

# Agreement Between Canada and Mongolia for the Promotion and Protection of Investments

Canada and Mongolia, 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:

"central government " means the federal government in the case of Canada and the government of Mongolia in the case of Mongolia;

"confidential information " means confidential business information and information that is privileged or otherwise protected from disclosure under the law of a Party;

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

"disputing investor" means an investor that makes a claim under Section C (Settlement of Disputes Between an Investor and the Host Party);

"disputing Party" means a Party against which a claim is made under Section C (Settlement of Disputes Between an Investor and the Host Party);

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

" enterprise " means

1. any entity constituted or organized under applicable law, whether or not for profit, whether privately owned or governmentally owned, including any corporation, trust, partnership, joint venture or other association; and
2. a branch of any such entity;

"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;

"ICSID" means the International Centre for the 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 on 18 March 1965;

"information protected under its competition laws" means:

- In the case of Canada, information within the scope of Section 29 of the Competition Act, R.S.C. 1985, c. 34, or any successor provision, and

- In the case of Mongolia, information within the scope of Article 12.1.5 and Article 15.1.8 of the Competition Law, 2010, or any successor provisions;

"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;

"investment" means:

1. an enterprise;
2. shares, stocks and other forms of equity participation in an enterprise;
3. bonds, debentures and other debt instruments of an enterprise;
4. a loan to an enterprise;
5. notwithstanding subparagraphs (c) and (d) 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;
6. an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise;
7. an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;
8. 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:
  1. contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, and concessions, or
  2. contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;
9. intellectual property rights; and
10. Any other tangible or intangible, moveable or immovable, property and related property rights acquired in the expectation of or used for the purpose of economic benefit or other business purpose;

But "investment" does not mean:

11. Claims to money that arise solely from:
  1. 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
  2. the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or
12. Any other claims to money, that do not involve the kinds of interests set out in subparagraphs (a) to (j);

"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" means a Party, a national of a Party or an enterprise of a Party, that seeks to make, is making or has made an investment;

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

"national" means:

- In the case of Canada, a natural person who is a citizen or permanent resident of Canada; and

- In the case of Mongolia, a natural person who is a citizen or permanent resident of Mongolia under applicable law

A natural person who is a citizen of one Party and a permanent resident of the other Party shall be deemed to be exclusively

a national of the Party of his or her citizenship;

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

"person" means a natural person or an enterprise;

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

"sub-national government" means:

- In the case of Canada, provincial, territorial or local governments; and
- In the case of Mongolia, aimag (province), capital city, district, bag and khoroo;

"taxation authorities" means until otherwise notified by a Party:

- For Canada, the Assistant Deputy Minister, Tax Policy, of the Department of Finance of Canada;
- For Mongolia, the Minister for Finance;

"territory" means:

- With respect to Canada, (i) the land territory, internal waters and territorial sea, including the air space above these areas, of Canada; (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 (UNCLOS); and (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;

- With respect to Mongolia, the land territory, internal waters and territorial sea of Mongolia and the airspace above it, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which Mongolia exercises sovereign rights and jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of natural resources of such areas;

"Tribunal" means an arbitration tribunal established under Article 23 (Submission of a Claim to Arbitration) or Article 27 (Consolidation);

"TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights;

"UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976, as may be amended from time to time; and

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

## **Section B. Substantive Obligations**

### **Article 2. Scope**

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

1. investors of the other Party; and
2. covered investments.

2. The obligations in Section B (Substantive Obligations) shall apply to any person of a Party when it exercises any regulatory, administrative or other governmental authority delegated to it by that Party.

### **Article 3. Promotion of Investment**

Each Party shall encourage the creation of favourable conditions for investment in its territory by investors of the other Party and shall admit such investments in accordance with this Agreement.

### **Article 4. 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 subnational 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 5. Most-favoured-nation Treatment**

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

3. For greater certainty, the treatment accorded by a Party under paragraph 1 and 2 means, with respect to a sub-national government, treatment accorded, in like circumstances, by that subnational government to investors, and to investments of investors, of a non-Party.

