



Council of the  
European Union

018125/EU XXVI. GP  
Eingelangt am 18/04/18

Brussels, 18 April 2018  
(OR. en)

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**Interinstitutional File:**  
**2018/0095 (NLE)**

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## PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	18 April 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 194 final - ANNEX 1
Subject:	ANNEX to the Proposal for a Council Decision on the conclusion of the Investment Protection Agreement between the European Union and its Member States of the one part, and the Republic of Singapore, of the other part

Delegations will find attached document COM(2018) 194 final - ANNEX 1.

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Encl.: COM(2018) 194 final - ANNEX 1



EUROPEAN  
COMMISSION

Brussels, 18.4.2018  
COM(2018) 194 final

ANNEX 1

## **ANNEX**

*to the*

### **Proposal for a Council Decision**

**on the conclusion of the Investment Protection Agreement between the European Union and its Member States of the one part, and the Republic of Singapore, of the other part**

INVESTMENT PROTECTION AGREEMENT  
BETWEEN THE EUROPEAN UNION  
AND ITS MEMBER STATES, OF THE ONE PART,  
AND THE REPUBLIC OF SINGAPORE, OF THE OTHER PART

XXXX/en 1

THE EUROPEAN UNION (hereinafter referred to as the "Union"),

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE REPUBLIC OF CROATIA

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN, and

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

of the one part, and

THE REPUBLIC OF SINGAPORE (hereinafter referred to as "Singapore"),

of the other part,

hereinafter jointly referred to as "the Parties",

RECOGNISING their longstanding and strong partnership based on the common principles and values reflected in the Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Singapore, of the other part (hereinafter referred to as "EUSPCA"), and their important economic, trade and investment relationship including as reflected in the Free Trade Agreement between the European Union and the Republic of Singapore (hereinafter referred to as "EUSFTA");

DESIRING to further strengthen their relationship as part of and in a manner coherent with their overall relations, and convinced that this Agreement will create a new climate for further development of investment between the Parties;

RECOGNISING that this Agreement will complement and promote regional economic integration efforts;

DETERMINED to strengthen their economic, trade, and investment relations in accordance with the objective of sustainable development, in its economic, social and environmental dimensions, and to promote investment in a manner mindful of high levels of environmental and labour protection and relevant internationally-recognised standards and agreements to which they are parties;

REAFFIRMING their commitment to the principles of sustainable development and transparency as reflected in the EUSFTA;

REAFFIRMING each Party's right to adopt and enforce measures necessary to pursue legitimate policy objectives such as social, environmental, security, public health and safety, promotion and protection of cultural diversity;

REAFFIRMING their commitment to the Charter of the United Nations signed in San Francisco on 26 June 1945 and having regard to the principles articulated in The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948;

RECOGNISING the importance of transparency in international trade and investment to the benefit of all stakeholders;

BUILDING on their respective rights and obligations under the WTO Agreement and other multilateral, regional and bilateral agreements and arrangements to which they are party, in particular, the EUSFTA,

HAVE AGREED AS FOLLOWS:

## CHAPTER ONE

### OBJECTIVE AND GENERAL DEFINITIONS

#### ARTICLE 1.1

##### Objective

The objective of this Agreement is to enhance the investment climate between the Parties in accordance with the provisions of this Agreement.

#### ARTICLE 1.2

##### Definitions

For the purposes of this Agreement:

1. "covered investment" means an investment which is owned, directly or indirectly, or controlled, directly or indirectly, by a covered investor of one Party in the territory of the other Party<sup>1</sup>.

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<sup>1</sup> For greater certainty, investments made "in the territory of the other Party" shall include investments made in an exclusive economic zone or continental shelf, as provided in the United Nations Convention on the Law of the Sea of 10 December 1982.



"investment" means every kind of asset which has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk or a certain duration. Forms that an investment may take include:

- (a) tangible or intangible, movable or immovable property as well as any other property rights, such as leases, mortgages, liens, and pledges;
- (b) an enterprise including a branch, shares, stocks and other forms of equity participation in an enterprise, including rights derived therefrom;
- (c) bonds, debentures, and loans and other debt instruments, including rights derived therefrom;
- (d) other financial assets, including derivatives, futures and options;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) claims to money or to other assets, or to any contractual performance having an economic value;

- (g) intellectual property rights<sup>1</sup> and goodwill; and
- (h) licenses, authorisations, permits, and similar rights conferred pursuant to domestic law, including any concessions to search for, cultivate, extract or exploit natural resources.<sup>2</sup>

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 qualification as investments.

2. "covered investor" means a natural person<sup>3</sup> or a juridical person of one Party that has made an investment in the territory of the other Party.

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<sup>1</sup> "intellectual property rights" means:

- (a) all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in Annex 1C of the WTO Agreement (hereinafter referred to as the "TRIPS Agreement") namely:
  - (i) copyright and related rights;
  - (ii) patents (which, in the case of the Union, include rights derived from supplementary protection certificates);
  - (iii) trademarks;
  - (iv) designs;
  - (v) layout-designs (topographies) of integrated circuits;
  - (vi) geographical indications;
  - (vii) protection of undisclosed information; and
- (b) plant variety rights.

<sup>2</sup> For greater certainty, an order or judgment entered in a judicial or administrative action shall not constitute in itself an investment.

<sup>3</sup> The term "natural person" includes natural persons permanently residing in Latvia who are not citizens of Latvia or any other state but who are entitled, under the laws and regulations of Latvia, to receive a non-citizen's passport (Alien's Passport).

3. "natural person of a Party" means a national of Singapore, or of one of the Member States of the Union, according to their respective legislation.
4. "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether or not for profit and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association.
5. "Union juridical person" or "Singapore juridical person" means a juridical person set up in accordance with the law of the Union or a Member State of the Union or Singapore, respectively, and having its registered office, central administration<sup>1</sup> or principal place of business in the territory of the Union or Singapore, respectively. Should the juridical person have only its registered office or central administration in the territory of the Union or of Singapore, respectively, it shall not be considered as a Union juridical person or a Singapore juridical person, respectively, unless it engages in substantive business operations<sup>2</sup> in the territory of the Union or of Singapore, respectively.

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<sup>1</sup> The term "central administration" means the head office where ultimate decision making takes place.

<sup>2</sup> The EU Party understands that the concept of "effective and continuous link" with the economy of a Member State of the Union enshrined in Article 54 of the Treaty on the Functioning of the European Union is equivalent to the concept of "substantive business operations". Accordingly, for a juridical person set up in accordance with the law of Singapore and having only its registered office or central administration in the territory of Singapore, the EU Party shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous economic link with the economy of Singapore.

6. "measure" means any law, regulation, procedure, requirement or practice.
7. "treatment" or "measure"<sup>1</sup> adopted or maintained by a Party includes those 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.
8. "returns" means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interests, payments in connection with intellectual property rights, payments in kind and all other lawful income.
9. "freely convertible currency" means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.
10. "establishment" means:
- (a) the constitution, acquisition or maintenance of a juridical person; or
  - (b) the creation or maintenance of a branch or representative office,
- with a view to establishing or maintaining lasting economic links within the territory of a Party for the purpose of performing an economic activity.

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<sup>1</sup> For greater certainty, the Parties understand that the terms "treatment" or "measure" include failures to act.

11. "economic activity" includes any activities of an economic nature except activities carried out in the exercise of governmental authority, i.e., activities not carried out on a commercial basis or in competition with one or more economic operators.

12. "EU Party" means the Union or its Member States, or the Union and its Member States, within their respective areas of competence as derived from the Treaty on the European Union and the Treaty on the Functioning of the European Union.

## CHAPTER TWO

### INVESTMENT PROTECTION

#### ARTICLE 2.1

##### Scope

1. This Chapter shall apply to covered investors and covered investments made in accordance with the applicable law, whether such investments were made before or after the entry into force of this Agreement<sup>1</sup>.
2. Notwithstanding any other provision in this Agreement, Article 2.3 (National Treatment) shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

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<sup>1</sup> For greater certainty, this Chapter shall not apply to a Party's treatment of covered investors or covered investments before the entry into force of this Agreement.

3. Article 2.3 (National Treatment) shall not apply to:

- (a) the procurement by governmental agencies of goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of goods or the supply of services for commercial sale; or
- (b) audio-visual services;
- (c) activities performed in the exercise of governmental authority within the respective territories of the Parties. For the purposes of this Agreement, an activity performed in the exercise of governmental authority means any activity, except an activity which is supplied on a commercial basis or in competition with one or more suppliers.

## ARTICLE 2.2

### Investment and Regulatory Measures

1. The Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, environment or public morals, social or consumer protection privacy and data protection and 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 Chapter.

3. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or grant:

(a) in the absence of any specific commitment under domestic law or contract to issue, renew, or maintain that subsidy or grant; or

(b) if the decision is made in accordance with the terms or conditions attached to the issuance, renewal or maintenance of the subsidy or grant, if any,

does not constitute a breach of the provisions of this Chapter.

4. For greater certainty, nothing in this Chapter shall be construed as preventing a Party from discontinuing the granting of a subsidy<sup>1</sup> or requesting its reimbursement where such action has been ordered by a competent court, administrative tribunal or other competent authority<sup>2</sup>, or requiring that Party to compensate the investor therefor.

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<sup>1</sup> In the case of the EU Party, "subsidy" includes "state aid" as defined in the EU law.

<sup>2</sup> In the case of the EU Party, the competent authorities entitled to order the actions mentioned in Article 2.2 (4) are the European Commission or a court or tribunal of a Member State when applying EU law on state aid.

## ARTICLE 2.3

### National Treatment

1. Each Party shall accord to covered investors of the other Party and to their covered investments, treatment in its territory no less favourable than the treatment it accords, in like situations, to its own investors and their investments with respect to the operation, management, conduct, maintenance, use, enjoyment and sale or other disposal of their investments.
2. Notwithstanding paragraph 1, each Party may adopt or maintain any measure with respect to the operation, management, conduct, maintenance, use, enjoyment and sale or other disposal of an establishment that is not inconsistent with commitments inscribed in its Schedule of Specific Commitments in Annex 8-A and 8-B of Chapter 8 (Services, Establishment and Electronic Commerce) of the EUSFTA respectively<sup>1</sup>, where such measure is:
  - (a) a measure that is adopted on or before the entry into force of this Agreement;

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<sup>1</sup> It is understood that a measure "that is not inconsistent with the commitments inscribed in a Party's Schedule of Specific Commitments in Annex 8-A and 8-B of Chapter 8 (Services, Establishment and Electronic Commerce) of the EUSFTA, respectively" shall include any measure in respect of any sector that has not been inscribed, and any measure that is not inconsistent with any condition, limitation or reservation that has been inscribed in respect of any sector, in the respective Schedules, regardless of whether such measure affects "establishment" as defined in subparagraph (d) of Article 8.8 (Definitions) of the EUSFTA.



