

**Disclaimer:** In view of the Commission's transparency policy, the Commission is publishing the texts of the Trade Part of the Agreement following the agreement in principle announced on 21 April 2018.

The texts are published for information purposes only and may undergo further modifications including as a result of the process of legal revision. The texts are still under negotiations and not finalised. However, in view of the growing public interest in the negotiations, the texts are published at this stage of the negotiations for information purposes. These texts are without prejudice to the final outcome of the agreement between the EU and Mexico.

The texts will be final upon signature. The agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement (or its provisional application).

## SECTION [X]: RESOLUTION OF INVESTMENT DISPUTES

### Article 1 - Definitions

For the purpose of this Section:

**disputing parties** means the claimant and the respondent;

**disputing party** means either the claimant or the respondent;

**claimant** means a natural person or an enterprise of a Party, other than a branch or representative office, that has made a covered investment in the territory of the other Party, and seeks to submit or has submitted a claim under this Section, either

(i) acting on its own behalf; or

(ii) acting on behalf of a locally established company which it owns or controls.<sup>1</sup>

**non-disputing Party** means either Mexico when the respondent is the European Union or a Member State of the European Union; or the European Union when Mexico is the respondent;

**respondent** means either Mexico, or in the case of the European Union, either the European Union or the Member State of the European Union concerned as determined pursuant to Article 5 (Request for Determination of the Respondent for Disputes with the European Union or its Member States);

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<sup>1</sup> For greater certainty, a claim submitted under (ii) shall be deemed to relate to a dispute between a Contracting State and a national of another Contracting State for the purpose of Article 25, paragraph 1, of the ICSID Convention.

**locally established company** means a juridical person established in the territory of one Party, and owned or controlled by an investor of the other Party;

**ICSID** means the International Centre for Settlement of Investment Disputes established by the ICSID Convention;

**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*;

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

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

**UNCITRAL Arbitration Rules** means the Arbitration Rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976, as revised in 2010;

**“Third Party funding”** means any funding provided by a natural or legal person who is not a party to the dispute but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings in return for a remuneration dependent on the outcome of the dispute or in the form of a donation or grant.

## **Section X: Resolution of investment disputes**

### **Article 2 - Scope**

1. This Section shall apply to disputes between a Party and a claimant of the other Party arising from an alleged breach of Article XX(X) (National Treatment / Post-establishment) or Article XX(X) (Most Favoured Nation Treatment / Post-establishment) of Section A (Liberalisation of Investments) or Section B (Investment Protection) which allegedly causes loss or damage to the claimant or its locally established company.
2. A claim with respect to the restructuring of debt of a Party shall be decided in accordance with Annex [XX] (Annex on Public Debt) to Section B (Investment Protection).
3. For greater certainty, an investor may not submit a claim under this Section if the investment has been made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.
4. The Tribunal constituted under this Section shall not decide claims that fall outside of the scope of this Article.
5. A Party may not submit a claim under this Section.

### **Article 3 – Consultations**

1. A dispute should as far as possible be settled amicably. Such a settlement may be agreed at any time, including after the claim has been submitted pursuant to Article 7 (Submission of a Claim to the Tribunal). Unless the disputing parties agree to a longer period, consultations shall be held within 60 days of the submission of the request for consultations pursuant to paragraph 4.
2. Unless the disputing parties agree otherwise, the place of consultation shall be:
  - (a) Mexico City, if the measures challenged are measures of Mexico;
  - (b) Brussels, if the measures challenged include a measure of the European Union; or
  - (c) the capital of the Member State of the European Union, if the measures challenged are exclusively measures of that Member State.
3. The disputing parties may agree to hold the consultations through videoconference or other means where appropriate.
4. The claimant shall submit to the other Party a request for consultations setting out:
  - (a) the name and address of the claimant and, if such request is submitted on behalf of a locally established company, the name, address and place of incorporation of the locally established company;
  - (b) the provisions referred to in Article 2 (Scope) alleged to have been breached;
  - (c) the legal and the factual basis for each claim, including the measure or measures alleged to be inconsistent with the provisions referred to in Article 2 (Scope);
  - (d) the relief sought and the estimated amount of damages claimed; and
  - (e) evidence establishing that the claimant is an investor of the other Party and that it owns or controls the investment and, where it acts on behalf of a locally established company, that it owns or controls the locally established company.

Where a request for consultations is submitted by more than one claimant or on behalf of more than one locally established company, the information in subparagraphs a) and e) shall be submitted for each claimant or each locally established company, as the case may be.

5. The requirements of the request for consultations set out in paragraph 4 shall be met with sufficient specificity to allow the respondent to effectively engage in consultations and to prepare its defense.

6. A request for consultations must be submitted within three years after the date on which the claimant or, as applicable, the locally established company, first acquired or should have first acquired, knowledge of the alleged breach and knowledge that the claimant or, as applicable, the locally established company, has incurred loss or damage thereby.

7. Notwithstanding paragraph 6, in the event that the request for consultations concerns a measure or measures of the European Union or a Member State of the European Union and the time period referred to in paragraph 6 has elapsed while the claimant or, as applicable, the locally established company pursued claims or proceedings relating to the same measure or measures before a tribunal or court under the domestic law of a Party, the request for consultations must be submitted:

(a) within two years of the date on which the claimant or, as applicable, the locally established company ceases to pursue such claims or proceedings before a tribunal or court under the domestic law of a Party; and

(b) in any event, no later than 10 years after the date on which the claimant or, as applicable, its locally established company, first acquired, or should have first acquired, knowledge of the measures or measures alleged to be inconsistent with the provisions referred to in Article 2 paragraph 1 (Scope) and of the loss or damage alleged to have been incurred thereby.

8. A request for consultations concerning an alleged breach by the European Union or a Member State of the European Union shall be sent to the European Union. Where the claimant identifies treatment afforded by a Member State of the European Union within its request for consultations, it shall also be sent to the Member State concerned.

9. In the event that the investor has not submitted a claim pursuant to Article 7 (Submission of a Claim to the Tribunal) within 18 months of submitting the request for consultations, the investor is deemed to have withdrawn its request for consultations and, if applicable, its notice requesting a determination of the respondent pursuant to Article 5 (Request for Determination of the Respondent for Disputes with the European Union or its Member States), and shall not submit a claim under this Section with respect to the same measures. This period may be extended by agreement of the parties involved in the consultations.

#### **Article 4 – Mediation**

1. The disputing parties may at any time agree to have recourse to mediation.

2. Recourse to mediation is without prejudice to the legal position or rights of either disputing party under this Chapter and is governed by the rules agreed to by the disputing

parties including, if available, any rules for mediation that may be adopted by the Joint Council.

3. The mediator is appointed by agreement of the disputing parties. The disputing parties may also jointly request the President of the Tribunal to appoint the mediator.

4. The disputing parties shall endeavour to reach a resolution of the dispute within 60 days from the appointment of the mediator.

5. If the disputing parties agree to have recourse to mediation, the time limits set out in Article 3, paragraphs 6 and 7 (Consultations), 29 paragraph 7 (Award) and 30, paragraph 3 (Appeal Procedure) shall be suspended from the date on which the disputing parties agreed to have recourse to mediation to the date on which either disputing party decides to terminate the mediation. A decision by a disputing party to terminate the mediation shall be transmitted by way of a letter to the mediator and the other disputing party.

