

08 INVESTMENT

Section A

ARTICLE 1

Definitions

For the purposes of this Chapter:

- (a) “Centre” means the International Centre for Settlement of Investment Disputes (ICSID) established by the ICSID Convention;
- (b) “claimant” means an investor of a Party that is a party to an investment dispute with the other Party. If that investor is a natural person, who is a permanent resident of a Party and a national of the other Party, that natural person may not submit a claim to arbitration against that latter Party;
- (c) “disputing parties” means the claimant and the respondent;
- (d) “disputing party” means either the claimant or the respondent;
- (e) “enterprise” means
 - (i) any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation; and
 - (ii) a branch of an enterprise;
- (f) “enterprise of a Party” means an enterprise constituted or organised under the law of a Party, or a branch located in the territory of a Party and carrying out business activities there;¹
- (g) “freely usable currency” means “freely usable currency” as determined by the International Monetary Fund under its Articles of Agreement;
- (h) “ICC Arbitration Rules” means the arbitration rules of the International Chamber of Commerce;

¹ For greater certainty, the inclusion of a “branch” in the definitions of “enterprise” and “enterprise of a Party” is without prejudice to a Party’s ability to treat a branch under its laws as an entity that has no independent legal existence and is not separately organised.

- (i) “ICSID Additional Facility Rules” means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;
- (j) “ICSID Convention” means the *Convention on the Settlement of Investment Disputes between States and Nationals of other States*, done at Washington, March 18, 1965;
- (k) “investment” means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:
 - (i) an enterprise;
 - (ii) shares, stock and other forms of equity participation in an enterprise;
 - (iii) bonds, debentures, other debt instruments and loans;^{2, 3}
 - (iv) futures, options and other derivatives;
 - (v) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;
 - (vi) intellectual property rights;
 - (vii) licences, authorisations, permits and similar rights conferred pursuant to the Party’s law; and
 - (viii) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges,

but investment does not mean an order or judgment entered in a judicial or administrative action;
- (l) “investor of a non-Party” means, with respect to a Party, an investor that attempts to make,⁴ is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

² Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

³ A loan issued by one Party to the other Party is not an investment.

⁴ For greater certainty, the Parties understand that, for the purposes of the definitions of “investor of a non-Party” and “investor of a Party”, an investor “attempts to make” an investment when that investor

- (m) “investor of a Party” means a Party, or a national⁵ or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party;
- (n) “measure” includes any law, regulation, procedure, requirement or practice;
- (o) “non-disputing Party” means the Party that is not a party to an investment dispute;
- (p) “New York Convention” means the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York, June 10, 1958;
- (q) “person” means a natural person or an enterprise;
- (r) “protected information” means confidential business information or information that is privileged or otherwise protected from disclosure under a Party’s law, including classified government information;
- (s) “respondent” means the Party that is a party to an investment dispute;
- (t) “Secretary-General” means the Secretary-General of ICSID;
- (u) “TRIPS Agreement” means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, set out in Annex 1C to the WTO Agreement;⁶ and
- (v) “UNCITRAL Arbitration Rules” means the arbitration rules of the United Nations Commission on International Trade Law.

ARTICLE 2

Scope

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

has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.

⁵ For the purposes of this Chapter, a “national” means, for Australia, a natural person who is an Australian citizen as defined in the *Australian Citizenship Act 2007* as amended from time to time, or any successor legislation; for Singapore, a person who is a citizen of Singapore within the meaning of its Constitution and its domestic laws; or a permanent resident of either Party.

⁶ For greater certainty, a reference in this Agreement to the TRIPS Agreement includes any waiver in force between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

- (a) investors of the other Party;
- (b) covered investments; and
- (c) all investments in the territory of that Party with respect to:
 - (i) Article 7 (Prohibition of Performance Requirements); and
 - (ii) Article 20 (Investment and Environmental, Health and other Regulatory Objectives).

2. This Chapter shall not apply to:

- (a) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments; or
- (b) a natural person who is a permanent resident but not a citizen of a Party where:
 - (i) the provisions of an investment protection agreement between the other Party and the country of which the person is a citizen have already been invoked in respect of the same matter; or
 - (ii) the person is a citizen of the other Party.

3. An enterprise of a Party shall not be treated as an investor of the other Party, but any investments in that enterprise by investors of that other Party shall be protected by this Chapter.

