and without being able to discern the identity of the person to whom the envelope corresponds until after the envelope is unsealed and opened;
- (e) the person to whom that envelope corresponds shall be the third arbitrator for the purposes of Annex VC; and
- (f) after the drawing, the container, and the envelopes remaining therein, shall be made available for verification by representatives of the investor in the presence of representatives of the Party.

ANNEX VI

SPECIFIC COMMITMENTS OF JAPAN FOR THE MOVEMENT OF NATURAL PERSONS

PART A

There may be limitations on the treatment accorded under this Part to natural persons who are permanent residents of Singapore, where Japan adopts or maintains measures pursuant to its domestic laws and regulations whose implementation would be prejudiced if the treatment accorded to natural persons who are permanent residents of Singapore is equivalent to the treatment accorded to natural persons who are nationals of Singapore.

Such measures include those taken in accordance with the provisions of the Immigration Control and Refugee Recognition Act (Cabinet Order No. 319, 1951).

A. Short-term business visitors

Entry and temporary stay will be granted to a natural person of Singapore who stays in Japan for a period not exceeding 90 days without acquiring remuneration from within Japan and without engaging in making direct sales to the general public or in supplying services himself, for the purposes of participating in business contacts including negotiations for the sale of goods or services, or other similar activities including those to prepare for establishing commercial presence in Japan.

B. Intra-corporate transferees

1. Entry and temporary stay will be granted to a natural person of Singapore who has been employed by a juridical person of Singapore that supplies services in Japan or by an enterprise of Singapore that invests in Japan for a period not less than one year immediately preceding the date of his application for the entry and temporary stay in Japan, and who is being transferred to a branch office, a juridical person or an enterprise constituted or registered in Japan owned or controlled by the aforementioned juridical person or enterprise of Singapore, provided that he will be engaged in one of the following activities:

- (a) activities to direct a branch office as its head;
- (b) activities to direct a juridical person or an enterprise as its board member or auditor;
- (c) activities to direct one or more departments of a juridical person or an enterprise;
- (d) activities which require technology and/or knowledge at an advanced level pertinent to physical sciences, engineering or other natural sciences, including information and communications technology; or (e) activities which require knowledge at an advanced level pertinent to jurisprudence, economics, business management, accounting or other human sciences.

Activities which require technology or knowledge at an advanced level pertinent to natural or human sciences referred to in sub-paragraphs (d) and (e) above mean activities in which the

natural person may not be able to engage without the application of specialised technology or knowledge of natural or human sciences acquired by him, in principle, by completing college education (i.e. bachelor's degree) or higher education.

2. Entry and temporary stay will be granted to a natural person of Singapore who has been employed by a juridical person of Singapore or has been a partner in it for a period not less than one year immediately preceding the date of his application for the entry and temporary stay in Japan, and who is being transferred to Japan and will return to the aforementioned juridical person of Singapore, provided that he will be engaged in one of the following activities of professional services which may be engaged only as a natural person and not as an employee:

- (a) legal services supplied by a lawyer qualified as “Bengoshi” under Japanese law;
- (b) consultancy on law of jurisdiction where the service supplier is a qualified lawyer;
- (c) legal services supplied by a patent attorney qualified as “Benrishi” under Japanese law;
- (d) legal services supplied by a maritime procedure agent qualified as “Kaijidairishi” under Japanese law;
- (e) accounting, auditing and bookkeeping services supplied by an accountant qualified as “Koninkaikeishi” under Japanese law; or
- (f) taxation services supplied by a tax accountant qualified as “Zeirishi” under Japanese law.

PART B

There may be limitations on the treatment accorded to natural persons who are permanent residents of Singapore, where Japan adopts or maintains measures pursuant to its domestic laws and regulations whose implementation would be prejudiced if the treatment accorded to natural persons who are permanent residents of Singapore is equivalent to the treatment accorded to natural persons who are nationals of Singapore.

Such measures include those taken in accordance with the provisions of the Immigration Control and Refugee Recognition Act (Cabinet Order No. 319, 1951).

A. Investors

Entry and temporary stay will be granted to a natural person of Singapore who is engaged in the activities to commence the operation of business in Japan, to invest in business in Japan and to operate or manage that business, excluding the activities to engage in the operation or management of business which are required to be carried out by “Gaikokuhojimbengoshi”, “Gaikokukoninkaikeishi” or those with other legal qualifications. Entry and temporary stay may be granted as long as the person concerned continues to meet the criteria and conditions stipulated at the time of his entry into Japan.

B. Natural persons who engage in work on the basis of a personal contract with public or private organisations in the territory of Japan

Entry and temporary stay will be granted to a natural person of Singapore who engages in work which requires technology and/or knowledge pertinent to engineering on the basis of a personal contract with public or private organisations in the territory of Japan. Entry and temporary stay may be granted as long as such person concerned continues to meet the criteria and conditions stipulated at the time of his entry into Japan.

**SPECIFIC COMMITMENTS OF SINGAPORE
FOR THE MOVEMENT OF NATURAL PERSONS**

Definitions

For the purposes of Singapore's specific commitments:

- (a) the term "managers" means natural persons within an organisation who primarily direct the organisation or a department or sub-division of the organisation, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or take other personnel actions such as promotion or leave authorisation, and exercise discretionary authority over day-to-day operations. "Managers" does not include first line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of the service or operation of an investment;
- (b) the term "executives" means natural persons within an organisation who primarily direct the management of the organisation, exercise wide latitude in decision-making, and receive only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of the service or the operation of an investment; and
- (c) the term "specialists" means natural persons within an organisation who possess knowledge at an advanced level of expertise and who possess proprietary knowledge of the organisation's service, research equipment, techniques, or management. "Specialists" may include but is not limited to members of licenced professions.

PART A

A. Short-term business visitors

- 1. Business visitors will be granted an initial stay of up to one month upon arrival. The stay may be extended up to a maximum of three months upon application.
- 2. "Business visitors" means natural persons of Japan who seek temporary entry to Singapore to:
 - (a) negotiate the sale of services or goods where such negotiations do not involve direct sales to the general public;

- (b) establish an investment; or
- (c) conduct or participate in business-related conferences, seminars or workshops; provided that such persons do not acquire remuneration from within Singapore and are not seeking employment or residence in Singapore.

B. Intra-corporate transferees

1. Entry for intra-corporate transferees is limited to a two year period that may be extended for periods of up to three additional years each time for a total term not exceeding eight years. Further extensions may be possible.

2. “Intra-corporate transferees” refers to natural persons of Japan who are managers, executives or specialists, who are employees of juridical persons of Japan that supply services in Singapore and enterprises of Japan that invest in Singapore through a branch, subsidiary, or affiliate established in Singapore and who have been in the prior employ of their firms in Japan for a period of not less than one year immediately preceding the date of their application for admission.

PART B

A. Investors

1. Entry for investors is limited to a two year period that may be extended for periods of up to three additional years each time for a total term not exceeding eight years. Further extensions may be possible.

2. “Investor” refers to a natural person of Japan who establishes an enterprise in Singapore, to which the person has committed a substantial amount of capital, and who is a manager or an executive in the enterprise.

B. Natural persons who engage in work on the basis of a personal contract with public or private organisations in the territory of Singapore

1. Entry for natural persons with a personal contract with public or private organisations in the territory of Singapore who are employed as engineers is limited to a two year period that may be extended for periods of up to three additional years each time for a total term not exceeding eight years. Further extensions may be possible.

2. “Engineers” refers to natural persons of Japan who possess acceptable educational qualifications, experience and any other conditions as required under the domestic laws and regulations of Singapore to provide engineering services in Singapore.

ANNEX VIIA

GOODS AND SERVICES

Goods and services listed in each Party's Appendix I to the GPA are to be procured in accordance with the provisions of Chapter 11 with the exception of the following services of the Universal List of Services, as contained in document MTN. GNS/W/120: (Provisional Central Product Classification (CPC), 1991)

- 51 Construction work
- 867 Architectural, engineering and other technical services.

ANNEX VIIB

ENTITIES

Entities listed in Annexes 1 and 3 of each Party's Appendix I to the GPA are to procure goods and services in accordance with the provisions of Chapter 11 with the exception of those entities which have been privatised.

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TRATADO DE LIBRE COMERCIO ENTRE CENTROAMÉRICA Y PANAMÁ*
[excerpts]

The Free Trade Agreement between the Central America and Panama was signed in January 2002. The market access negotiations are being held bilaterally between Panama and each Central American country. El Salvador and Panama already signed the protocol to the Agreement.

CUARTA PARTE

INVERSIÓN, SERVICIOS Y ASUNTOS RELACIONADOS

CAPÍTULO 10

Sección A – Inversión

Artículo 10.01 Ámbito de aplicación

1. Este Capítulo se aplica a las medidas que adopte o mantenga una Parte relativas a:
 - a) los inversionistas de la otra Parte en todo lo relacionado con su inversión;
 - b) las inversiones de inversionistas de la otra Parte realizadas en territorio de la Parte;
 - c) todas las inversiones de los inversionistas de una Parte en el territorio de la otra Parte en lo relativo al Artículo 10.07.
2. Este Capítulo no se aplica a las medidas que adopte o mantenga una Parte relativas a:
 - a) los servicios financieros;
 - b) las medidas que adopte una Parte para restringir la participación de las inversiones de inversionistas de la otra Parte en su territorio por razones de orden público o de seguridad nacional;
 - c) las actividades económicas reservadas a cada Parte, de conformidad con su legislación vigente a la fecha de la firma de este Tratado, las cuales se listarán en el Anexo III relativo a las actividades económicas reservadas a cada Parte;
 - d) los servicios o funciones gubernamentales tales como, la ejecución de las leyes, servicios de readaptación social, pensión o seguro de desempleo o servicios de

* *Source:* The Governments of the Central America countries and the Government of Panama (2002). "Tratado de Libre Comercio entre Centroamérica y Panamá ", available on the Internet (<http://www.comex.go.cr>). [Note added by the editor.]

seguridad social, bienestar social, educación pública, capacitación pública, salud y atención infantil o protección de la niñez;

- e) las controversias o reclamaciones surgidas con anterioridad a la entrada en vigencia de este Tratado, o relacionadas con hechos acaecidos con anterioridad a su vigencia, incluso si sus efectos permanecen aún después de ésta.

3. Este Capítulo se aplica en todo el territorio de las Partes y en cualquier nivel de gobierno a pesar de las medidas incompatibles que pudieran existir en las legislaciones de esos niveles de gobierno.

4. No obstante lo dispuesto en el párrafo 2(d), si un inversionista de una Parte, debidamente autorizado, presta servicios o lleva a cabo funciones tales como servicios de readaptación social, pensión o seguro de desempleo o servicios de seguridad social, bienestar social, educación pública, capacitación pública, salud y atención infantil o protección de la niñez, las inversiones de ese inversionista estarán protegidas por las disposiciones de este Capítulo.

5. Este Capítulo cubre tanto las inversiones existentes a la fecha de entrada en vigencia de este Tratado como a las inversiones hechas o adquiridas con posterioridad.

Artículo 10.02 Trato nacional

1. Cada Parte otorgará a los inversionistas de la otra Parte un trato no menos favorable que el que otorgue, en circunstancias similares, a sus propios inversionistas en lo referente al establecimiento, adquisición, expansión, administración, conducción, operación, venta u otra disposición de las inversiones.

2. Cada Parte otorgará a las inversiones de inversionistas de la otra Parte un trato no menos favorable que el que otorga, en circunstancias similares, a las inversiones de sus propios inversionistas en lo referente al establecimiento, adquisición, expansión, administración, conducción, operación, venta u otra disposición de las inversiones.