#### **Article 5 – Determination of the Respondent for Disputes with the European Union or its Member States**

1. If the dispute cannot be settled within 90 days of the submission of the request for consultations, the request concerns an alleged breach of this Agreement by the European Union or a Member State of the European Union and the claimant intends to submit a claim pursuant to Article 7 (Submission of a Claim to the Tribunal), the claimant shall deliver to the European Union a notice requesting a determination of the respondent.

2. The notice under paragraph 1 shall identify the measures in respect of which the claimant intends to submit a claim. Where a measure of a Member State of the European Union is identified, the notice shall also be sent to the Member State concerned.

3. The European Union shall, after having made a determination, inform the claimant within 60 days of the receipt of the notices referred to in paragraph 2 as to whether the European Union or a Member State of the European Union shall be the respondent.

4. In the event that the investor has not been informed of the determination within 60 days of delivering its notice requesting such determination:

(a) if the measures identified in the notice are exclusively measures of a Member State of the European Union, the Member State shall be the respondent;

(b) if the measures identified in the notice include measures of the European Union, the European Union shall be the respondent.

5. The claimant may submit a claim pursuant to Article 7 (Submission of a Claim to the Tribunal) on the basis of the determination made pursuant to paragraph 3, and, if no such determination has been communicated to the investor, on the basis of the application of paragraph 4.

6. If the European Union or a Member State of the European Union is the respondent, pursuant to paragraph 3 or 4, neither the European Union, nor the Member State of the European Union may assert the inadmissibility of the claim, lack of jurisdiction of the Tribunal or otherwise object to the claim or award on the ground that the respondent was not properly determined pursuant to paragraph 3 or identified on the basis of the application of paragraph 4.
7. The Tribunal and the Appeal Tribunal shall be bound by the determination made pursuant to paragraph 3 and, if no such determination has been communicated to the claimant, the application of paragraph 4.
8. Nothing in this Agreement or the applicable rules on dispute settlement shall prevent the exchange of all information relating to a dispute between the European Union and the Member State concerned.

#### **Article 6 – Procedural and Other Requirements for the Submission of a Claim to the Tribunal**

1. A claimant may only submit a claim pursuant to Article 7 (Submission of a Claim to the Tribunal) if the claimant:
  - (a) delivers to the respondent, with the submission of a claim, its written consent to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Section;
  - (b) allows at least 180 days to elapse from the submission of the request for consultations and, if applicable, at least 90 days to elapse from the submission of the notice requesting a determination of the respondent;
  - (c) has fulfilled the requirements of the notice requesting a determination of the respondent;
  - (d) has fulfilled the requirements related to the request for consultations;
  - (e) does not identify a measure in its claim that was not identified in its request for consultations;
  - (f) withdraws or discontinues any existing proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim;
  - (g) waives in writing its right to initiate any claim or proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim; and

(h) declares that it will not enforce any award rendered pursuant to this Section before such award has become final pursuant to Articles 29 paragraph 8 or 9 (Award) or 30 paragraph 2 (Appeal Procedure), and will not seek to appeal, review, set aside, annul, revise or initiate any other similar procedure before an international or domestic court or tribunal, as regards an award pursuant to this Section.

2. If the claim submitted pursuant to Article 7 (Submission of a Claim to the Tribunal) is for loss or damage to a locally established company or to an interest in a locally established company that the claimant owns or controls directly or indirectly, the requirements in subparagraphs 1(f) and (g) apply both to the investor and the locally established enterprise.

The requirement to withdraw or discontinue existing proceedings pursuant to subparagraph 1 (f) above shall also apply to:

(a) where the claim is submitted by an investor acting on its own behalf, all persons who, directly or indirectly, have an ownership interest in or are controlled by the investor; or

(b) where the claim is submitted by an investor acting on behalf of a locally established company, all persons who, directly or indirectly, have an ownership interest in or are controlled by the locally established company,

and claim to have suffered the same loss or damage as the claimant or locally established company.<sup>2</sup>

3. The requirements of subparagraphs 1(f) and (g) and paragraph 2 do not apply in respect of a locally established company if the respondent or the claimant's host state has deprived the claimant of control of the locally established company, or has otherwise prevented the locally established company from fulfilling those requirements.

4. Upon request of the respondent, the Tribunal shall decline jurisdiction if the claimant or, as applicable, the locally established company fails to fulfil any of the requirements of paragraphs 1 and 2.

5. The declaration provided pursuant to paragraph 1(g) shall cease to apply where the claim is rejected on the basis of the failure to meet the nationality requirements to bring an action under this Agreement.

6. Where the European Union or a Member State of the Union is the respondent, subparagraph 1(f) and (g) shall not prevent the claimant from seeking interim measures of protection before the domestic courts or tribunals of the respondent. Where Mexico is the respondent, subparagraph 1(f) and (g) shall not prevent the claimant from seeking interim measures of protection, or from initiating or continuing proceedings for injunctive,

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<sup>2</sup> For greater certainty, the same loss or damage means loss or damage flowing from the same treatment which the person seeks to recover in the same capacity as the claimant (e.g. if the claimant sues as a shareholder, this provision would cover a related person also pursuing recovery as a shareholder).

declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the Mexican Law.

#### **Article 7 – Submission of a Claim to the Tribunal**

1. If a dispute has not been resolved through consultations, a claim may be submitted under this Section by:

- (a) an investor of a Party on its own behalf; or
- (b) an investor of a Party, on behalf of a locally established company which it owns or controls directly or indirectly.

For greater certainty, a locally established company may not submit a claim against the Party in which it is established under this Section.

2. A claim may be submitted under the following rules:

- (a) the ICSID Convention and Rules of Procedure for Arbitration Proceedings;
- (b) the ICSID Additional Facility Rules if the conditions for proceedings pursuant to paragraph (a) do not apply;
- (c) the UNCITRAL Arbitration Rules; or
- (d) any other rules on agreement of the disputing parties.

3. In the event that the investor proposes rules pursuant to subparagraph 2(d), the respondent shall reply to the investor's proposal within 20 days of receipt. If the disputing parties have not agreed on such rules within 30 days of receipt, the investor may submit a claim under the rules provided for in subparagraph 2(a), (b) or (c).

4. Where a claim is submitted pursuant to subparagraphs 2(b), (c) or (d), the disputing parties may agree on the legal place of the proceedings. If the disputing parties fail to reach an agreement, the division of the Tribunal hearing the claim shall determine the place in accordance with the applicable dispute settlement rules, provided that the place shall be in the territory of a State that is a Party to the New York Convention.

5. The rules applicable under paragraph 2 are those that are in effect on the date that the claim or claims are submitted to the Tribunal under this Section, subject to the specific rules set out in this Section. The Joint Council may adopt rules supplementing the applicable dispute settlement rules and any such rules shall be binding on the Tribunal and the Appeal Tribunal.

6. A claim is submitted for dispute settlement under this Section when the request or notice initiating proceedings is received in accordance with the applicable dispute settlement rules.