- (b) a measure referred to in subparagraph (a) that is being continued, replaced or amended after the entry into force of this Agreement, provided the measure is no less consistent with paragraph 1 after being continued, replaced or amended than the measure as it existed prior to its continuation, replacement or amendment; or
- (c) a measure not falling within subparagraphs (a) or (b), provided it is not applied in respect of, or in a way that causes loss or damage<sup>1</sup> to, covered investments made in the territory of the Party before the entry into force of such measure.

3. Notwithstanding paragraphs 1 and 2, a Party may adopt or enforce measures that accord to covered investors and investments of the other Party less favourable treatment than that accorded to its own investors and their investments, in like situations, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the covered investors or investments of the other Party in the territory of a Party, or is a disguised restriction on covered investments, where the measures are:

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<sup>1</sup> For the purposes of subparagraph (2)(c), it is understood that factors like the fact that a Party has provided for a reasonable phase-in period for the implementation of a measure or that a Party has made any other attempt to address the effects of the measure on covered investments made before its entry into force, shall be taken into account in determining whether the measure causes loss or damage to covered investments made before the entry into force of the measure.

- (a) necessary to protect public security, public morals or to maintain public order<sup>1</sup>;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or investments;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
  - (i) the prevention of deceptive or fraudulent practices or to deal with the effects of a default on a contract;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidential of individual records and accounts;
  - (iii) safety;

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<sup>1</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (f) aimed at ensuring the effective or equitable<sup>1</sup> imposition or collection of direct taxes in respect of investors or investments of the other Party.

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<sup>1</sup> Measures that are aimed at ensuring the effective or equitable imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

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

Tax terms or concepts in paragraph (f) and in this footnote are to be determined according to tax definitions or concepts, or equivalent or similar definitions and concepts, under domestic law of the Party taking the measure.

## ARTICLE 2.4

### Standard of Treatment

1. Each Party shall accord in its territory to covered investments of the other Party fair and equitable treatment<sup>1</sup> and full protection and security in accordance with paragraphs 2 to 6.
2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if its measure or series of measures constitute:
  - (a) denial of justice<sup>2</sup> in criminal, civil and administrative proceedings;
  - (b) a fundamental breach of due process;
  - (c) manifestly arbitrary conduct;
  - (d) harassment, coercion, abuse of power or similar bad faith conduct.

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<sup>1</sup> Treatment in this Article includes treatment of covered investors which directly or indirectly interferes with the covered investors' operation, management, conduct, maintenance, use, enjoyment and sale or other disposal of their covered investments.

<sup>2</sup> For greater certainty, the sole fact that the covered investor's claim has been rejected, dismissed or unsuccessful does not in itself constitute a denial of justice.

3. In determining whether the fair and equitable treatment obligation, as set out in paragraph 2, has been breached, a Tribunal may take into account, where applicable, whether a Party made specific or unambiguous representations<sup>1</sup> to an investor so as to induce the investment, that created legitimate expectations of a covered investor and which were reasonably relied upon by the covered investor, but that the Party subsequently frustrated<sup>2</sup>.
4. The Parties shall, upon request of a Party or recommendations by the Committee, review the content of the obligation to provide fair and equitable treatment, pursuant to the procedure for amendments set out in Article 4.3 (Amendments), in particular, whether treatment other than those listed in paragraph 2 can also constitute a breach of fair and equitable treatment.
5. For greater certainty, "full protection and security" only refers to a Party's obligation relating to physical security of covered investors and investments.

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<sup>1</sup> For greater certainty, representations made so as to induce the investments include the representations made in order to convince the investor to continue with, not to liquidate or to make subsequent investments.

<sup>2</sup> For greater certainty, the frustration of legitimate expectations as described in this paragraph does not, by itself, amount to a breach of paragraph 2, and such frustration of legitimate expectations must arise out of the same events or circumstances that give rise to the breach of paragraph 2.

6. Where a Party, itself or through any entity mentioned in paragraph 7 of Article 1.2 (Definitions), had given a specific and clearly spelt out commitment in a contractual written obligation<sup>1</sup> towards a covered investor of the other Party with respect to the covered investor's investment or towards such covered investment, that Party shall not frustrate or undermine the said commitment through the exercise of its governmental authority<sup>2</sup> either:

- (a) deliberately; or
- (b) in a way which substantially alters the balance of rights and obligation in the contractual written obligation unless the Party provides reasonable compensation to restore the covered investor or investment to a position which it would have been in had the frustration or undermining not occurred.

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

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<sup>1</sup> For the purposes of this paragraph, a "contractual written obligation" means an agreement in writing, entered into by a Party, itself or through any entity mentioned in paragraph 7 of Article 1.2 (Definitions), with a covered investor or a covered investment whether in a single instrument or multiple instruments, that creates an exchange of rights and obligations, binding both parties.

<sup>2</sup> For the purposes of this Article, a Party frustrates or undermines a commitment through the exercise of its governmental authority when it frustrates or undermines the said commitment through the adoption, maintenance or non-adoption of measures mandatory or enforceable under domestic laws.

## ARTICLE 2.5

### Compensation for Losses

1. Covered investors of one Party whose covered investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Party shall be accorded by that Party, as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that accorded by that Party to its own investors or to the investors of any third country, whichever is more favourable to the covered investor concerned.

2. Without prejudice to paragraph 1, covered investors of a Party who, in any of the situations referred to in paragraph 1, suffer losses in the territory of the other Party resulting from:

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

shall be accorded by the other Party restitution or compensation.

## ARTICLE 2.6

### Expropriation<sup>1</sup>

1. Neither Party shall directly or indirectly nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") the covered investments of covered investors of the other Party except:

- (a) for a public purpose;
- (b) in accordance with due process of law;
- (c) on a non-discriminatory basis; and
- (d) against payment of prompt, adequate and effective compensation in accordance with paragraph 2.

2. Compensation shall amount to the fair market value of the covered investment immediately before its expropriation or impending expropriation became public knowledge plus interest at a commercially reasonable rate, established on a market basis taking into account the length of time from the time of expropriation until the time of payment. Such compensation shall be effectively realisable, freely transferable in accordance with Article 2.7 (Transfer) and made without delay.

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<sup>1</sup> For greater certainty, this Article shall be interpreted in accordance with Annexes 1 to 3.



Valuation criteria used to determine fair market value may include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate.

3. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, to the extent that such issuance is consistent with the TRIPS Agreement.
4. Any measure of expropriation or valuation shall, at the request of the covered investors affected, be reviewed by a judicial or other independent authority of the Party taking the measure.

## ARTICLE 2.7

### Transfer

1. Each Party shall permit all transfers relating to a covered investment to be made in a freely convertible currency without restriction or delay. Such transfers include:
  - (a) contributions to capital such as principal and additional funds to maintain, develop or increase the covered investment;
  - (b) profits, dividends, capital gains and other returns, proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
  - (c) interest, royalty payments, management fees, and technical assistance and other fees;

- (d) payments made under a contract entered into by the covered investor, or its covered investment, including payments made pursuant to a loan agreement;
- (e) earnings and other remuneration of personnel engaged from abroad and working in connection with a covered investment;
- (f) payments made pursuant to Article 2.6 (Expropriation) and Article 2.5 (Compensation for Losses);
- (g) payments arising under Article 3.18 (Award).

2. Nothing in this Article shall be construed to prevent a Party from applying in an equitable and non-discriminatory manner its law 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) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offences;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;

(f) social security, public retirement or compulsory savings schemes; or

(g) taxation.

3. When in exceptional circumstances of serious difficulties, or threat thereof, for the operation of the economic and monetary policy or exchange rate policy in either Party, safeguard measures with regard to transfers may temporarily be taken by the Party concerned. Such measures shall be strictly necessary, shall not exceed in any case a period of six months<sup>1</sup>, and shall not constitute a means of arbitrary or unjustified discrimination between a Party and a non-Party in like situations.

The Party adopting the safeguard measures shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.

4. Where a Party is in serious balance-of-payments and external financial difficulties, or under threat thereof, it may adopt or maintain restrictive measures with regard to transfers related to investments.

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<sup>1</sup> The application of safeguard measures may be extended through their formal reintroduction in case of continuing exceptional circumstances and after having notified the other Party regarding the implementation of any proposed formal reintroduction.

5. The Parties shall endeavour to avoid the application of the restrictive measures referred to in paragraph 4. Any restrictive measures adopted or maintained under paragraph 4 shall be non-discriminatory, of a limited duration, and not go beyond what is necessary to remedy the balance-of-payments and external financial situation. They shall be in accordance with the conditions established in the Marrakesh Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994 (hereinafter referred to as "WTO Agreement") and consistent with the Articles of Agreement of the International Monetary Fund, as applicable.

6. Any Party maintaining or having adopted restrictive measures under paragraph 4, or any changes thereto, shall promptly notify the other Party of them.

7. Where restrictions are adopted or maintained under paragraph 4, consultations shall be held promptly in the Committee. Such consultations shall assess the balance-of-payments situation of the Party concerned and the restrictions adopted or maintained under paragraph 4, taking into account, *inter alia*, such factors as:

- (a) the nature and extent of the balance-of-payments and the external financial difficulties;
- (b) the external economic and trading environment; or
- (c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 4 and 5. All findings of statistical and other facts presented by the International Monetary Fund (hereinafter referred to as "IMF") relating to foreign exchange, monetary reserves and balance-of-payments shall be accepted and conclusions shall be based on the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.

## ARTICLE 2.8

### Subrogation

If a Party, or an agency acting on behalf of the Party, makes a payment in favour of any of its investors under a guarantee, a contract of insurance or other form of indemnity it has entered into or granted in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or title or the assignment of any claim in respect of such investment. The Party or the agency shall have the right to exercise the subrogated or assigned right or claim to the same extent as the original right or claim of the investor. Such subrogated rights may be exercised by the Party or an agency or by the investor if the Party or the agency so authorises.