Artículo 10.03 Trato de nación más favorecida

1. Cada Parte otorgará a los inversionistas de la otra Parte un trato no menos favorable que el que otorgue, en circunstancias similares, a los inversionistas de cualquier otra Parte o de un país no Parte, en lo referente al establecimiento, adquisición, expansión, administración, conducción, operación, venta u otra disposición de inversiones.

2. Cada Parte otorgará a las inversiones de inversionistas de la otra Parte un trato no menos favorable que el que otorgue, en circunstancias similares, a las inversiones de inversionistas de cualquier otra Parte o de un país no Parte, en lo referente al establecimiento, adquisición, expansión, administración, conducción, operación, venta u otra disposición de inversiones.

Artículo 10.04 Nivel de trato

Cada Parte otorgará a los inversionistas de la otra Parte y a las inversiones de los inversionistas de la otra Parte el mejor de los tratos requeridos por los Artículos 10.02 y 10.03.

Artículo 10.05 Trato en caso de pérdidas

Cada Parte otorgará a los inversionistas de la otra Parte, respecto de las inversiones que sufran pérdidas en su territorio debido a conflictos armados o contiendas civiles, un trato no discriminatorio respecto de cualquier medida que adopte o mantenga en relación con esas pérdidas.

Artículo 10.06 Nivel mínimo de trato

Una Parte otorgará a las inversiones de los inversionistas de la otra Parte un trato acorde con el Derecho Internacional, incluido un trato justo y equitativo, así como protección y seguridad plenas.

Artículo 10.07 Requisitos de desempeño

1. Ninguna de las Partes podrá imponer ni hacer cumplir cualquiera de los siguientes requisitos o hacer cumplir ningún compromiso u obligación, en lo referente al establecimiento, adquisición, expansión, administración, conducción u operación de una inversión de un inversionista de una Parte en su territorio para:

- a) exportar un determinado nivel o porcentaje de mercancías o servicios;
- b) alcanzar un determinado grado o porcentaje de contenido nacional;
- c) adquirir o utilizar u otorgar preferencia a mercancías producidas o a servicios prestados en su territorio, o adquirir mercancías o servicios de personas en su territorio;
- d) relacionar en cualquier forma el volumen o valor de las importaciones con el volumen o valor de las exportaciones, o con el monto de las entradas de divisas asociadas con dicha inversión; este párrafo no se aplica a ningún otro requisito distinto a los señalados en el mismo.

2. Ninguna de las Partes podrá condicionar la recepción de una ventaja o que se continúe recibiendo la misma, en relación con una inversión en su territorio por parte de un inversionista de una Parte, al cumplimiento de cualquiera de los siguientes requisitos:

- a) alcanzar un determinado grado o porcentaje de contenido nacional;
- b) adquirir, utilizar u otorgar preferencia a mercancías producidas en su territorio, o adquirir mercancías de productores en su territorio; o
- c) relacionar, en cualquier forma, el volumen o valor de las importaciones con el volumen o valor de las exportaciones, o con el monto de las entradas de divisas asociadas con dicha inversión;

este párrafo no se aplica a ningún otro requisito distinto a los señalados en el mismo.

3. Las disposiciones contenidas en:

- a) el párrafo 1(a), (b) y (c) y el párrafo 2(a) y (b) no se aplican en lo relativo a los requisitos para calificación de las mercancías y servicios con respecto a programas de promoción a las exportaciones y de ayuda externa;
- b) el párrafo 1(b) y (c) y el párrafo 2(a) y (b) no se aplican a las compras realizadas por una Parte o por una empresa del Estado;
- c) el párrafo 2(a) y (b) no se aplican a los requisitos impuestos por una Parte importadora relacionados con el contenido necesario de las mercancías para calificar respecto de aranceles o cuotas preferenciales.

4. Nada de lo dispuesto en el párrafo 2 se interpretará como impedimento para que una Parte condicione la recepción de una ventaja o la continuación de su recepción, en relación con una inversión en su territorio por parte de un inversionista de una Parte, al cumplimiento de un requisito de que ubique la producción, preste un servicio, capacite o emplee trabajadores, construya o amplíe ciertas instalaciones, o lleve a cabo investigación y desarrollo, en su territorio.

5. Siempre que dichas medidas no se apliquen de manera arbitraria o injustificada, o no constituyan una restricción encubierta al comercio o inversión internacionales, nada de lo dispuesto en los párrafos 1(b) ó (c) ó 2(a) ó (b) se interpretará en el sentido de impedir a una Parte adoptar o mantener medidas, incluidas las de naturaleza ambiental, necesarias para:

- a) asegurar el cumplimiento de leyes y reglamentaciones que no sean incompatibles con las disposiciones de este Tratado;
- b) proteger la vida o salud humana, animal o vegetal; o
- c) la preservación de recursos naturales no renovables, vivos o no.

6. En caso de que, a juicio de una Parte, la imposición por la otra Parte de alguno de los requisitos señalados a continuación afecte negativamente el flujo comercial o constituya una barrera significativa a la inversión de un inversionista de la Parte, el asunto será considerado por la Comisión:

- a) restringir las ventas en su territorio de las mercancías que esa inversión produzca, relacionando de cualquier manera esas ventas al volumen o valor de sus exportaciones o a ganancias en divisas que generen;
- b) transferir a una persona en su territorio, tecnología, proceso productivo u otro conocimiento reservado, salvo cuando el requisito se imponga por un tribunal judicial o administrativo o autoridad competente para reparar una supuesta violación a la legislación en materia de competencia o para actuar de una manera que no sea incompatible con otras disposiciones de este Tratado; o
- c) actuar como el proveedor exclusivo de las mercancías que produzca para un mercado específico, regional o mundial.

7. La medida que exija que una inversión emplee una tecnología para cumplir con requisitos de salud, seguridad o medio ambiente de aplicación general, no se considerará incompatible con

el párrafo 6(b). Para brindar mayor certeza, los Artículos 10.02 y 10.03 se aplican a la citada medida.

8. Si la Comisión encontrare que, en efecto, el requisito en cuestión afecta negativamente el flujo comercial o constituye una barrera significativa a la inversión de un inversionista de la otra Parte, recomendará las disposiciones necesarias para suprimir la práctica de que se trate. Las Partes considerarán estas disposiciones como incorporadas a este Tratado.

Artículo 10.08 Altos ejecutivos y consejos de administración o juntas directivas

1. Ninguna de las Partes podrá exigir que una empresa de esa Parte, que sea una inversión de un inversionista de la otra Parte, designe a individuos de alguna nacionalidad en particular para ocupar puestos de alta dirección en esa empresa.

2. Una Parte podrá exigir que la mayoría de los miembros de los órganos de administración o juntas directivas de una empresa de esa Parte, que sea una inversión de un inversionista de la otra Parte, sean de una nacionalidad en particular, siempre que el requisito no menoscabe materialmente la capacidad del inversionista para ejercer el control de su inversión.

Artículo 10.09 Reservas y excepciones

1. Los Artículos 10.02, 10.03, 10.07 y 10.08 no se aplican a:

- a) cualquier medida disconforme existente que sea mantenida por:
 - i) una Parte a nivel nacional, como se estipula en su lista del Anexo I ó III; o
 - ii) un gobierno local o municipal;
- b) la continuación o pronta renovación de cualquier medida disconforme a que se refiere el literal (a); ni
- c) la modificación de cualquier medida disconforme a que se refiere el literal (a) siempre que dicha modificación no disminuya el grado de conformidad de la medida, tal y como estaba en vigencia antes de la modificación con los Artículos 10.02, 10.03, 10.07 y 10.08.

2. Los Artículos 10.02, 10.03, 10.07 y 10.08 no se aplicarán a cualquier medida que una Parte adopte o mantenga, en relación con los sectores, subsectores o actividades, tal como se indica en su lista del Anexo II.

3. Ninguna de las Partes podrá exigir, de conformidad con cualquier medida adoptada después de la fecha de entrada en vigencia de este Tratado y comprendida en su lista del Anexo II, a un inversionista de la otra Parte, por razón de su nacionalidad, que venda o disponga de alguna otra manera de una inversión existente al momento en que la medida cobre vigencia.

4. El Artículo 10.03 no se aplica al trato otorgado por una de las Partes de conformidad con los tratados, o con respecto a los sectores, estipulados en su lista del Anexo IV.

5. Los Artículos 10.02, 10.03 y 10.08 no se aplican a:

- a) las compras realizadas por una Parte o por una empresa del Estado; o
- b) los subsidios o donaciones o aportaciones, incluyendo los préstamos, garantías y seguros respaldados por el gobierno, otorgados por una Parte o por una empresa del Estado.

Artículo 10.10 Transferencias

1. Cada Parte permitirá que todas las transferencias relacionadas con la inversión de un inversionista de la otra Parte en el territorio de la Parte, se hagan libremente y sin demora. Dichas transferencias incluyen:

- a) utilidades, dividendos, intereses, ganancias de capital, pagos por regalías, gastos por administración, asistencia técnica y otros cargos, ganancias en especie y otros montos derivados de la inversión;
- b) productos derivados de la venta o liquidación, total o parcial, de la inversión;
- c) pagos realizados conforme a un contrato del que sea parte un inversionista o su inversión, incluidos pagos efectuados conforme a un convenio de préstamo;
- d) pagos efectuados de conformidad con el Artículo 10.11; y
- e) pagos que provengan de la aplicación de las disposiciones relativas al mecanismo de solución de controversias contenido en la Sección B de este Capítulo.

2. Cada Parte permitirá que las transferencias se realicen en divisa de libre convertibilidad al tipo de cambio vigente de mercado en la fecha de la transferencia.

3. Ninguna de las Partes podrá exigir a sus inversionistas que efectúen transferencias de sus ingresos, ganancias, o utilidades u otros montos derivados de, o atribuibles a, inversiones llevadas a cabo en territorio de la otra Parte, ni los sancionará en caso de que no realicen la transferencia.

4. No obstante lo dispuesto en los párrafos 1 y 2, una Parte podrá establecer los mecanismos para impedir la realización de una transferencia, por medio de la aplicación equitativa, no discriminatoria de sus leyes en los siguientes casos:

- a) quiebra, insolvencia o protección de los derechos de los acreedores;
- b) infracciones penales o resoluciones administrativas en firme;
- c) incumplimiento del requisito de presentar informes de transferencias de divisas u otros instrumentos monetarios;
- d) aseguramiento del cumplimiento de sentencias y laudos dictados en procedimientos contenciosos; o
- e) relativas a asegurar el cumplimiento de las leyes y reglamentos para la emisión, comercio y operaciones de valores.

5. El párrafo 3 no se interpretará como un impedimento para que una Parte, a través de la aplicación de sus leyes de manera equitativa, no discriminatoria, imponga cualquier medida relacionada con el párrafo 4 del (a) al (e).

Artículo 10.11 Expropiación e indemnización

1. Ninguna de las Partes podrá nacionalizar ni expropiar, directa o indirectamente, una inversión de un inversionista de la otra Parte en su territorio, ni adoptar ninguna medida equivalente a la expropiación o nacionalización de esa inversión ("expropiación"), salvo que sea:

- a) por causa de utilidad pública u orden público e interés social, conforme a lo dispuesto en el Anexo 10.11(1);
- b) sobre bases no discriminatorias;
- c) con apego a los principios de legalidad y del debido proceso y al Artículo 10.06; y
- d) mediante indemnización conforme a las disposiciones de este Artículo.