7. Each Party shall notify the other Party of the place of delivery of notices and other documents by the investors pursuant to this Section. Each Party shall ensure this information is made publicly available.

### **Article 8 – Concurrent Proceedings**

Where a claim is brought pursuant to this Section and Section X (State to State Dispute Settlement) or another international agreement and:

- (a) there is a potential for overlapping compensation; or
- (b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Section.

The Tribunal shall, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to another international agreement are taken into account in its decision, order or award.

### **Article 9 – Consent to the Settlement of the Dispute by the Tribunal**

- 1. The respondent consents to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Section.
- 2. The consent under paragraph 1 and the submission of a claim to the Tribunal under this Section shall be deemed to satisfy the requirements of:
  - (a) Article 25 of the ICSID Convention and Chapter II of Schedule C of the ICSID Additional Facility Rules regarding written consent of the disputing parties; and
  - (b) Article II of the New York Convention for an agreement in writing.

### **Article 10 - Third Party Funding**

- 1. Where there is third party funding, the disputing party benefiting from it shall notify to the other disputing party and to the division of the Tribunal, or where the division of the Tribunal is not composed, to the President of the Tribunal, the name and address of the third party funder.
- 2. Such notification shall be made at the time of submission of a claim, or, where the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the Agreement is concluded or the donation or grant is made.

### **Article 11 - Tribunal**

1. A Tribunal is hereby established to hear claims submitted pursuant to Article 7 (Submission of a Claim to the Tribunal).
2. The Joint Council shall, upon the entry into force of this Agreement, appoint nine Members to the Tribunal. Three of the Members shall be nationals of a Member State of the European Union, three shall be nationals of Mexico and three shall be nationals of third countries.<sup>3</sup>
3. The Joint Council may decide to increase or to decrease the number of the Members by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.
4. The Members shall have demonstrated expertise in public international law and possess the qualifications required for appointment as a judge to the International Court of Justice, or be jurists of recognised competence. It is desirable that they have expertise in particular, in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements, or trade negotiations.
5. The Members appointed pursuant to this Section shall be appointed for a five-year term. However, the terms of four of the nine persons appointed immediately after the entry into force of the Agreement, to be determined by lot, shall extend to seven years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person who is serving on a division of the Tribunal when his or her term expires may, with the authorization of the President of the Tribunal after consulting with the other Members of the division, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Tribunal.
6. The Tribunal shall hear cases in divisions consisting of three Members, of whom one shall be a national of a Member State of the European Union, one a national of Mexico and one a national of a third country. The division shall be chaired by the Member who is a national of a third country.
7. The disputing parties may also agree that a case be heard by a sole Member who is a national of a third country, to be selected by the President of the Tribunal.
8. Within 90 days of the submission of a claim pursuant to Article 7 (Submission of a Claim to the Tribunal), the President of the Tribunal, in accordance with the Working Procedures adopted pursuant to paragraph 10, shall appoint the Members or Member composing the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of the divisions is random and unpredictable, while giving equal opportunity to all Members to be selected.

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<sup>3</sup> The Parties shall endeavor to appoint Members representative of diverse socioeconomic conditions and legal traditions.

9. The President of the Tribunal shall be responsible for organisational issues and will be appointed for a two-year term and shall be drawn by lot from among the Members who are nationals of third countries. The Presidents shall serve on the basis of a rotation drawn by lot by the Chair of the Joint Council. The Working Procedures adopted pursuant to paragraph 10 shall foresee the necessary rules for addressing a temporary unavailability of the President.

10. The Tribunal shall draw up its own working procedures, after consulting with the Parties.

11. The Members shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities under this Agreement.

12. In order to ensure their availability, the Members shall be paid a monthly retainer fee to be fixed by decision of the Joint Council. The President of the Tribunal shall receive a fee equivalent to the fee determined pursuant to Article 12, paragraph 12 (Appeal Tribunal) for each day worked in fulfilling the functions of President of the Tribunal pursuant to this Section.

13. The retainer fee shall be paid by both Parties taking into account their respective levels of development into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest. The Sub-Committee on Services and Investment shall regularly review the amount and repartition of the retainer fee and may recommend relevant adjustments for decision by the Joint Council.

14. Unless the Joint Council adopts a decision pursuant to paragraph 15, the amount of the other fees and expenses of the Members on a division of the Tribunal shall be those determined pursuant to Regulation 14 (1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 29, paragraph 5 (Award).

15. Upon a decision by the Joint Council, the retainer fee and other fees and expenses may be permanently transformed into a regular salary. In such an event, the Members shall serve on a full-time basis and the Joint Council shall fix their remuneration and related organisational matters. In that event, the Members shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Tribunal.

17. The Secretariat of ICSID shall act as Secretariat for the Tribunal and provide it with appropriate support. The expenses for such support shall be allocated among the disputing parties in accordance with Article 29, paragraph 5 (Award).

## **Article 12 - Appeal Tribunal**

1. A permanent Appeal Tribunal is hereby established to hear appeals from the awards issued by the Tribunal.

2. The Appeal Tribunal shall be composed of six Members, of whom two shall be nationals of a Member State of the European Union, two shall be nationals of Mexico and two shall be nationals of third countries.
3. The Joint Council, shall, upon the entry into force of this Agreement, appoint the members of the Appeal Tribunal. For this purpose, each Party shall propose three candidates, two of which may be nationals of that Party and one shall be a non-national, for the Joint Council to thereafter jointly appoint the Members.
4. The Joint Council may agree to increase the number of the Members of the Appeal Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 3.
5. The Appeal Tribunal Members shall be appointed for a five-year term. However, the terms of three of the six persons appointed immediately after the entry into force of the Agreement, to be determined by lot, shall extend to seven years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person who is serving on a division of the Appeal Tribunal when his or her term expires may, with the authorization of the President of the Appeal Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Appeal Tribunal.
6. The Appeal Tribunal shall have a President responsible for organisational issues, who shall be selected by lot for a two-year term and shall be selected from among the Members who are nationals of third countries. The Presidents shall serve on the basis of a rotation drawn by lot by the Chair of the Joint Council. The Working procedures adopted pursuant to paragraph 10 shall foresee the necessary rules for addressing a temporary unavailability of the President.
7. The Members of the Appeal Tribunal shall possess the qualifications required for appointment as a judge to the International Court of Justice, or be jurists of recognised competence. They shall have demonstrated expertise in public international law and in the subject matter covered by this Chapter. It is desirable that they have expertise in international trade law and the resolution of disputes arising under international investment or international trade agreements.
8. The Appeal Tribunal shall hear appeals in divisions consisting of three Members, of whom one shall be a national of a Member State of the European Union, one a national of Mexico and one a national of a third country. The division shall be chaired by the Member who is a national of a third country.
9. The composition of the division hearing each appeal shall be established in each case by the President of the Appeal Tribunal, in accordance with the Working Procedures adopted pursuant to paragraph 10, on a rotation basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to be selected.