## CHAPTER THREE

### DISPUTE SETTLEMENT

#### SECTION A

#### RESOLUTION OF DISPUTES BETWEEN INVESTORS AND PARTIES

##### ARTICLE 3.1

##### Scope and Definitions

1. This Section shall apply to a dispute between a claimant of one Party and the other Party concerning treatment<sup>1</sup> alleged to breach the provisions of Chapter Two (Investment Protection) which breach allegedly causes loss or damage to the claimant or its locally established company.
2. For the purposes of this Section, unless otherwise specified:
  - (a) "disputing parties" means the claimant and the respondent;

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<sup>1</sup> The Parties understand that the term "treatment" may include failures to act.

- (b) "claimant" means an investor of a Party which seeks to submit or has submitted a claim pursuant to this Section, either:
  - (i) acting on its own behalf; or
  - (ii) acting on behalf of a locally established company, as defined in subparagraph (c), which it owns or controls<sup>1</sup>;
- (c) "locally established company" means a juridical person owned or controlled<sup>2</sup> by an investor of one Party, established in the territory of the other Party;
- (d) "non-disputing Party" means either Singapore, in the case where the Union or a Member State of the Union is the respondent; or the Union, in the case where Singapore is the respondent;
- (e) "respondent" means either Singapore; or in the case of the EU Party, either the Union or the Member State of the Union as notified pursuant to Article 3.5 (Notice of Intent); and

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<sup>1</sup> For the avoidance of doubt, subparagraph 2(b) shall constitute the Parties' agreement to treat a locally established company as a national of another Contracting State for the purposes of subparagraph 2(b) of Article 25 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965.

<sup>2</sup> A juridical person is:

- (a) owned by natural or juridical persons of the other Party if more than 50 per cent of the equity interest in it is beneficially owned by natural or juridical persons of that Party;
- (b) controlled by natural or juridical persons of the other Party if such natural or juridical persons have the power to name a majority of its directors or otherwise to legally direct its actions.

- (f) "third party funding" means any funding provided by a natural or juridical 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 share or other interest in the proceeds or potential proceeds of the proceedings to which the disputing party may become entitled, or in the form of a donation or grant.

## ARTICLE 3.2

### Amicable Resolution

Any dispute should as far as possible be resolved amicably through negotiations and, where possible, before the submission of a request for consultations pursuant to Article 3.3 (Consultations). An amicable resolution may be agreed at any time, including after dispute settlement proceedings under this Section have been commenced.

## ARTICLE 3.3

### Consultations

1. Where a dispute cannot be resolved as provided for under Article 3.2 (Amicable Resolution), a claimant of a Party alleging a breach of the provisions of Chapter Two (Investment Protection) may submit a request for consultations to the other Party.



2. The request for consultations shall contain the following information:
  - (a) the name and address of the claimant and, where 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 of Chapter Two (Investment Protection) alleged to have been breached;
  - (c) the legal and factual basis for the dispute, including the treatment alleged to breach the provisions of Chapter Two (Investment Protection); and
  - (d) the relief sought and the estimated loss or damage allegedly caused to the claimant or its locally established company by reason of that breach.
3. The request for consultations shall be submitted:
  - (a) within 30 months of the date on which the claimant or, as applicable, the locally established company, first acquired, or should have first acquired, knowledge of the treatment alleged to breach the provisions of Chapter Two (Investment Protection); or

- (b) in the event that local remedies are being pursued when the time period referred to in subparagraph (a) elapses, within one year of the date on which the claimant or, as applicable, the locally established company, ceases to pursue those local remedies; and, 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 treatment alleged to breach the provisions of Chapter Two (Investment Protection).
4. In the event that the claimant has not submitted a claim pursuant to Article 3.6 (Submission of Claim to Tribunal) within eighteen months of submitting the request for consultations, the claimant shall be deemed to have withdrawn its request for consultations, any notice of intent and to have waived its rights to bring such a claim. This period may be extended by agreement between the parties involved in the consultations.
5. The time periods referred to in paragraphs 3 and 4 shall not render a claim inadmissible where the claimant can demonstrate that the failure to request consultations or submit a claim, as the case may be, is due to the claimant's inability to act as a result of actions deliberately taken by the other Party, provided that the claimant acts as soon as it is reasonably able to act.
6. In the event that the request for consultations concerns an alleged breach of this Agreement by the Union, or by any Member State of the Union, it shall be sent to the Union.
7. The disputing parties may hold the consultations through videoconference or other means where appropriate, such as in the case where the investor is a small or medium-sized enterprise.

## ARTICLE 3.4

### Mediation and Alternative Dispute Resolution

1. The disputing parties may at any time, including prior to the delivery of a notice of intent, agree to have recourse to mediation.
2. Recourse to mediation is voluntary and without prejudice to the legal position of either disputing party.
3. Recourse to mediation may be governed by the rules set out in Annex 6 (Mediation Mechanism for Disputes between Investors and Parties) or such other rules as the disputing parties may agree. Any time limit mentioned in Annex 6 (Mediation Mechanism for Disputes between Investors and Parties) may be modified by mutual agreement between the disputing parties.
4. The mediator shall be appointed by agreement of the disputing parties or in accordance with Article 3 (Selection of the Mediator) of Annex 6 (Mediation Mechanism for Disputes between Investors and Parties). Mediators shall comply with Annex 7 (Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators).
5. The disputing parties shall endeavour to reach a mutually agreed solution within sixty days from the appointment of the mediator.

6. Once the disputing parties agree to have recourse to mediation, paragraphs 3 and 4 of Article 3.3 (Consultations) shall not apply between the date on which it was agreed to have recourse to mediation, and thirty days after the date on which either party to the dispute decides to put an end to the mediation, by way of a letter to the mediator and the other disputing party.

7. Nothing in this Article shall preclude the disputing parties from having recourse to other forms of alternative dispute resolution.

## ARTICLE 3.5

### Notice of Intent

1. If the dispute cannot be settled within three months of the submission of the request for consultations, the claimant may deliver a notice of intent which shall specify in writing the claimant's intention to submit the claim to dispute settlement, and contain the following information:

- (a) the name and address of the claimant and, where 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 of Chapter Two (Investment Protection) alleged to have been breached;
- (c) the legal and factual basis for the dispute, including the treatment alleged to breach the provisions of Chapter Two (Investment Protection); and

- (d) the relief sought and the estimated loss or damage allegedly caused to the claimant or its locally established company by reason of that breach.

The notice of intent shall be sent to the Union or to Singapore, as the case may be.

2. Where a notice of intent has been sent to the Union, the Union shall make a determination of the respondent within two months from the date of receipt of the notice. The Union shall inform the claimant of this determination immediately, on the basis of which the claimant may submit a claim pursuant to Article 3.6 (Submission of Claim to Tribunal).
3. Where no determination of the respondent has been made pursuant to paragraph 2, the following shall apply:
  - (a) in the event that the notice of intent exclusively identifies treatment by a Member State of the Union, that Member State shall act as respondent;
  - (b) in the event that the notice of intent identifies any treatment by an institution, body or agency of the Union, the Union shall act as respondent.
4. Where either the Union or a Member State acts as respondent, neither the Union nor the Member State concerned shall assert the inadmissibility of a claim, or otherwise assert that a claim or award is unfounded or invalid, on the ground that the proper respondent should be or should have been the Union rather than the Member State or *vice versa*.

5. For greater certainty, nothing in this Agreement or the applicable dispute settlement rules shall prevent the exchange, between the Union and the Member State concerned, of all information relating to a dispute.

## ARTICLE 3.6

### Submission of Claim to Tribunal

1. No earlier than three months from the date of the notice of intent delivered pursuant to Article 3.5 (Notice of Intent), the claimant may submit the claim to the Tribunal under one of the following dispute settlement rules<sup>1</sup>:

- (a) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (hereinafter referred to as the "ICSID Convention") provided that both the respondent and the State of the claimant are parties to the ICSID Convention;

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<sup>1</sup> For greater certainty:

- (a) the rules of the relevant dispute settlement mechanisms shall apply subject to the specific rules set out in this Section, and supplemented by decisions adopted pursuant to subparagraph 4(g) of Article 4.1 (Committee); and
- (b) claims where a representative submits a claim in the name of a class composed of an undetermined number of unidentified claimants and intends to conduct the proceedings by representing the interests of such claimants and making all decisions relating to the conduct of the claim on their behalf shall not be admissible.

- (b) the ICSID Convention in accordance with the Rules on the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes (hereinafter referred to as "ICSID Additional Facility Rules"), provided that either the respondent or the State of the claimant is a party to the ICSID Convention;<sup>1</sup>
- (c) the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- (d) any other rules if the disputing parties so agree.

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

- (a) Chapter II of the ICSID Convention, and the ICSID Additional Facility Rules, for written consent of the disputing parties; and
- (b) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 (hereinafter referred to as "New York Convention") for an "agreement in writing".

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<sup>1</sup> For the purpose of subparagraphs (a) and (b), the term "State" is deemed to include the Union, if the Union accedes to the ICSID Convention.

## ARTICLE 3.7

### Conditions to the Submission of Claim

1. A claim may be submitted under this Section only if:
  - (a) the submission of the claim is accompanied by the claimant's consent in writing to dispute settlement in accordance with the procedures set out in this Section and the claimant's designation of one of the fora rules referred to in paragraph 1 of Article 3.6 (Submission of Claim to Tribunal) as the rules for dispute settlement;
  - (b) at least six months have elapsed since the submission of the request for consultations under Article 3.3 (Consultations) and at least three months have elapsed from the submission of the notice of intent under Article 3.5 (Notice of Intent);
  - (c) the request for consultations and the notice of intent submitted by the claimant fulfilled the requirements set out in paragraph 2 of Article 3.3 (Consultations) and paragraph 1 of Article 3.5 (Notice of Intent) respectively;
  - (d) the legal and factual basis of the dispute was subject to prior consultation pursuant to Article 3.3 (Consultations);
  - (e) all the claims identified in the submission of the claim made pursuant to Article 3.6 (Submission of Claim to Tribunal) are based on treatment identified in the notice of intent made pursuant to Article 3.5 (Notice of Intent);



(f) the claimant:

- (i) withdraws any pending claim submitted to the Tribunal, or to any other domestic or international court or tribunal under domestic or international law, concerning the same treatment as alleged to breach the provisions of Chapter Two (Investment Protection);
- (ii) declares that it will not submit such a claim in the future; and
- (iii) declares that it will not enforce any award rendered pursuant to this Section before such award has become final, 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. For the purposes of subparagraph 1(f), the term "claimant" refers to the investor and, where applicable, to the locally established company. In addition, for the purposes of subparagraph 1(f)(i) the term "claimant" 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 company.