2. La indemnización será equivalente al valor justo de mercado que tenga la inversión expropiada inmediatamente antes de que la medida expropiatoria se haya llevado a cabo (fecha de expropiación), y no reflejará ningún cambio en el valor debido a que la intención de expropiar se conoció con antelación a la fecha de expropiación. Los criterios de valuación podrán incluir el valor corriente, el valor del activo, incluyendo el valor fiscal declarado de bienes tangibles, así como otros criterios que resulten apropiados para determinar el valor justo de mercado.

3. El pago de la indemnización se hará sin demora y será completamente liquidable.

4. Sin perjuicio de lo establecido en el párrafo 5, la cantidad pagada por concepto de indemnización no podrá ser inferior a la cantidad equivalente que, de acuerdo al tipo de cambio vigente en la fecha de determinación del justo valor de mercado, se hubiera pagado en dicha fecha al inversionista expropiado en una moneda de libre convertibilidad en el mercado financiero internacional. La indemnización incluirá el pago de intereses calculados desde el día de la desposesión de la inversión expropiada hasta el día de pago, los que serán calculados sobre la base de una tasa pasiva o de captación promedio para dicha moneda del sistema bancario nacional de la Parte donde se efectúa la expropiación.

5. En caso de que la indemnización sea pagada en una moneda de libre convertibilidad, la indemnización incluirá intereses calculados desde el día de la desposesión de la inversión expropiada hasta el día de pago, los que serán calculados sobre la base de una tasa pasiva o de captación promedio para dicha moneda del sistema bancario nacional de la Parte donde se efectúa la expropiación.

6. Una vez pagada, la indemnización podrá transferirse libremente de conformidad con el Artículo 10.10.

7. Este Artículo no se aplica a la expedición de licencias obligatorias otorgadas en relación con derechos de propiedad intelectual, o a la revocación, limitación o creación de derechos de propiedad intelectual, en la medida que dicha expedición, revocación, limitación o creación sea conforme con el ADPIC.

8. Para los efectos de este Artículo y para mayor certeza, no se considerará que una medida no discriminatoria de aplicación general es una medida equivalente a la expropiación de un valor de deuda o un préstamo cubiertos por este Capítulo, sólo porque dicha medida imponga costos a un deudor cuyo resultado sea la falta de pago de la deuda.

Artículo 10.12 Formalidades especiales y requisitos de información

1. Ninguna disposición del Artículo 10.02 se interpretará en el sentido de impedir a una Parte adoptar o mantener una medida que prescriba formalidades especiales conexas al establecimiento de inversiones por inversionistas de la otra Parte, tales como que las inversiones se constituyan conforme a las leyes y reglamentos de la Parte, siempre que dichas formalidades no menoscaben significativamente la protección otorgada por una Parte de conformidad con este Capítulo.

2. No obstante lo dispuesto en los Artículos 10.02 y 10.03, una Parte podrá exigir de un inversionista de la otra Parte o de su inversión, en su territorio, que proporcione información rutinaria referente a esa inversión, exclusivamente con fines de información o estadística. La Parte protegerá de cualquier divulgación la información de negocios que sea confidencial, que pudiera afectar negativamente la situación competitiva del inversionista o de la inversión.

Artículo 10.13 Relación con otros Capítulos

1. En caso de incompatibilidad entre una disposición de este Capítulo y la disposición de otro, prevalecerá la de este último en la medida de la incompatibilidad.

2. Si una Parte requiere a un prestador de servicios de la otra Parte que deposite una fianza u otra forma de garantía financiera como condición para prestar un servicio en su territorio, ello, por sí mismo no hace aplicable este Capítulo a la prestación transfronteriza de ese servicio. Este Capítulo se aplica al trato que otorgue esa Parte a la fianza depositada o garantía financiera.

Artículo 10.14 Denegación de beneficios

Previa notificación y consulta, hechas de acuerdo a lo prescrito en los Artículos 18.04 (Suministro de información) y 20.06 (Consultas), una Parte podrá denegar los beneficios de este Capítulo a un inversionista de la otra Parte que sea una empresa de dicha Parte y a las inversiones de tales inversionistas, si inversionistas de un país no Parte son propietarios o controlan la empresa en los términos indicados en la definición de “inversión de un inversionista de una Parte” del Artículo 10.40 y ésta no tiene actividades comerciales sustanciales en el territorio de la Parte conforme a cuya ley está constituida u organizada.

Artículo 10.15 Medidas relativas al medio ambiente

1. Ninguna disposición del presente Capítulo se interpretará como impedimento para que una Parte adopte, mantenga o ponga en ejecución cualquier medida, consistente con este Capítulo, que considere apropiada para asegurar que las actividades de inversión en su territorio observen la legislación ecológica o medio ambiental en esa Parte.

2. Las Partes reconocen que es inadecuado alentar la inversión por medio de un relajamiento de las medidas internas aplicables a la salud o la seguridad o relativas a la ecología o el medio ambiente. En consecuencia, ninguna Parte eliminará o se comprometerá a eximir de la

aplicación de esas medidas a la inversión de un inversionista, como medio para inducir el establecimiento, la adquisición, la expansión o conservación de la inversión de un inversionista en su territorio. Si una Parte estima que la otra Parte ha alentado una inversión de tal manera, podrá solicitar consultas con esa otra Parte.

Sección B – Solución de controversias entre una Parte y un inversionista de la otra Parte

Artículo 10.16 Objetivo

Sin perjuicio de los derechos y obligaciones de las Partes establecidos en el Capítulo 20 (Solución de Controversias), esta Sección establece un mecanismo para la solución de controversias en materia de inversión que se susciten como consecuencia de la violación de una obligación establecida en la Sección A de este Capítulo, y asegura, tanto el trato igual entre inversionistas de las Partes de acuerdo con el principio de reciprocidad, como el debido ejercicio de la garantía de audiencia y defensa dentro de un debido proceso legal ante un tribunal arbitral imparcial.

Artículo 10.17 Reclamación de un inversionista de una Parte, por cuenta propia

1. De conformidad con esta Sección, un inversionista de una Parte podrá someter a arbitraje una reclamación cuyo fundamento sea que la otra Parte o una empresa controlada directa o indirectamente por esa Parte, ha violado una obligación establecida en este Capítulo, siempre y cuando el inversionista haya sufrido pérdidas o daños en virtud de esa violación o a consecuencia de ella.
2. Un inversionista no podrá presentar una reclamación si han transcurrido más de tres (3) años a partir de la fecha en la cual tuvo conocimiento por primera vez o debió haber tenido conocimiento de la presunta violación, así como conocimiento de que sufrió pérdidas o daños.

Artículo 10.18 Reclamación de un inversionista de una Parte, en representación de una empresa

1. Un inversionista de una Parte, en representación de una empresa de la otra Parte que sea una persona jurídica propiedad del inversionista o que esté bajo su control directo o indirecto, podrá someter a arbitraje, de conformidad con esta Sección, una reclamación cuyo fundamento sea que la otra Parte o una empresa controlada directa o indirectamente por esa Parte haya violado una obligación establecida en este Capítulo, siempre y cuando la empresa haya sufrido pérdidas o daños en virtud de esa violación o a consecuencia de ella.
2. Un inversionista no podrá presentar una reclamación en representación de la empresa a la que se refiere el párrafo 1, si han transcurrido más de tres (3) años a partir de la fecha en la cual la empresa tuvo conocimiento por primera vez, o debió tener conocimiento de la presunta violación, así como conocimiento de que sufrió pérdidas o daños.
3. Cuando un inversionista presente una reclamación de conformidad con este Artículo y, de manera paralela un inversionista que no tenga el control de una empresa, presente una reclamación en los términos del Artículo 10.17 como consecuencia de los mismos actos que dieron lugar a la presentación de una reclamación de acuerdo con este Artículo, o dos o más reclamaciones se sometan a arbitraje en los términos del Artículo 10.21, el Tribunal establecido

conforme al Artículo 10.27, examinará conjuntamente dichas reclamaciones, salvo que el Tribunal de acumulación determine que los intereses de una parte contendiente se verían perjudicados por ello.

4. Una inversión no podrá presentar una reclamación a arbitraje conforme a esta Sección.

Artículo 10.19 Solución de una controversia mediante consulta y negociación

Las partes contendientes intentarán primero dirimir la controversia por vía de consulta o negociación.

Artículo 10.20 Notificación de la intención de someter la reclamación a arbitraje

El inversionista contendiente notificará por escrito a la Parte contendiente su intención de someter una reclamación a arbitraje al menos noventa (90) días antes de que se presente la reclamación, y la notificación señalará lo siguiente:

- a) el nombre y dirección del inversionista contendiente y cuando la reclamación se haya realizado conforme al Artículo 10.18, incluirá la denominación o razón social y el domicilio de la empresa;
- b) las disposiciones de este Capítulo presuntamente incumplidas y cualquier otra disposición aplicable;
- c) las cuestiones de hecho y de derecho en que se fundamente la reclamación; y
- d) la reparación que se solicita y el monto aproximado de los daños reclamados.

Artículo 10.21 Sometimiento de la reclamación al arbitraje

1. Salvo lo dispuesto en el Anexo 10.21 y siempre que hayan transcurrido seis (6) meses desde que tuvieron lugar los actos que motivan la reclamación, un inversionista contendiente podrá someter la reclamación a arbitraje de acuerdo con:

- a) el Convenio del CIADI, siempre que tanto la Parte contendiente como la Parte del inversionista, sean Estados parte del mismo;
- b) las Reglas del Mecanismo Complementario del CIADI, cuando la Parte contendiente o la Parte del inversionista, pero no ambas, sea Parte del Convenio del CIADI; o
- c) las Reglas de Arbitraje de la CNUDMI.

2. Las reglas propias de cada uno de los procedimientos arbitrales establecidos en este Capítulo regirán el arbitraje, salvo en la medida de lo modificado en esta Sección.

Artículo 10.22 Condiciones previas al sometimiento de una reclamación al procedimiento arbitral

1. El consentimiento de las partes contendientes al procedimiento de arbitraje conforme a este Capítulo se considerará como consentimiento a ese arbitraje con exclusión de cualquier otro mecanismo.

2. Cada Parte podrá exigir el agotamiento previo de sus recursos administrativos como condición a su consentimiento al arbitraje conforme a este Capítulo. Sin embargo, si transcurridos seis (6) meses a partir del momento en que se interpusieron los recursos administrativos correspondientes, las autoridades administrativas no han emitido su resolución final, el inversionista podrá recurrir directamente al arbitraje, de conformidad con lo establecido en esta Sección.

3. Un inversionista contendiente podrá someter una reclamación al procedimiento arbitral de conformidad con el Artículo 10.17, sólo si:

- a) consiente someterse al arbitraje en los términos de los procedimientos establecidos en esta Sección; y
- b) el inversionista y, cuando la reclamación se refiera a pérdida o daño de una participación en una empresa de la otra Parte que sea una persona jurídica propiedad del inversionista o que esté bajo su control directo o indirecto, la empresa renuncian a su derecho a iniciar o continuar cualquier procedimiento ante cualquier tribunal judicial conforme al derecho de cualquiera de las Partes u otros procedimientos de solución de controversias respecto a la medida de la Parte contendiente presuntamente violatoria de las disposiciones a las que se refiere el Artículo 10.17, salvo los procedimientos que no tengan por objeto el pago de daños, en los que se solicite la aplicación de medidas precautorias de carácter suspensivo, declaratorio o extraordinario, ante el tribunal administrativo o judicial, conforme a la legislación de la Parte contendiente.