10. The Appeal Tribunal shall draw up its own working procedures, after consulting with the Parties.
11. All persons serving on the Appeal Tribunal shall be available at all times and on short notice and shall stay abreast of other dispute settlement activities under this agreement.
12. The Members of the Appeal Tribunal shall be paid a monthly retainer fee and receive a fee for each day worked as a Member, to be determined by decision of the Joint Council. The President of the Appeal Tribunal shall receive a fee for each day worked in fulfilling the functions of President of the Appeal Tribunal pursuant to this Section.
13. The remuneration of the Members shall be paid by both Parties taking into account their respective levels of development into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest. The Sub-Committee on Services and Investment shall regularly review the amount and repartition of the retainer fee and may recommend relevant adjustments for decision by the Joint Council.
14. Upon a decision by the Joint Council, the retainer fee and the fees for days worked may be permanently transformed into a regular salary. In such an event, the Members of the Appeal Tribunal shall serve on a full-time basis and the Joint Council shall fix their remuneration and related organisational matters. In that event, the Members shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Appeal Tribunal.
15. The Secretariat of ICSID shall act as Secretariat for the Appeal Tribunal and provide it with appropriate support. The expenses for such support shall be allocated among the disputing parties in accordance with Article 29, paragraph 5 (Award).

### **Article 13 - Ethics**

1. The Members of the Tribunal and the Members of the Appeal Tribunal shall be chosen from persons whose independence is beyond doubt. They shall not be affiliated with any government.<sup>4</sup> They shall not take instructions from any government or organisation with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. In so doing they shall comply with Annex I (Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators). In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new investment protection dispute under this or any other agreement or domestic law.
2. If a disputing party considers that a Member appointed to a division has a conflict of interest, it shall send a notice of challenge to the President of the Tribunal or to the

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<sup>4</sup> For greater certainty, the mere fact that a person is employed by a public university, or that a former government employee is receiving a pension from the government, or has a family relationship with a government official is not in itself a reason to be considered as affiliated with a government.

President of the Appeal Tribunal, respectively. The notice of challenge shall be sent within 15 days of the date on which the composition of the division of the Tribunal or of the Appeal Tribunal has been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.

3. If, within 15 days from the date of the notice of challenge, the challenged Member has elected not to resign from that division, the President of the Tribunal or the President of the Appeal Tribunal, respectively, shall, after hearing the disputing parties and after providing the Member an opportunity to submit any observations, issue a decision within 45 days of receipt of the notice of challenge and forthwith notify the disputing parties and other Members of the division.

4. Challenges against the appointment to a division of the President of the Tribunal shall be decided by the President of the Appeal Tribunal and *vice-versa*.

5. Upon a reasoned recommendation from the President of the Appeal Tribunal, or on their joint initiative, the Parties, by decision of the Joint Council, may decide to remove a Member from the Tribunal or from the Appeal Tribunal where his or her behaviour is inconsistent with the obligations set out in paragraph 1 and incompatible with his or her continued membership of the Tribunal or Appeal Tribunal. If the behaviour in question is alleged to be that of the President of the Appeal Tribunal then the President of the Tribunal shall submit the reasoned recommendation. Articles 11, paragraph 2 (Tribunal) and 12, paragraph 3 (Appeal Tribunal) shall apply *mutatis mutandis* for filling vacancies that may arise pursuant to this paragraph.

#### **Article 14 - Multilateral Dispute Settlement Mechanisms**

1. The Parties should cooperate for the establishment of a multilateral mechanism for the resolution of investment disputes.

2. Upon the entry into force between the Parties of an international agreement providing for such a multilateral mechanism applicable to disputes under this Agreement, the relevant parts of this Section shall be suspended and the Joint Council may adopt a decision specifying any transitional arrangements.

#### **Article 15 - Applicable Law**

1. The Tribunal shall determine whether the measure subject to the claim is inconsistent with any of the provisions referred to in Article 2 (Scope) alleged by the claimant.

2. In making its determination, the Tribunal shall apply the provisions of this Agreement, and, when relevant, other rules and principles of international law applicable between the Parties. It shall interpret this Agreement in accordance with customary rules of

interpretation of public international law, as codified in the Vienna Convention on the Law of Treaties.

3. For greater certainty, in determining the consistency of a measure with this Agreement, the Tribunal shall consider, when relevant, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.

4. For greater certainty, the Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of the disputing Party.

5. If a Party has concerns as regards matters of interpretation relating to this Chapter, it may request the Joint Council to consider the issue. The Joint Council may adopt decisions interpreting any provision of this Agreement. Any such interpretation shall be binding on the Tribunal and the Appeal Tribunal. The Joint Council may decide that an interpretation shall have binding effect from a specific date.

6. If a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the Tribunal shall, on request of the respondent, request the interpretation of the Joint Council on the issue. The Joint Council shall submit in writing any decision on its interpretation under Article XX (Functions of the Joint Council) to the Tribunal within 90 days of delivery of the request.

7. A decision issued by the Joint Council under paragraph 6 shall be binding on the Tribunal, and any decision or award issued by the Tribunal must be consistent with that decision. If the Joint Council fails to issue such a decision within 90 days, the Tribunal shall decide the issue.

#### **Article 16 - Anti-Circumvention**

For greater certainty, the Tribunal shall decline jurisdiction where the dispute had arisen, or was foreseeable on the basis of a high degree of probability, at the time when the claimant acquired ownership or control of the investment subject to the dispute and the Tribunal determines, on the basis of the facts of the case, that the claimant has acquired ownership or control of the investment for the main purpose of submitting the claim under this Section. The possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the Tribunal.

#### **Article 17 – Claims Manifestly Without Legal Merit**

1. The respondent may, no later than 30 days after the constitution of the division of the Tribunal, and in any event before its first session, or 30 days after the respondent

became aware of the facts on which the objection is based, file an objection that a claim is manifestly without legal merit.

2. An objection shall not be submitted under paragraph 1 if the respondent has filed an objection pursuant to Article 18 (Claims Unfounded as a Matter of Law).
3. The respondent shall specify as precisely as possible the basis for the objection.
4. On receipt of an objection pursuant to this Article, the Tribunal shall suspend the proceedings on the merits and establish a schedule for considering such an objection consistent with its schedule for considering any other preliminary question.
5. The Tribunal, after giving the disputing parties an opportunity to present their observations, shall at its first session or promptly thereafter, issue a decision or award stating the grounds therefor. In doing so, the Tribunal shall assume the alleged facts to be true.
6. This Article shall be without prejudice to the Tribunal's authority to address other objections as a preliminary question or to the right of the respondent to object, in the course of the proceeding, that a claim lacks legal merit.

#### **Article 18 – Claims Unfounded as a Matter of Law**

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at an appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted pursuant to Article 7 (Submission of a Claim to the Tribunal) is not a claim for which an award in favour of the claimant may be made under this Section, even if the facts alleged were assumed to be true.
2. An objection under paragraph 1 shall be submitted to the Tribunal no later than the date the Tribunal fixes for the respondent to submit its counter-memorial or statement of defense.
3. If an objection has been submitted pursuant to Article 17 (Claims Manifestly Without Legal Merit), the Tribunal may, taking into account the circumstances of that objection, decline to address, under the procedures set out in this Article, an objection submitted pursuant to paragraph 1.
4. On receipt of an objection under paragraph 1, and, if appropriate, after rendering a decision pursuant to paragraph 3 and unless it considers the objection manifestly unfounded, 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.