## **Article 6. Minimum Standard of Treatment**

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

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 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 7. Compensation for Losses**

Notwithstanding paragraph 6 of Article 16 (Reservations and Exceptions), 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 compensation for losses suffered by investments in its territory owing to armed conflict, civil strife or a natural disaster.

## **Article 8. Senior Management, Boards of Directors and Entry of Personnel**

1. A Party may not require that enterprises of that Party that are covered investments 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 enterprises that are covered investments 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 employed by an investor of the other Party who seek to render managerial or executive services, or services that require specialized knowledge, to an investment of that investor in the territory of the Party.

## **Article 9. Performance Requirements**

1. The Parties reaffirm their obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs), the provisions of which, as they may be amended from time to time, are incorporated into and made part of this Agreement.

2. 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 of a non-Party in its territory to:

- a. export a given level or percentage of goods;
  - b. achieve a given level or percentage of domestic content;
  - c. 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; and
  - d. supply exclusively from the territory of the Party the goods that such investment produces or the services it provides to a specific regional market or to the world market.
3. For greater certainty, paragraph 2 does not prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory, on compliance with a requirement set out in that paragraph.
4. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements is not inconsistent with subparagraph 2(c).

## **Article 10. Expropriation**

1. Neither Party may nationalize or expropriate covered investments either directly or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation"), except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on prompt, adequate and effective compensation.
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 to determine fair market value, as appropriate.
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 accrued from the date of expropriation until the date of payment.
4. The investor affected shall have a right under the law of the expropriating Party to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.
5. 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 11. Transfers**

1. Each Party shall permit all transfers relating to covered investments 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 covered investment;
  - c. proceeds from the sale of all or any part of covered investments or from the partial or complete liquidation of covered investments;
  - d. payments made under a contract entered into by the investor, or covered investments, including payments made pursuant to a loan agreement;
  - e. payments made pursuant to Articles 7 (Compensation for Losses) and 10 (Expropriation); and
  - f. payments arising under Section C (Settlement of Disputes between an Investor and the Host Party).

2. Each Party shall permit transfers relating to covered investments to be made in the convertible currency in which the capital was originally invested, or in any other convertible currency agreed to by the investor and the Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the market 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 for failing 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 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 of returns in kind in circumstances where it could otherwise restrict transfers under the WTO Agreement and as set out in paragraph 3.

## **Article 12. Transparency**

1. Each Party shall 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:

1. publish in advance any such measure that it proposes to adopt; and
  2. 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.

## **Article 13. 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 the Party or agency 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, 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 14. Corporate Social Responsibility**

Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labour, the environment, human rights, community relations and anti-corruption. The Parties should remind those enterprises of the importance of incorporating such corporate social responsibility standards in their internal policies.

## **Article 15. 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 16. Reservations and Exceptions**

1. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 8 (Senior Management, Boards of Directors and Entry of Personnel) and paragraphs 2, 3 and 4 of Article 9 (Performance Requirements) shall not apply to:

1. any measure:

1. existing and non-conforming, maintained in the territory of a Party,
2. maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition of a government's equity interests in, or the assets of, an existing state enterprise or an existing governmental entity:
  1. - prohibits or imposes limitations on the ownership or control of equity interests or assets; or
  2. - imposes nationality requirements relating to senior management or members of the board of directors;
2. the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
3. an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 8 (Senior Management, Boards of Directors and Entry of Personnel) and paragraphs 2, 3, and 4 of Article 9 (Performance Requirements).

2. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 8 (Senior Management, Boards of Directors and Entry of Personnel) and paragraphs 2, 3 and 4 of Article 9 (Performance Requirements) shall not apply to any measure that a Party adopts or maintains with respect to sectors or matters, as set out in its schedule to Annex I.

3. Article 5 (Most-Favoured-Nation Treatment) shall not apply to treatment accorded by a Party pursuant to agreements set out in its schedule to Annex II.

