

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
AND
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
ON THE PROMOTION AND PROTECTION OF INVESTMENTS

PREAMBLE

The Government of the Democratic Republic of Timor-Leste and the Government of the Republic of Indonesia (hereinafter collectively referred to as the “Parties” or individually as a “Party”),

DESIRING to create favourable conditions for greater economic cooperation between the Parties and in particular for investments by investors of one State in the territory of the other State based on the principles of equality and mutual benefit;

ACKNOWLEDGING the important contribution that investments can make to sustainable development, and seeking to promote and facilitate such investments within the territories of the Parties;

RECOGNISING that the encouragement and reciprocal protection of such investments can stimulate business initiative, foster the inflow of capital and technology, and increase economic development and prosperity in both States;

REAFFIRMING the right of the Parties to regulate and to introduce new measures relating to investments in their territories in order to meet legitimate policy objectives,

HAVE AGREED as follows:

CHAPTER I

DEFINITIONS AND SCOPE

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement:

enterprise means any entity, constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the law of a Party, and carrying out business activities there;

freely usable currency means “freely usable currency” as determined by the International Monetary Fund under its *Articles of Agreement of the International Monetary Fund* and any amendments thereto;

ICSID means the International Centre for Settlement of Investment Disputes;

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*, as amended and in effect on April 10, 2006;

ICSID Arbitration Rules means the *Rules of Procedure for Arbitration Proceedings (Arbitration Rules)*, as amended and in effect on April 10, 2006;

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

investment means any kind of asset owned or controlled, directly or indirectly, by an investor that has the characteristics of an investment¹, such as the commitment of capital, the expectation of gain or profit, the assumption of risk or certain duration. Forms that an investment may take include, but are not limited to²:

- a. shares, stocks and other forms of equity participation in an enterprise, including rights derived therefrom;
- b. bonds, debentures, loans and other debt instruments^{3,4}, including rights derived therefrom;
- c. turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- d. claims to money or to any contractual performance related to a business and under contract having an economic value⁵;
- e. intellectual property rights which are conferred pursuant to the laws and regulations of a Party where the investment is located;
- f. licenses, authorisations, permits, and similar rights conferred pursuant to applicable domestic law, including any concession to search for, cultivate, extract or exploit natural resources⁶; and
- g. other tangible or intangible, movable or immovable property and related property rights such as mortgages, liens or pledges;

For the purpose of the definition of “investment”, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.

investor means:

¹ For greater certainty, where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take.

² The term “investment” does not include an order or judgment entered in a judicial or administrative action or an arbitral award made in an arbitral proceeding.

³ For the purpose of this Agreement, “loans and other debt instruments” described in (b) and “claims to money or to any contractual performance” described in (d) of this Article refer to assets which relate to a business activity and do not refer to assets which are of a personal nature, unrelated to any business activity.

⁴ A loan issued by a Party to the other Party is not an investment.

⁵ For greater certainty, investment does not mean claims to money that arise solely from:

- a. commercial contracts for the sale of goods or services, domestic financing of such contracts; or
- b. the extension of credit in connection with such commercial contracts.

⁶ Whether a particular type of license, authorisation, permit or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the Party’s law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party’s law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

- a. an enterprise of a Party; or
- b. a natural person who, under the law of a Party, is a national⁷ of that Party; that has made an investment;

locally established enterprise means an enterprise owned or controlled by an investor of a Party, established in the territory of the other Party;

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, and includes measures taken by:

- a. central, regional or local governments and authorities; and
- b. non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

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

returns means amounts yielded by or derived from an investment, including, but not limited to, any profits, interest, capital gains, dividends, royalties or fees;

territory means:

- a. in respect of the Republic of Indonesia: the land territories, territorial sea, archipelagic waters, internal waters, including sea-bed and subsoil thereof, and airspace over such territories, as well as continental shelf and exclusive economic zone, over which Indonesia has sovereignty, sovereign rights or jurisdiction, as defined in its laws, and in accordance with the United Nations Convention on the Law of the Sea, done at Montego Bay, 10 December 1982; and
- b. in respect of the Democratic Republic of Timor-Leste: based on Article 4 of National Constitution of the Democratic Republic of Timor-Leste;

UNCITRAL Arbitration Rules means the *Arbitration Rules of the United Nations Commission on International Trade Law*, as adopted by the United Nations General Assembly on 15 December 1976.

ARTICLE 2 APPLICABILITY OF AGREEMENT

1. This Agreement shall apply, with respect to a Party, to an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or made, established, acquired or expanded thereafter, and has been admitted according to the laws and regulations of the former Party, and where applicable, specifically approved in writing⁸ by competent authority of the former Party.

2. The provisions in this Agreement shall not apply to claims arising out of events which occurred⁹, or claims which had been raised, prior to the entry into force of this Agreement.

⁷ For greater certainty, if a natural person possesses dual nationality, she or he shall be deemed to possess exclusively the nationality of the Party of her or his dominant and effective nationality.