**Article 19 - Transparency of the Proceedings**

1. The Tribunal shall promptly make available to the public all written submissions submitted by the disputing parties to the Tribunal as well as all procedural orders, decisions and awards issued or rendered by the Tribunal, or, where applicable, by the President of the Tribunal, with the exception of protected information consisting of:

- (a) confidential business information<sup>5</sup>;
- (b) privileged information that is protected from disclosure by law; or
- (c) information the disclosure of which would impede law enforcement.

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, 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. The submissions mentioned in paragraph 1 include the memorial, the counter-memorial, the reply, the rejoinder and any other submission made by a disputing party during the proceedings, such as a notice of challenge pursuant to Article 13, paragraph 2 (Ethics) or the request for consolidation under Article 28 (Consolidation).

4. Minutes or transcripts of the hearings, if available, shall be made available to the public subject to the redaction of protected information pursuant to paragraph 1.

5. The Parties shall make publicly available in a timely manner and prior to the composition of a division of the Tribunal the request for consultations referred to in Article 3 (Consultations), the request for determination of the Respondent and the determination of the Respondent referred to in Article 5 (Determination of the Respondent for Disputes with the European Union or its Member States), subject to the redaction of protected information. To that effect the claimant shall submit a public version of its request for consultation and request for determination of the Respondent preferably at the same time but no later than 15 days after submitting the non-public version. If the claimant does not provide such public versions, it shall be deemed to have consented to make available the submitted documents.

6. The Tribunal may make available to the public all the exhibits upon request and after consulting with the relevant disputing party in order to prevent from disclosure protected information and allowing a reasonable period of time to redact, if needed, the pertinent portions of the exhibits.

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<sup>5</sup> For greater certainty, confidential business information includes information that is not in the public domain and which describes, contains or otherwise reveals trade secrets or financial, commercial, scientific or technical information that has been consistently treated as confidential information by the disputing party to whom it is related, including but not limited to information on prices, costs, strategic and marketing plans, market share data, and accounting or financial records.

7. For the purpose of paragraph 1, each disputing party shall be responsible for providing the Tribunal with redacted versions of its written submissions within 30 days after their submission or within any other time limit set by the Tribunal. The Tribunal may review the redacted versions of the disputing parties and may assess whether the redacted information should be protected. The Tribunal shall, after consulting the disputing parties, decide any objection regarding the designation of information claimed to be protected information. Where the Tribunal determines that information should not be redacted from a document, or that a document should not be prevented from being made available to the public, any disputing party that voluntarily introduced the document into the record shall be permitted to withdraw all or parts of the document from the record of the proceedings.

8. The Tribunal shall consult with the disputing parties whether an order, decision or award rendered by the Tribunal contains protected information pursuant to paragraph 1(a), (b) or (c) before its publication.

9. If a disputing party does not provide the Tribunal a request to preserve confidentiality over protected information in a particular submission, procedural order, decision or award within 30 days of the submission or the consultation of the disputing party pursuant to paragraphs 6 and 8, or within any other time limits set by the Tribunal, that party shall be deemed to have consented to make available to the public such submission, procedural order, decision or award.

10. The Tribunal may make publicly available the information and documents referred to in this Article by communication to the repository referred to in the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

11. Nothing in this Section shall require a respondent to withhold from the public information required to be disclosed by its laws.

#### **Article 20 – Interim Measures of Protection**

1. The 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.

2. The Tribunal may not order the seizure of assets nor may it prevent the application of a measure alleged to constitute a breach referred to in Article 7 (Submission of a Claim to the Tribunal). For purposes of this paragraph, an order includes a recommendation.

#### **Article 21 - Discontinuance**

If, following the submission of a claim under this Section, the claimant fails to take any steps in the proceeding during 180 consecutive days or such periods as the disputing parties may agree, the claimant shall be deemed to have withdrawn its claim and to have discontinued the proceedings. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, take note of the discontinuance in an order and issue an

award on costs. After such an order has been rendered the authority of the Tribunal shall lapse. The claimant may not subsequently submit a claim on the same matter arising from the same measure or measures.

### **Article 22 - Security for Costs**

1. For greater certainty, upon request, the Tribunal may order the claimant to post security for all or a part of the costs if there are reasonable grounds to believe that the claimant may be unable to comply with an award on costs issued against it.
2. If the security for costs is not posted in full within 30 days after the issuance of an order under paragraph 1 or within any other time period set by the Tribunal, the Tribunal shall so inform the disputing parties. The Tribunal may order the suspension or termination of the proceedings.

### **Article 23 - The Non-Disputing Party to the Agreement**

1. The Respondent shall, within 30 days after receipt or promptly after any dispute concerning protected information has been resolved,<sup>6</sup> deliver to the non-disputing Party:
  - (a) a request for consultations referred to in Article 3 (Consultations), a notice requesting a determination referred to in Article 4 (Determination of the Respondent for Disputes with the European Union or its Member States), a claim referred to in Article 7 (Submission of a Claim to the Tribunal);
  - (b) on request:
    - (i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;
    - (ii) written submissions made to the Tribunal by third persons pursuant to Article 24 (Intervention by Third Persons);
    - (iii) minutes or transcripts of hearings of the Tribunal, where available; and
    - (iv) orders, awards and decisions of the Tribunal.
  - (c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been tendered to the Tribunal, including exhibits appended to the document referred to in paragraphs (a) and (b).
2. The non-disputing Party has the right to attend a hearing held under this Section, and may make oral and written submissions to the Tribunal regarding the interpretation of

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<sup>6</sup> For greater certainty, the term confidential or protected information shall be understood as defined in and determined pursuant to Article 19 (Transparency of the Proceedings).

this Agreement. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the non-disputing Party.

#### **Article 24 - Interventions by Third Persons**

1. 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.
2. Each submission shall be in writing and in the language of the proceedings, unless the disputing parties agree otherwise. 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. In addition, the author of the communication will prove if he/she has any affiliation, direct or indirect, with any of the disputing parties, and shall specify the nature of the interest in the dispute.
3. When communications pursuant to paragraphs 1 through 2 are admitted by the Tribunal, it shall provide the disputing parties with an opportunity to respond to such submissions.