En consecuencia, una vez que el inversionista o la empresa hayan sometido la reclamación a un procedimiento arbitral de conformidad con esta Sección, la elección de dicho procedimiento será única y definitiva excluyendo la posibilidad de someter la reclamación ante el tribunal nacional competente de la parte contendiente o a otros procedimientos de solución de controversias, sin perjuicio de las excepciones señaladas anteriormente con respecto a medidas precautorias.

4. Un inversionista contendiente podrá someter una reclamación al procedimiento arbitral de conformidad con el Artículo 10.18, sólo si tanto el inversionista como la empresa:

- a) consienten en someterse al arbitraje en los términos de los procedimientos establecidos en esta Sección; y
- b) renuncian a su derecho de iniciar o continuar cualquier procedimiento con respecto a la medida de la Parte contendiente que presuntamente sea una de las violaciones a las que se refiere el Artículo 10.18 ante cualquier tribunal judicial conforme al derecho de una Parte u otros procedimientos de solución de controversias, salvo los procedimientos que no tengan por objeto el pago de

daños, en los que se solicite la aplicación de medidas precautorias de carácter suspensivo, declaratorio o extraordinario, ante el tribunal administrativo o judicial, conforme al derecho de la Parte contendiente.

En consecuencia, una vez que el inversionista o la empresa hayan sometido la reclamación a un procedimiento arbitral de conformidad con esta Sección, la elección de dicho procedimiento será única y definitiva excluyendo la posibilidad de someter la reclamación ante el tribunal nacional competente de la parte contendiente o a otros procedimientos de solución de controversias, sin perjuicio de las excepciones señaladas anteriormente con respecto a medidas precautorias.

5. El consentimiento y la renuncia requeridos por este Artículo se manifestarán por escrito, se entregarán a la Parte contendiente y se incluirán en el sometimiento de la reclamación a arbitraje.

6. Sólo en el caso que la Parte contendiente haya privado al inversionista contendiente del control de una empresa, no se requerirá la renuncia de la empresa conforme a los párrafos 3(b) y 4(b).

Artículo 10.23 Consentimiento al arbitraje

1. Cada Parte consiente en someter reclamaciones a arbitraje con apego a los procedimientos y requisitos establecidos en esta Sección.

2. El consentimiento a que se refiere el párrafo 1 y el sometimiento de una reclamación a arbitraje por parte de un inversionista contendiente implicará haber cumplido con los requisitos señalados en:

- a) el Capítulo II del Convenio del CIADI (Jurisdicción del Centro) y las Reglas del Mecanismo Complementario que exigen el consentimiento por escrito de las Partes;
- b) el Artículo II de la Convención de Nueva York, que exige un acuerdo por escrito; y
- c) el Artículo I de la Convención Interamericana, que requiere un acuerdo.

Artículo 10.24 Número de árbitros y método de nombramiento

Con excepción de lo que se refiere al Tribunal establecido conforme al Artículo 10.27, y a menos que las partes contendientes acuerden algo distinto, el Tribunal estará integrado por tres (3) árbitros. Cada una de las partes contendientes nombrará a uno (1). El tercer árbitro, quien será el presidente del Tribunal, será designado por acuerdo de las partes contendientes.

Artículo 10.25 Integración del Tribunal en caso de que una parte contendiente no designe árbitro o las partes contendientes no logren un acuerdo en la designación del presidente del Tribunal

1. En caso de que una parte contendiente no designe árbitro o no se logre un acuerdo en la designación del presidente del Tribunal, el Secretario General nombrará a los árbitros en los procedimientos de arbitraje, de conformidad con esta Sección.

2. Cuando un Tribunal, que no sea el establecido de conformidad con el Artículo 10.27, no se integre en un plazo de noventa (90) días a partir de la fecha en que la reclamación se someta al arbitraje, el Secretario General, a petición de cualquiera de las partes contendientes y, en lo posible, previa consulta de las mismas, nombrará al árbitro o árbitros no designados todavía, pero no al presidente del Tribunal quien será designado conforme a lo dispuesto en el párrafo 3. En todo caso, la mayoría de los árbitros no podrá ser nacional de la Parte contendiente o nacional de la Parte del inversionista contendiente.

3. El Secretario General designará al presidente del Tribunal de la lista de árbitros a la que se refiere el párrafo 4, asegurándose que el presidente del Tribunal no sea nacional de la Parte contendiente o nacional de la Parte del inversionista contendiente. En caso de que no se encuentre en la lista un árbitro disponible para presidir el Tribunal, el Secretario General designará, de la Lista de Árbitros del CIADI, al presidente del Tribunal, siempre que sea de nacionalidad distinta a la de la Parte contendiente o a la de la Parte del inversionista contendiente.

4. A la fecha de entrada en vigencia de este Tratado, las Partes establecerán y mantendrán una lista de dieciocho (18) árbitros como posibles presidentes del Tribunal, ninguno de los cuales podrá ser nacional de una Parte, que reúnan los requisitos establecidos en el Convenio del CIADI y en las reglas contempladas en el Artículo 10.21 y que cuenten con experiencia en Derecho Internacional y en materia de inversión. Los miembros de la lista serán designados por mutuo acuerdo sin importar su nacionalidad por un plazo de dos (2) años, renovables si por consenso las Partes así lo acuerdan. En caso de muerte o renuncia de un miembro de la lista, las Partes de mutuo acuerdo designarán a otra persona que le reemplace en sus funciones para el resto del período para el que aquél fue nombrado.

Artículo 10.26 Consentimiento para la designación de árbitros

Para los propósitos del Artículo 39 del Convenio del CIADI y del Artículo 7 de la Parte C de las Reglas del Mecanismo Complementario, y sin perjuicio de objetar a un árbitro de conformidad con el Artículo 10.25(3) o sobre base distinta a la nacionalidad:

- a) la Parte contendiente acepta la designación de cada uno de los miembros de un Tribunal establecido de conformidad con el Convenio del CIADI o con las Reglas del Mecanismo Complementario;
- b) un inversionista contendiente a que se refiere el Artículo 10.17 podrá someter una reclamación a arbitraje o continuar el procedimiento conforme al Convenio del CIADI o a las Reglas del Mecanismo Complementario, únicamente a condición de que el inversionista contendiente manifieste su consentimiento por escrito sobre la designación de cada uno de los miembros del Tribunal;
- c) el inversionista contendiente a que se refiere el Artículo 10.18(1) podrá someter una reclamación a arbitraje o continuar el procedimiento conforme al Convenio del CIADI o a las Reglas del Mecanismo Complementario, únicamente a condición de que el inversionista contendiente y la empresa que representa manifiesten su consentimiento por escrito sobre la designación de cada uno de los miembros del Tribunal.

Artículo 10.27 Acumulación de procedimientos

1. Un Tribunal de acumulación establecido conforme a este Artículo se instalará con apego a las Reglas de Arbitraje de la CNUDMI y procederá de conformidad con lo contemplado en dichas Reglas, salvo lo dispuesto en esta Sección.
 2. Cuando un Tribunal de acumulación establecido conforme a este Artículo determine que las reclamaciones sometidas a arbitraje de acuerdo con el Artículo 10.21 plantean una cuestión en común de hecho o de derecho, el Tribunal de acumulación, en interés de una resolución justa y eficiente, y habiendo escuchado a las partes contendientes, podrá ordenar que:
 - a) asuma jurisdicción, conozca y resuelva todas o parte de las reclamaciones, de manera conjunta; o
 - b) asuma jurisdicción, conozca y resuelva una o más de las reclamaciones sobre la base de que ello contribuirá a la resolución de las otras.
 3. Una parte contendiente que pretenda obtener una orden de acumulación en los términos del párrafo 2, solicitará al Secretario General que instale un Tribunal de acumulación y especificará en su solicitud:
 - a) el nombre de la Parte contendiente o de los inversionistas contendientes contra los cuales se pretenda obtener la orden de acumulación;
 - b) la naturaleza de la orden de acumulación solicitada; y
 - c) el fundamento en que se apoya la solicitud.
 4. La parte contendiente entregará copia de su solicitud a la Parte contendiente o a los inversionistas contendientes contra quienes se pretende obtener la orden de acumulación.
 5. En un plazo de sesenta (60) días a partir de la fecha de la recepción de la solicitud, el Secretario General instalará un Tribunal de acumulación integrado por tres (3) árbitros. El Secretario General nombrará al presidente del Tribunal de acumulación de la lista de árbitros a la que se refiere el Artículo 10.25(4). En caso que no se encuentre en la lista un (1) árbitro disponible para presidir el Tribunal de acumulación, el Secretario General designará, de la Lista de Árbitros del CIADI, al presidente del Tribunal de acumulación quien no será nacional de ninguna de las Partes. El Secretario General designará a los otros dos (2) integrantes del Tribunal de acumulación de la lista a la que se refiere el Artículo 10.25(4) y, cuando no estén disponibles en dicha lista, los seleccionará de la Lista de Árbitros del CIADI; de no haber disponibilidad de árbitros en esta Lista, el Secretario General hará discrecionalmente los nombramientos faltantes. Uno (1) de los miembros será nacional de la Parte contendiente y el otro miembro del Tribunal de acumulación será nacional de la Parte de los inversionistas contendientes.
 6. Cuando se haya establecido un Tribunal de acumulación conforme a este Artículo, el inversionista contendiente que haya sometido una reclamación a arbitraje conforme al Artículo 10.17 ó 10.18 y no haya sido mencionado en la solicitud de acumulación hecha de acuerdo con el párrafo 3, podrá solicitar por escrito al Tribunal de acumulación que se le incluya en una solicitud de acumulación de acuerdo con el párrafo 2, y especificará en dicha solicitud:
-

- a) el nombre y dirección del inversionista contendiente y en su caso la denominación o razón social y el domicilio de la empresa;
 - b) la naturaleza de la orden de acumulación solicitada; y
 - c) los fundamentos en que se apoya la solicitud.
7. Un inversionista contendiente al que se refiere el párrafo 6, entregará copia de su solicitud a las partes contendientes señaladas en una solicitud hecha conforme al párrafo 3.
8. Un Tribunal establecido conforme al Artículo 10.21 no tendrá jurisdicción para resolver una reclamación, o parte de ella, respecto de la cual haya asumido jurisdicción un Tribunal de acumulación establecido conforme a este Artículo.
9. A solicitud de una parte contendiente, un Tribunal de acumulación establecido de conformidad con este Artículo podrá, en espera de su decisión conforme al párrafo 2, disponer que los procedimientos de un Tribunal establecido de acuerdo al Artículo 10.21 se aplacen a menos que ese último Tribunal haya suspendido sus procedimientos hasta tanto se resuelva sobre la procedencia de la acumulación.
10. Una Parte contendiente entregará al Secretariado en un plazo de quince (15) días a partir de la fecha en que se reciba por la Parte contendiente, una copia de:
- a) una solicitud de arbitraje hecha conforme al párrafo 1 del Artículo 36 del Convenio del CIADI;
 - b) una notificación de arbitraje en los términos del Artículo 2 de la Parte C de las Reglas del Mecanismo Complementario del CIADI; o
 - c) una notificación de arbitraje en los términos previstos por las Reglas de Arbitraje de la CNUDMI.
11. Una Parte contendiente entregará al Secretariado copia de la solicitud formulada en los términos del párrafo 3:
- a) en un plazo de quince (15) días a partir de la recepción de la solicitud en el caso de una petición hecha por el inversionista contendiente;
 - b) en un plazo de quince (15) días a partir de la fecha en que la solicitud fue hecha en el caso de una petición hecha por la Parte contendiente.
12. Una Parte contendiente entregará al Secretariado, copia de una solicitud formulada en los términos del párrafo 6 en un plazo de quince (15) días a partir de la fecha de recepción de la solicitud.
13. El Secretariado conservará un registro público de los documentos a los que se refieren los párrafos 10, 11 y 12.