3. Upon request of the respondent, the Tribunal shall decline jurisdiction where the claimant fails to respect any of the requirements or declarations referred to in paragraphs 1 and 2.

4. Subparagraph 1(f) shall not prevent the claimant from seeking interim measures of protection before the courts or administrative tribunals of the respondent prior to the institution or during the pendency of proceedings before any of the dispute settlement fora referred to in Article 3.6 (Submission of Claim to Tribunal). For the purposes of this Article, interim measures of protection shall be for the sole purpose of preservation of the claimant's rights and interests and shall not involve the payment of damages or the resolution of the substance of the matter in dispute.

5. For greater certainty, the Tribunal shall decline jurisdiction where the dispute had arisen, or was very likely to arise, at the time when the claimant acquired ownership or control of the investment subject to the dispute, and the Tribunal determines based on the facts that the claimant has acquired ownership or control of the investment for the main purpose of submitting the claim under this Section. This is without prejudice to other jurisdictional objections which could be entertained by the Tribunal.

## ARTICLE 3.8

### 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 3.9

### Tribunal of First Instance

1. A Tribunal of First Instance ("Tribunal") is hereby established to hear claims submitted pursuant to Article 3.6 (Submission of Claim to Tribunal).
2. The Committee shall, upon the entry into force of this Agreement, appoint six Members to the Tribunal. For the purposes of this appointment:
  - (a) The EU Party shall nominate two Members;
  - (b) Singapore shall nominate two Members; and
  - (c) The EU Party and Singapore shall jointly nominate two Members, who shall not be nationals of any Member State of the Union or of Singapore.
3. The Committee 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 possess the qualifications required in their respective countries for appointment to judicial office, or be jurists of recognised competence. They shall have specialised knowledge of, or experience 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.

5. The Members shall be appointed for an eight-year term. However, the inaugural terms of three of the six persons appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to twelve years. A Member's term of appointment may be renewed by decision of the Committee upon expiry. 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 authorisation of the President of the 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 Tribunal.

6. There shall be a President and Vice-President of the Tribunal who shall be responsible for organisational issues. They will be appointed for a four-year term and shall be drawn by lot from among the Members who have been appointed pursuant to paragraph 2(c). They shall serve on the basis of a rotation drawn by lot by the Chair of the Committee. The Vice-President shall replace the President when the President is unavailable.

7. The Tribunal shall hear cases in divisions consisting of three Members, of whom one each shall have been appointed pursuant to paragraphs 2(a), 2(b), and 2(c), respectively. The division shall be chaired by the Member who had been appointed pursuant to paragraph 2(c).

8. Within 90 days of the submission of a claim pursuant to Article 3.6 (Submission of Claim to Tribunal), the President of the Tribunal shall appoint the Members composing the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to serve.

9. Notwithstanding paragraph 7, the disputing parties may agree that a case be heard by a sole Member. This Member shall be selected by the President of the Tribunal from amongst those Members who had been appointed pursuant to paragraph 2(c). The respondent shall give sympathetic consideration to such a request from the claimant, in particular where the claimant is a small or medium-sized enterprise or the compensation or damages claimed are relatively low. Such a request should be made at the same time as the filing of the claim pursuant to Article 3.6 (Submission of Claim to Tribunal).

10. The Tribunal shall draw up its own working procedures.

11. The Members of the Tribunal shall ensure that they are available and able to perform the functions set out in this Section.

12. In order to ensure their availability, the Members shall be paid a monthly retainer fee to be fixed by decision of the Committee. The President of the Tribunal and, where applicable, the Vice-President, shall receive a fee equivalent to the fee determined pursuant to Article 3.10(11) (Appeal Tribunal) for each day worked in fulfilling the functions of President of the Tribunal pursuant to this Section.

13. The retainer fee and the daily fees for the President or Vice-President of the Tribunal when working in fulfilling the functions of President of the Tribunal pursuant to this Section shall be paid equally by both Parties into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee or the daily fees, the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest.

14. Unless the Committee 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 3.21 (Costs).

15. Upon a decision by the Committee, 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 Committee 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.

16. 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 by the Tribunal among the disputing parties in accordance with Article 3.21 (Costs).

## ARTICLE 3.10

### Appeal Tribunal

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

2. The Committee shall, upon the entry into force of this Agreement, appoint six Members to the Appeal Tribunal. For the purposes of this appointment:

- (a) The EU Party shall nominate two Members;
- (b) Singapore shall nominate two Members; and
- (c) The EU Party and Singapore shall jointly nominate two Members, who shall not be nationals of any Member State of the Union or of Singapore.

3. The Committee may decide to increase or to decrease 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 2.

4. The Appeal Tribunal Members shall possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognised competence. They shall have specialised knowledge of, 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.

5. The Appeal Tribunal Members shall be appointed for an eight-year term. However, the inaugural terms of three of the six persons appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to twelve years. A Member's term of appointment may be renewed by decision of the Committee upon expiry. 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 authorisation 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. There shall be a President and Vice-President of the Appeal Tribunal who shall be responsible for organisational issues. They will be appointed for a four-year term and shall be drawn by a lot from among the Appeal Tribunal Members who have been appointed pursuant to paragraph 2(c). They shall serve on the basis of a rotation drawn by lot by the Chair of the Committee. The Vice-President shall replace the President when the President is unavailable.
7. The Appeal Tribunal shall hear cases in divisions consisting of three Members, of whom one each shall have been appointed pursuant to paragraphs 2(a), 2(b), and 2(c), respectively. The division shall be chaired by the Member who had been appointed pursuant to paragraph 2(c).
8. The President of the Appeal Tribunal shall appoint the Members composing the division of the Appeal Tribunal hearing the appeal on a rotation basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to serve.
9. The Appeal Tribunal shall draw up its own working procedures.



10. The Appeal Tribunal Members shall ensure that they are available and able to perform the functions set out in this Section.

11. In order to ensure their availability, the Members 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 Committee. The President of the Appeal Tribunal and, where applicable, the Vice-President, shall receive a fee for each day worked in fulfilling the functions of President of the Appeal Tribunal pursuant to this Section.

12. The retainer fee and the daily fees for the President or Vice-President of the Appeal Tribunal when working in fulfilling the functions of President of the Appeal Tribunal pursuant to this Section shall be paid equally by both Parties into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee or the daily fees, the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest.

13. Upon a decision by the Committee, the retainer fee and the daily fees may be permanently transformed into a regular salary. In such an event, the Appeal Tribunal Members shall serve on a full-time basis and the Committee shall fix their remuneration and related organisational matters. In that event, the Appeal Tribunal 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.

14. 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 by the Tribunal among the disputing parties in accordance with Article 3.21 (Costs).

## ARTICLE 3.11

### Ethics

1. The Members of the Tribunal and of the Appeal Tribunal shall be chosen from amongst persons whose independence is beyond doubt. They shall not be affiliated with any government,<sup>1</sup> and in particular, 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 7 (Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators). In addition, upon appointment, they shall refrain from acting as counsel, party-appointed expert or party-appointed 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 has conflict of interest, it shall send a notice of challenge of that Member's appointment to the President of the Tribunal or to the 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.

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<sup>1</sup> For greater certainty, the fact that a person receives an income from the government, or was formerly employed by the government, or has family relationship with a person who receives an income from the government, does not in itself render that person ineligible.

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, the Parties, by decision of the Committee, 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 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 of First Instance shall submit the reasoned recommendation. Articles 3.9(5) (Tribunal of First Instance) and 3.10(4) (Appeal Tribunal) shall apply *mutatis mutandis* for filling vacancies that may arise pursuant to this paragraph.

## ARTICLE 3.12

### Multilateral Dispute Settlement Mechanism

The Parties shall pursue with each other and other interested trading partners, the establishment of a multilateral investment tribunal and appellate mechanism for the resolution of international investment disputes. Upon establishment of such a multilateral mechanism, the Committee shall consider adopting a decision to provide that investment disputes under this Section will be resolved pursuant to that multilateral mechanism, and to make appropriate transitional arrangements.

## ARTICLE 3.13

### Applicable Law and Rules of Interpretation

1. The Tribunal shall decide whether the treatment that is the subject of the claim is in breach of an obligation under Chapter Two (Investment Protection).

2. Subject to paragraph 3, the Tribunal shall apply this Agreement interpreted in accordance with the Vienna Convention on the Law of Treaties and other rules and principles of international law applicable between the Parties.<sup>1</sup>

3. Where serious concerns arise as regards issues of interpretation which may affect matters relating to this Agreement, the Committee, pursuant to subparagraph 4(f) of Article 4.1 (Committee), may adopt interpretations of provisions of this Agreement. An interpretation adopted by the Committee shall be binding on the Tribunal and the Appeal Tribunal and any award shall be consistent with that decision. The Committee may decide that an interpretation shall have binding effect from a specific date.

## ARTICLE 3.14

### Claims Manifestly Without Legal Merit

1. The respondent may, no later than thirty days after the constitution of a division of the Tribunal pursuant to Article 3.9 (Tribunal of First Instance) and in any event before the first session of the division of the Tribunal, file an objection that a claim is manifestly without legal merit.

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<sup>1</sup> For greater certainty, the domestic law of the Parties shall not be part of the applicable law. Where the Tribunal is required to ascertain the meaning of a provision of the domestic law of one of the Parties as a matter of fact, it shall follow the prevailing interpretation of that provision made by the courts or authorities of that Party, and any meaning given to the relevant domestic law made by the Tribunal shall not be binding upon the courts or the authorities of either Party. 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.

2. The respondent shall specify as precisely as possible the basis for the objection.
3. The Tribunal, after giving the disputing parties an opportunity to present their observations on the objection, shall, at the first session of the division of the Tribunal or promptly thereafter, issue a decision or provisional award on the objection.
4. This procedure and any decision of the Tribunal shall be without prejudice to the right of a respondent to object, pursuant to Article 3.15 (Claims Unfounded as a Matter of Law) or in the course of the proceedings, to the legal merits of a claim and without prejudice to the Tribunal's authority to address other objections as a preliminary question.