4. Nothing in this Chapter shall be construed to impose an obligation on a Party to privatise.

5. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:

- (a) the central, regional or local governments or authorities of that Party; and
- (b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by central, regional or local governments or authorities of that Party.⁷

⁷ For greater certainty, governmental authority is delegated under the Party's law, including through a legislative grant or a government order, directive or other action transferring or authorising the exercise of governmental authority.

ARTICLE 3

Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement of a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that the bond or financial security is a covered investment.
3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 9 (Financial Services).

ARTICLE 4

*National Treatment*⁸

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. For greater certainty, the treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

ARTICLE 5

Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party with

⁸ For greater certainty, whether treatment is accorded in “like circumstances” under Articles 4 (National Treatment) or 5 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

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

3. For greater certainty, the treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms such as those included in Section B (Investor-State Dispute Settlement).

ARTICLE 6

Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.⁹

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens referred to in paragraph 1 and do not create additional substantive rights. The obligation in paragraph 1 to provide:

- (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
- (b) “full protection and security” requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

⁹ The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.

ARTICLE 7

Prohibition of Performance Requirements

1. Neither Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking, to:¹⁰

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

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

- (a) achieve a given level or percentage of domestic content;
- (b) purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

¹⁰ For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “requirement” or a “commitment or undertaking” for the purposes of paragraph 1.

- (c) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
 - (d) restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
- (b) Paragraph 1(f) shall not apply:
- (i) when a Party authorises use of an intellectual property right in accordance with Article 31¹¹ of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or
 - (ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under a Party's competition laws.¹²
- (c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on investment or international trade, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:
- (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;
 - (ii) necessary to protect human, animal, or plant life or health; or
 - (iii) related to the conservation of living or non-living exhaustible natural resources.

¹¹ The reference to Article 31 includes footnote 7 to Article 31 and includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN (01)/DEC/2).

¹² The Parties recognise that a patent does not necessarily confer market power.

- (d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
 - (e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to government procurement.
 - (f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.
5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

ARTICLE 8

Senior Management and Boards of Directors

1. A Party shall not require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

ARTICLE 9

Special Formalities and Information Requirements

1. Nothing in Article 4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Chapter.
2. Notwithstanding Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered

investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

ARTICLE 10

Transparency

Each Party shall promptly make public its laws, regulations and investment policies, and any amendments thereto, of general application that pertain to or affect investments in its territory by investors of the other Party.

ARTICLE 11

Reservations

1. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 7 (Prohibition of Performance Requirements) and 8 (Senior Management and Boards of Directors) shall not apply to:

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

2. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 7 (Prohibition of Performance Requirements) and 8 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities as set out in its Schedule to Annex 4-II.

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement for that Party and covered by its Schedule to Annex 4-II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. (a) Article 4 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by Article 3 of the TRIPS Agreement; and
(b) Article 5 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by: Article 4 of the TRIPS Agreement.
5. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) and 8 (Senior Management and Boards of Directors) shall not apply to government procurement.
6. For greater certainty, any amendments or modifications to a Party's Schedules to Annex 4-I or Annex 4-II, pursuant to this Article, shall be made in accordance with Article 11 (Amendments) of Chapter 17 (Final Provisions).

ARTICLE 12

Additional Commitments

1. The Parties shall set out their respective additional commitments in Annex 4-III of this Agreement with respect to investment matters not covered by Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 7 (Prohibition of Performance Requirements) and 8 (Senior Management and Board of Directors).
2. Section B (Investor-State Dispute Settlement) shall not apply to these additional commitments.

ARTICLE 13

Expropriation and Nationalisation

1. Neither Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:
 - (a) for a public purpose;¹³
 - (b) in a non-discriminatory manner;
 - (c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and
 - (d) in accordance with due process of law.

¹³ For greater certainty, for the purposes of this Article, the term "public purpose" refers to a concept in customary international law. Domestic law may express this or a similar concept by using different terms, such as "public necessity", "public interest" or "public use".

2. Compensation shall:
 - (a) be paid without delay;
 - (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);
 - (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
 - (d) be fully realisable and freely transferable.
3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.
4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:
 - (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus
 - (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. Notwithstanding paragraphs 1, 2, 3 and 4, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation and any subsequent amendments thereto relating to the amount of compensation where such amendments follow the general trends in the market value of the land.
6. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that the issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.¹⁴
7. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant,

¹⁴ For greater certainty, the Parties recognise that, for the purposes of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of those rights, and the term "limitation" of intellectual property rights includes exceptions to those rights.

