

**AGREEMENT  
BETWEEN  
CANADA  
AND  
THE REPUBLIC OF PERU  
FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

CANADA AND THE REPUBLIC OF PERU, hereinafter referred to as the "Parties",

RECOGNIZING that the promotion and the protection of investments of investors of one Party in the territory of the other Party will be conducive to the stimulation of mutually beneficial business activity, to the development of economic cooperation between them and to the promotion of sustainable development,

HAVE AGREED AS FOLLOWS:



## SECTION A - DEFINITIONS

### ARTICLE 1

#### Definitions

For the purpose of this Agreement:

**administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct, but does not include:

- (i) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
- (ii) a ruling that adjudicates with respect to a particular act or practice.

**affiliate** a person is an affiliate of another person when:

- (i) directly or indirectly, it controls or is controlled by that other person; or
- (ii) it and the other person are both controlled, directly or indirectly, by the same person;

**Commission** means the body established by the Parties under Article 50;

**confidential information** means business confidential information and information that is privileged or otherwise protected from disclosure;

**covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party existing on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;

**cultural industries** means persons engaged in any of the following activities:

- (i) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;
- (ii) the production, distribution, sale or exhibition of film or video recordings;
- (iii) the production, distribution, sale or exhibition of audio or video music recordings;
- (iv) the publication, distribution, sale or exhibition of music in print or machine readable form; or
- (v) radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services.

**days** means calendar days, including weekends and holidays;

**designate** means to establish, designate or authorize, or to expand the scope of a monopoly, additional good or service after the date of entry into force of the Agreement;

**disputing investor** means an investor that makes a claim under Section C;

**disputing Party** means a Party against which a claim is made under Section C;



**disputing party** means the disputing investor or the disputing Party;

**enterprise** means:

- (i) any entity constituted or organized under applicable law, whether or not for profit, whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association; and
- (ii) a branch of any such entity;

**enterprise of a Party** means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

**equity or debt securities** includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

**existing** means in effect on the date of entry into force of this Agreement;

**financial institution** means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

**financial service** means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;

**government monopoly** means a monopoly that is owned, or controlled through ownership interests, by the national government of a Party or by another such monopoly;

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

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

**intellectual property rights** means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights.

**Inter-American Convention** means the *Inter-American Convention on International Commercial Arbitration*, done at Panama, January 30, 1975;

**investment** means:

- (I) an enterprise;
- (II) an equity security of an enterprise;



(III) a debt security of an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

(IV) a loan to an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

(V) (i) notwithstanding subparagraphs (III) and (IV) above, a loan to or debt security issued by a financial institution is an investment only where the loan or debt security is treated as regulatory capital by the Party in whose territory the financial institution is located, and

(ii) a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in (i), is not an investment;

for greater certainty:

(iii) a loan to, or debt security issued by, a Party or a state enterprise thereof is not an investment; and

(iv) a loan granted by or debt security owned by a cross-border financial service provider, other than a loan to or debt security issued by a financial institution, is an investment if such loan or debt security meets the criteria for investments set out elsewhere in this Article;

(VI) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

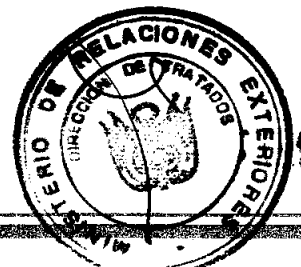
(VII) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraphs (III) (IV) or (V);

(VIII) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(IX) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

(ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;



but investment does not mean,

- (X) claims to money that arise solely from
  - (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or
  - (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraphs (IV) or (V); and
- (XI) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (I) through (IX);

**investment of an investor of a Party** means an investment owned or controlled directly or indirectly by an investor of such Party;

**investor of a Party**<sup>1</sup> means

- (i) in the case of Canada:
  - (a) Canada or a state enterprise of Canada, or
  - (b) a national or an enterprise of Canada,
- (ii) in the case of the Republic of Peru:
  - (a) a state enterprise of the Republic of Peru, or
  - (b) a national or enterprise of the Republic of Peru;

that seeks to make, is making or has made an investment; a natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship; and

that seeks to make, is making or has made an investment; a natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship;

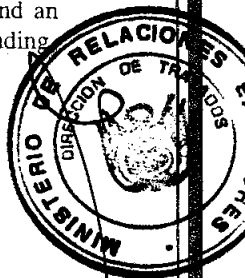
**investor of a non-Party**<sup>2</sup> means an investor other than an investor of a Party, that seeks to make, is making, or has made an investment;

**legal stability agreement** means an agreement entered into by the national government of a Party and an investor of the other Party or a covered investment of such investor that accords certain benefits, including but not limited to, a commitment to maintain the existing income tax regime during a specified time;

**measure** includes any law, regulation, procedure, requirement, or practice;

<sup>1</sup> For greater certainty, it is understood that an investor "seeks to make an investment" only when the investor has taken concrete steps necessary to make said investment, such as when the investor has made an application for a permit or license authorizing the establishment of an investment.