4. In respect of intellectual property rights, a Party may derogate from Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), and subparagraph 2(c) of Article 9 (Performance Requirements) in a manner that is consistent with the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of WTO Agreement.

5. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 8 (Senior Management, Boards of Directors and Entry of Personnel) and 9 (Performance Requirements) of this Agreement shall not apply to procurement by a Party.

6. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) and 8 (Senior Management, Boards of Directors and Entry of Personnel) of this Agreement shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

7. Articles 6 (Minimum Standard of Treatment), 7 (Compensation for Losses), 8 (Senior Management, Boards of Directors and Entry of Personnel), 9 (Performance Requirements) and 11 (Transfers) shall not apply to taxation measures.

8. Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) shall not apply to:

1. taxation measures on income, capital gains, or the taxable capital of corporations; or
2. any new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, any measure that is taken by a Party to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) providing that the measure does not arbitrarily discriminate between persons, goods or services of the Parties.

## **Article 17. 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:

1. to protect human, animal or plant life or health;
2. to ensure compliance with laws and regulations that are not inconsistent with this Agreement; or
3. 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:

1. 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;
2. the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
3. 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 or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 9 (Performance Requirements) or Article 11 (Transfers).

4. Nothing in this Agreement shall be construed:

1. 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;

2. to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests:

1. 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;
2. taken in time of war or other emergency in international relations; or
3. relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

3. 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 the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the confidentiality of the financial affairs and accounts of individual customers of financial institutions.

6. Nothing in this Agreement shall be construed to require, during the course of any dispute settlement procedure under this Agreement, a Party to furnish or allow access to information protected under its competition laws, or a competition authority of a Party to furnish or allow access to any other information that is privileged or otherwise protected from disclosure.

7. The competition authority referred to paragraph 6 shall be the following until otherwise notified by a Party:

- For Canada: the Commissioner of Competition; and

- For Mongolia: the relevant authorities by the laws mentioned under the definition of "information protected under its competition laws" in the Article 1 of this Agreement.

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

"Cultural industries" means persons engaged in any of the following activities:



1. 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;
  2. the production, distribution, sale or exhibition of film or video recordings;
  3. the production, distribution, sale or exhibition of audio or video music recordings;
  4. the publication, distribution, sale or exhibition of music in print or machine readable form; or
  5. radiocommunications 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.
9. Any measure adopted by a Party in conformity with a decision adopted, extended or modified by the World Trade Organization pursuant to Article IX:3 and 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 (Settlement of Disputes between an Investor and the Host Party) of this Agreement may not claim that such a conforming measure is in breach of this Agreement.
10. Nothing in this Agreement shall affect the rights and obligations of the Parties under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall apply to the extent of the inconsistency.
11. 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.

## **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 the other Party and to investments of that 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. A Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of the other Party and to investments of that investor 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.

## **Section C. Settlement of Disputes between an Investor and the Host Party**

### **Article 19. Purpose**

Without prejudice to the rights and obligations of the Parties under Section D (State-to-State Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes.

### **Article 20. Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise**

1. An investor of a Party may submit to arbitration under this Section a claim that:
  1. the other Party has breached an obligation under Section B (Substantives Obligations), other than an obligation under paragraph 3 of Article 8 (Senior Management, Boards of Directors and Entry of Personnel), Article 12 (Transparency), 14 (Corporate Social Responsibility) or 15 (Health, Safety and Environmental Measures); and
  2. the investor has incurred loss or damage by reason of, or arising out of, that breach.
2. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that:
  1. the other Party has breached an obligation under Section B (Substantive Obligations), other than an obligation under paragraph 3 of Article 8 (Senior Management, Boards of Directors and Entry of Personnel), Article 12 (Transparency), 14 (Corporate Social Responsibility) or 15 (Health, Safety and Environmental Measures); and
  2. the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

## **Article 21. Conditions Precedent to Submission of a Claim to Arbitration**

1. The disputing parties shall hold consultations in an attempt to settle a claim amicably before a disputing investor may submit a claim to arbitration. Consultations shall be held within 30 days of the submission of the notice of intent to submit a claim to arbitration under subparagraph 2(c), unless the disputing parties otherwise agree. The place of consultation shall be the capital of the disputing Party, unless the disputing parties otherwise agree.