- (a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or
- (b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant;

standing alone, does not constitute an expropriation.

ARTICLE 14

Treatment in Cases of Armed Conflict or Civil Strife

1. Each Party shall accord to investors of the other Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

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

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

the latter Party shall provide the investor restitution, compensation or both, as appropriate, for that loss.

ARTICLE 15

Transfers

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

- (a) contributions to capital;¹⁵
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;
- (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

¹⁵ For greater certainty, contributions to capital include the initial contribution.

- (d) payments made under a contract, including a loan agreement;
 - (e) payments made pursuant to Article 14 (Treatment in Cases of Armed Conflict or Civil Strife) and Article 13 (Expropriation and Nationalisation); and
 - (f) payments arising out of a dispute.
2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of another Party.
4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws¹⁶ relating to:
- (a) bankruptcy, insolvency or the protection of the rights of creditors;
 - (b) issuing, trading or dealing in securities, futures, options or derivatives;
 - (c) criminal or penal offences;
 - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
 - (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.
5. Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.
6. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 4 (Temporary Safeguard Measures) of Chapter 17 (Final Provisions) or at the request of the Fund.

ARTICLE 16

¹⁶ For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programmes.

Subrogation

1. If a Party or a designated agency of a Party makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity it has granted in respect of a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights or title the investor would have possessed under this Chapter in respect of such covered investment but for the subrogation. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.
2. Where a Party or a designated agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the designated agency of the Party making the payment, pursue those rights and claims against the other Party.

ARTICLE 17

Review of Subsidies

1. The Parties shall review the treatment of subsidies in the context of developments at international fora to which both Parties are Members.
2. The Parties shall consult on appropriate steps in regard to subsidies related to investments or investors where any subsidies issues arise under this Chapter.

ARTICLE 18

Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the other Party and to investments of that investor if the enterprise:
 - (a) is owned or controlled by a person of a non-Party or of the denying Party; and
 - (b) has no substantial business activities in the territory of the other Party.
2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

ARTICLE 19

General Exceptions

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

- (a) necessary to protect public morals or to maintain public order;¹⁷
- (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 a contract;
 - (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; or
 - (iii) safety;
- (d) imposed for the protection of national treasures of artistic, historic or archaeological value; or
- (e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

ARTICLE 20

Investment and Environmental, Health and other Regulatory Objectives

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

ARTICLE 21

Disclosure of Confidential Information

¹⁷ 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.

Nothing in this Chapter shall require a Party to furnish or allow access to confidential information, the disclosure of which would be contrary to its law, impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Section B: Investor-State Dispute Settlement¹⁸

ARTICLE 22

Tobacco Control Measures

No claim may be brought under this Section in respect of a tobacco control measure¹⁹ of a Party.

ARTICLE 23

Consultation and Negotiation

1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.
2. The claimant shall deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue.
3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

ARTICLE 24

Submission of a Claim to Arbitration

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 23.2 (Consultation and Negotiation):

¹⁸ No claim may be brought under this Section in respect of the following measures of Australia: measures comprising or related to the Pharmaceutical Benefits Scheme, Medicare Benefits Scheme, Therapeutic Goods Administration and Office of the Gene Technology Regulator. A reference to a body or program in this footnote includes any successor of that body or program.

¹⁹ “Tobacco control measure” means a measure of a Party related to tobacco products (including products made or derived from tobacco), such as for their production, consumption, distribution, labelling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well as fiscal measures such as internal taxes and excise taxes, and enforcement measures, such as inspection, recordkeeping, and reporting requirements. “Tobacco products” means products under Chapter 24 of the Harmonised System, including processed tobacco, or any product that contains tobacco, that is manufactured to be used for smoking, sucking, chewing or snuffing.