Artículo 10.28 Notificación

La Parte contendiente entregará a la otra Parte:

- a) notificación escrita de una reclamación que se haya sometido a arbitraje a más tardar treinta (30) días después de la fecha de sometimiento de la reclamación a arbitraje; y
- b) copias de todos los escritos de alegatos presentados en el procedimiento arbitral.

Artículo 10.29 Participación de una Parte

Previa notificación escrita a las partes contendientes, una Parte podrá plantear a un Tribunal establecido conforme a esta Sección sus puntos de vista sobre una cuestión de interpretación de este Tratado.

Artículo 10.30 Documentación

1. Una Parte tendrá, a su costa, derecho a recibir de la Parte contendiente una copia de:
 - a) las pruebas ofrecidas a cualquier Tribunal establecido conforme a esta Sección; y
 - b) los argumentos escritos presentados por las partes contendientes.
2. Una Parte que reciba información conforme a lo dispuesto en el párrafo 1, dará tratamiento confidencial a la información como si fuera una Parte contendiente.

Artículo 10.31 Sede del procedimiento arbitral

Salvo que las partes contendientes acuerden algo distinto, un Tribunal establecido conforme a esta Sección llevará a cabo el procedimiento arbitral en territorio de una Parte que sea parte de la Convención de Nueva York, el cual será elegido de conformidad con:

- a) las Reglas del Mecanismo Complementario del CIADI, si el arbitraje se rige por esas Reglas o por el Convenio del CIADI; o
- b) las Reglas de Arbitraje de la CNUDMI, si el arbitraje se rige por esas Reglas.

Artículo 10.32 Derecho aplicable

1. Un Tribunal establecido conforme a esta Sección decidirá las controversias que se sometan a su consideración de conformidad con este Tratado y con las reglas aplicables del Derecho Internacional.
2. La interpretación que formule la Comisión sobre una disposición de este Tratado será obligatoria para un Tribunal establecido de conformidad con esta Sección.

Artículo 10.33 Interpretación de los Anexos

1. Cuando una Parte alegue como defensa que una medida presuntamente violatoria cae en el ámbito de una reserva o excepción consignada en cualquiera de los Anexos a petición de la

Parte contendiente, cualquier Tribunal establecido de conformidad con esta Sección solicitará a la Comisión una interpretación sobre ese asunto. La Comisión, en un plazo de sesenta (60) días a partir de la entrega de la solicitud, presentará por escrito al Tribunal su interpretación.

2. En seguimiento al Artículo 10.32(2), la interpretación de la Comisión sometida conforme al párrafo 1 será obligatoria para cualquier Tribunal establecido de conformidad con esta Sección. Si la Comisión no somete una interpretación dentro de un plazo de sesenta (60) días, el Tribunal decidirá sobre el asunto.

Artículo 10.34 Dictámenes de expertos

Sin perjuicio de la designación de otro tipo de expertos cuando lo autoricen las reglas de arbitraje aplicables, el Tribunal, a petición de una parte contendiente, o por iniciativa propia, podrá designar uno o más expertos para dictaminar por escrito cualquier cuestión relacionada con la controversia.

Artículo 10.35 Medidas provisionales de protección

Un Tribunal establecido conforme a esta Sección podrá solicitar a los tribunales nacionales, o dictar a las partes contendientes, medidas provisionales de protección para preservar los derechos de la parte contendiente o para asegurar que la competencia o jurisdicción del Tribunal surta plenos efectos. Ese Tribunal no podrá ordenar el secuestro o embargo, o el acatamiento a, o la suspensión de la aplicación de la medida presuntamente violada a la que se refiere el Artículo 10.17 ó 10.18.

Artículo 10.36 Laudo definitivo

1. Cuando un Tribunal establecido de conformidad con esta Sección dicte un laudo definitivo desfavorable a una Parte, dicho Tribunal sólo podrá resolver sobre:

- a) daños pecuniarios y los intereses que procedan; o
- b) la restitución de la propiedad, en cuyo caso el laudo dispondrá que la Parte contendiente podrá pagar daños pecuniarios, más los intereses que procedan, en lugar de la restitución.

Un Tribunal podrá también otorgar el pago de costas de acuerdo con las reglas de arbitraje aplicables.

2. De conformidad con el párrafo 1, cuando la reclamación se haga conforme al Artículo 10.18(1):

- a) el laudo que prevea la restitución de la propiedad, dispondrá que la restitución se otorgue a la empresa;
- b) el laudo que conceda daños pecuniarios e intereses que procedan, dispondrá que la suma de dinero se pague a la empresa.

3. Para efectos de los párrafos 1 y 2, los daños se determinarán en la moneda en que se haya realizado la inversión.

4. El laudo se dictará sin perjuicio de los derechos que un tercero con interés jurídico tenga sobre la reparación de los daños que haya sufrido, conforme a la legislación aplicable.

Artículo 10.37 Definitividad y ejecución del laudo

1. El laudo dictado por cualquier Tribunal establecido conforme a esta Sección será obligatorio sólo para las partes contendientes y únicamente respecto del caso concreto.

2. Conforme a lo dispuesto en el párrafo 3 y al procedimiento de revisión, aclaración o anulación aplicable a un laudo previstos bajo el mecanismo aplicable que sea procedente a juicio del Secretario General, una parte contendiente acatará y cumplirá con un laudo sin demora.

3. Una parte contendiente podrá solicitar la ejecución de un laudo definitivo en tanto:

a) en el caso de un laudo definitivo dictado conforme al Convenio del CIADI:

i) hayan transcurrido ciento veinte (120) días desde la fecha en que se dictó el laudo y sin que ninguna parte contendiente haya solicitado la revisión o anulación del mismo; o

ii) hayan concluido los procedimientos de aclaración, revisión o anulación; y

b) en el caso de un laudo definitivo conforme a las Reglas del Mecanismo Complementario del CIADI o las Reglas de Arbitraje de la CNUDMI:

i) hayan transcurrido tres (3) meses desde la fecha en que se dictó el laudo y sin que ninguna parte contendiente haya iniciado un procedimiento para revisarlo, revocarlo o anularlo; o

ii) un tribunal de la Parte contendiente haya desechado o admitido una solicitud de reconsideración, revocación o anulación del laudo que una de las partes contendientes haya presentado y esta resolución no pueda recurrirse.

4. Cada Parte dispondrá la debida ejecución de un laudo en su territorio.

5. Cuando una Parte contendiente incumpla o no acate un laudo definitivo, la Comisión, a la entrega de una solicitud de una Parte cuyo inversionista fue parte en el procedimiento de arbitraje, integrará un grupo arbitral conforme al Artículo 20.08 (Solicitud de integración del grupo arbitral). La Parte solicitante podrá invocar dichos procedimientos para obtener:

a) una determinación en el sentido de que el incumplimiento o desacato de los términos del laudo definitivo es contrario a las obligaciones de este Tratado; y

b) una recomendación en el sentido de que la Parte cumpla y acate el laudo definitivo.

6. El inversionista contendiente podrá recurrir a la ejecución de un laudo arbitral conforme al Convenio del CIADI, la Convención de Nueva York o la Convención Interamericana,

independientemente de que se hayan iniciado o no los procedimientos contemplados en el párrafo 5.

7. Para los efectos del Artículo 1 de la Convención de Nueva York y del Artículo 1 de la Convención Interamericana, se considerará que la reclamación que se somete a arbitraje conforme a esta Sección, surge de una relación u operación comercial.

Artículo 10.38 Disposiciones generales

Momento en que la reclamación se considera sometida al procedimiento arbitral

1. Una reclamación se considera sometida a arbitraje en los términos de esta Sección cuando:

- a) la solicitud para un arbitraje conforme al párrafo 1 del Artículo 36 del Convenio del CIADI ha sido recibida por el Secretario General;
- b) la notificación de arbitraje de conformidad con el Artículo 2 de la Parte C de las Reglas del Mecanismo Complementario del CIADI ha sido recibida por el Secretario General; o
- c) la notificación de arbitraje contemplada en las Reglas de Arbitraje de la CNUDMI ha sido recibida por la Parte contendiente.

Entrega de la notificación y otros documentos

2. La entrega de la notificación y otros documentos a una Parte se hará en el lugar designado por ella en el Anexo 10.38(2).

Pagos conforme a contratos de seguro o garantía

3. En un procedimiento arbitral conforme a lo previsto en esta Sección, una Parte no aducirá como defensa, contrademanda, derecho de compensación, u otros, que el inversionista contendiente ha recibido o recibirá, de acuerdo a un contrato de seguro o garantía, indemnización u otra compensación por todos o por parte de los presuntos daños cuya restitución solicita.

Publicación de un laudo

4. Los laudos se publicarán únicamente en el caso de que exista acuerdo por escrito entre las partes contendientes.

Artículo 10.39 Exclusiones

Las disposiciones de solución de controversias de esta Sección o las del Capítulo 20 (Solución de Controversias) no se aplicarán a los supuestos contenidos en el Anexo 10.39.

Sección C – Definiciones

Artículo 10.40 Definiciones

Para efectos de este Capítulo, se entenderá por:

CIADI: el Centro Internacional de Arreglo de Diferencias Relativas a Inversiones;

Convención de Nueva York: la Convención de Naciones Unidas sobre el Reconocimiento y Ejecución de las Sentencias Arbitrales Extranjeras, celebrada en Nueva York el 10 de junio de 1958;

Convención Interamericana: la Convención Interamericana sobre Arbitraje Comercial Internacional, celebrada en Panamá el 30 de enero de 1975;

Convenio del CIADI: el Convenio sobre Arreglo de Diferencias Relativas a Inversiones entre Estados y Nacionales de otros Estados, celebrado en Washington el 18 de marzo de 1965;

empresa: “empresa” tal como se define en el Capítulo 2 (Definiciones Generales);

empresa de una Parte: una empresa constituida u organizada de conformidad con la ley de una Parte; y una sucursal ubicada en territorio de una Parte y que desempeñe actividades comerciales en el mismo;

inversión: toda clase de bienes o derechos de cualquier naturaleza, adquiridos o utilizados con el propósito de obtener un beneficio económico u otros fines empresariales, adquiridos con recursos transferidos o reinvertidos por un inversionista, y comprenderá:

a) una empresa, acciones de una empresa, participaciones en el capital social de una empresa, que le permitan al propietario participar en los ingresos o en las utilidades de la misma. Instrumentos de deuda de una empresa y préstamos a una empresa cuando:

- i) la empresa es una filial del inversionista, o
- ii) la fecha de vencimiento original del instrumento de deuda o el préstamo sea por lo menos de tres (3) años;

b) una participación en una empresa que otorgue derecho al propietario para participar del haber social de esa empresa en una liquidación, siempre que éste no derive de un instrumento de deuda o un préstamo excluidos conforme al literal (a);

c) bienes raíces u otra propiedad, tangibles o intangibles, incluidos los derechos en el ámbito de la propiedad intelectual, así como cualquier otro derecho real (tales como hipotecas, derechos de prenda, usufructo y derechos similares) adquiridos con la expectativa de, o utilizados con el propósito de, obtener un beneficio económico o para otros fines empresariales; y

d) la participación o beneficio que resulte de destinar capital u otros recursos comprometidos para el desarrollo de una actividad económica en territorio de una Parte, entre otros, conforme a:

- i) contratos que involucran la presencia de la propiedad de un inversionista en territorio de la Parte, incluidos, las concesiones, los contratos de construcción y de llave en mano; o
- ii) contratos donde la remuneración depende sustancialmente de la producción, ingresos o ganancias de una empresa;

pero inversión no significa,

- una obligación de pago de, ni el otorgamiento de un crédito a, el Estado o una empresa del Estado;

- reclamaciones pecuniarias derivadas exclusivamente de:

- i) contratos comerciales para la venta de bienes o servicios por un nacional o empresa en territorio de una Parte a una empresa en territorio de la otra Parte; o
- ii) el otorgamiento de crédito en relación con una transacción comercial, cuya fecha de vencimiento sea menor a tres (3) años, como el financiamiento al comercio; salvo un préstamo cubierto por las disposiciones de un préstamo a una empresa según se establece en el literal (a); o

- cualquier otra reclamación pecuniaria que no conlleve los tipos de interés dispuestos en los literales del (a) al (d);

inversionista contendiente: un inversionista que formula una reclamación en los términos de la Sección B de este Capítulo;

inversión de un inversionista de una Parte: la inversión propiedad o bajo control directo o indirecto de un inversionista de dicha Parte.