2. A disputing investor may submit a claim to arbitration under Article 20 (Claims by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) only if:

1. the disputing investor and, where a claim is made under paragraph 2 of Article 20 (Claims by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the enterprise, consent to arbitration in accordance with the procedures set out in this Agreement;

2. at least six months have elapsed since the events giving rise to the claim;

3. the disputing investor has delivered to the disputing Party a written notice of its intent to submit a claim to arbitration (Notice of Intent) at least 90 days prior to submitting the claim. The Notice of Intent shall specify:

1. the name and address of the disputing investor and, where a claim is made under paragraph 2 of Article 20 (Claims by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the name and address of the enterprise;

2. the provisions of this Agreement alleged to have been breached and any other relevant provisions;

3. the issues and factual basis for the claim, including the measures at issue; and

4. the relief sought and the approximate amount of damages claimed;

4. the disputing investor has delivered evidence establishing that it is an investor of the other Party with its Notice of Intent;

And

5. in the case of a claim submitted under paragraph 1 of Article 20 (Claims by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise):

1. not more than three years have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage thereby; and

2. the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the disputing Party that is a juridical person that the disputing investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 20 (Claims by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party;

6. in the case of a claim submitted under paragraph 2 of Article 20 (Claims by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise):

1. not more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby; and

2. both the disputing investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 20 (Claims by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required under paragraph 2 shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration. A waiver from the enterprise under subparagraphs 2(e)(ii) or 2(f)(ii) shall not be required where a disputing Party has deprived the disputing investor of control of an enterprise.

4. In addition to satisfying the conditions precedent listed in paragraph 2, a disputing investor may submit a claim to

arbitration under Article 20 (Claims by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) with respect to a taxation measure only if:

1. the disputing investor provides a copy of the notice of claim to the taxation authorities of the Parties; and
2. six months after receiving notification of the claim by the disputing investor, the taxation authorities of the Parties fail to reach a joint determination that the measure does not breach the relevant provisions of this Agreement.
5. If, in connection with a claim by a disputing 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. A decision of the taxation authorities shall bind any Tribunal formed pursuant to Section C (Settlement of Disputes between an Investor and the Host Party) or arbitral panel formed pursuant to Section D (State-to-State Dispute Settlement Procedures). 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 itself decide the issue.
6. The taxation authorities seized of an issue under paragraphs 4 and 5 may agree to modify the time period allowed for their consideration of the issue.

## **Article 22. Special Rules Regarding Financial Services**

1. With respect to:

1. financial institutions of a Party; and
2. investors of a Party, and investments of such investors, in financial institutions in the disputing Party's territory,

This Section applies only in respect of claims that the disputing Party has breached an obligation under Article 10 (Expropriation), 11 (Transfers) or 18 (Denial of Benefits).

2. Where a disputing investor or disputing Party claims that a dispute involves measures adopted or maintained by a Party relating to financial institutions of the other Party or investors of the other Party and their investments in financial institutions in the disputing Party's territory, or where the disputing Party invokes paragraph 6 of Article 11 (Transfers), paragraph 2 or 3 of Article 17 (General Exceptions), in addition to the criteria set out in paragraph 2 of Article 25 (Arbitrators), the arbitrators shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

3. Where a disputing investor submits a claim to arbitration under this Section, and the disputing Party invokes paragraph 6 of Article 11 (Transfers), paragraph 2 or 3 of Article 17 (General Exceptions), at the request of that Party, the Tribunal shall 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 disputing investor. The Tribunal may not proceed pending receipt of a report under this Article.