## ARTICLE 3.15

### 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 any 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 under this Section is not a claim for which an award in favour of the claimant may be made under Article 3.6 (Submission of Claim to Tribunal), even if the facts alleged were assumed to be true. The Tribunal may also consider any other relevant facts not in dispute.

2. An objection under paragraph 1 shall be submitted to the Tribunal as soon as possible after the division of the Tribunal is constituted, and in no event later than the date the Tribunal fixes for the respondent to submit its counter-memorial or statement of defence or, in the case of an amendment to the claim, the date the Tribunal fixes for the respondent to submit its response to the amendment. An objection may not be submitted under paragraph 1 as long as proceedings under Article 3.14 (Claims Manifestly without Legal Merit) are pending, unless the Tribunal grants leave to file an objection under this Article, after having taken due account of the circumstances of the case.

3. Upon receipt of an objection under paragraph 1, 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 provisional award on the objection, stating the grounds therefor.

## ARTICLE 3.16

### Transparency of Proceedings

Annex 8 (Rules on Public Access to Documents, Hearings and the Possibility of Third Persons to Make Submissions) shall apply to disputes under this Section.

## ARTICLE 3.17

### The Non-disputing Party to the Agreement

1. The Tribunal shall accept or, after consultation with the disputing parties, may invite oral or written submissions on issues of treaty interpretation from the non-disputing Party to the Agreement.
2. The Tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraph 1.
3. The Tribunal shall ensure that any submission does not disrupt or unduly burden the proceedings, or unfairly prejudice any disputing party.
4. The Tribunal shall also ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the non-disputing Party to the Agreement.

## ARTICLE 3.18

### Award

1. Where the Tribunal decides that the treatment in dispute is in breach of an obligation under Chapter Two (Investment Protection), the Tribunal may award, separately or in combination, only:<sup>1</sup>

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<sup>1</sup> For greater certainty, an award shall be made on the basis of a request from the claimant and shall be made after considering any comments of the disputing parties.



- (a) monetary damages and any applicable interest; and
  - (b) restitution of property, provided that the respondent may pay monetary damages and any applicable interest, as determined by the Tribunal in accordance with Chapter Two (Investment Protection), in lieu of restitution.
2. Monetary damages shall not be greater than the loss suffered by the claimant or, as applicable, its locally established company, as a result of the breach of the relevant provisions of Chapter Two (Investment Protection), reduced by any prior damages or compensation already provided by the Party concerned. The Tribunal shall not award punitive damages.
3. Where a claim is submitted on behalf of a locally established company, the award shall be made to the locally established company.
4. As a general rule, the Tribunal shall issue a provisional award within 18 months of the date of submission of the claim. When the Tribunal considers that it cannot issue its provisional award within 18 months, 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 provisional award. 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.

## ARTICLE 3.19

### 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 dismisses 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.
3. 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 in part. The Appeal Tribunal shall refer the matter back to the Tribunal, specifying precisely how it has modified or reversed the relevant findings and conclusions of the Tribunal. The Tribunal shall be bound by the findings and conclusions of the Appeal Tribunal and shall, after hearing the disputing parties if appropriate, revise its provisional award accordingly. The Tribunal shall seek to issue its revised award within 90 days after the referral of the matter back to it.

4. 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.
5. A disputing party lodging an appeal shall provide security for the costs of appeal. The disputing party shall also provide any other security as may be ordered by the Appeal Tribunal.
6. The provisions of Articles 3.8 (Third-Party Funding), Annex 8 (Rules on Public Access to Documents, Hearings and the Possibility of Third Persons to Make Submissions), 3.17 (The Non-disputing Party to the Agreement) and Article 3.21 (Costs) shall apply *mutatis mutandis* in respect of the appeal procedure.

## ARTICLE 3.20

### Indemnification or Other Compensation

The 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 has received or will receive indemnification or other compensation, pursuant to an insurance or guarantee contract, for all or part of the damages sought in a dispute initiated under this Section.

## ARTICLE 3.21

### Costs

1. The Tribunal shall order that the costs of the proceedings shall 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 party, unless the Tribunal determines that such apportionment of costs is not appropriate in the circumstances of the case.
3. Where only some 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.
4. Where a claim or parts of a claim are dismissed on application of Article 3.14 (Claims Manifestly without Legal Merits) or Article 3.15 (Claims Unfounded as a Matter of Law), the Tribunal shall order that all costs relating to such a claim or parts thereof, including the costs of the proceedings and other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party.

5. The Committee shall consider adopting 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. Such supplemental rules shall take into account the financial resources of a claimant which is a natural person or a small or medium-sized enterprise. The Committee shall endeavour to adopt such supplemental rules no later one year after the entry into force of this Agreement.

## ARTICLE 3.22

### Enforcement of Awards

1. An award rendered pursuant to this section shall not be enforceable until it has become final pursuant to Articles 3.18(4) (Award), 3.19(2) (Appeal Procedure), or 3.19(3) (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>1</sup>
2. Each Party shall recognise 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>1</sup> For greater certainty, this does not prevent a disputing party from requesting the Tribunal to revise, correct, or interpret an award, such as pursuant to Articles 50 and 51 ICSID Convention or Articles 37 and 38 of the UNCITRAL Arbitration Rules, or equivalent provisions of other rules, as applicable to the proceedings in question.

3. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where such execution is sought.

4. For greater certainty, Article 4.11 (No Direct Effect) of Chapter Four (Institutional, General and Final Provisions) shall not prevent the recognition, execution and enforcement of awards rendered pursuant to this Section.

5. For the purposes of Article I 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 3.6(1)(a) (Submission of Claim to Tribunal), a final award issued pursuant to this Section shall qualify as an award under Section 6 of Chapter IV of the ICSID Convention.

## ARTICLE 3.23

### Role of the Parties to the Agreement

1. Neither Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to dispute settlement under this Section, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

2. For greater certainty, paragraph 1 shall not exclude the possibility of a Party having recourse to dispute settlement procedures under Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties) in respect of a measure of general application even if that measure is alleged to have breached the Agreement as regards a specific investment in respect of which a claim has been submitted pursuant to Article 3.6 (Submission of Claim to Tribunal) and is without prejudice to Article 3.17 (The Non-disputing Party to the Agreement).

## ARTICLE 3.24

### Consolidation

1. Where two or more claims that have been submitted separately under Article 3.6 (Submission of Claim to Tribunal) have a question of law or fact in common and arise out of the same events or circumstances, a disputing party may seek the establishment of a separate division of the Tribunal ("consolidating division") and request that such division issue a consolidation order in accordance with:

- (a) the agreement of all the disputing parties sought to be covered by the order, in which case the disputing parties shall submit a joint request in accordance with paragraph 3; or
- (b) paragraphs 2 through 12, provided that only one respondent is sought to be covered by the order.

2. A disputing party seeking a consolidation order shall first deliver a notice to the other disputing parties sought to be covered by the order. This notice shall specify:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
- (b) the claims, or parts thereof, sought to be covered by the order; and
- (c) the grounds for the order sought.

The disputing parties shall endeavour to agree on the consolidation order sought and on the applicable dispute settlement rules.

3. Where the disputing parties referred to in paragraph 2 have not reached an agreement on consolidation within thirty days of the notice, a disputing party may make a request for a consolidation order under paragraphs 3 through 7. The request shall be delivered, in writing, to the President of the Tribunal and all the disputing parties sought to be covered by the order. Such a request shall specify:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
- (b) the claims, or parts thereof, sought to be covered by the order; and
- (c) the grounds for the order sought.



Where the disputing parties have reached an agreement on consolidation of the claims, they shall submit a joint request to the President of the Tribunal in accordance with this paragraph.

4. Unless the President of the Tribunal finds within thirty days after receiving a request under paragraph 3 that the request is manifestly unfounded, a consolidating division of the Tribunal shall be established in accordance with Article 3.9(8) (Tribunal of First Instance).

5. The consolidating division of the Tribunal shall conduct its proceedings in the following manner:

- (a) unless all disputing parties otherwise agree, where all the claims for which a consolidation order is sought have been submitted under the same dispute settlement rules, the consolidating division shall proceed under the same dispute settlement rules;
- (b) where the claims for which a consolidation order is sought have not been submitted under the same dispute settlement rules:
  - (i) the disputing parties may agree on the applicable dispute settlement rules available under Article 3.6 (Submission of Claim to Tribunal) which shall apply to the consolidation proceedings; or
  - (ii) if the disputing parties cannot agree on the same dispute settlement rules within thirty days from the request made pursuant to paragraph 3, the UNCITRAL arbitration rules shall apply to the consolidation proceedings.

6. Where the consolidating division is satisfied that two or more claims that have been submitted under Article 3.6 (Submission of Claim to Tribunal) have a question of law or fact in common, and arise out of the same events or circumstances, the consolidating division may, in the interest of fair and efficient resolution of the claims, including the consistency of awards, and after hearing the disputing parties, by order:

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

7. Where a consolidating division has been established, a claimant that has submitted a claim under Article 3.6 (Submission of Claim to Tribunal) and that has not been named in a request made under paragraph 3 may make a written request to the consolidating division that it be included in any order made under paragraph 6. Such request shall comply with the requirements set out in paragraph 3.

8. On application of a disputing party, the consolidating division, pending its decision under paragraph 6, may order that the proceedings of a division established under Article 3.9 (Tribunal of First Instance) be stayed, unless the latter division has already adjourned its proceedings.

9. A division of the Tribunal established under Article 3.9 (Tribunal of First Instance) shall cease to have jurisdiction to decide a claim, or parts of a claim, over which a consolidating division has assumed jurisdiction, and the proceedings of a division established under Article 3.9 (Tribunal of First Instance) shall be stayed or adjourned accordingly.

10. The award of the consolidating division in relation to claims, or parts of claims, over which it has assumed jurisdiction, shall be binding on the divisions established under Article 3.9 (Tribunal of First Instance) in respect of these claims, as of the date the award becomes final pursuant to Articles 3.18(4) (Award), 3.19(2) (Appeal Procedure), or 3.19(3) (Appeal Procedure).

11. A claimant may withdraw its claim or part thereof subject to consolidation from dispute settlement proceedings under this Article, provided that such claim or part thereof may not thereafter be resubmitted under Article 3.6 (Submission of Claim to Tribunal).