⁸ Where specific approval in writing is required for investments by a Party's domestic laws and regulations, that Party shall take all reasonable steps to observe transparency, fairness and efficiency in processing the application. These steps would include:

- a. ensuring that information on that Party's competent authority and its approval processes are promptly published or otherwise made available;
- b. in the case of an application for approval in writing, promptly notifying the applicant in writing of any additional information required and the outcome of the application; and
- c. In the case that an application is denied, promptly notifying the applicant in writing of the reasons for denying the application. If an application is denied, the applicant shall have the opportunity of submitting a new application, or resubmit documents requested or instructed by the competent authority of the Party.

⁹ For greater certainty, this Agreement shall not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement for that Party.

3. This Agreement shall not apply to:
 - a. subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, 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 investors of the Party or investments of investors of the Party;
 - b. government procurement;
 - c. services supplied in the exercise of governmental authority; and
 - d. taxation measures, except as set out in Article 39 (Taxation Measures).

CHAPTER II

PROTECTION

ARTICLE 3

TREATMENT OF INVESTMENT

1. Each Party shall accord to investments and to investors of the other Party with respect to their investments fair and equitable treatment and full protection and security in each territory in accordance with this Article.
2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 through measures or series of measures that constitute:
 - a. denial of justice in criminal, civil or administrative proceedings;
 - b. fundamental disregard of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;
 - c. manifest arbitrariness;
 - d. targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or
 - e. harassment, coercion, abuse of power or corruptive practices.
3. For greater certainty, “full protection and security” refers to the Party’s obligations to ensure the physical protection and security of investments and of investors with respect to their investments.
4. For greater certainty, a determination that there has been a breach of another provision of this Agreement, or of any other international agreement, does not in itself establish that there has been a breach of this Article.

ARTICLE 4

NATIONAL TREATMENT

1. Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the management, conduct, operation, and sale or other disposition¹⁰ of investments.

¹⁰ For greater certainty, this Article shall not apply to any measure by a Party relating to the divestment of investments in specific sectors where the foreign investors were made aware, as of the date or during the

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

3. 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 investments of investors, of the Party of which that regional level of government forms a part.

ARTICLE 5

MOST-FAVoured-NATION TREATMENT

1. Each Party shall accord to investments of investors of the other Party 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 management, conduct, operation, and sale or other disposition of investments.

2. The provisions of this Article shall not be construed so as to oblige a Party to extend to the investors of the other Party and investments of investors of the other Party the benefit of any treatment, preference or privilege resulting from:

- a. any existing and future customs union, free trade area, free trade arrangement, common market, monetary union or similar international agreement or other forms of regional cooperation or regional economic community to which either of the Parties is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union, area or arrangement;
- b. any existing bilateral investment agreements (also commonly referred to as “investment guarantee agreements”, “investment promotion and protection agreements”, or “international investment agreements”) that were initialled, signed or have entered into force prior to the entry into force of this Agreement¹¹;
- c. any arrangement with a non-Party or parties in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects; or
- d. any existing and future international agreement for the avoidance of double taxation or other international taxation agreements or arrangements.

3. For greater certainty, substantive obligations in other international investment treaties or other trade agreements do not in themselves constitute “treatment”, and thus cannot give rise to a breach of this Article, provided that no measures have been adopted or maintained by a Party pursuant to such obligations.

ARTICLE 6

EXPROPRIATION AND COMPENSATION¹²

1. A Party shall not expropriate or nationalise an investment either directly or through measures equivalent to expropriation or nationalisation (expropriation), except:

registration of their investment, that their investment would be divested in future in accordance with the Party's domestic legislation.

¹¹ For greater certainty, “bilateral investment agreements” include any subsequent reviews or amendments to those agreements.

¹² This Article shall be interpreted in accordance with Annex I (Expropriation).

- a. for a public purpose;
 - b. in a non-discriminatory manner;
 - c. on payment of prompt, adequate and effective compensation; and
 - d. in accordance with due process of law.
2. The compensation referred to in sub-paragraph 1(c) shall:
- a. be paid without undue delay¹³;
 - b. be equivalent to the fair market value of the expropriated investment at the time when or immediately before the expropriation took place (“the date of expropriation”) or before the expropriation was publicly announced, or when the expropriation occurred, whichever is applicable;
 - c. not reflect any change in value because the intended expropriation had become known earlier; and
 - d. be effectively realisable, freely usable and freely transferable between the territories of the Parties.
3. The compensation referred to in sub-paragraph 1(c) shall include appropriate interest. The compensation, including any accrued interest, shall be payable either in the currency of the expropriating Party or, if requested by the investor, in a freely usable currency.
4. If an investor requests payment in a freely usable currency, the compensation referred to in sub-paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the 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 Agreement¹⁴.