<sup>2</sup> For greater certainty, it is understood that an investor "seeks to make an investment" only when the investor has taken concrete steps necessary to make said investment, such as when the investor has made an application for a permit or license authorizing the establishment of an investment.





**monopoly** means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

**national** means a natural person who is a citizen or permanent resident of a Party;

**national government** means:

- (i) in respect of Canada, the federal level of government; and
- (ii) in respect of the Republic of Peru, the national level of government;

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

**non-disputing Party** means a Party that is not a party to an investment dispute under Section C;

**non-disputing party** means a person of a Party, or a person of a non-Party with a significant presence in the territory of a Party, that is not a party to an investment dispute under Section C;

**person** means a natural person or an enterprise;

**person of a Party** means a national, or an enterprise of a Party;

**public entity** means a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

**Secretary-General** means the Secretary-General of ICSID;

**state enterprise** means an enterprise that is owned or controlled through ownership interests by a Party;

**sub-national government** means:

- (i) in respect of Canada, provincial or local governments; and
- (ii) in respect of the Republic of Peru, regional or local governments;

**tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement;

**taxation authorities** means the following until notice in writing to the contrary is provided to the other Party:

- (i) for Canada: the Assistant Deputy Minister, Tax Policy, of the Department of Finance Canada; and
- (ii) for the Republic of Peru: the Vice Minister of Economy, the Ministry of Economy and Finance.

**territory** means

- (i) in respect of Canada:
  - (a) the land territory of Canada, air space, internal waters and territorial sea of Canada;

- (b) those areas, including the exclusive economic zone and the seabed and subsoil, over which Canada exercises, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration and exploitation of the natural resources; and
  - (c) artificial islands, installations and structures in the exclusive economic zone or on the continental shelf over which Canada has jurisdiction as a coastal state; and
- (ii) in respect of the Republic of Peru, the land territory, the islands, the internal waters, as well as the airspace and the maritime domain which includes the sea adjacent to its coast, its seabed and subsoil, to a distance of 200 nautical miles measured from the baselines established by law, and the corresponding continental shelf, over which the Republic of Peru exercises sovereignty and jurisdiction in accordance with its domestic law and international law;

**Tribunal** means an arbitration tribunal established under Article 27 (Submission of a Claim to Arbitration) or Article 32 (Consolidation);

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976; and

**WTO Agreement** means the Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994.



## SECTION B - SUBSTANTIVE OBLIGATIONS

### ARTICLE 2

#### Scope and Application

1. This Agreement shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party; and
  - (b) covered investments.
2. For greater certainty, the provisions of this Agreement do not bind a Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement for that Party.

### ARTICLE 3

#### National Treatment

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

### ARTICLE 4<sup>3 4</sup>

#### Most-Favoured-Nation Treatment

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



<sup>3</sup> For greater certainty, the treatment accorded by a Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

<sup>4</sup> For greater certainty, Article 4 shall be interpreted in accordance with Annex B.4.



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

## ARTICLE 5

### Minimum Standard of Treatment

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

2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

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

## ARTICLE 6

### Senior Management, Boards of Directors and Entry of Personnel

1. A Party may not require that an enterprise of that Party, that is a covered investment, appoint to senior management positions individuals of any particular nationality.

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

3. Subject to its laws, regulations and policies relating to the entry of aliens, each Party shall grant temporary entry to nationals of the other Party, employed by an investor of the other Party, who seek to render services to an investment of that investor in the territory of the Party, in a capacity that is managerial or executive or requires specialized knowledge.

## ARTICLE 7

### Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or a non-Party in its territory:

- (a) to export a given level or percentage of goods;
- (b) to achieve a given level or percentage of domestic content;



- (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority, to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or
- (g) to supply exclusively from the territory of the Party the goods it produces or the services it provides to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 3 and 4 apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
- (d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraphs 1 and 3 shall not apply to any requirement other than the requirements set out in those paragraphs.