#### **Article 25 – Expert Reports**

Without prejudice to the appointment of other kinds of experts where authorised by the applicable rules referred to in Article 7 (Submission of a Claim to the Tribunal), the Tribunal, at the request of a disputing party or, after consulting the disputing parties, on its own initiative, may appoint one or more experts to report to it in writing on any scientific factual issue, such as environmental, health or safety matters, or other matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

#### **Article 26 - Indemnification or Other Compensation**

A respondent may not assert, and the Tribunal shall not accept as a defence, counterclaim, right of set-off, or for any other reason that the claimant or the locally established company on behalf of which the claim is submitted, has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

#### **Article 27 – Role of the Parties**

1. A Party shall not bring an international claim in respect of a claim submitted pursuant to Article 7 (Submission of a Claim to the Tribunal) unless the other Party has failed to abide by and comply with the award rendered in that dispute.
2. Paragraph 1 shall not exclude the possibility of dispute settlement under Chapter XXX (Dispute Settlement) in respect of a measure of general application even if that measure is alleged to have breached this Agreement as regards a specific investment in respect of which a claim has been submitted pursuant to Article 7 (Submission of a Claim to the Tribunal) and is without prejudice to Article 23 (The Non-Disputing Party to the Agreement).
3. Paragraph 1 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

### **Article 28 – Consolidation**

1. When two or more claims that have been submitted separately pursuant to Article 7 (Submission of a Claim to the Tribunal) have a question of law or fact in common and arise out of the same events or circumstances, a disputing party or the disputing parties jointly may seek the establishment of a separate division of the Tribunal pursuant to this Article and request that such division issue a consolidation order ("request for consolidation").
2. The disputing party seeking a consolidation order shall first deliver a notice to the disputing parties it seeks to be covered by this order.
3. If the disputing parties notified pursuant to paragraph 2 have reached an agreement on the consolidation order to be sought, they may make a joint request for the establishment of a separate division of the Tribunal and a consolidation order pursuant to this Article. If the disputing parties notified pursuant to paragraph 2 have not reached agreement on the consolidation order to be sought within 30 days of the notice, a disputing party may make a request for the establishment of a separate division of the Tribunal and a consolidation order pursuant to this Article.
4. The request shall be delivered, in writing, to the President of the Tribunal and to all the disputing parties sought to be covered by the order, and shall specify:
  - (a) the names and addresses of the disputing parties sought to be covered by the order;
  - (b) the scope of the consolidation sought; and
  - (c) the grounds for the order sought.
5. A request for consolidation involving more than one respondent shall require the agreement of all such respondents.
6. The rules applicable to the proceedings under this Article are determined as follows:

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- (a) if all of the claims for which a consolidation order is sought have been submitted to dispute settlement under the same rules pursuant to Article 7 (Submission of a Claim to the Tribunal), these rules shall apply;
- (b) if the claims for which a consolidation order is sought have not been submitted to dispute settlement under the same rules:
  - (i) the claimants may collectively agree on the applicable rules referred to in Article 7, paragraph 2 (Submission of a Claim to the Tribunal); or
  - (ii) if the claimants cannot agree on the applicable rules within 30 days of the President of the Tribunal receiving the request for consolidation, the UNCITRAL Arbitration Rules shall apply except as modified by this Section.

7. The President of the Tribunal shall, after receipt of a consolidation request and in accordance with the requirements of Article 11, paragraph 8 (Tribunal) constitute a new division ("consolidating division") of the Tribunal which shall have jurisdiction over some or all of the claims, in whole or in part, which are the subject of the joint consolidation request.

8. If, after hearing the disputing parties, a consolidating division is satisfied that claims submitted pursuant to Article 7 (Submission of a Claim to the Tribunal) have a question of law or fact in common and arise out of the same events or circumstances, and consolidation would best serve the interests of fair and efficient resolution of the claims including the interest of consistency of awards, the consolidating division of the Tribunal may, by order, assume jurisdiction over some or all of the claims, in whole or in part.

9. If a consolidating division of the Tribunal has assumed jurisdiction pursuant to paragraph 8, a claimant that has submitted a claim pursuant to Article 7 (Submission of a Claim to the Tribunal) and whose claim has not been consolidated may make a written request to the Tribunal that it be included in such order provided that the request complies with the requirements set out in paragraph 4. The consolidating division of the Tribunal shall grant such order where it is satisfied that the conditions of paragraph 8 are met and that granting such a request would not unduly burden or unfairly prejudice the disputing parties or unduly disrupt the proceedings.

10. On application of a disputing party, a consolidating division of the Tribunal established under this Article, pending its decision under paragraph 8, may order that the proceedings of the division of the Tribunal appointed under Article 11 (Tribunal) be stayed unless the latter Tribunal has already adjourned its proceedings.

11. A division of the Tribunal appointed under Article 11 (Tribunal) shall cede jurisdiction in relation to the claims, or parts thereof, over which a consolidating division of the Tribunal established under this Article has assumed jurisdiction.

12. The award of a consolidating division of the Tribunal established under this Article in relation to those claims, or parts thereof, over which it has assumed jurisdiction is binding on the division of the Tribunal appointed under Article 11 (Tribunal) as regards those claims, or parts thereof.

13. A claimant may withdraw a claim under this Section that is subject to consolidation and such claim shall not be resubmitted pursuant to Article 7 (Submission of a Claim to the Tribunal).

14. At the request of a claimant, a consolidating division of the Tribunal may take measures in order to preserve any confidential or protected information of that claimant in relation to other claimants. Those measures may include the submission of redacted versions of documents containing confidential or protected information to the other investors or arrangements to hold parts of the hearing in private.

### **Article 29 - Award**

1. Where the Tribunal, concludes that the respondent has breached any of the provisions referred to in Article 2, paragraph 1 (Scope) alleged by the claimant, the Tribunal, upon a request by the claimant and after hearing the disputing parties, 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, determined in a manner consistent with Article XX (Expropriation) of Section B (Investment Protection) of Chapter II (Investment).

2. Subject to paragraph 1, where a claim is submitted on behalf of a locally-established company, and an award is made in favour of the locally-established company an award shall provide that:

- (a) any restitution of property shall be made to the locally established company;
- (b) any monetary damages and applicable interest shall be paid to the locally established company; and
- (c) the award is made without prejudice to any right that any person may have under applicable domestic law in the relief provided in the award.

3. For greater certainty, the Tribunal may not award other remedies than those referred to in paragraph 1, nor may it order the repeal, cessation or modification of the measure concerned.

4. Monetary damages shall not be greater than the loss suffered by the claimant or, as applicable, the locally established company, as a result of the breach of the relevant provisions of the Agreement, reduced by any prior damages or compensation already provided by the Party concerned. The Tribunal may not award punitive damages. For greater certainty, if an investor submits a claim pursuant to Article 7(1)(a) (Submission of a Claim to the Tribunal), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.

5. The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion such costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the case. Other reasonable costs, including the reasonable costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the claim. When considering the reasonableness of the costs or of their apportionment, the Tribunal may also take into account whether the costs to be reimbursed to the prevailing disputing party would excessively exceed the costs incurred by the unsuccessful disputing party. Where only some parts of the claims have been successful the costs of the proceedings and other reasonable costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims. The Appeal Tribunal shall deal with costs in accordance with this Article.

6. No later than one year after the entry into force of this Agreement, the Joint Council shall adopt supplemental rules on fees for the purpose of determining the maximum amount of costs of legal representation and assistance that may be borne by specific categories of unsuccessful disputing parties, taking into account their financial resources.

7. The Tribunal and the disputing parties shall make every effort to ensure that the dispute settlement process is carried out in a timely manner. The Tribunal should issue its final award within 30 months of the date the claim is submitted pursuant to Article 7 (Submission of a Claim to the Tribunal). If the Tribunal requires additional time to issue its final award, it shall provide the disputing parties the reasons for the delay.