ARTICLE 7

COMPENSATION FOR LOSSES

1. Investors of a Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, civil disturbances, a state of national emergency, revolt, insurrection, riot or other similar situations in the territory of the latter Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Party accords to investors of any non-Party or to its own investors, whichever is more favourable. Any resulting compensation shall be made in freely usable currency and be freely transferable in accordance with Article 8 (Transfers).
2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:
- a. requisitioning of the investment or part thereof of the investor by the latter Party's forces or authorities; or
 - b. destruction of the investment or part thereof of the investor by the latter Party's forces or authorities, which was not required by the necessity of the situation,

¹³ The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

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.

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss in accordance with Article 6 (Expropriation and Compensation).

ARTICLE 8

TRANSFERS

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

- a. contributions to capital, including the initial contribution;
- b. profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
- c. interest, royalty payments, management fees, and technical assistance and other fees;
- d. payments made under a contract, entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
- e. payments made pursuant to Article 6 (Expropriation and Compensation) and Article 7 (Compensation for Losses); and
- f. payments arising under Chapter III (Dispute Settlement).

2. Each Party shall permit such transfers to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

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

- a. bankruptcy, insolvency, or the protection of the rights of creditors;
- b. 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;
- e. ensuring compliance with orders or judgments in judicial or administrative proceedings;
- f. social security, public retirement, or compulsory savings schemes;
- g. severance entitlements of employees;
- h. the requirement to register and satisfy other formalities imposed by the central bank or other relevant authorities of a Party; or
- i. taxation.

4. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the *Articles of Agreement of the International Monetary Fund* provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Agreement regarding such transactions, except under Article 9 (Restrictions to Safeguard the Balance of Payments) or at the request of the International Monetary Fund.

ARTICLE 9

RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. In the event of serious balance of payments and external financial difficulties or threat thereof, or in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and

exchange rate policies, a Party may adopt or maintain restrictions on payments, transfers or capital movements, related to investments. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:
 - a. be consistent with the *Articles of Agreement of the International Monetary Fund*;
 - b. avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
 - c. not exceed those necessary to deal with the circumstances described in paragraph 1;
 - d. be temporary and be phased out progressively as the situation specified in paragraph 1 improves; and
 - e. be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party;
3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Party.
4. The Party adopting any restrictions under paragraph 1 shall promptly agree to the other Party's request for consultation to review the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement.

ARTICLE 10

SUBROGATION

1. If either Party (or any agency, institution, statutory body, or corporation designated by it), as a result of an indemnity it has given on non-commercial risks in respect of an investment or any part thereof, makes payment to its own investors in respect of any of their claims under this Agreement, the other Party shall recognise that the Party making payment to its own investors (or any agency, institution, statutory body, or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of the said investor. This, however, does not necessarily imply recognition by the other Party of the merits of any case or the amount of any claims arising therefrom.
2. Where a Party (or any agency, institution, statutory body, or corporation designated by it) 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 any agency, institution, statutory body, or corporation designated by it) making the payment, pursue those rights and claims against the other Party.

ARTICLE 11

RIGHT TO REGULATE

1. Nothing in this Agreement shall affect the right of the Parties to regulate within their respective territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social, or consumer protection or the promotion and protection of cultural diversity.
2. For greater certainty, the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an

obligation under this Agreement.

ARTICLE 12

COMPLIANCE WITH DOMESTIC LAWS AND REGULATIONS

Without prejudice to this Agreement, an investor of a Party and its investment shall comply with all laws and regulations of the other Party, where the investment is located, concerning the establishment, acquisition, expansion, management, operation, and sale or other disposition of such investment.

ARTICLE 13

CORPORATE SOCIAL RESPONSIBILITY

Each Party shall encourage enterprises operating within its territory to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party.

ARTICLE 14

MEASURES AGAINST CORRUPTION

1. The Parties reaffirm that bribery and other forms of corruption in any investment activities can undermine democracy and rule of law, discourage foreign investment and adversely affect economic development of the Parties.
2. Nothing in this Agreement shall prevent a Party from undertaking measures to prevent and combat bribery and other forms of corruption in any investment activities within its territory, provided that such measures are not inconsistent with this Agreement.

CHAPTER III

DISPUTE SETTLEMENT

SECTION ONE: SETTLEMENT OF DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY

ARTICLE 15

SCOPE AND BASIC PRINCIPLES

1. This Section shall apply to disputes between a Party (hereinafter referred to as the “disputing Party”) and an investor of the other Party (hereinafter referred to as the “disputing investor”) concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment (hereinafter referred to as an “investment dispute”). In the event of an investment dispute, the disputing parties should seek to resolve the dispute with a view towards reaching an amicable settlement.

2 For greater certainty, objections that a disputing Party may raise in any proceedings under this Section would include, but not be limited to, objections on the ground that an investment has been made, established, acquired or admitted through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.

ARTICLE 16

CONSULTATIONS

1. The disputing parties shall initially seek to resolve an investment dispute by consultations and negotiations (“consultations”), which may include the use of non-binding, third party procedures, such as good offices, conciliation and mediation. Such consultations shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Party.