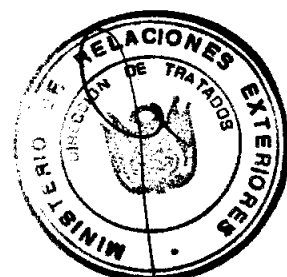
6. The provisions of:

- (a) Paragraphs (1) (a), (b) and (c), and (3) (a) and (b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
- (b) Paragraphs (1) (b), (c), (f) and (g), and (3) (a) and (b) shall not apply to procurement by a Party or a state enterprise; and
- (c) Paragraphs (3) (a) and (b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

## ARTICLE 8

### Monopolies and State Enterprises

1. Nothing in this Agreement shall be construed to prevent a Party from designating a monopoly, or from maintaining or establishing a state enterprise.
2. Where a Party intends to designate a monopoly<sup>5</sup> and the designation may affect the interests of persons of the other Party, the Party shall, wherever possible, provide prior written notification to the other Party of the designation.
3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any government monopoly that it maintains or designates acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges<sup>6</sup>.
4. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.



<sup>5</sup> Nothing in this Article shall be construed to prevent a monopoly from charging different prices in different geographic markets, where such differences are based on normal commercial considerations, such as taking account of supply and demand conditions in those markets.

<sup>6</sup> A delegation includes a legislative grant, a government order, directive or other act transferring to the monopoly, or authorizing the exercise by the monopoly of, governmental authority.

## ARTICLE 9

### Reservations and Exceptions

1. Articles 3, 4, 6 and 7 shall not apply to:
  - (a) any existing non-conforming measure that is maintained by
    - (i) a national government, as set out in its Schedule to Annex I, or
    - (ii) a sub-national government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 3, 4, 6 and 7.
2. Articles 3, 4, 6 and 7 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its schedule to Annex II.
3. Article 4 shall not apply to treatment accorded by a Party pursuant to agreements, or with respect to sectors, set out in Annex III.
4. In respect of intellectual property rights, a Party may derogate from Articles 3 and 4 in a manner that is consistent with the WTO Agreement.
5. The provisions of Articles 3, 4 and 6 of this Agreement shall not apply to:
  - (a) procurement by a Party or state enterprise;
  - (b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance;
6. For greater certainty, Article 3 of this Agreement shall not apply to the granting by a Party to a financial institution of an exclusive right to provide activities or services forming part of a public retirement plan or statutory system of social security.

## ARTICLE 10

### General Exceptions

1. Subject to the requirement that such measures are not applied in a manner that would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary:

- (a) to protect human, animal or plant life or health;



- (b) to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; or
  - (c) for the conservation of living or non-living exhaustible natural resources.
2. 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, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
  - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
  - (c) ensuring the integrity and stability of a Party's financial system.
3. Nothing in this Agreement shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 7 (Performance Requirements) or Article 14 (Transfer of Funds).
4. Nothing in this Agreement shall be construed:
- (a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
  - (b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests
    - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,
    - (ii) taken in time of war or other emergency in international relations, or
    - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
  - (c) to prevent any Party from taking action in pursuance of its obligations under the *United Nations Charter* for the maintenance of international peace and security.
5. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting Cabinet confidences, personal privacy or the confidentiality of the financial affairs and accounts of individual customers of financial institutions.



6. The provisions of this Agreement shall not apply to investments in cultural industries.

7. Any measure adopted by a Party in conformity with a decision adopted, extended or modified by the World Trade Organization pursuant to Articles IX:3 or IX:4 of the WTO Agreement shall be deemed to be also in conformity with this Agreement. An investor purporting to act pursuant to Section C of this Agreement may not claim that such a conforming measure is in breach of this Agreement.

## ARTICLE 11

### Health, Safety and Environmental Measures

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

## ARTICLE 12

### Compensation for Losses

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

2. Paragraph (1) shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 3 but for Article 9(5)(b).

## ARTICLE 13<sup>7</sup>

### Expropriation

1. Neither Party shall nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation"), except for a public purpose<sup>8</sup>, in accordance with due process of law, in a non-discriminatory manner and on prompt, adequate and effective compensation.



<sup>7</sup> For greater certainty, Article 13(1) shall be interpreted in accordance with Annex B.13(1) on the clarification of indirect expropriation.

<sup>8</sup> The term "public purpose" is a treaty term to be interpreted in accordance with international law. It is not meant to create any inconsistency with the same or similar concepts in the domestic law of the Parties.

2. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until date of payment.

4. The investor affected shall have a right, under the law of the Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of its case and of the valuation of its investment in accordance with the principles set out in this Article.