4. Pursuant to a request received in accordance with paragraph 3, the Parties shall proceed to prepare a written report, either on the basis of agreement following consultations, or by means of an arbitral panel in accordance with Section D (State-to-State Dispute Settlement Procedures). The report shall be transmitted to the Tribunal, and shall be binding on the Tribunal.

5. The Tribunal may decide the matter where, within 70 days of the referral by the Tribunal, no request for the establishment of a panel pursuant to paragraph 4 has been made, and no report has been received by the Tribunal.

## **Article 23. Submission of a Claim to Arbitration**

1. A disputing investor who meets the conditions precedent in Article 21 (Conditions Precedent to Submission of a Claim to Arbitration) may submit the claim to arbitration under:

1. the ICSID Convention, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;
2. the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention; or
3. the UNCITRAL Arbitration Rules.

2. The arbitration rules applicable under paragraph 1, and in effect on the date the claim or claims were submitted to

arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement and supplemented by any rules adopted by the Parties.

3. A claim is submitted to arbitration under this Section when:

1. the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
  2. the request for arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General; or
  3. the notice of arbitration under Article 3 of the UNCITRAL Arbitration Rules is received by the disputing Party.
4. Delivery of notice and other documents on a Party shall be made to:

For Canada:

Office of the Deputy Attorney General of Canada

Justice Building

239 Wellington Street

Ottawa, Ontario

K1A 0H8

For Mongolia:

The Cabinet Secretariat of the Government of Mongolia

State Palace

Sukhbaatar Square

Ulaanbaatar 12

Mongolia

## **Article 24. Consent to Arbitration**

1. Each Party consents to the submission of a claim to arbitration in accordance with the terms of this Agreement. Failure to meet any of the conditions precedent in Article 21 (Conditions Precedent to Submission of a Claim to Arbitration) shall nullify that consent.

2. The consent given in paragraph 1 and the submission of a claim to arbitration shall satisfy the requirement of:

1. Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and

2. Article II of the New York Convention for an agreement in writing

## **Article 25. Arbitrators**

1. Except in respect of a Tribunal established under Article 27 (Consolidation), and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. Arbitrators shall have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international investment or international trade agreements. Arbitrators shall be independent of, and not be affiliated with or take instructions from, either Party or the disputing investor.

3. If the disputing parties do not agree on the remuneration of the arbitrators before the constitution of the Tribunal, the prevailing ICSID rate for arbitrators shall apply.

4. If a Tribunal, other than a Tribunal established under Article 27 (Consolidation), has not been constituted within 90 days from the date that a claim is submitted to arbitration, either disputing party may ask the Secretary-General to appoint, in his

or her discretion and, to the extent practicable, in consultation with the disputing parties, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall not be a national of either Party.

## **Article 26. Agreement to Appointment of Arbitrators**

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on a paragraph 2 of Article 25 (Arbitrators) or on a ground other than nationality, citizenship or permanent residence:

1. the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
2. a disputing investor referred to in paragraph 1 of Article 20 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration or continue a claim under the ICSID Convention or the ICSID Additional Facility Rules only if the disputing investor agrees in writing to the appointment of each member of the Tribunal; and
3. a disputing investor referred to in paragraph 2 of Article 20 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

## **Article 27. Consolidation**

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.
2. Where a Tribunal established under this Article is satisfied that claims submitted to arbitration under Article 23 (Submission of a Claim to Arbitration) have a question of law or fact in common, the Tribunal may, in the interest of fair and efficient resolution of the claims and after hearing the disputing parties, by order:
  1. assume jurisdiction over, and hear and determine together, all or part of the claims; or
  2. 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.
3. A disputing party that seeks an order under paragraph 2 shall request that the Secretary-General establish a Tribunal and shall specify in the request:
  1. the name of the disputing Party or disputing investors against which the order is sought;
  2. the nature of the order sought; and
  3. the grounds on which the order is sought.
4. The disputing party shall deliver a copy of the request to the disputing Party or disputing investors against which the order is sought.
5. The disputing parties shall request the Secretary-General to establish a Tribunal comprising three arbitrators within 60 days of receipt of the request. The disputing parties shall ask the Secretary-General to appoint one member who is a national of the disputing Party, one member who is a national of the Party of the disputing investors, and a presiding arbitrator who is not a national of either Party.
6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 23 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:
  1. the name and address of the disputing investor;
  2. the nature of the order sought; and
  3. the grounds on which the order is sought.
7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a

request made under paragraph 3.