2. With the objective of resolving an investment dispute through consultations, the written request for consultations shall contain information regarding the legal and factual basis for the investment dispute, including the name and address of the disputing investor, the provisions of this Agreement alleged to have been breached, the relief sought and the estimated amount of damages claimed, and evidence establishing that the disputing investor is an investor of the other party and that it owns or controls the investments.

3. Consultations shall commence within 30 days of receipt by the disputing Party of the written request for consultations, unless the disputing parties otherwise agree, and the place for consultations shall be Jakarta where the disputing Party is Indonesia, or Dili where the disputing Party is Timor-Leste.

ARTICLE 17

MEDIATION

1. If the dispute cannot be resolved within 180 days from the date of receipt by the disputing Party of the written request for consultations, the disputing Party may initiate a mediation process, which shall be mandatory for the disputing investor, with a view towards reaching an amicable settlement. Such a mediation process shall be initiated by a written request delivered by the disputing Party to the disputing investor.

2. The mediation process under this Article can only be initiated by a written request delivered by the disputing Party within 180 days from the date of receipt by the disputing Party of the written request for consultations.

3. Expenses incurred in relation to the mediation process shall be borne equally by the disputing parties. Each disputing party shall bear its own legal expenses.

ARTICLE 18

SUBMISSION OF A CLAIM

1. If an investment dispute cannot be resolved within 1 year from the date of delivery of the written request for consultations pursuant to Article 16 (Consultations) then a disputing investor may submit a claim to one of the following fora:

- a. arbitration under the ICSID Convention and the ICSID Arbitration Rules, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;
- b. arbitration under the ICSID Additional Facility Rules, provided that either the disputing Party or the Party of the disputing investor is a party to the ICSID Convention;
- c. arbitration under the UNCITRAL Arbitration Rules; or
- d. any other arbitral institutions or under any other arbitration rules, if the disputing parties so agree,

provided that resort to any arbitration rules or fora under sub-paragraphs (a) to (d) shall exclude resort to the others.

For the avoidance of doubt, the disputing investor may submit a claim on its own behalf in respect of loss or damage that has been incurred by the disputing investor, or on behalf of an enterprise of the disputing Party that the disputing investor owns or controls, either directly or indirectly, in respect of loss or damage that has been incurred by the enterprise.

2. Each Party hereby consents to the submission of an investment dispute to arbitration under paragraph 1 in accordance with the provisions of this Section, conditional upon:

- a. the submission of the dispute to such arbitration taking place within three years of the time at which the disputing investor became aware, or should have reasonably become aware, of a breach of an obligation under this Agreement causing loss or damage to the disputing investor or its investment;
- b. the disputing investor providing written consent to arbitration in accordance with the provisions set out in this Section;
- c. the legal and factual basis for the dispute was subject to prior consultation or conciliation pursuant to Article 16 (Consultations) or Article 17 (Mediation) respectively;
- d. the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Party of its intent to submit the dispute to such arbitration and which:
 - (i) states the name and address of the disputing investor and, where a dispute is submitted on behalf of an enterprise, the name, address, and place of constitution of the enterprise;

- (ii) nominates one of the fora referred to in paragraph 1 as the forum for dispute settlement;
 - (iii) waives the disputing investor's right to initiate or continue any proceedings before any of the other dispute settlement fora referred to in paragraph 1 in relation to the matter under dispute;
 - (iv) provides, where a dispute is submitted on behalf of a locally established enterprise, the enterprise's written waiver of its right to initiate or continue any proceedings before any of the other dispute settlement fora referred to in paragraph 1 in relation to the matter under dispute;
 - (v) briefly summarises the alleged breach of the disputing Party under this Agreement (including the provisions alleged to have been breached), the legal and factual basis for the dispute, and the loss or damage allegedly caused to the disputing investor or its investment by reason of that breach; and
- e. no final award concerning the same treatment as alleged to breach the provisions of Chapter II (Protection) having been rendered in a claim submitted by the disputing investor to another international tribunal established pursuant to this Section, or any other treaty.

3. Notwithstanding sub-paragraph 2(d)(iii), the disputing investor shall not be prevented from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving the disputing investor's rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Party.

4. For the purposes of sub-paragraph 2(e), the term "disputing investor" refers to the investor and, where applicable, to the locally established enterprise, and includes all persons who directly or indirectly have an ownership interest in, or who are controlled by the investor or, where applicable, the locally established enterprise.

5. The consent under paragraph 2 and the submission of a claim to arbitration under this Section shall 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".

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

ARTICLE 19

THIRD-PARTY FUNDING

1. Any disputing party benefiting from third-party funding shall notify the other disputing party and the Tribunal of the name and address of the third-party funder.

2. Such notification shall be made at the time of submission of a claim, or without delay as soon as the third-party funding is agreed, donated or granted, as applicable.