5. The provisions of this Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreement.

#### ARTICLE 14

##### Transfer of Funds

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

- (a) contributions to capital;
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
- (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- (d) payments made under a contract entered into by the investor, or the covered investment, including payments made pursuant to a loan agreement;
- (e) payments made pursuant to Articles 12 and 13; and
- (f) payments arising under Section C.

2. Each Party shall permit transfers relating to a covered investment to be made in the convertible currency in which the capital was originally invested, or in any other convertible currency agreed by the investor and the Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer.



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

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offences;
- (d) reports of transfers of currency or other monetary instruments; or
- (e) ensuring the satisfaction of judgments in adjudicatory proceedings.

4. Neither Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to investments in the territory of the other Party.

5. Paragraph 4 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 3.

6. Notwithstanding the provisions of paragraphs 1, 2 and 4, and without limiting the applicability of paragraph 5, a Party may prevent or limit transfers by a financial institution to, or for the benefit of, an affiliate of or person related to such institution, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions.

7. Notwithstanding paragraph 1, a Party may restrict transfers in kind in circumstances where it could otherwise restrict transfers under the WTO Agreement and as set out in paragraph 3.

## ARTICLE 15

### Subrogation

1. If a Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of such Party or agency thereof to any right or title held by the investor.

2. A Party or any agency thereof which is subrogated to the rights of an investor in accordance with paragraph 1 of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. Such rights may be exercised by the Party or any agency thereof, or by the investor if the Party or any agency thereof so authorizes.





## ARTICLE 16

### Taxation Measures

1. Except where express reference is made thereto, nothing in this Agreement shall apply to taxation measures. For greater certainty, nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention. In the event of any inconsistency between the provisions of this Agreement and any such convention, the provisions of that convention shall apply to the extent of the inconsistency.
2. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would be contrary to the Party's law protecting information concerning the taxation affairs of a taxpayer.
3. The provisions of Article 13 shall apply to taxation measures unless the taxation authorities of the Parties, no later than six months after being notified by an investor that the investor disputes a taxation measure, jointly determine that the measure in question is not an expropriation. The investor shall refer the issue of whether a taxation measure is an expropriation for a determination to the taxation authorities of the Parties at the same time that it gives notice under Article 24 (Notice of Intent to Submit a Claim to Arbitration).
4. If, in connection with a claim by an investor of a Party or a dispute between the Parties, an issue arises as to whether a measure of a Party is a taxation measure, a Party may refer the issue to the taxation authorities of the Parties. The taxation authorities shall decide the issue, and their decision shall bind any Tribunal formed pursuant to Section C or arbitral panel formed pursuant to Section D, as the case may be, with jurisdiction over the claim or the dispute. A Tribunal or arbitral panel seized of a claim or a dispute in which the issue arises may not proceed pending receipt of the decision of the taxation authorities. If the taxation authorities have not decided the issue within six months of the referral, the Tribunal or arbitral panel shall decide the issue in place of the taxation authorities.

## ARTICLE 17

### Prudential Measures

1. Where an investor submits a claim to arbitration under Section C, and the disputing Party invokes Articles 10(2) or 14(6), the Tribunal established pursuant to Article 22 (Claim by an Investor of a Party on its Own Behalf) or 23 (Claim by an Investor of a Party on Behalf of an Enterprise) shall, at the request of that Party, seek a report in writing from the Parties on the issue of whether and to what extent the said paragraphs are a valid defence to the claim of the investor. The Tribunal may not proceed pending receipt of a report under this Article.
2. Pursuant to a request received in accordance with paragraph (1), the Parties shall proceed in accordance with Section D to prepare a written report, either on the basis of agreement following consultations, or by means of an arbitral panel. The consultations shall be between the financial services authorities of the Parties. The report shall be transmitted to the Tribunal, and shall be binding on the Tribunal.
3. Where, within 70 days of the referral by the Tribunal, no request for the establishment of a panel pursuant to paragraph (2) has been made, and no report has been received by the Tribunal, the Tribunal may proceed to decide the matter.



## ARTICLE 18

### Denial of Benefits

1. A Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of such Party and to investments of such investor if investors of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprises or to its investments.

2. Subject to Article 19(3), a Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

## ARTICLE 19

### Transparency

1. Each Party shall, to the extent possible, ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. To the extent possible, each Party shall:

- (a) publish in advance any such measure that it proposes to adopt; and
- (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

3. Upon request by a Party, information shall be exchanged on the measures of the other Party that may have an impact on covered investments.