- (a) the claimant, on its own behalf, may submit to arbitration under this Section a claim:
 - (i) that the respondent has breached an obligation under Section A; and
 - (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and
 - (b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:
 - (i) that the respondent has breached an obligation under Section A; and
 - (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.
2. At least 90 days before submitting any claim to arbitration under this Section, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (notice of intent). The notice shall specify:
- (a) the name and address of the claimant and, if a claim is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;
 - (b) for each claim, the provision of this Agreement alleged to have been breached and any other relevant provisions;
 - (c) the legal and factual basis for each claim; and
 - (d) the relief sought and the approximate amount of damages claimed.
3. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:
- (a) the ICSID Convention and the ICSID *Rules of Procedure for Arbitration Proceedings*;
 - (b) the ICSID Additional Facility Rules;
 - (c) the UNCITRAL Arbitration Rules; or
 - (d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.
4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration (notice of arbitration):

- (a) referred to in the ICSID Convention is received by the Secretary-General;
- (b) referred to in the ICSID Additional Facility Rules is received by the Secretary-General;
- (c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or
- (d) referred to under any arbitral institution or arbitration rules selected under paragraph 3(d) is received by the respondent.

5. A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitration rules.

6. The arbitration rules applicable under paragraph 3 that are in effect on the date the claim or claims were submitted to arbitration under this Section shall govern the arbitration except to the extent modified by this Agreement.

7. The claimant shall provide with the notice of arbitration:

- (a) the name of the arbitrator that the claimant appoints; or
- (b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

ARTICLE 25

Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall be deemed to satisfy the requirements of:

- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
- (b) Article II of the New York Convention for an "agreement in writing".

ARTICLE 26

Conditions and Limitations on Consent of Each Party

1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 24 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 24.1(a)) or the enterprise (for claims brought under Article 24.1(b)) has incurred loss or damage.

2. No claim shall be submitted to arbitration under this Section unless:

- (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
- (b) the notice of arbitration is accompanied:
 - (i) for claims submitted to arbitration under Article 24.1(a) (Submission of a Claim to Arbitration), by the claimant's written waiver; and
 - (ii) for claims submitted to arbitration under Article 24.1(b) (Submission of a Claim to Arbitration), by the claimant's and the enterprise's written waivers,

of any right to initiate or continue before any court or administrative tribunal under the law of either Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 24 (Submission of a Claim to Arbitration).

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 24.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 24.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.

ARTICLE 27

Selection of Arbitrators

1. Unless the disputing parties agree otherwise, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within a period of 75 days after the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either Party as the presiding arbitrator unless the disputing parties agree otherwise.

4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:

(a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a claimant referred to in Article 24.1(a) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and

(c) a claimant referred to in Article 24.1(b) (Submission of a Claim to Arbitration) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

5. Any person appointed as a member or chair of a tribunal shall meet the requirements set out in Article 5 (Composition of Arbitral Tribunals) of Chapter 16 (Dispute Settlement).

6. In addition to any applicable arbitral rules regarding independence and impartiality of arbitrators, arbitrators shall comply with Annex 7 (Code of Conduct for Arbitrators appointed under Chapter 8 (Investment) and Chapter 16 (Dispute Settlement)) and any other guidance on the application of relevant rules or guidelines on conflicts of interest in international arbitration that the Parties may provide.

ARTICLE 28

Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 24.4 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in

accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. After consultation with the disputing parties, the tribunal may accept and consider written *amicus curiae* submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 33 (Awards) or that a claim is manifestly without legal merit.

- (a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.
- (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
- (c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 33 (Awards), the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.

- (d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.

5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 6 (Minimum Standard of Treatment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.

8. A respondent may not assert as a defence, counterclaim, right of set-off or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

9. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 24 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.

10. In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.

11. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements including under another Agreement to which both Parties are party, the Parties shall consider whether awards rendered under Article 33 (Awards) should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 29 (Transparency of Arbitral Proceedings).

ARTICLE 29

Transparency of Arbitral Proceedings

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

- (a) the notice of intent;
- (b) the notice of arbitration;
- (c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Articles 28.2 and 28.3 (Conduct of the Arbitration) and Article 32 (Consolidation);
- (d) minutes or transcripts of hearings of the tribunal, if available; and
- (e) orders, awards and decisions of the tribunal.

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.

3. Nothing in this Section, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 2 (Security Exceptions) of Chapter 17 (Final Provisions) or Article 21 (Disclosure of Confidential Information).²⁰

4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:

²⁰ For greater certainty, when a respondent chooses to disclose to the tribunal information that may be withheld in accordance with Article 2 (Security Exceptions) of Chapter 17 (Final Provisions) or Article 21 (Disclosure of Confidential Information), the respondent may still withhold that information from disclosure to the public.