8. A Tribunal established under Article 23 (Submission of a Claim to Arbitration) shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 23 (Submission of a Claim to Arbitration) be stayed unless the latter Tribunal has already adjourned its proceedings.

## **Article 28. Documents to, and Participation of, the other Party**

1. A disputing Party shall deliver to the other Party a copy of the notice of intent referred to in subparagraph 2(c) of Article 21 (Conditions Precedent to Submission of a Claim to Arbitration), the notice of arbitration referred to in paragraph 3 of Article 23 (Submission of a Claim to Arbitration), any statement of claim and any documents that are appended to such notices or claims no later than 30 days after the date that such documents have been delivered to the disputing Party. The other Party shall be entitled, at its cost, to receive from the disputing Party a copy of the evidence that has been tendered to the Tribunal, copies of all pleadings filed in the arbitration, and the written argument of the disputing parties. The Party receiving such information shall treat the information as if it were a disputing Party.

2. The other Party shall have the right to attend any hearings held under this Section. Upon written notice to the disputing parties, the other Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

## **Article 29. Place of Arbitration**

The disputing parties may agree on the legal place of arbitration under the arbitral rules applicable under paragraph 1 of Article 23 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the Tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of either Party or of a third State that is a party to the New York Convention.

## **Article 30. Public Access to Hearings and Documents**

1. Any Tribunal award under this Section shall be publicly available, subject to the redaction of confidential information. All other documents submitted to, or issued by, the Tribunal shall be publicly available unless the disputing parties otherwise agree, subject to the redaction of confidential information.

2. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings in camera to the extent necessary to ensure the protection of confidential information, including business confidential information.

3. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

4. The Parties may share with officials of their respective central and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but they shall ensure that those persons protect any confidential information in such documents.

5. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

## **Article 31. Submissions by a Non-disputing Party**

A Tribunal shall have the authority to consider and accept written submissions from a person or entity that is not a disputing party and that has a significant interest in the arbitration. The Tribunal shall ensure that any non-disputing party submission does not disrupt the proceedings and does not unduly burden or unfairly prejudice either disputing party.

## **Article 32. Governing Law**

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. A joint interpretation by the Parties of a provision of this Agreement shall be binding on

a Tribunal established under this Section, and any award under this Section shall be consistent with such interpretation.

2. Where a disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, on request of the disputing Party, the Tribunal shall request the joint interpretation of the Parties on the issue. The Parties shall submit in writing their joint interpretation to the Tribunal. Further to paragraph 1, the joint interpretation shall be binding on the Tribunal. If the Parties fail to submit the joint interpretation within 60 days of the delivery of the request, the Tribunal shall decide the issue.

### **Article 33. Expert Reports**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party, or on its own initiative unless the disputing parties disapprove, may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may agree.

### **Article 34. Interim Measures of Protection and Final Award**

1. A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 20 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise). For purposes of this paragraph, an order includes a recommendation.

2. Where a Tribunal makes a final award against the disputing Party, the Tribunal may award, separately or in combination, only:

1. monetary damages and any applicable interest;
2. restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

The Tribunal may also award costs in accordance with the applicable arbitration rules.