12. At the request of one of the disputing parties, the consolidating division may take such measures as it sees fit in order to preserve the confidentiality of protected information of that disputing party vis-à-vis other disputing parties. Such measures may include allowing the submission of redacted versions of documents containing protected information to the other disputing parties or arrangements to hold parts of the hearing in private.

## SECTION B

### RESOLUTION OF DISPUTES BETWEEN PARTIES

#### ARTICLE 3.25

##### Scope

This Section shall apply with respect to any difference concerning the interpretation and application of the provisions of this Agreement, except as otherwise expressly provided.

## ARTICLE 3.26

### Consultations

1. The Parties shall endeavour to resolve any difference regarding the interpretation and application of the provisions referred to in Article 3.25 (Scope) by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations, by means of a written request to the other Party copied to the Committee, and shall give the reasons for the request, including identification of the measures at issue, the applicable provisions referred to in Article 3.25 (Scope), and the reasons for the applicability of such provisions.
3. Consultations shall be held within thirty days of the date of receipt of the request and take place, unless the Parties agree otherwise, on the territory of the Party complained against. The consultations shall be deemed concluded within sixty days of the date of receipt of the request, unless the Parties agree otherwise. Consultations shall be confidential, and without prejudice to the rights of either Party in any further proceedings.
4. Consultations on matters of urgency shall be held within fifteen days of the date of receipt of the request, and shall be deemed concluded within thirty days of the date of receipt of the request, unless the Parties agree otherwise.

5. If the Party to which the request is made does not respond to the request for consultations within ten days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if consultations have been concluded and no mutually agreed solution has been reached, the complaining Party may request the establishment of an arbitration panel in accordance with Article 3.28 (Initiation of Arbitration Procedure).

## ARTICLE 3.27

### Mediation

Any Party may request the other Party to enter into a mediation procedure with respect to any measure adversely affecting investment between the Parties pursuant to Annex 10 (Mediation Procedure for Disputes between Parties).

## ARTICLE 3.28

### Initiation of Arbitration Procedure

1. Where the Parties have failed to resolve the dispute by recourse to consultations as provided for in Article 3.26 (Consultations), the complaining Party may request the establishment of an arbitration panel in accordance with this Article.

2. The request for the establishment of an arbitration panel shall be made in writing to the Party complained against and the Committee. The complaining Party shall identify in its request the specific measure at issue, and it shall explain how such measure constitutes a breach of the provisions referred to in Article 3.25 (Scope) in a manner sufficient to present the legal basis for the complaint clearly.

## ARTICLE 3.29

### Establishment of the Arbitration Panel

1. An arbitration panel shall be composed of three arbitrators.
2. Within five days of the date of receipt by the Party complained against of the request referred to in paragraph 1 of Article 3.28 (Initiation of Arbitration Procedure), the Parties shall enter into consultations in order to agree on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree, within ten days of entering into the consultations referred to in paragraph 2, on the chairperson of the arbitration panel, the chair of the Committee, or the chair's delegate, shall, within twenty days of entering into consultations referred to in paragraph 2, select one arbitrator who will serve as a chairperson by lot from the list referred to under paragraph 1 of Article 3.44 (Lists of Arbitrators).
4. In the event that the Parties are unable to agree, within ten days of entering into the consultations referred to in paragraph 2, on the arbitrators:

- (a) each Party may select one arbitrator, who will not act as a chairperson, from the individuals on the list established under paragraph 2 of Article 3.44 (Lists of Arbitrators), within fifteen days of entering into the consultations referred to in paragraph 2; and
  - (b) if either Party fails to select an arbitrator under subparagraph 4(a), the chair of the Committee, or the chair's delegate, shall select any remaining arbitrator by lot from among the individuals proposed by the Party pursuant to paragraph 2 of Article 3.44 (Lists of Arbitrators), within twenty days of entering into consultations referred to in paragraph 2.
5. Should the list provided for in paragraph 2 of Article 3.44 (Lists of Arbitrators) not be established at the time required pursuant to paragraph 4:
- (a) where both Parties have proposed individuals pursuant to paragraph 2 of Article 3.44 (Lists of Arbitrators), each Party may select one arbitrator, who will not act as a chairperson, from among the individuals proposed, within fifteen days of entering into the consultations referred to in paragraph 2. If a Party fails to select an arbitrator, the chair of the Committee, or the chair's delegate, shall select the arbitrator by lot from among the individuals proposed by the Party which failed to select its arbitrator; or
  - (b) where only one Party has proposed individuals pursuant to paragraph 2 of Article 3.44 (Lists of Arbitrators), each Party may select one arbitrator, who will not act as a chairperson, from among the individuals proposed, within fifteen days of entering into the consultations referred to in paragraph 2. If a Party fails to select an arbitrator, the chair of the Committee, or the chair's delegate, shall select the arbitrator by lot from among the individuals proposed.

6. Should the list provided for in paragraph 1 of Article 3.44 (Lists of Arbitrators) not be established at the time required pursuant to paragraph 3, the chairperson shall be selected by lot from among former Members of the WTO Appellate Body, who shall not be a person of either Party.

7. The date of establishment of the arbitration panel shall be the date on which the last of the three arbitrators is selected.

8. Replacement of arbitrators shall take place only for the reasons and according to the procedures detailed in Rules 19 to 25 of Annex 9 (Rules of Procedure for Arbitration).

## ARTICLE 3.30

### Preliminary Ruling on Urgency

If a Party so requests, the arbitration panel shall give a preliminary ruling within ten days of its establishment on whether it deems the case to be urgent.



## ARTICLE 3.31

### Interim Panel Report

1. The arbitration panel shall issue an interim report to the Parties setting out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations, not later than ninety days from the date of establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel must notify the Parties and the Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its interim report. Under no circumstances should the arbitration panel issue its interim report later than 120 days after the date of its establishment.
2. Any Party may submit a written request for the arbitration panel to review precise aspects of the interim report within thirty days of its notification.
3. In cases of urgency the arbitration panel shall make every effort to issue its interim report and any Party may submit a written request for the arbitration panel to review precise aspects of the interim report, within half of the respective time frames under paragraphs 1 and 2.
4. After considering any written comments by the Parties on the interim report, the arbitration panel may modify its report and make any further examination it considers appropriate. The findings of the final panel ruling shall include a sufficient discussion of the arguments made at the interim review stage, and shall answer clearly to the written comments of the two Parties.

## ARTICLE 3.32

### Arbitration Panel Ruling

1. The arbitration panel shall issue its ruling to the Parties and to the Committee within 150 days from the date of the establishment of the arbitration panel. Where it considers that this deadline cannot be met, the chairperson of the arbitration panel shall notify the Parties and the Committee in writing, stating the reasons for the delay and the date on which the arbitration panel plans to issue its ruling. Under no circumstances should the arbitration panel issue its ruling later than 180 days after the date of its establishment.
2. In cases of urgency the arbitration panel shall make every effort to issue its ruling within seventy-five days from the date of its establishment. Under no circumstances should the arbitration panel issue its ruling later than ninety days after the date of its establishment.

## ARTICLE 3.33

### Compliance with the Arbitration Panel Ruling

Each Party shall take any measure necessary to comply in good faith with the arbitration panel ruling, and the Parties shall endeavour to agree on the period of time to comply with the ruling.

## ARTICLE 3.34

### Reasonable Period of Time for Compliance

1. No later than thirty days after the receipt of the notification of the arbitration panel ruling to the Parties, the Party complained against shall notify the complaining Party and the Committee of the time it will require for compliance (hereinafter referred to as "reasonable period of time"), if immediate compliance is not possible.
2. If there is disagreement between the Parties on the reasonable period of time to comply with the arbitration panel ruling, the complaining Party shall, within twenty days of the receipt of the notification made under paragraph 1 by the Party complained against, request in writing the original arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the Committee. The original arbitration panel shall issue its ruling to the Parties and notify the Committee within twenty days from the date of the submission of the request.
3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 3.29 (Establishment of the Arbitration Panel) shall apply. The time limit for issuing the ruling shall be thirty-five days from the date of the submission of the request referred to in paragraph 2.
4. The Party complained against shall inform the complaining Party in writing of its progress to comply with the arbitration panel ruling at least one month before the expiry of the reasonable period of time.

5. The reasonable period of time may be extended by mutual agreement of the Parties.

## ARTICLE 3.35

### Review of Any Measure Taken to Comply with the Arbitration Panel Ruling

1. The Party complained against shall notify the complaining Party and the Committee before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.
2. In the event that there is disagreement between the Parties concerning the existence or the consistency of any measure notified under paragraph 1 with the provisions referred to in Article 3.25 (Scope), the complaining Party may request in writing the original arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and the provisions referred to in Article 3.25 (Scope) with which it considers that measure to be inconsistent, in a manner sufficient to present the legal basis for the complaint clearly, and it shall explain how such measure is inconsistent with the provisions referred to in Article 3.25 (Scope). The original arbitration panel shall notify its ruling within forty-five days of the date of the submission of the request.
3. In the event that any member of the original arbitration panel is no longer available, the procedures set out in Article 3.29 (Establishment of the Arbitration Panel) shall apply. The time limit for issuing the ruling shall be sixty days from the date of the submission of the request referred to in paragraph 2.

## ARTICLE 3.36

### Temporary Remedies in Case of Non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that no measure taken to comply exists or that the measure notified under paragraph 1 of Article 3.35 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling) is inconsistent with that Party's obligations under the provisions referred to in Article 3.25 (Scope), the Party complained against shall enter into negotiations with the complaining Party with a view to developing mutually acceptable agreement on compensation.
2. If no agreement on compensation is reached within thirty days after the end of the reasonable period of time or of the issuance of the arbitration panel ruling under Article 3.35 (Review of Any Measure Taken to Comply with the Arbitration Panel Ruling) that no measure taken to comply exists or that a measure taken to comply is inconsistent with the provisions referred to in Article 3.25 (Scope), the complaining Party shall be entitled, upon notification to the other Party and to the Committee, to take appropriate measures at a level equivalent to the nullification or impairment caused by the violation. The notification shall specify such measures. The complaining Party may take such measures at any moment after the expiry of ten days after the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3.

3. If the Party complained against considers that the measures taken by the complaining Party are not equivalent to the nullification or impairment caused by the violation, it may request in writing the original arbitration panel to rule on the matter. Such request shall be notified to the complaining Party and to the Committee before the expiry of the ten-day period referred to in paragraph 2. The original arbitration panel, having sought, if appropriate, the opinion of experts, shall notify its ruling on the level of the suspension of obligations to the Parties and to the Committee within thirty days of the date of the submission of the request. Measures shall not be taken until the original arbitration panel has notified its ruling, and any measure shall be consistent with the arbitration panel ruling.