8. A provisional award shall become final if 90 days have elapsed after it has been issued and neither disputing party has appealed the award to the Appeal Tribunal.

9. Either disputing party may appeal the provisional award pursuant to Article 30 (Appeal Procedure). In such an event, if the Appeal Tribunal modifies or reverses the provisional award of the Tribunal then the Tribunal shall, after hearing the disputing parties if appropriate, revise its provisional award to reflect the findings and conclusions of the Appeal Tribunal. The provisional award will become final 90 days after its issuance. The Tribunal shall be bound by the findings made by the Appeal Tribunal. The Tribunal shall seek to issue its revised award within 90 days of receiving the report of the Appeal Tribunal.

### **Article 30 – Appeal Procedure**

1. Either disputing party may appeal before the Appeal Tribunal a provisional award within 90 days of its issuance. The grounds for appeal are:
  - (a) that the Tribunal has erred in the interpretation or application of the applicable law;
  - (b) that the Tribunal has manifestly erred in the appreciation of the facts, including the appreciation of relevant domestic law; or

(c) those provided for in Article 52 of the ICSID Convention, in so far as they are not covered by (a) and (b).

2. If the Appeal Tribunal rejects the appeal, the provisional award shall become final. The Appeal Tribunal may also dismiss the appeal on an expedited basis where it is clear that the appeal is manifestly unfounded, in which case the provisional award shall become final. If the appeal is well founded, the Appeal Tribunal shall modify or reverse the legal findings and conclusions in the provisional award in whole or part. Its decision shall specify precisely how it has modified or reversed the relevant findings and conclusions of the Tribunal.

3. As a general rule, the appeal proceedings shall not exceed 180 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appeal Tribunal issues its decision. When the Appeal Tribunal considers that it cannot issue its decision within 180 days, it shall inform the disputing parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its decision. In no case should the proceedings exceed 270 days.

4. The Appeal Tribunal may order the disputing party lodging an appeal to post security for all or a part of the costs of the appeal proceedings.

5. The provisions of Articles 10 (Third Party Funding), 19 (Transparency of the Proceedings), 20 (Interim Measures of Protection), 21 (Discontinuance), 23 (The Non-Disputing Party to the Agreement) shall apply *mutatis mutandis* in respect of the appeal procedure.

6. The Joint Joint Council may adopt rules providing guidance to the Appeal Tribunal on how to address and conduct the appeal proceedings in case of bifurcation of the proceedings before the Tribunal.

### **Article 31 - Enforcement of Awards**

1. An award rendered pursuant to this Section shall not be enforceable until it has become final pursuant to Articles 29 paragraph 8 or 9 (Award), or 30 paragraph 2 (Appeal Procedure). Final awards issued pursuant to this Section by the Tribunal shall be binding between the disputing parties and shall not be subject to appeal, review, set aside, annulment or any other remedy.<sup>7</sup>

2. Each Party shall recognize an award rendered pursuant to this Agreement as binding and enforce the pecuniary obligation within its territory as if it were a final judgement of a court in that Party.

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<sup>7</sup> For greater certainty, this does not prevent a disputing party from requesting the Tribunal to revise an award or to interpret an award in accordance with the applicable rules on dispute settlement where this possibility is available under the applicable rules.

3. Execution of the award shall be governed by the laws and international commitments concerning the execution of judgments or awards in force where such execution is sought.
4. For greater certainty, [Article X (Rights and obligations of natural or juridical persons under this Agreement, Chapter Y)] shall not prevent the recognition, execution and enforcement of awards rendered pursuant to this Section.
5. For the purposes of Article 1 of the New York Convention, final awards issued pursuant to this Section are arbitral awards relating to claims that are considered to arise out of a commercial relationship or transaction.
6. For greater certainty and subject to paragraph 1, where a claim has been submitted to dispute settlement pursuant to Article 7, paragraph 2(a) (Submission of a Claim to the Tribunal), a final award issued pursuant to this Section shall qualify as an award under Chapter IV, Section 6 of the ICSID Convention.

#### **Article 32 – Service of Documents**

Delivery of requests for consultations, notices and other documents to a Party shall be made to the places named for that Party in Annex II (Service of Documents) or its respective successors. A Party shall promptly make publicly available and notify the other Party of any change to the place referred in that Annex.

#### **Article 33 – Sub-Committee on Services and Investment**

1. The Sub-Committee on Services and Investment shall provide a forum for the Parties to consult on issues related to this Chapter, including:
  - (a) difficulties which may arise in the implementation of this Chapter;
  - (b) possible improvements of this Chapter, in particular in the light of experience and developments in other international *fora* and under the Parties' other agreements; and
  - (c) upon request of either Party, the implementation of any mutually agreed solution as regards a dispute under this Section.
2. The Sub-Committee on Services and Investment shall also adopt recommendations for any decisions to be adopted or actions to be taken by the Joint Council pursuant to this Chapter.



*ANNEX [I]*

**CODE OF CONDUCT FOR MEMBERS OF THE TRIBUNAL, THE APPEAL  
TRIBUNAL AND MEDIATORS**

*Article 1*

**Definitions**

In this Code of Conduct:

- (a) **member** means a Member of the Tribunal or a Member of the Appeal Tribunal established pursuant to [Section [X] (Resolution of Investment Disputes)];
- (b) **mediator** means a person who conducts mediation in accordance with Article 4 (Mediation) of [Section X (Resolution of Investment Disputes)];
- (c) **candidate** means an individual who is under consideration for selection as a Member of the Tribunal or Appeal Tribunal;
- (d) **assistant** means a person who, under the terms of appointment of a Member, assists the Member in his research or supports him in his duties;

*Article 2*

**Independence and Impartiality of Members**

1. Members must be independent and impartial and avoid impropriety and the appearance of impropriety or bias. They shall avoid direct and indirect conflicts of interest and observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. They shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or disputing party or fear of criticism.
2. Members shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere or appear to interfere, with the proper performance of their duties.
3. Members shall not use their position to advance any personal or private interests and shall avoid actions that may create the impression that they are in a position to be influenced by others.

4. Members shall not allow financial, business, professional, family or social relationships or responsibilities to influence their conduct or judgment.
5. Members must avoid entering into any relationship or acquiring any financial interest that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or bias.