3. Subject to paragraph 2, where a claim is made under paragraph 2 of Article 20 (Claim by a Disputing Investor of a Party on Its Own Behalf or on Behalf of an Enterprise):

1. an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise;
2. an award of restitution of property shall provide that restitution be made to the enterprise; and
3. the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

4. A Tribunal may not award punitive damages.

### **Article 35. Finality and Enforcement of an Award**

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

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

1. in the case of a final award made under the ICSID Convention:

1. 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

2. revision or annulment proceedings have been completed; and

2. in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

1. 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
2. a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.
4. Each Party shall provide for the enforcement of an award in its territory.
5. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

## **Article 36. Receipts Under Insurance or Guarantee Contracts**

In an arbitration under this Section, a disputing Party shall not assert as a defence, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

## **Section D. State-to-state Dispute Settlement Procedures**

### **Article 37. Disputes between the Parties**

1. Either Party may request consultations on the interpretation or application of this Agreement. The other Party shall give sympathetic consideration to the request. Any dispute between the Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations.
2. If a dispute cannot be settled through consultations, it shall, at the request of either Party, be submitted to an arbitral panel for decision.
3. An arbitral panel shall be constituted for each dispute. Within two months after receipt through diplomatic channels of the request for arbitration, each Party shall appoint one member to the arbitral panel. The two members shall then select a national of a third State who, upon approval by the two Parties, shall be appointed Chair of the arbitral panel. The Chair shall be appointed within two months from the date of appointment of the other two members of the arbitral panel.
4. If within the periods specified in paragraph 3 the necessary appointments have not been made, either Party may invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or is prevented from discharging the said function, the Member of the International Court of Justice next in seniority, who is not a national of either Party, shall be invited to make the necessary appointments.
5. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, or the resolution of disputes arising under international trade or international investment agreements. They shall be independent of, and not be affiliated with or take instructions from, either Party.
6. Where a Party determines that the dispute involves measures relating to financial institutions, or to investors or investments of such investors in financial institutions, or where a Party invokes paragraph 6 of Article 11 (Transfers), paragraphs 2 or 3 of Article 17 (General Exceptions), the arbitrators shall, in addition to the criteria set out in paragraph 5, have expertise or experience in financial services or practice, which may include the regulation of financial institutions.
7. The arbitral panel shall determine its own procedure. The arbitral panel shall reach its decision by a majority of votes. Such decision shall be binding on both Parties. Unless otherwise agreed, the decision of the arbitral panel shall be rendered within six months of the appointment of the Chair.
8. Each Party shall bear the costs of its own member of the panel and of its representation in the arbitral proceedings. The costs related to the Chair and any remaining costs shall be borne equally by the Parties. The arbitral panel may, however, award that a higher proportion of costs be borne by one of the two Parties, and this award shall be binding on both Parties.
9. Within 60 days of the decision of a panel, the Parties shall reach agreement on the manner in which to resolve their dispute. Such agreement shall normally implement the decision of the panel. If the Parties fail to reach agreement, the Party bringing the dispute shall be entitled to compensation or to suspend benefits of equivalent value to those awarded by the panel.

## **Section E. Final Provisions**



## **Article 38. Consultations and other Actions**

1. A Party may request in writing consultation with the other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.
2. The consultations under paragraph 1 may address, inter alia, matters relating to:
  1. the implementation of this Agreement; or
  2. the interpretation or application of this Agreement.
3. Further to consultations under this Article, the Parties may take any action as they may agree, including making and adopting rules supplementing the applicable arbitral rules under Section C (Settlement of Disputes between an Investor and the Host Party) of this Agreement.

## **Article 39. Extent of Obligations**

The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by sub-national governments.

## **Article 40. Exclusions**

The dispute settlement provisions of Sections C (Settlement of Disputes between an Investor and the Host Party) and D (State-to-State Dispute Settlement Procedures) of this Agreement shall not apply to the matters in Annex III.

## **Article 41. Application and Entry Into Force**

1. All Annexes and footnotes shall form an integral part of this Agreement.
2. Each Party shall notify the other in writing of the completion of the procedures required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.
3. This Agreement shall remain in force unless either Party notifies the other Party in writing of its intention to terminate it. The termination of this Agreement shall become effective one year after notice of termination has been received by the other Party. In respect of investments or

Commitments to invest made prior to the date when the termination of this Agreement becomes effective, Articles 1 to 40 inclusive, as well as paragraphs 1 and 2, shall remain in force for a period of fifteen years.