4. In the event that any member of the original arbitration panel is no longer available, the procedures laid down in Article 3.29 (Establishment of the Arbitration Panel) shall apply. The period for issuing the ruling shall be forty-five days from the date of the submission of the request referred to in paragraph 3.

5. The measures foreseen in this Article shall be temporary and shall not be applied after:

- (a) the Parties have reached a mutually agreed solution pursuant to Article 3.39 (Mutually Agreed Solution); or
- (b) the Parties have reached an agreement on whether the measure notified under paragraph 1 of Article 3.37 (Review of Any Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance) brings the Party complained against into conformity with the provisions referred to in Article 3.25 (Scope); or

- (c) any measure found to be inconsistent with the provisions referred to in Article 3.25 (Scope) has been withdrawn or amended so as to bring it into conformity with those provisions, as ruled under paragraph 2 of Article 3.37 (Review of Any Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance).

## ARTICLE 3.37

### Review of Any Measure Taken to Comply After the Adoption of Temporary Remedies for Non-Compliance

1. The Party complained against shall notify the complaining Party and the Committee of any measure it has taken to comply with the ruling of the arbitration panel and of its request for the termination of the measures applied by the complaining Party.
2. If the Parties do not reach an agreement on whether the notified measure brings the Party complained against into conformity with the provisions referred to in Article 3.25 (Scope) within thirty days of the date of receipt of the notification, the complaining Party shall request in writing the original arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the Committee. The arbitration panel ruling shall be notified to the Parties and to the Committee within forty-five days of the date of the submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 3.25 (Scope), the measures referred to in Article 3.36 (Temporary Remedies in Case of Non-compliance) shall be terminated.

## ARTICLE 3.38

### Suspension and Termination of Arbitration Procedures

1. The arbitration panel shall, at the written request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding twelve months and shall resume its work at the end of this agreed period at the written request of the complaining Party, or before the end of this agreed period at the written request of both Parties. If the complaining Party does not request the resumption of the arbitration panel's work before the expiry of the agreed suspension period, the dispute settlement procedures initiated pursuant to this Section shall be deemed terminated. Subject to Article 3.45 (Relation with WTO Obligations), the suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in other proceedings.
2. The Parties may, at any time, agree in writing to terminate the dispute settlement procedures initiated pursuant to this Section.

## ARTICLE 3.39

### Mutually Agreed Solution

The Parties may reach a mutually agreed solution to a dispute under this Section at any time. They shall notify the Committee and the arbitration panel, if any, of such a solution. If the solution requires approval pursuant to the relevant domestic procedures of either Party, the notification shall refer to this requirement, and the dispute settlement procedures initiated pursuant to this Section shall be suspended. If such approval is not required, or upon notification of the completion of any such domestic procedures, the procedure shall be terminated.



## ARTICLE 3.40

### Rules of Procedure

1. Dispute settlement procedures under this Section shall be governed by Annex 9 (Rules of Procedure for Arbitration).
2. Any meeting of the arbitration panel shall be open to the public in accordance with Annex 9 (Rules of Procedure for Arbitration).

## ARTICLE 3.41

### Submission of Information

1. At the request of a Party, or upon its own initiative, the arbitration panel may obtain information from any source, including the Parties involved in the dispute, it deems appropriate for the arbitration panel proceedings. The arbitration panel also has the right to seek the relevant opinion of experts as it deems appropriate. The arbitration panel shall consult the Parties before choosing such experts. Any information obtained in this manner must be disclosed to the Parties and submitted for their comments.
2. Interested natural or legal persons of the Parties are authorised to submit *amicus curiae* briefs to the arbitration panel in accordance with Annex 9 (Rules of Procedure for Arbitration).

## ARTICLE 3.42

### Rules of Interpretation

The arbitration panel shall interpret the provisions referred to in Article 3.25 (Scope) in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties. Where an obligation under this Agreement is identical to an obligation under the WTO Agreement, the arbitration panel shall take into account any relevant interpretation established in rulings of the WTO Dispute Settlement Body (hereinafter referred to as "DSB"). The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided in the provisions referred to in Article 3.25 (Scope).

## ARTICLE 3.43

### Arbitration Panel Decisions and Rulings

1. The arbitration panel shall make every effort to take any decision by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote.
2. Any ruling of the arbitration panel shall be binding on the Parties and shall not create any rights or obligations to physical or legal persons. The ruling shall set out the findings of fact, the applicability of the relevant provisions referred to in Article 3.25 (Scope) and the rationale behind any findings and conclusions that it makes. The Committee shall make the arbitration panel ruling publicly available in its entirety, unless it decides not to do so in order to ensure the confidentiality of any information designated by either Party as confidential.

## ARTICLE 3.44

### Lists of Arbitrators

1. The Parties shall establish, upon the entry into force of this Agreement, a list of five individuals who are willing and able to serve as the chairperson of an arbitration panel referred to in Article 3.29 (Establishment of the Arbitration Panel).
2. The Committee shall, no later than six months after the entry into force of this Agreement, establish a list of at least ten individuals who are willing and able to serve as arbitrators. Each of the Parties shall propose upon the entry into force of this Agreement at least five individuals to serve as arbitrators.
3. The Committee will ensure that the list of individuals to serve as chairpersons or arbitrators, established pursuant to paragraphs 1 and 2 respectively, are maintained.
4. Arbitrators shall have specialised knowledge of or experience in law and international trade or investment, or in the settlement of disputes arising under international trade agreements. They shall be independent, serve in their individual capacities and not be affiliated with the government of either of the Parties, and shall comply with Annex 11 (Code of Conduct for Arbitrators and Mediators).

## ARTICLE 3.45

### Relation with WTO Obligations

1. Recourse to the dispute settlement provisions of this Section shall be without prejudice to any action in the WTO framework, including dispute settlement proceedings.
2. Notwithstanding paragraph 1, where a Party has, with regard to a particular measure, initiated dispute settlement proceedings, either under this Section or under the WTO Agreement, it may not institute dispute settlement proceedings regarding the same measure in the other forum until the first proceedings have ended. Moreover, a Party shall not initiate dispute settlement proceedings under this Section and under the WTO Agreement, unless substantially different obligations under both agreements are in dispute, or unless the forum selected fails for procedural or jurisdictional reasons to make findings on the claim seeking redress of that obligation, provided that the failure of the forum is not the result of a failure of a disputing Party to act diligently.
3. For the purposes of paragraph 2:
  - (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement (hereinafter referred to as "DSU") and are deemed to be ended when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17(14) of the DSU; and

- (b) dispute settlement proceedings under this Section are deemed to be initiated by a Party's request for the establishment of an arbitration panel under paragraph 1 of Article 3.28 (Initiation of Arbitration Procedure) and are deemed to be ended when the arbitration panel issues its ruling to the Parties and to the Committee under paragraph 2 of Article 3.32 (Arbitration Panel Ruling) or when the parties have reached a mutually agreed solution under Article 3.39 (Mutually Agreed Solution).

4. Nothing in this Section shall preclude a Party from implementing the suspension of obligations authorised by the DSB. Neither the WTO Agreement nor the EUSFTA shall be invoked to preclude a Party from taking appropriate measures under Article 3.36 (Temporary Remedies in Case of Non-compliance) of this Section.

## ARTICLE 3.46

### Time Limits

1. All time limits laid down in this Section, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days, the first day being the day following the act or fact to which they refer, unless otherwise specified.
2. Any time limit referred to in this Section may be modified by mutual agreement of the Parties.

## CHAPTER FOUR

### INSTITUTIONAL, GENERAL AND FINAL PROVISIONS

#### ARTICLE 4.1

##### Committee

1. Parties hereby establish a Committee comprising representatives of the EU Party and Singapore.
2. The Committee shall normally meet every two years in the Union or Singapore alternately or without undue delay at the request of either Party. The Committee shall be co-chaired by the Minister for Trade and Industry of Singapore and the Member of the European Commission responsible for Trade, or their respective delegates. The Committee shall agree on its meeting schedule and set its agenda, and may adopt its own rules of procedure.
3. The Committee shall:
  - (a) ensure that this Agreement operates properly;
  - (b) supervise and facilitate the implementation and application of this Agreement, and further its general aims;

- (c) consider ways to further enhance investment relations between the Parties;
- (d) examine difficulties which may arise in the implementation of Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties) and consider possible improvements thereto, in particular in the light of experience and developments in other international fora;
- (e) review generally the functioning of Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties), including taking into account any issues arising from efforts to establish the multilateral dispute settlement mechanism contemplated in Article 3.12 (Multilateral Dispute Settlement Mechanism);
- (f) without prejudice to Chapter Three (Dispute Settlement), seek to solve problems which might arise in areas covered by this Agreement, or resolve disputes that may arise regarding the interpretation or application of this Agreement; and
- (g) consider any other matter of interest relating to an area covered by this Agreement.

4. The Committee may, on agreement of the Parties and after completion of their respective legal requirements and procedures, decide to:

- (a) appoint the Members of the Tribunal and the Members of the Appeal Tribunal pursuant to Articles 3.9(2) (Tribunal of First Instance) and 3.10(2) (Appeal Tribunal), to increase or decrease the number of the Members pursuant to Articles 3.9(3) and 3.10(3), and to remove a Member from the Tribunal or Appeal Tribunal pursuant to Article 3.11(5) (Ethics);

- (b) fix the monthly retainer fee of the Members of the Tribunal and of the Appeal Tribunal pursuant to Articles 3.9(12) and 3.10(11) and the amount of the daily fees of the Members serving on a division of the Appeal Tribunal and of the Presidents of the Tribunal and Appeal Tribunal pursuant to Articles 3.10(12) and 3.9(13);
- (c) transform the retainer fee and other fees and expenses of the Members of the Tribunal and Appeal Tribunal into a regular salary pursuant to Articles 3.9(15) and 3.10(13);
- (d) specify any necessary transitional arrangements pursuant to Article 3.12 (Multilateral Dispute Settlement Mechanism);
- (e) adopt supplemental rules on fees pursuant to Article 3.21(5) (Costs);
- (f) adopt interpretations of the provisions of this Agreement, which shall be binding on the Parties and all bodies set up under this Agreement, including the Tribunal and the Appeal Tribunal referred to under Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties), and the arbitration panels referred to under Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties); and
- (g) adopt rules supplementing the applicable dispute settlement rules or the rules included in the Annexes. Such rules shall be binding on the Tribunal and on the Appeal Tribunal referred to under Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties), and the arbitration panels referred to under Chapter Three (Dispute Settlement) Section B (Resolution of Disputes between Parties).