ARTICLE 20

CONSTITUTION OF THE ARBITRAL TRIBUNAL

1. Unless the disputing parties otherwise agree, the arbitral tribunal shall be composed of three arbitrators, who shall not be nationals or permanent residents of either Party. Each disputing party shall appoint one arbitrator and the disputing parties shall agree upon a third arbitrator, who shall be the chairman of the arbitral tribunal. The chairman of the arbitral tribunal shall be a national of a non-Party which has diplomatic relations with the disputing Party and the non-disputing Party. If an arbitral tribunal has not been established within 90 days from the date on which the claim was submitted to arbitration, either because a disputing party failed to appoint an arbitrator or because the disputing parties failed to agree upon the chairman, the Secretary-General of ICSID, upon request of either disputing party, shall appoint, at his own discretion, the arbitrator or arbitrators not yet appointed. If the Secretary-General of ICSID is a national or permanent resident of either Party, or he or she is otherwise unable to act, the Deputy Secretary-General of ICSID, who is not a national or permanent resident of either Party, may be invited to make the necessary appointments.
2. The arbitrators shall have experience or expertise in public international law. It is desirable that they have expertise, in particular, in international investment law, international trade law, or the resolution of disputes arising under international investment or international trade agreements. The arbitrators shall be independent from the Parties and the disputing investor, and not be affiliated to or receive instructions from any of them.
3. The disputing parties may establish rules relating to expenses incurred by the tribunal, including remuneration of the arbitrators.
4. Where any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and the successor shall have all the powers and duties of the original arbitrator.
5. Arbitrators appointed under this Section shall comply with Annex II (Code of Conduct for Arbitrators and Mediators).

ARTICLE 21

GOVERNING LAW

1. Subject to paragraphs 2 and 3 of this Article, when a claim is submitted under Article 18 (Submission of a Claim), the tribunal shall decide the issues in dispute in accordance with this Agreement, any other applicable agreements between the Parties, and the applicable rules of international law.
2. The tribunal may, on its own account or at the request of a disputing Party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of the delivery of the request. For the avoidance of doubt, the Parties may also adopt, on their own account, joint interpretations of provisions of this Agreement.
3. A joint decision of the Parties on the interpretation of a provision of this Agreement shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that joint decision.

ARTICLE 22

PLACE OF ARBITRATION

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

ARTICLE 23

ARBITRAL PROCEEDINGS

1. 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, a tribunal shall, before proceeding to the merits, address and decide as a preliminary question any objection by the disputing Party that, as a matter of law, a claim submitted is not a claim for which an award in favour of the disputing investor may be made under Article 24 (Awards), or that a claim is frivolous or manifestly without merit, even if the facts alleged¹⁵ were assumed to be true. The tribunal may also consider any relevant facts not in dispute. The disputing Party shall specify as precisely as possible the basis for the objection.

- a. Such objection 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 disputing Party to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the disputing Party 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. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal.
- c. The disputing Party does not waive any objection as to competence or any argument on the merits merely because the disputing Party did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 2. For greater certainty, such objections or arguments may be raised at another stage of the proceedings.

2. In the event that the disputing Party so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis any preliminary objection under paragraph 1 and any objection that the dispute is not within the tribunal's competence. 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.

3. The tribunal may, if warranted, award to the prevailing disputing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the disputing parties a reasonable opportunity to comment.

¹⁵ For the purposes of this paragraph, the facts alleged refer to those made in support of the 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.

ARTICLE 24

AWARDS

1. Where a tribunal makes a final award against a disputing Party, 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 representing the fair market value of the property at the time immediately before the expropriation or impending expropriation became known, whichever is earlier, and any applicable interest in lieu of restitution, determined in a manner consistent with Article 6 (Expropriation and Compensation) of Chapter II (Protection).
2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.
3. A tribunal may not award punitive damages.
4. In any arbitration conducted under this Section, at the request of a disputing investor, 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 the proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.
5. Where a claim is submitted on behalf of an enterprise of the disputing Party, the arbitral award shall be made to the enterprise.
6. Any arbitral award shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.
7. Subject to paragraph 8 of this Article and the applicable review procedure for an interim award, the disputing parties shall abide by and comply with an award without delay.
8. A disputing investor may not seek enforcement of a final award until:
 - a. in the case of a final award under the ICSID Convention:
 - (i) 120 days has 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;
 - b. in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to paragraph 1 of Article 18 (Submission of a Claim):
 - (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.
9. Each Party shall provide for the enforcement of an award in its territory. Each Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

ARTICLE 25

COSTS

1. The tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the case.
2. Other reasonable costs, including 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.
3. If only parts of the claims have been successful, the costs awarded shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

ARTICLE 26

SECURITY FOR COSTS

Upon request by the disputing Party, the tribunal may order the disputing investor to post security for all or a part of the costs, if there are reasonable grounds to believe that the disputing investor risks not being able to honour a possible decision on costs issued against it.