En caso de una empresa, una inversión es propiedad de un inversionista de una Parte si ese inversionista tiene la titularidad de más del cincuenta por ciento (50%) de su capital social.

Una inversión está bajo el control de un inversionista de una Parte si ese inversionista tiene la facultad de:

- i) designar a la mayoría de sus directores; o
- ii) dirigir legalmente de otro modo sus operaciones;

inversionista de una Parte: una Parte o una empresa de la misma, o un nacional o empresa de dicha Parte, que pretende realizar o, en su caso, realice o haya realizado una inversión en territorio de la otra Parte. La intención de pretender realizar una inversión podrá manifestarse, entre otras formas, mediante actos jurídicos tendientes a materializar la inversión, o estando en vías de comprometer los recursos necesarios para realizarla;

Parte contendiente: la Parte contra la cual se hace una reclamación en los términos de la Sección B de este Capítulo;

parte contendiente: el inversionista contendiente o la Parte contendiente;

partes contendientes: el inversionista contendiente y la Parte contendiente;

reclamación: la demanda hecha por el inversionista contendiente contra una Parte en los términos de la Sección B de este Capítulo;

Reglas de Arbitraje de la CNUDMI: las Reglas de Arbitraje de la Comisión de las Naciones Unidas sobre Derecho Mercantil Internacional (CNUDMI), aprobadas por la Asamblea General de las Naciones Unidas el 15 de diciembre de 1976;

Secretario General: el Secretario General del CIADI;

transferencias: transferencias y pagos internacionales;

Tribunal: un tribunal arbitral establecido conforme al Artículo 10.21; y

Tribunal de acumulación: un tribunal arbitral establecido conforme al Artículo 10.27.

ANEXO 10.38(2)

ENTREGA DE NOTIFICACIONES Y OTROS DOCUMENTOS

1. Para efectos del Artículo 10.38(2), el lugar para la entrega de notificaciones y otros documentos será:
 - a) para el caso de Costa Rica: Dirección General de Comercio Exterior, o su sucesora Centro de Comercio Exterior Paseo Colón San José, Costa Rica
 - b) para el caso de El Salvador: Dirección de Política Comercial del Ministerio de Economía, o su sucesora Alameda Juan Pablo II, Calle Guadalupe, Edificio C-2, Planta 3 Centro de Gobierno San Salvador, El Salvador
 - c) para el caso de Guatemala: Ministerio de Economía, o su sucesor 8ª. Avenida 10-43 zona 1 Guatemala, Guatemala
 - d) para el caso de Honduras: Secretaría de Estado en los Despachos de Industria y Comercio Dirección General de Administración de Tratados, o su sucesora Calle Peatonal, Antiguo local de Lloyds Bank, Segundo Piso Tegucigalpa, Honduras
 - d) para el caso de Nicaragua: Dirección General de Comercio Exterior, o su sucesora Ministerio de Fomento Industria y Comercio Km. 6 Carretera a Masaya Managua, Nicaragua
 - f) para el caso de Panamá: Ministerio de Comercio e Industrias Viceministerio de Comercio Exterior, o su sucesor Dirección Nacional de Negociaciones Comerciales Internacionales, Vía Ricardo J. Alfaro, Plaza Edison, Piso #3, Panamá, República de Panamá

2. Las Partes comunicarán cualquier cambio del lugar designado para la entrega de notificaciones y otros documentos.

CAPITULO 12

SERVICIOS FINANCIEROS

Artículo 12.01 Definiciones

Para efectos de este Capítulo, se entenderá por:

autoridades reguladoras: cualquier entidad gubernamental que ejerza autoridad de supervisión sobre prestadores de servicios financieros o instituciones financieras;

entidad pública: un banco central o autoridad monetaria de una Parte, o cualquier institución financiera de naturaleza pública, propiedad de una Parte o que esté bajo su control, cuando no esté ejerciendo funciones comerciales;

empresa: “empresa” tal como se define en el Capítulo 2 (Definiciones Generales);

institución financiera: cualquier empresa o intermediario financiero que esté autorizado para hacer negocios de prestar servicios financieros y esté regulado o supervisado como una institución financiera conforme a la legislación de la Parte en cuyo territorio se encuentre establecida;

institución financiera de la otra Parte: una institución financiera, incluso una sucursal de la misma, constituida de acuerdo con la legislación vigente, ubicada en territorio de una Parte que sea propiedad o esté controlada por personas de la otra Parte;

inversión: toda clase de bienes o derechos de cualquier naturaleza, adquiridos o utilizados con el propósito de obtener un beneficio económico u otros fines empresariales, adquiridos con recursos transferidos o reinvertidos por un inversionista, y comprenderá:

- a) una empresa, acciones de una empresa; participaciones en el capital social de una empresa, que le permitan al propietario participar en los ingresos o en las utilidades de la misma. Instrumentos de deuda de una empresa y préstamos a una empresa cuando:
 - i) la empresa es una filial del inversionista; o
 - ii) la fecha de vencimiento original del instrumento de deuda o el préstamo sea por lo menos de tres (3) años;
- b) una participación en una empresa que otorgue derecho al propietario para participar del haber social de esa empresa en una liquidación, siempre que éste no derive de un instrumento de deuda o un préstamo excluidos conforme al literal (a);

- c) bienes raíces u otra propiedad, tangibles o intangibles, incluidos los derechos en el ámbito de la propiedad intelectual, así como cualquier otro derecho real (tales como hipotecas, derechos de prenda, usufructo y derechos similares) adquiridos con la expectativa de, o utilizados con el propósito de, obtener un beneficio económico o para otros fines empresariales;
- d) la participación o beneficio que resulte de destinar capital u otros recursos comprometidos para el desarrollo de una actividad económica en territorio de una Parte, entre otros, conforme a:
 - i) contratos que involucran la presencia de la propiedad de un inversionista en territorio de la Parte, incluidos, las concesiones, los contratos de construcción y de llave en mano; o
 - ii) contratos donde la remuneración depende sustancialmente de la producción, ingresos o ganancias de una empresa; y
- e) un préstamo otorgado por un prestador de servicios financieros transfronterizos o un valor de deuda propiedad del mismo, excepto un préstamo a una institución financiera o un valor de deuda emitido por la misma;

pero inversión no significa,

- una obligación de pago de, ni el otorgamiento de un crédito a, el Estado o una empresa del Estado;

- reclamaciones pecuniarias derivadas exclusivamente de:

- i) contratos comerciales para la venta de bienes o servicios por un nacional o empresa en territorio de una Parte a una empresa en territorio de la otra Parte; o
- ii) el otorgamiento de crédito en relación con una transacción comercial, cuya fecha de vencimiento sea menor a tres (3) años, como el financiamiento al comercio; salvo un préstamo cubierto por las disposiciones del literal (a);

- cualquier otra reclamación pecuniaria que no conlleve los tipos de interés dispuestos en los literales del (a) al (e);

- un préstamo otorgado a una institución financiera o un valor de deuda propiedad de una institución financiera, salvo que se trate de un préstamo a una institución financiera que sea tratado como capital para efectos regulatorios, por cualquier Parte en cuyo territorio esté ubicada la institución financiera;

inversión de un inversionista de una Parte: la inversión propiedad o bajo control directo o indirecto de un inversionista de dicha Parte.

En caso de una empresa, una inversión es propiedad de un inversionista de una Parte si ese inversionista tiene la titularidad de más del cincuenta por ciento (50%) de su capital social.

Una inversión está bajo el control de un inversionista de una Parte si ese inversionista tiene la facultad de:

- i) designar a la mayoría de sus directores; o
- ii) dirigir legalmente de otro modo sus operaciones;

inversionista de una Parte: una Parte o una empresa de la misma, o un nacional o empresa de dicha Parte, que pretende realizar o, en su caso, realice o haya realizado una inversión en territorio de la otra Parte. La intención de pretender realizar una inversión podrá manifestarse, entre otras formas, mediante actos jurídicos tendientes a materializar la inversión, o estando en vías de comprometer los recursos necesarios para realizarla;

inversionista contendiente: un inversionista que someta a arbitraje una reclamación en los términos del Artículo 12.19 y de la Sección B del Capítulo 10 (Inversión);

nuevo servicio financiero: un servicio financiero no prestado en territorio de una Parte que sea prestado en territorio de la otra Parte, incluyendo cualquier forma nueva de distribución de un servicio financiero o de venta de un producto financiero que no sea vendido en el territorio de la Parte;

organismos autoregulados: una entidad no gubernamental, incluso una bolsa o mercado de valores o de futuros, central de valores, cámara de compensación o cualquier otra asociación u organización que ejerza una autoridad, propia o delegada, de regulación o de supervisión;

prestación transfronteriza de servicios financieros o comercio transfronterizo de servicios financieros:

la prestación de un servicio financiero:

- a) del territorio de una Parte al territorio de la otra Parte;
- b) en el territorio de una Parte a un consumidor de servicios de la otra Parte; o
- c) por un prestador de servicios de una Parte mediante la presencia de personas físicas de una Parte en territorio de la otra Parte;

prestador de servicios financieros de una Parte: una persona de una Parte que se dedica al negocio de prestar algún servicio financiero en territorio de la Parte;

prestador de servicios financieros transfronterizos de una Parte: una persona autorizada de una Parte que se dedica al negocio de prestar servicios financieros en su territorio y que pretenda realizar o realice la prestación transfronteriza de servicios financieros; y

servicio financiero: un servicio de naturaleza financiera inclusive banca, seguros, reaseguros, y cualquier servicio conexo o auxiliar a un servicio de naturaleza financiera.

Artículo 12.02 Ámbito de aplicación

1. Este Capítulo se aplica a las medidas que adopte o mantenga una Parte relativas a:
-

- a) instituciones financieras de la otra Parte;
 - b) inversionistas de una Parte e inversiones de esos inversionistas en instituciones financieras en territorio de la otra Parte; y
 - c) el comercio transfronterizo de servicios financieros.
2. Ninguna disposición del presente Capítulo se interpretará en el sentido de impedir a una Parte, o a sus entidades públicas, que conduzcan o presten en forma exclusiva en su territorio:
- a) las actividades realizadas por las autoridades monetarias o por cualquier otra institución pública, dirigidas a la consecución de políticas monetarias o cambiarias;
 - b) las actividades y servicios que formen parte de planes públicos de retiro o de sistemas obligatorios de seguridad social; o
 - c) otras actividades o servicios por cuenta de la Parte, con su garantía, o que usen los recursos financieros de la misma o de sus entidades públicas.
3. Las disposiciones de este Capítulo prevalecerán sobre las de otros, salvo en los casos en que se haga remisión expresa a esos Capítulos.
4. El Artículo 10.11 (Expropiación e indemnización) forma parte integrante de este Capítulo.