## ARTICLE 4.2

### Decision-making

1. The Parties may take decisions in the Committee, where provided for in this Agreement. The decisions taken shall be binding on the Parties, which shall take the measures necessary to implement the decisions taken.
2. The Committee may make appropriate recommendations, where provided for in this Agreement.
3. The Committee shall draw up its decisions and recommendations by agreement between the Parties.

## ARTICLE 4.3

### Amendments

1. The Parties may agree to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, as set out in the instrument of amendment.
2. Notwithstanding paragraph 1, the Parties may, in the Committee, adopt a decision amending this Agreement where provided for in this Agreement.

## ARTICLE 4.4

### Prudential carve out

1. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:
  - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
  - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial service suppliers; or
  - (c) ensuring the integrity and stability of the Party's financial system.
2. These measures shall not be more burdensome than necessary to achieve their aim and shall not constitute a means of arbitrary or unjustifiable discrimination against financial service suppliers of the other Party in comparison to its own like financial service suppliers or a disguised restriction on trade in services.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

## ARTICLE 4.5

### Security Exceptions

Nothing in this Agreement shall be construed to:

- (a) require either Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;
- (b) prevent either Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) connected with the production of or trade in arms, munitions and war materials and related to traffic in other goods and materials and to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;
  - (ii) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
  - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
  - (iv) taken in time of war or other emergency in international relations, or to protect critical public infrastructure (this relates to communications, power or water infrastructure providing essential goods or services to the general public) from deliberate attempts to disable or disrupt it;

- (c) prevent either Party from taking any action for the purpose of maintaining international peace and security.

## ARTICLE 4.6

### Taxation

1. This Agreement shall only apply to taxation measures insofar as such application is necessary to give effect to the provisions of this Agreement.<sup>1</sup>
2. Nothing in this Agreement shall affect the rights and obligations of either Singapore, or the Union or any of its Member States, under any tax agreement between Singapore and the Union or any of its Member States. In the event of any inconsistency between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency. In the case of a tax agreement between Singapore and the Union or one of its Member States, the competent authorities under that agreement shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that agreement.

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<sup>1</sup> The term "provisions of this Agreement" means the provisions that accord: (a) non-discriminatory treatment to investors in the manner and to the extent provided for in Article 2.3 (National Treatment); and (b) protection to investors and their investments against expropriation in the manner and to the extent provided for in Article 2.6 (Expropriation).

3. Nothing in this Agreement shall prevent either Party from adopting or maintaining any taxation measure which differentiates between taxpayers based on rational criteria, such as taxpayers who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested.<sup>1</sup>

4. Nothing in this Agreement shall prevent the adoption or maintenance of any measure aimed at preventing the avoidance or evasion of taxes pursuant to the tax provisions of agreements to avoid double taxation or other tax arrangements or domestic fiscal legislation.

5. Nothing in this Agreement shall prevent Singapore from adopting or maintaining taxation measures which are needed to protect Singapore's overriding public policy interests arising out of its specific constraints of space.

#### ARTICLE 4.7

##### Specific Exception

Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

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<sup>1</sup> For greater certainty, the Parties share an understanding that nothing in this Agreement shall prevent any taxation measure aimed at social welfare, public health or other socio-community objectives, or at macroeconomic stability; or tax benefits linked to place of incorporation and not the nationality of the person owning the company. Taxation measures aimed at macroeconomic stability are measures in reaction to movements and trends in the national economy to address or to prevent systemic imbalances which seriously threaten the stability of the national economy.

## ARTICLE 4.8

### Sovereign Wealth Funds

Each Party shall encourage its sovereign wealth funds to respect the Generally Accepted Principles and Practices – Santiago Principles.

## ARTICLE 4.9

### Disclosure of Information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.
2. When a Party submits information to the Committee which is considered as confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

## ARTICLE 4.10

### Fulfilment of Obligations

The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall see to it that the objectives set out in this Agreement are attained.

## ARTICLE 4.11

### No Direct Effect

For greater certainty, nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons, other than those created between the Parties under public international law.

## ARTICLE 4.12

### Relationship with other Agreements

1. This Agreement shall be an integral part of the overall bilateral relations as governed by the EUSPCA and shall form part of a common institutional framework. It constitutes a specific agreement giving effect to the trade provisions of the EUSPCA.
2. For greater certainty, the Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their obligations under the WTO Agreement.

3. (a) Upon the entry into force of this Agreement, the agreements between Member States of the Union and Singapore listed in Annex 5 (Agreements Referred to in Article 4.12) including the rights and obligations derived therefrom, shall be terminated and cease to have effect, and shall be replaced and superseded by this Agreement.
- (b) In the event of the provisional application of this Agreement in accordance with paragraph 4 of Article 4.15 (Entry into Force), the application of the provisions of the agreements listed in Annex 5 (Agreements Referred to in Article 4.12), as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application. In the event the provisional application of this Agreement is terminated and this Agreement does not enter into force, the suspension shall cease and the agreements listed in Annex 5 (Agreements Referred to in Article 4.12) shall have effect.
- (c) Notwithstanding subparagraphs 3(a) and 3(b), a claim may be submitted pursuant to the provisions of an agreement listed in Annex 5 (Agreements Referred to in Article 4.12), regarding treatment accorded while the said agreement was in force, pursuant to the rules and procedures established in that agreement, and provided that no more than three years have elapsed since the date of suspension of the agreement pursuant to subparagraph 3(b), or, if the agreement is not suspended pursuant to subparagraph 3(b), the date of entry into force of this Agreement.



- (d) Notwithstanding subparagraphs 3(a) and 3(b), if the provisional application of this Agreement is terminated and this Agreement does not enter into force, a claim may be submitted pursuant to Chapter Three (Dispute Settlement) Section A (Resolution of Disputes between Investors and Parties) regarding treatment accorded during the period of the provisional application of this Agreement provided no more than three years have elapsed since the date of termination of the provisional application.

For the purposes of this paragraph, the definition of "entry into force of this Agreement" provided in subparagraph 4(d) of Article 4.15 (Entry into Force) shall not apply.

#### ARTICLE 4.13

##### Territorial Application

This Agreement shall apply:

- (a) with respect to the EU Party, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties; and
- (b) with respect to Singapore, to its territory.

References to "territory" in this Agreement shall be understood in this sense, except as otherwise expressly provided.

## ARTICLE 4.14

### Annexes, Appendices, Joint Declarations, Protocols and Understandings

The Annexes, Appendices, Joint Declarations, Protocols and Understandings to this Agreement shall form an integral part thereof.

## ARTICLE 4.15

### Entry into Force

1. This Agreement shall be approved by the Parties in accordance with their own procedures.
2. This Agreement shall enter into force on the first day of the second month following that in which the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures for the entry into force of this Agreement. The Parties may by agreement fix another date.
3. Notifications shall be sent to the Secretary General of the Council of the Union and to the Director, North America and Europe Division, Singapore Ministry of Trade and Industry, or their respective successors.

4. (a) This Agreement shall be provisionally applied from the first day of the month following the date on which the Union and Singapore have notified each other of the completion of their respective relevant procedures. The Parties may by mutual agreement fix another date.
- (b) In the event that certain provisions of this Agreement cannot be provisionally applied, the Party which cannot undertake such provisional application shall notify the other Party of the provisions which cannot be provisionally applied.

Notwithstanding subparagraph 4(a), provided the other Party has completed the necessary procedures and does not object to provisional application within ten days of the notification that certain provisions cannot be provisionally applied, the provisions of this Agreement which have not been notified shall be provisionally applied the first day of the month following the notification.

- (c) The Union or Singapore may terminate provisional application by written notice to the other Party. Such termination shall take effect on the first day of the second month following notification.
- (d) Where this Agreement, or certain provisions thereof, is provisionally applied, the term "entry into force of this Agreement" shall be understood to mean the date of provisional application. The Committee may exercise their functions during the provisional application of this Agreement. Any decisions adopted in the exercise of these functions will only cease to be effective if the provisional application of this Agreement is terminated and this Agreement does not enter into force.

## ARTICLE 4.16

### Duration

1. This Agreement shall be valid indefinitely.
2. Either the EU Party or Singapore may notify in writing the other Party of its intention to terminate this Agreement.
3. This Agreement shall be terminated six months after the notification under paragraph 2 without prejudice to Article 4.17 (Termination).
4. Within 30 days of delivery of a notification under paragraph 2, either Party may request consultations regarding whether the termination of any provision of this Agreement should take effect at a later date than provided under paragraph 2. Such consultations shall commence within 30 days of a Party's delivery of such request.

## ARTICLE 4.17

### Termination

In the event that this Agreement is terminated pursuant to Article 4.16 (Duration), this Agreement shall continue to be effective for a further period of twenty years from that date in respect of covered investments made before the date of termination of the present Agreement. This Article shall not apply in the case of the termination of provisional application of this Agreement and this Agreement does not enter into force.

## ARTICLE 4.18

### Accession of new Member States of the Union

1. The Union shall notify Singapore without undue delay of any request for accession of a third country to the Union.
2. During the negotiations between the Union and the candidate country seeking accession, the Union shall endeavour to:
  - (a) provide, upon the request of Singapore, and to the extent possible, any information regarding any matter covered by this Agreement; and
  - (b) take into account any concerns expressed by Singapore.

3. The Union shall notify Singapore as soon as feasible about the outcome of accession negotiations with the candidate country seeking accession to the Union, and notify Singapore of the entry into force of any accession to the Union.
4. The Committee shall examine any effects of such accession on this Agreement sufficiently in advance of the date of accession and shall decide on any necessary adjustment or transition arrangements.
5. Any new Member State of the Union shall accede to this Agreement by depositing an act of accession to this Agreement with the General Secretariat of the Council of the European Union and the Director, North America and Europe Division, Singapore Ministry of Trade and Industry, or their respective successors.

#### ARTICLE 4.19

##### Authentic Texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Estonian, Danish, Dutch, English, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.