ARTICLE 27

CONSOLIDATION

Where two or more claims have been submitted separately to arbitration under Article 18 (Submission of a Claim) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

ARTICLE 28

SERVICE OF DOCUMENTS

1. Notices and other documents in disputes under this Section shall be served on Indonesia by delivery to:

Director General for Legal Affairs and International Treaties
Ministry of Foreign Affairs
Jalan Taman Pejambon No. 6
Jakarta 10110
Indonesia

2. Notices and other documents in disputes under this Section shall be served on Timor-Leste by delivery to:

- a. Coordinating Minister for Economic Affairs
Palacio do Governo
Rua 30 de Agosto, Colmera
Dili, Timor-Leste; and
- b. Minister of Foreign Affairs and Cooperation
Avenida de Portugal

**SECTION TWO: SETTLEMENT OF DISPUTES BETWEEN
THE PARTIES**

ARTICLE 29

SCOPE

This Section applies to the settlement of disputes between the Parties arising from the interpretation or application of the provisions of this Agreement.

ARTICLE 30

CONSULTATIONS

1. Either Party may request in writing, consultations on the interpretation or application of this Agreement. If a dispute arises between the Parties on the interpretation or application of this Agreement, it shall, to the extent possible, be settled amicably through consultations.
2. In the event the dispute is not settled through the means mentioned above within 6 months from the date such consultations were requested in writing, then, unless the Parties agree otherwise, either Party may submit such dispute to an arbitral tribunal established in accordance with this Section or, by agreement of the Parties, to any other international tribunal.

ARTICLE 31

CONSTITUTION OF THE ARBITRAL TRIBUNAL

1. Arbitration proceedings shall initiate upon written notice delivered by a Party (hereinafter referred to as "requesting Party") to the other Party (hereinafter referred to as "respondent Party") through diplomatic channels. Such notice shall contain a statement setting forth the provisions of Chapter II (Protection) alleged to have been breached, the legal and factual grounds of the claim, a summary of the development and results of the consultations pursuant to Article 30 (Consultations), the requesting Party's intention to initiate proceedings under this Section and the name of the arbitrator appointed by such requesting Party.
2. Within 30 days after delivery of such notice, the respondent Party shall notify the requesting Party the name of its appointed arbitrator.
3. Within 30 days following the date on which the second arbitrator was appointed, the Parties shall appoint, by mutual agreement, a third arbitrator, who shall be the chairman of the arbitral tribunal. In the event that the Parties fail to mutually agree on the appointment of the third arbitrator, the arbitrators appointed by the Parties shall, within 30 days, appoint the third arbitrator, who shall be the chairman of the arbitral tribunal.
4. The arbitrators shall have experience or expertise in public international law. It is desirable that they have expertise, in particular, in international investment law, international trade law, or the resolution of disputes arising under international investment or international trade agreements. The arbitrators shall be independent from the Parties, and not be affiliated to or receive instructions from either of them.

5. With regard to the selection of arbitrators under paragraphs 1, 2, and 3 of this Article, both Parties and, where relevant, the arbitrators appointed by them, shall not select arbitrators that are nationals or permanent residents of either Party. In addition, the third arbitrator shall be a national of a non-Party which has diplomatic relations with the Parties.

6. If the required appointments have not been made within the time limits set forth in paragraphs 2 and 3 above, either Party may invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President of the International Court of Justice is a national or a permanent resident of either Party, or he or she is otherwise unable to act, the Vice-President of the International Court of Justice shall be invited to make the said appointments. If the Vice-President of the International Court of Justice is a national or a permanent resident of either Party, or he or she is otherwise unable to act, the Member of the International Court of Justice next in seniority who is neither a national nor a permanent resident of either Party shall be invited to make the necessary appointments.

7. In the event an arbitrator appointed under this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and he or she shall have the same powers and duties that the original arbitrator had.

8. Each Party shall bear the costs of its appointed arbitrator and of any legal representation in the proceedings. The costs of the chairman of the arbitral tribunal and of other expenses associated with the conduct of the arbitration shall be borne equally by the Parties, unless the arbitral tribunal decides that a higher proportion of costs be borne by one of the Parties.

ARTICLE 32

PLACE OF ARBITRATION

Unless the Parties agree otherwise, the place of arbitration shall be determined by the arbitral tribunal.

ARTICLE 33

ARBITRAL PROCEEDINGS

1. A tribunal established under this Section shall decide all questions relating to its competence and, subject to any agreement between the Parties, determine its own procedure. At any stage of the proceedings, the arbitral tribunal may propose to the Parties that the dispute be settled amicably. At all times, the arbitral tribunal shall afford a fair hearing to the Parties.

2. The arbitral tribunal shall decide the issues in dispute in accordance with this Agreement and the applicable rules and principles of international law.

3. The arbitral tribunal shall reach its decision by majority vote. The award shall be issued in writing and shall contain the applicable factual and legal findings. A signed award shall be delivered to each Party. The award shall be final and binding on the Parties.

CHAPTER IV

FINAL PROVISIONS

ARTICLE 34

OTHER OBLIGATIONS

If the legislation of either Party or international obligations existing at present or established hereafter between the Parties in addition to this Agreement, results in a position entitling investments by investors of the other Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement.