*Article 3*

**Disclosure Obligations**

1. Prior to their appointment as a Member to the Tribunal or Appeal Tribunal, candidates shall receive a copy of this Code of Conduct and disclose to the Parties any past and present interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias. To this end, candidates shall make all reasonable efforts to become aware of any such interests, relationships or matters.
2. Upon her or his appointment to a division of the Tribunal or of the Appeal Tribunal, the Secretariat of the Tribunal or of the Appeal Tribunal, respectively, shall provide a Member with the Disclosure Statement form set out in the Appendix to this Code of Conduct. A Member shall make his or her best efforts to submit the Disclosure Statement to the Secretariat within 15 days, for transmission to the Parties, the disputing parties and the President of the Tribunal or Appeal Tribunal, as the case may be.
3. Pursuant to paragraph 2, a Member appointed to a division shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the proceeding. To this end, that Member shall make all reasonable efforts to become aware of any such interests, relationships and matters. Therefore, that Member shall disclose, at a minimum and to the best of his knowledge, the following interests, relationships and matters:
  - (a) any financial or personal interest of the Member in:
    - (i) the proceeding or its outcome; and
    - (ii) an administrative proceeding, a domestic judicial proceeding or another international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the Member is under consideration;

- (b) any financial interest of the Member's employer, or professional partner or associate, or close family member<sup>8</sup> in:
    - (i) the proceeding or its outcome; and
    - (ii) an administrative proceeding, a domestic judicial proceeding or another international dispute settlement proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
  - (c) any past or current financial, business, professional, family or social relationship with any interested parties in the proceeding, or their counsel; and
  - (d) public advocacy or legal or other representation concerning an issue in dispute in the proceeding or involving the same investors or investments.
4. Throughout their term of office, Members shall at all times continue to make all efforts to become aware of any interests, relationships or matters referred to in paragraph 1 of this Article and disclose such interests, relationships or matters by informing the Parties.
5. Throughout the proceedings, Members appointed to a division have a continuing obligation to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process and shall communicate matters concerning actual or potential violations of this Code of Conduct in writing to the Parties and the disputing parties.
6. Any doubt as to whether a Member should disclose certain interest, relationship or matter should be resolved in favour of disclosure. Disclosure of an interest, relationship or matter is without prejudice as to whether the interest, relationship or matter is covered by this Code of Conduct, or whether it is inconsistent with Article 13, paragraph 1 (Ethics).

#### *Article 4*

#### **Duties of Members**

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<sup>8</sup> For the purpose of this Code of Conduct the term "close family member" refers to a spouse, sibling, parent or life partner, in addition to any other family member with whom a close relationship exists.

1. Members shall perform their duties thoroughly and expeditiously throughout the course of the proceeding and shall do so with fairness and diligence towards the disputing parties and other Members.
2. Members shall consider only those issues raised in the proceeding and which are necessary for a decision or award and shall not delegate this duty to any other person.
3. Experts and assistants shall comply with the obligations incurred by Members pursuant to paragraphs 1 and 2, Article 2 (Independence and Impartiality of Members), paragraph 5 of Article 3 (Disclosure Obligations) and Article 6 (Confidentiality) of this Code of Conduct. In this regard, a Member shall take all reasonable measures and necessary steps to ensure that they are aware of, and comply with, such obligations.
4. Members shall not engage in ex parte contacts concerning the proceeding.

*Article 5*

**Obligations of Former Members**

1. Former Members shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decisions or awards of the Tribunal or the Appeal Tribunal.
2. Without prejudice to Articles 11, paragraph 5 (Tribunal) and 12, paragraph 5 (Appeal Tribunal), Members shall undertake that after the end of their term, they shall not become involved:
  - (a) in any manner whatsoever in investment disputes which were pending before the Tribunal or the Appeal Tribunal before the end of their term; and/or
  - (b) in any manner whatsoever in investment disputes directly and clearly connected with disputes, including concluded disputes, which they have dealt with as Members of the Tribunal or the Appeal Tribunal.
3. Members shall undertake that for a period of three years after the end of their term, they shall not act as representatives of one of the disputing parties in investment disputes before the Tribunal or the Appeal Tribunal.
4. If the President of the Tribunal or of the Appeal Tribunal is informed or otherwise becomes aware that a former Member of the Tribunal or of the Appeal Tribunal, respectively, is alleged to have acted inconsistently with the obligations set up in

paragraphs 1 through 3, he shall examine the matter, provide the opportunity to the former Member to be heard, and, after verification, inform thereof:

- (a) the professional body or other such institution with which that former Member is affiliated;
- (b) the Contracting Parties; and
- (c) the President of any other relevant Investment Tribunal or Appeal Tribunal in view of the initiation of appropriate measures.

The President of the Tribunal or of the Appeal Tribunal shall make public its decision to take the actions referred to in subparagraphs (a), b and (c) above, together with the reasons therefor.

#### *Article 6*

#### **Confidentiality**

1. No Members or former Members shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding, except for the purposes of the proceeding, and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
2. No Members shall disclose a decision or award or parts thereof prior to its publication in accordance with the transparency provisions of Article 19 (Transparency of the Proceedings) of [Section [X] (Resolution of Investment Disputes)] as applicable.
3. No Members or former Members shall at any time disclose the deliberations of the Tribunal or Appeal Tribunal, or any Member's views, whatever they may be. A Member shall not make a public statement regarding the merits of a pending proceeding.

#### *Article 7*

#### **Expenses**

Each Member shall keep a record and render a final account of the time devoted to the procedure and of the expenses incurred, as well as the time and expenses of their assistant.

*Article 8*

**Mediators**

The rules set out in this Code of Conduct as applying to Members or former Members shall apply, mutatis mutandis, to mediators.

*Article 9*

**Consultative Committee**

1. The President of the Tribunal and the President of the Appeal Tribunal shall be assisted by a Consultative Committee for ensuring the proper application of this Code of Conduct, Article 13 (Ethics) and for the execution of any other task, where so provided.
2. The President of the Tribunal and the President of the Appeal Tribunal shall be assisted by Consultative Committees composed of the two most senior Members of the Tribunal or of the Appeal Tribunal.

**APPENDIX TO CODE OF CONDUCT**

**DISCLOSURE STATEMENT**

1. I acknowledge having received a copy of the Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators annexed to Section [X] [Resolution of Investment Disputes] of Chapter [X] [Investment] of the EU-Mexico Global Agreement (hereinafter referred to as 'Code of Conduct').
2. I acknowledge having read and understood the Code of Conduct.
3. I understand my continuing duty to disclose herewith or in future any past and present interest, relationship or matter that is likely to affect my independence or impartiality or that might reasonably create an appearance of impropriety of bias, pursuant to Article 3 of the Code of Conduct.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By:

Signature\_\_\_\_\_

Name\_\_\_\_\_

**Annex 2**  
**Service of Documents on a Party under Section XX**  
**(Resolution of Investment Disputes)**

**Mexico**

Requests for consultations, notices and other documents in disputes under Section XX (Resolution of investment disputes) shall be served on Mexico by delivery to:

Dirección General de Consultoría Jurídica de Comercio Internacional  
Secretaría de Economía  
Alfonso Reyes # [XX] piso [17]  
Col. Hipódromo Condesa  
Del. Cuauhtémoc  
Ciudad de México  
C.P.: 06140

**European Union**

Requests for consultations, notices and other documents in disputes under Section XX (Resolution of Investment Disputes) shall be served on the European Union by delivery to:

European Commission  
Directorate-General for Trade  
Unit F2 – Dispute Settlement and Legal Aspects of Trade Policy  
Rue de la Loi 170  
1040, Brussels  
Belgium,

or any other address or electronic mail address communicated by the European Commission to the claimant following the receipt of the request for consultations.

**Member States of the European Union**

Requests for consultations, notices and other documents in disputes under Section XX (Resolution of investment disputes) shall be served on a Member State of the European Union by delivery to the place made publicly available on the website of the Directorate General for Trade of the European Commission, or any other address or electronic mail address communicated by the Member State concerned to the claimant following the receipt of the request for consultations.