Artículo 12.03 Organismos autoregulados.

Cuando una Parte requiera que una institución financiera o un prestador de servicios financieros transfronterizos de la otra Parte sea miembro, participe, o tenga acceso a un organismo autoregulado para ofrecer un servicio financiero en su territorio o hacia éste, la Parte hará todo lo que esté a su alcance para que ese organismo cumpla con las obligaciones de este Capítulo.

Artículo 12.04 Derecho de establecimiento

1. Las Partes reconocen el principio que a los inversionistas de una Parte, se les debe permitir establecer una institución financiera en el territorio de la otra Parte, mediante cualesquiera de las modalidades de establecimiento y de operación que la legislación de esta Parte permita.
2. Cada Parte podrá imponer, en el momento del establecimiento de una institución financiera, términos y condiciones que sean compatibles con el Artículo 12.06.

Artículo 12.05 Comercio transfronterizo

1. Ninguna Parte incrementará el grado de disconformidad de sus medidas relativas al comercio transfronterizo de servicios financieros, en relación con las disposiciones de este Tratado, que realicen los prestadores de servicios financieros transfronterizos de la otra Parte, después de la entrada en vigencia de este Tratado, excepto lo dispuesto en la Sección B de la lista de la Parte del Anexo VI.

2. Cada Parte permitirá a personas ubicadas en su territorio y a sus nacionales, donde quiera que se encuentren, adquirir servicios financieros de prestadores de servicios financieros transfronterizos de la otra Parte ubicados en territorio de esa otra Parte. Esto no obliga a una Parte a permitir que estos prestadores de servicios financieros transfronterizos hagan negocios o se anuncien en su territorio. Las Partes podrán definir lo que es “anunciarse” y “hacer negocios” para efectos de esta obligación.

3. Sin perjuicio de otros medios de regulación prudencial al comercio transfronterizo de servicios financieros, la Parte podrá exigir el registro de prestadores de servicios financieros transfronterizos de la otra Parte y de instrumentos financieros.

Artículo 12.06 Trato nacional

1. Cada Parte otorgará a los inversionistas de la otra Parte un trato no menos favorable que el que otorga a sus propios inversionistas respecto al establecimiento, adquisición, expansión, administración, conducción, operación, venta, así como otras formas de enajenación de instituciones financieras similares e inversiones en instituciones financieras similares en su territorio.

2. Cada Parte otorgará a las instituciones financieras de la otra Parte y a las inversiones de los inversionistas de la otra Parte en instituciones financieras, un trato no menos favorable que el que otorga a sus propias instituciones financieras similares y a las inversiones de sus propios inversionistas en instituciones financieras similares respecto al establecimiento, adquisición, expansión, administración, conducción, operación, venta y otras formas de enajenación de instituciones financieras e inversiones.

3. Conforme al Artículo 12.05, cuando una Parte permita la prestación transfronteriza de un servicio financiero, otorgará a prestadores de servicios financieros transfronterizos de la otra Parte, un trato no menos favorable que el que otorga a sus propios prestadores de servicios financieros similares, respecto a la prestación de ese servicio.

4. El trato que una Parte otorgue a instituciones financieras similares y a prestadores de servicios financieros transfronterizos similares de la otra Parte, ya sea idéntico o diferente al otorgado a sus propias instituciones o prestadores de servicios similares, es congruente con los párrafos 1 al 3, si ofrece igualdad en las oportunidades para competir.

5. El tratamiento de una Parte no ofrece igualdad en las oportunidades para competir si sitúa en una posición desventajosa a las instituciones financieras similares y a los prestadores de servicios financieros transfronterizos similares de la otra Parte en su capacidad de prestar servicios financieros, comparada con la capacidad de las propias instituciones financieras similares y prestadores de servicios similares de la Parte para prestar esos servicios.

Artículo 12.07 Trato de nación más favorecida

Cada Parte otorgará a los inversionistas de la otra Parte, a las instituciones financieras de la otra Parte, a las inversiones de los inversionistas en instituciones financieras y a los prestadores de servicios financieros transfronterizos de la otra Parte, un trato no menos favorable que el otorgado a los inversionistas, a las instituciones financieras similares, a las inversiones de los inversionistas en instituciones financieras similares y a los prestadores de servicios financieros transfronterizos similares de la otra Parte o de un país no Parte.

Artículo 12.08 Reconocimiento y armonización

1. Al aplicar las medidas comprendidas en este Capítulo, una Parte podrá reconocer las medidas prudenciales de la otra Parte o de un país no Parte. Ese reconocimiento podrá ser:

- a) otorgado unilateralmente;
- b) alcanzado a través de la armonización u otros medios; o
- c) con base en un acuerdo o arreglo con la otra Parte o con el país no Parte.

2. La Parte que otorgue el reconocimiento de medidas prudenciales de conformidad con el párrafo 1, brindará oportunidades apropiadas a la otra Parte para demostrar que existen circunstancias por las cuales hay o habrá regulaciones equivalentes, supervisión y puesta en práctica de la regulación y, de ser conveniente, procedimientos para compartir información entre las Partes.

3. Cuando una Parte otorgue reconocimiento a las medidas prudenciales de conformidad con el párrafo 1(c) y las circunstancias dispuestas en el párrafo 2 existan, esa Parte brindará oportunidades adecuadas a la otra Parte para negociar la adhesión al acuerdo o arreglo, o para negociar un acuerdo o arreglo similar.

4. Ninguna disposición del presente Artículo se debe interpretar como la implementación de un mecanismo obligatorio de revisión del sistema financiero o de las medidas prudenciales de una Parte por la otra Parte.

Artículo 12.09 Excepciones

1. Ninguna disposición del presente Capítulo, se interpretará como impedimento para que una Parte adopte o mantenga medidas prudenciales, tales como:

- a) proteger a administradores de fondos, inversionistas, depositantes, participantes en el mercado financiero, tenedores o beneficiarios de pólizas, o personas acreedoras de obligaciones fiduciarias a cargo de una institución financiera o de un prestador de servicios financieros transfronterizos;
- b) mantener la seguridad, solidez, integridad o responsabilidad financiera de instituciones financieras o de prestadores de servicios financieros transfronterizos;
y
- c) asegurar la integridad y estabilidad del sistema financiero de una Parte.

2. Ninguna disposición del presente Capítulo se aplica a medidas no discriminatorias de aplicación general adoptadas por una entidad pública en la conducción de políticas monetarias o de políticas de crédito conexas, o bien de políticas cambiarias. Este párrafo no afectará las obligaciones de cualquiera de las Partes derivadas de requisitos de desempeño en inversión respecto a las medidas cubiertas por el Capítulo 10 (Inversión) o del Artículo 12.17.

3. El Artículo 12.06, no se aplicará al otorgamiento de derechos de exclusividad que haga una Parte a una institución financiera, para prestar uno de los servicios financieros a que se refiere el párrafo 2(b) del Artículo 12.02.

4. No obstante lo dispuesto en los párrafos del 1 al 3 del Artículo 12.17, una Parte podrá evitar o limitar las transferencias de una institución financiera o de un prestador de servicios financieros transfronterizos, o en beneficio de una filial o una persona relacionada con esa institución o con ese prestador de servicios, por medio de la aplicación justa y no discriminatoria de medidas relacionadas con el mantenimiento de la seguridad, solidez, integridad o responsabilidad financiera de instituciones financieras o de prestadores de servicios financieros transfronterizos. Lo establecido en este párrafo se aplicará sin perjuicio de cualquier otra disposición de este Tratado que permita a una Parte restringir transferencias.

Artículo 12.10 Transparencia

1. Además de lo dispuesto en el Artículo 18.03 (Publicación), cada Parte se asegurará que cualquier medida que adopte sobre asuntos relacionados con este Capítulo se publique oficialmente o se dé a conocer con oportunidad a los destinatarios de la misma por algún otro medio escrito.

2. Las autoridades reguladoras de cada Parte pondrán a disposición de los interesados toda información relativa a los requisitos para llenar y presentar una solicitud para la prestación de servicios financieros.

3. A petición del solicitante, la autoridad reguladora le informará sobre la situación de su solicitud. Cuando esa autoridad requiera del solicitante información adicional, se lo notificará sin demora injustificada.

4. Cada una de las autoridades reguladoras dictará en un plazo no mayor de ciento veinte (120) días, una resolución administrativa respecto a una solicitud completa relacionada con la prestación de un servicio financiero, presentada por un inversionista en una institución financiera, por una institución financiera o por un prestador de servicios financieros transfronterizos de la otra Parte. La autoridad notificará al interesado, sin demora, la resolución. No se considerará completa la solicitud hasta que se celebren todas las audiencias pertinentes y se reciba toda la información necesaria. Cuando no sea viable dictar una resolución en el plazo de ciento veinte (120) días, la autoridad reguladora lo comunicará al interesado sin demora injustificada y posteriormente procurará emitir la resolución en un plazo de sesenta (60) días.

5. Ninguna disposición de este Capítulo obliga a una Parte a divulgar ni a permitir acceso a:

- a) información relativa a los asuntos financieros y cuentas de clientes individuales de instituciones financieras o de prestadores de servicios financieros transfronterizos; ni.
- b) cualquier información confidencial cuya divulgación pudiera dificultar la aplicación de la ley, o, de algún otro modo, ser contraria al interés público o dañar intereses comerciales legítimos de empresas determinadas.

Artículo 12.11 Comité de Servicios Financieros

1. Las Partes establecen el Comité de Servicios Financieros cuya composición se señala en el Anexo
2. El Comité conocerá los asuntos relativos a este Capítulo y, sin perjuicio de lo dispuesto en el Artículo 19.05(2) (Comités), tendrá las siguientes funciones:
 - a) supervisar la aplicación de este Capítulo y su desarrollo posterior;
 - b) considerar aspectos relativos a servicios financieros que le sean presentados por una Parte;
 - c) participar en los procedimientos de solución de controversias de conformidad con los Artículos 12.18 y 12.19; y
 - d) facilitar el intercambio de información entre autoridades de supervisión y cooperar en materia de asesoría sobre regulación prudencial, procurando la armonización de los marcos normativos de regulación así como de las otras políticas, cuando se considere conveniente.
3. El Comité se reunirá cuando sea necesario o a petición de una de las Partes para evaluar la aplicación de este Capítulo.

Artículo 12.12 Consultas

1. Sin perjuicio de lo establecido en el Artículo 20.06 (Consultas), cualquier Parte podrá solicitar consultas con la otra Parte, respecto a cualquier asunto relacionado con este Tratado que afecte los servicios financieros. La otra Parte considerará favorablemente esa solicitud. La Parte consultante dará a conocer al Comité los resultados de sus consultas, durante las reuniones que éste celebre.
2. En las consultas previstas en este Artículo participarán funcionarios de las autoridades competentes señaladas en el Anexo 12.11.
3. Una Parte podrá solicitar que las autoridades reguladoras de la otra Parte intervengan en las consultas realizadas de conformidad con este Artículo, para discutir las medidas de aplicación general de esa otra Parte que puedan afectar las operaciones de las instituciones financieras o de los prestadores de servicios financieros transfronterizos en el territorio de la Parte que solicitó la consulta.
4. Ninguna disposición del presente Artículo será interpretado en el sentido de obligar a las autoridades reguladoras que intervengan en las consultas conforme al párrafo 3, a divulgar información o a actuar de manera que pudiera interferir en asuntos particulares en materia de regulación, supervisión, administración o aplicación de medidas.
5. En los casos que, para efectos de supervisión, una Parte necesite información sobre una institución financiera en territorio de la otra Parte o sobre prestadores de servicios financieros transfronterizos en territorio de la otra Parte, la Parte podrá acudir a la autoridad reguladora responsable en territorio de esa otra Parte para solicitar la información.