ARTICLE 35

DENIAL OF BENEFITS

1. A Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of that 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 any Party other than the denying Party.
2. A Party may deny the benefits of this Agreement to an investor of the other Party if a person of a non-Party owns or controls the enterprise and the denying Party does not maintain diplomatic relations with that non-Party.
3. A Party may deny the benefits of this Agreement 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 Agreement were accorded to the enterprise or to its investments.

ARTICLE 36

TRANSPARENCY

1. Each Party shall ensure that its laws, regulations, and administrative rulings of general application pertaining to or affecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons or the other Party to become acquainted with them. International agreements pertaining to or affecting investors or investment activities, to which a Party is a signatory, shall also be published.
2. To the extent feasible, each Party shall make the measures and international agreements of the kind referred to in paragraph 1 available on the internet. Each Party shall, upon request by the other Party, respond within a reasonable period of time to specific questions from and provide information to the other Party with respect to matters referred to in paragraph 1.

ARTICLE 37

PRUDENTIAL MEASURES

1. Notwithstanding any other provisions in this Agreement, a Party shall not be prevented from taking measures in a non-discriminatory manner relating to financial services for prudential reasons¹⁶, including measures for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity and stability of its financial system.
2. Where the measures taken by a Party pursuant to paragraph 1 do not conform with this Agreement, they shall not be used as a means of avoiding the commitments or obligations of the Party under this Agreement.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

ARTICLE 38

PROMOTION AND FACILITATION OF INVESTMENT

1. Subject to its laws and regulations, each Party shall endeavour to cooperate in the facilitation of investments between the Parties including through:
 - a. creating the necessary environment for all forms of investments;
 - b. simplifying procedures for investment applications and approvals;
 - c. promoting dissemination of investment information, including investment rules, regulations, policies and procedures; and
 - d. establishing an appropriate mechanism, to the extent possible, to provide assistance and advisory services to investors including facilitation of operating licenses and permits.
2. Subject to its laws and regulations, cooperation activities under sub-paragraph 1(d) may be built on existing agreements or arrangements already in place for economic cooperation.
3. Nothing in this Article shall be construed to affect any obligation in the provisions of Chapter II (Protection), or be subject to or otherwise affect any dispute resolution proceedings under this Agreement.

ARTICLE 39

TAXATION MEASURES

1. For the purposes of this Article:

tax convention means a convention for the avoidance of double taxation or other international taxation agreement or arrangement to which Indonesia or Timor-Leste is party;
2. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

¹⁶ The Parties understand that the term 'prudential reasons' includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

3. This Agreement shall only grant rights and impose obligations with respect to taxation measures where:
 - (a) they are granted or imposed under Article 6 (Expropriation and Compensation); or
 - (b) they are granted or imposed under Article 8 (Transfers).
4. Where sub-paragraph 3(a) apply, Section One (Settlement of Disputes between a Party and an Investor of the other Party) of Chapter III (Dispute Settlement), shall also apply in respect of taxation measures.
5.
 - (a) No investor may invoke Article 6 (Expropriation and Compensation) as the basis for a claim if it has been determined pursuant to this paragraph that the taxation measure is not an expropriation. An investor that seeks to invoke Article 6 (Expropriation and Compensation) with respect to a taxation measure must first refer to the competent authorities of the Party of the investor and the respondent Party, at the time that it makes its request for consultations under Article 16 (Consultations), the issue of whether that taxation measure is not an expropriation. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the taxation measure is not an expropriation within a period of 365 days of the referral, the investor may submit its claim to arbitration under Article 18 (Submission of a Claim).
 - (b) For the purposes of this paragraph, competent authorities means:
 - (i) with respect to Indonesia, the Minister of Finance or his or her authorised representative;
 - (ii) with respect to Timor-Leste, the Minister of Finance or his or her authorised representative;or any successor of these competent authorities as notified in writing to the other Party.
6. In assessing whether a measure related to taxation constitutes expropriation, the following considerations shall be taken into account:
 - (a) the imposition of taxes does not generally constitute expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment, does not in and itself constitute expropriation;
 - (b) enforcement activities of the tax laws including seizure of property for the purpose of tax collection do not generally constitute expropriation;
 - (c) taxation measures which are consistent with internationally recognized tax policies, principles and practices do not generally constitute expropriation. In particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not be considered to be expropriatory; and
 - (d) taxation measures which are applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers, are not likely to constitute expropriation. A taxation measure should not constitute expropriation if, when the investment is made, it was already in force and information about the measure was made public or otherwise made publicly available.
7.
 - (a) Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the designated authorities shall have the sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.
 - (b) For the purposes of this paragraph, designated authorities means:
 - (i) with respect to Indonesia, the Minister of Finance or his or her authorized representative;
 - (iii) with respect to Timor-Leste, the Minister of Finance or his or her authorised representative;

or any successor of these designated authorities as notified in writing to the other Party.

8. Nothing in this Agreement shall oblige a Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future tax convention by which the Party is bound.