- (a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
- (b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;
- (c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and
- (d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:
 - (i) withdraw all or part of its submission containing that information; or
 - (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).

In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavour to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.

ARTICLE 30

Governing Law

When a claim is submitted under Articles 24.1(a) or 24.1(b) (Submission of a Claim to Arbitration), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.²¹

ARTICLE 31

Expert Reports

Without prejudice to the appointment of other kinds of experts when authorised by the applicable arbitration rules, a tribunal, on request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions that the disputing parties may agree.

ARTICLE 32

Consolidation

1. If two or more claims have been submitted separately to arbitration under Article 24.1 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.
2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:
 - (a) the names and addresses of all the disputing parties sought to be covered by the order;
 - (b) the nature of the order sought; and
 - (c) the grounds on which the order is sought.
3. Unless the Secretary-General finds within a period of 30 days after the date of receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

²¹ For greater certainty, this provision is without prejudice to any consideration of the domestic law of the respondent when it is relevant to the claim as a matter of fact.

4. Unless all the disputing parties sought to be covered by the order agree otherwise, a tribunal established under this Article shall comprise three arbitrators:

- (a) one arbitrator appointed by agreement of the claimants;
- (b) one arbitrator appointed by the respondent; and
- (c) the presiding arbitrator appointed by the Secretary-General, provided that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.

5. If, within a period of 60 days after the date when the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 24.1 (Submission of a Claim to Arbitration) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
- (c) instruct a tribunal previously established under Article 27 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:
 - (i) that tribunal, on request of a claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and
 - (ii) that tribunal shall decide whether a prior hearing shall be repeated.

7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 24.1 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6. The request shall specify:

- (a) the name and address of the claimant;

- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 27 (Selection of Arbitrators) shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.

10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 27 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.

ARTICLE 33

Awards

1. When a tribunal makes a final award, the tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 24.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.

3. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance with this Section and the applicable arbitration rules.

4. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award to the respondent reasonable costs and attorney's fees.

5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 24.1(b) (Submission of a Claim to Arbitration) and an award is made in favour of the enterprise:

- (a) an award of restitution of property shall provide that restitution be made to the enterprise;
- (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
- (c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.

6. A tribunal shall not award punitive damages.

7. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

8. Subject to paragraph 9 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

9. A disputing party shall not seek enforcement of a final award until:

- (a) in the case of a final award made under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) revision or annulment proceedings have been completed; and
- (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 24.4(d) (Submission of a Claim to Arbitration):
 - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or
 - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

10. Each Party shall provide for the enforcement of an award in its territory.

11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a tribunal shall be established under Chapter 16 (Dispute Settlement). The requesting Party may seek in those proceedings:

- (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
- (b) a recommendation that the respondent abide by or comply with the final award.

12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 11.

13. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

ARTICLE 34

Service of Documents

1. Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Australia by delivery to:

Department of Foreign Affairs and Trade
R.G. Casey Building
John McEwen Crescent
Barton ACT 0221
Australia

2. Notices and other documents in disputes under Section B (Investor-State Dispute Settlement) shall be served on Singapore by delivery to:

Permanent Secretary
Ministry of Trade & Industry
100 High Street #09-01
Singapore 179434
Singapore.

ANNEX 8-A

EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Article 13.1 (Expropriation and Nationalisation) addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article 13.1 (Expropriation and Nationalisation) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
 - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and
 - (iii) the character of the government action.
 - (b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health,²² safety, and the environment, do not constitute indirect expropriation, except in rare circumstances.

²² For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances and blood and blood-related products.

ANNEX 8-B

For greater certainty, a decision under Australia's foreign investment policy, which consists of the *Foreign Acquisitions and Takeovers Act 1975*, *Foreign Acquisitions and Takeovers Regulations 2015*, *Foreign Acquisitions Fees Imposition Act 2015 (Commonwealth)*, *Foreign Acquisitions Fees Imposition Regulation 2015 (Commonwealth)*, *Financial Sector (Shareholdings) Act 1998* and associated Ministerial Statements by the Treasurer of the Commonwealth of Australia or a minister acting on his or her behalf, on whether or not to approve a foreign investment proposal, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 16 (Dispute Settlement).