Artículo 12.13 Nuevos servicios financieros y procesamiento de datos

1. Cada Parte permitirá que, una institución financiera de la otra Parte preste cualquier nuevo servicio financiero de tipo similar a aquellos que esa Parte, conforme a su legislación, permita prestar a sus instituciones financieras. La Parte podrá decidir la modalidad institucional y jurídica a través de la cual se ofrezca ese servicio y podrá exigir autorización para la prestación del mismo. Cuando esa autorización se requiera, la resolución respectiva se dictará en un plazo razonable y solamente podrá ser denegada por razones prudenciales, siempre que éstas no sean contrarias a la legislación de la Parte, y a los Artículos 12.06 y 12.07.

2. Cada Parte permitirá a las instituciones financieras de la otra Parte transferir, para su procesamiento, información hacia el interior o el exterior del territorio de la Parte, utilizando cualquiera de los medios autorizados en ella, cuando sea necesario para llevar a cabo las actividades ordinarias de negocios de esas instituciones.

3. Cada Parte se compromete a respetar la confidencialidad de la información procesada dentro de su territorio que provenga de una institución financiera ubicada en la otra Parte.

Artículo 12.14 Altos ejecutivos y consejo de administración o juntas directivas

1. Ninguna Parte podrá obligar a las instituciones financieras de la otra Parte a que contraten personal de una nacionalidad en particular, para ocupar puestos de alta dirección empresarial u otros cargos esenciales.

2. Ninguna Parte podrá exigir que la junta directiva o el consejo de administración de una institución financiera de la otra Parte se integre por nacionales de la Parte, por residentes en su territorio o una combinación de ambos.

Artículo 12.15 Reservas y compromisos específicos

1. Los Artículos del 12.04 al 12.07, 12.13 y 12.14 no se aplican a:

- a) cualquier medida disconforme existente que sea mantenida por una de las Partes a nivel nacional, según lo indicado en la Sección A de su lista en el Anexo VI;
- b) la continuación o pronta renovación de cualquier medida disconforme a que se refiere el literal (a); ni
- c) la modificación de cualquier medida disconforme a que se refiere el literal (a) en tanto dicha modificación no reduzca la conformidad de la medida con los Artículos del 12.04 al 12.07, 12.13 y 12.14, tal como la propia medida estaba en vigencia inmediatamente antes de la modificación.

2. Los Artículos del 12.04 al 12.07, 12.13 y 12.14 no se aplicarán a ninguna medida que una Parte adopte o mantenga de acuerdo con la Sección B de su lista del Anexo VI.

3. La Sección C de la lista de cada una de las Partes en el Anexo VI podrá establecer ciertos compromisos específicos de esa Parte.

4. Cuando una Parte haya establecido en los Capítulos 10 (Inversión) y 11 (Comercio Transfronterizo de Servicios), una reserva a cuestiones relativas a presencia local, trato nacional, trato de nación más favorecida, y altos ejecutivos y consejo de administración o juntas directivas, la reserva se entenderá hecha a los Artículos del 12.04 al 12.07, 12.13 y 12.14, según sea el caso, en el grado que la medida, sector, subsector o actividad especificados en la reserva estén cubiertos por este Capítulo.

Artículo 12.16 Denegación de beneficios

Una Parte podrá denegar, parcial o totalmente, los beneficios derivados de este Capítulo a un prestador de servicios financieros de la otra Parte o a un prestador de servicios financieros transfronterizos de la otra Parte, previa notificación y realización de consultas, de conformidad con los Artículos 12.10 y 12.12, cuando la Parte determine que el servicio está siendo prestado por una empresa que no realiza actividades comerciales sustanciales en territorio de esa otra Parte y que es propiedad de personas de un país no Parte o está bajo el control de las mismas.

Artículo 12.17 Transferencias

1. Cada Parte permitirá que todas las transferencias relacionadas con la inversión en su territorio de un inversionista de la otra Parte, se hagan libremente y sin demora. Esas transferencias incluyen:

- a) ganancias, dividendos, intereses, ganancias de capital, pagos por regalías, gastos por administración, asistencia técnica y otros cargos, ganancias en especie y otros montos derivados de la inversión;
- b) productos derivados de la venta o liquidación, total o parcial, de la inversión;
- c) pagos realizados conforme a un contrato del que sea parte un inversionista o su inversión, incluidos pagos efectuados conforme a un convenio de préstamo;
- d) pagos efectuados de conformidad con el Artículo 10.11 (Expropiación e indemnización); y
- e) pagos que resulten de un procedimiento de solución de controversias entre una Parte y un inversionista de la otra Parte conforme a este Capítulo y a la Sección B del Capítulo 10 (Inversión).

2. Cada Parte permitirá que las transferencias se realicen en divisa de libre convertibilidad, al tipo de cambio vigente de mercado en la fecha de la transferencia.

3. Ninguna Parte podrá exigir a sus inversionistas que efectúen transferencias de sus ingresos, ganancias, o utilidades u otros montos derivados de inversiones llevadas a cabo en territorio de la otra Parte o atribuibles a las mismas ni los sancionará en caso que no realicen la transferencia.

4. No obstante lo dispuesto en los párrafos 1 y 2, una Parte podrá establecer los mecanismos para impedir la realización de una transferencia, por medio de la aplicación equitativa, no discriminatoria de sus leyes en los siguientes casos:

- a) quiebra, insolvencia o protección de los derechos de los acreedores;
- b) infracciones penales o resoluciones administrativas en firme;
- c) incumplimiento del requisito de presentar informes de transferencias de divisas u otros instrumentos monetarios;
- d) aseguramiento del cumplimiento de sentencias y laudos dictados en procedimientos contenciosos; o
- e) relativas a asegurar el cumplimiento de las leyes y reglamentos para la emisión, comercio y operaciones de valores.

5. El párrafo 3 no se interpretará como un impedimento para que una Parte, a través de la aplicación de su legislación de manera equitativa y no discriminatoria, imponga cualquier medida relacionada con los literales del párrafo 4.

Artículo 12.18 Solución de controversias entre las Partes

1. En los términos en que lo modifica este Artículo, el Capítulo 20 (Solución de Controversias) se aplica a la solución de controversias que surjan entre las Partes respecto a este Capítulo.

2. El Comité de Servicios Financieros integrará por consenso una lista de hasta dieciocho (18) individuos que incluya tres (3) individuos de cada Parte, que cuenten con las aptitudes y disposiciones necesarias para actuar como árbitros en controversias relacionadas con este Capítulo. Los integrantes de esta lista deberán, además de satisfacer los requisitos establecidos en el Capítulo 20 (Solución de Controversias), tener conocimientos especializados en materia financiera, amplia experiencia derivada del ejercicio de responsabilidades en el sector financiero o en su regulación.

3. Para los fines de la constitución del grupo arbitral, se utilizará la lista a que se refiere el párrafo 2, excepto que las Partes contendientes acuerden que pueden formar parte del grupo arbitral individuos no incluidos en esa lista, siempre que cumplan con los requisitos establecidos en el párrafo 2. El presidente siempre será escogido de esa lista.

4. En cualquier controversia en que el grupo arbitral haya encontrado que una medida es incompatible con las obligaciones de este Capítulo cuando proceda la suspensión de beneficios a que se refiere el Capítulo 20 (Solución de Controversias) y la medida afecte:

- a) sólo al sector de los servicios financieros, la Parte reclamante podrá suspender sólo beneficios en ese sector;
- b) al sector de servicios financieros y a cualquier otro sector, la Parte reclamante podrá suspender beneficios en el sector de los servicios financieros que tengan un efecto equivalente al efecto de esa medida en el sector de servicios financieros; o
- c) cualquier otro sector que no sea el de servicios financieros, la Parte reclamante no podrá suspender beneficios en el sector de los servicios financieros.

Artículo 12.19 Solución de controversia sobre inversión en materia de servicios financieros entre un inversionista de una Parte y una Parte

1. La Sección B del Capítulo 10 (Inversión) se incorpora a este Capítulo y es parte integrante del mismo.
2. Cuando un inversionista de la otra Parte, de conformidad con el Artículo 10.17 (Reclamación de un inversionista de una Parte, por cuenta propia) o 10.18 (Reclamación de un inversionista de una Parte, en representación de una empresa) y al amparo de la Sección B del Capítulo 10 (Inversión) someta a arbitraje una reclamación en contra de una Parte, y esa Parte contendiente invoque el Artículo 12.09 a solicitud de ella misma, el Tribunal remitirá por escrito el asunto al Comité para su decisión. El Tribunal no podrá proceder hasta que haya recibido una decisión según los términos de este Artículo.
3. En la remisión del asunto conforme al párrafo 1, el Comité decidirá si el Artículo 12.09 es una defensa válida contra la reclamación del inversionista y en qué grado lo es. El Comité transmitirá copia de su decisión al Tribunal y a la Comisión. Esa decisión será obligatoria para el Tribunal.
4. Cuando el Comité no haya tomado una decisión en un plazo de sesenta (60) días a partir de que reciba la remisión conforme al párrafo 1, la Parte contendiente o la Parte del inversionista contendiente podrán solicitar que se establezca un grupo arbitral de conformidad con el Artículo 20.08 (Solicitud de integración del grupo arbitral). El grupo arbitral estará constituido conforme al Artículo 12.18 y enviará al Comité y al Tribunal su determinación definitiva, que será obligatoria para el Tribunal.
5. Cuando no se haya solicitado la instalación de un grupo arbitral en los términos del párrafo 4 dentro de un lapso de diez (10) días a partir del vencimiento del plazo de sesenta (60) días a que se refiere ese párrafo, el Tribunal podrá proceder a resolver el caso.

**ANEXO 12.11
COMITÉ DE SERVICIOS FINANCIEROS**

1. El Comité de Servicios Financieros establecido en el Artículo 12.11 estará integrado:
 - a) para el caso de Costa Rica, el Ministerio de Comercio Exterior, o su sucesor, en consulta con la autoridad competente que corresponda (Banco Central de Costa Rica, Superintendencia General de Entidades Financieras, Superintendencia de Pensiones y Superintendencia de Valores);
 - b) para el caso de El Salvador, el Ministerio de Economía, Superintendencia del Sistema Financiero, Superintendencia de Valores, Superintendencia del Sistema de Pensiones y Banco Central de Reserva;
 - c) para el caso de Guatemala, Ministerio de Economía, Banco de Guatemala y Superintendencia de Bancos;
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- d) para el caso de Honduras, la Secretaría de Estado en los Despachos de Industria y Comercio, Banco Central de Honduras y Comisión Nacional de Bancos y Seguros;
 - e) para el caso de Nicaragua, el Ministerio de Fomento Industria y Comercio; Banco Central de Nicaragua, Superintendencia de Bancos y de Otras Instituciones Financieras; y
 - f) para el caso de Panamá, el Ministerio de Comercio e Industrias por conducto del Viceministerio de Comercio Exterior, o su sucesor, en consulta con la autoridad competente que corresponda (Superintendencia de Bancos, Superintendencia de Seguros y Reaseguros y Comisión Nacional de Valores).
2. El representante principal de cada Parte será el que esa Parte designe para tal efecto.

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