ARTICLE 40

ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on the date of exchange of Instruments of Ratification by the Parties.
2. This Agreement may be amended by mutual consent of the Parties in writing. The amendments shall enter into force in accordance with the same legal procedure prescribed under paragraph 1.
3. This Agreement shall remain in force for a period of 10 years and shall continue in force thereafter, unless, at any time after the expiry of the initial period of 10 years, either Party notifies in writing the other Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Party.
4. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a further period of 10 years from that date.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at _____ on _____ in the Portuguese, Indonesian, and English languages, all texts being equally authentic. In the event of any divergence concerning interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF
THE DEMOCRATIC REPUBLIC OF
TIMOR-LESTE**

**FOR THE GOVERNMENT OF
THE REPUBLIC OF INDONESIA**

ANNEX I EXPROPRIATION

1. An action or a series of related 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 6 (Expropriation and Compensation) addresses two situations:
 - a. the first situation is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
 - b. the second situation is where an action or series of related actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
3. The determination of whether an action or series of related actions by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in sub-paragraph 2(b) requires a case-by-case, fact-based inquiry that considers, among other factors:
 - a. the economic impact of the government action, although the fact that an action or series of related actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an indirect expropriation has occurred;
 - b. the extent to which the government action interferes with distinct, reasonable investment-backed expectations¹⁷; and
 - c. the character of the government action, including its objective and whether the action is disproportionate to the public purpose.
4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety and the environment do not constitute expropriation of the type referred to in sub-paragraph 2(b).

¹⁷ For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector

ANNEX II CODE OF CONDUCT FOR ARBITRATORS AND MEDIATORS

Definitions

1. In this Code of Conduct:

arbitrator means a member of an arbitral tribunal established pursuant to Article 20 (Constitution of the Arbitral Tribunal);

mediator means a person who conducts mediation in accordance with Article 17 (Mediation);

candidate means an individual who is under consideration for selection as an arbitrator;

assistant means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator;

staff, in respect of an arbitrator, means any person under the direction and control of the arbitrator, other than an assistant; and

proceedings, unless otherwise specified, means arbitral proceedings under Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement).

Responsibilities to the Process

2. Throughout the proceedings, every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved.

3. Arbitrators shall not take instructions from any organisation or government with regard to matters before the arbitral tribunal.

Disclosure Obligations

4. Prior to his or her appointment as an arbitrator, a candidate shall disclose to the disputing parties any past or present 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 bias in the proceedings. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

5. Once appointed, an arbitrator shall at all times continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 4 and shall disclose them. The disclosure obligation is a continuing duty, which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the proceedings at the earliest time the arbitrator becomes aware of it. The arbitrator shall disclose such interests, relationships or matters by informing the disputing parties, in writing, for their consideration.

6. Disclosure of an interest, relationship or matter is without prejudice as to whether that interest, relationship or matter is indeed covered by paragraphs 4 or 5, or whether it warrants recusal or disqualification. In the event of uncertainty regarding whether an interest, relationship or matter must be disclosed, a candidate or arbitrator should err in favour of disclosure.

7. An arbitrator shall communicate matters concerning actual or potential violations of this Code of Conduct to the disputing parties.

Duties of Arbitrators

8. An arbitrator shall comply with the provisions of Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement) and the applicable rules of procedure.

9. An arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceedings, and with fairness and diligence.

10. An arbitrator shall not deny other arbitrators the opportunity to participate in all aspects of the proceedings.

11. An arbitrator shall consider only those issues raised in the proceedings and necessary for a decision or award and shall not delegate this duty to any other person.

12. An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with, paragraphs 2 to 6 and 21 to 24 of this Code of Conduct.

13. An arbitrator shall not engage in any *ex parte* contacts concerning the proceedings.

Independence and Impartiality of Arbitrators

14. An arbitrator shall be independent and impartial and avoid creating an appearance of bias or impropriety and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a disputing party or a non-disputing Party, or fear of criticism.

15. An arbitrator 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 his or her duties.

16. An arbitrator shall not use his or her position on the arbitral tribunal to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him or her.

17. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgement.

18. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.

Obligations of Former Arbitrators

19. A former arbitrator shall avoid actions that may create the appearance that he or she was biased in carrying out his or her duties or derived any advantage from the decisions or awards of the arbitral tribunal.

Confidentiality

20. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding, except for the purposes of

that proceedings, and shall not, in particular, disclose or use any such information to gain a personal advantage or an advantage for others or to adversely affect the interests of others.

21. An arbitrator shall not make any public statement regarding the merits of a pending proceedings.

22. An arbitrator shall not disclose a decision or award or parts thereof prior to its publication.

23. An arbitrator or former arbitrator shall not at any time disclose the deliberations of the arbitral tribunal, or any arbitrator's view regarding the deliberations, except as required by law.

Expenses

24. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his or her expenses, as well as the time and expenses of his or her assistants.

Responsibilities of Assistants and Staff

25. Paragraphs 2 to 6, 8, 13, and 19 to 23 of this Code of Conduct shall also apply to assistants and staff.

Mediators

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