IN WITNESS WHEREOF, the undersigned, duly authorised, have signed this Agreement.

DONE in duplicate at Ulaanbaatar, on September 8, 2016, in the English and French languages. This Agreement shall also be drawn up in the Mongolian language. Once approved by the Parties by exchange of diplomatic notes, the Mongolian version shall be considered equally authentic.

FOR CANADA

FOR MONGOLIA

The Parties confirm their shared understanding that:

1. indirect expropriation results from a measure or series of measures of a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure;
2. the determination of whether a measure or series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
  1. the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures

of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

2. the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and

3. the character of the measure or series of measures.

3. except in rare circumstances, such as when a measure or series of measures are so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriation.

In accordance with paragraph 2 of Article 16 of this Agreement, Canada reserves the right to adopt or maintain any measure that does not conform to the obligations set out below with respect to the following sectors or matters:

Social services (i.e.: public law enforcement; correctional services, income security or insurance; social security or insurance; social welfare; public education; public training; health and child care), where the measure does not conform with the obligations imposed by Article 4 (National Treatment) or Article 8 (Senior Management, Boards of Directors and Entry of Personnel) of this Agreement;

The rights or preferences provided to aboriginal peoples, where the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 5 (Most Favoured-Nation Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) Article 9 (Performance Requirements) of this Agreement; the rights or preferences provided to socially or economically disadvantaged minorities, where the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements) of this Agreement;

Residency requirements for ownership of oceanfront land, where the measure does not conform with the obligations imposed by Article 4 (National Treatment) of this Agreement;

Government securities (i.e. acquisition, sale or other disposition by nationals of the other Party of bonds, treasury bills or other kinds of debt securities issued by the Government of Canada, a province or local government), where the measure does not conform with the obligations imposed by Article 4 (National Treatment) of this Agreement; maritime cabotage, Footnote 2 where the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements) of this Agreement;

Licensing fishing or fishing related activities, including entry of foreign fishing vessels to Canada's exclusive economic zone, territorial sea, internal waters or ports and use of any services therein, where the measure does not conform with the obligations imposed by Article 4 (National Treatment) or Article 5 (Most-Favoured-Nation Treatment) of this Agreement;

Telecommunications services, where the measure does not conform with the obligations imposed by Article 4 (National Treatment) or Article 8 (Senior Management, Boards of Directors and Entry of Personnel) of this Agreement by limiting foreign investment in facilities-based telecommunications service suppliers, requiring that such service suppliers be controlled in fact by a Canadian, requiring that at least 80 percent of the members of the board of directors of such suppliers be Canadian, and imposing cumulative foreign investment level restrictions; and

The establishment or acquisition in Canada of an investment in the services sector, where the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements) of this Agreement, provided that the measure is consistent with Canada's obligations under Articles II, XVI, XVII and XVIII of the WTO General Agreement on Trade in Services.

#### Schedule of Mongolia

Government securities (i.e. acquisition, sale or other disposition by nationals of the other Party of bonds, treasury bills other kinds of debt securities issued by the Government of Mongolia, a province or local government), where the measure does not conform with the obligations imposed by Article 4 (National Treatment) of this Agreement.

Nationality requirements for ownership of land, where the measure does not conform to the obligations imposed by Article 4 (National Treatment) of this Agreement.

Social services (i.e. health, public welfare, public education, social insurance and security), where the measure does not conform with the obligations imposed by Article 4 (National Treatment), or Article 8 (Senior Management, Boards of

Directors and Entry of Personnel) of this Agreement.

Any measure to ensure local production of the majority of consumer demands for strategic food production (i.e. livestock-meat, milk, flour, wheat, grain seed, and drinking water), where the measure does not conform to the obligations imposed by Article 4 (National Treatment) or Article 9 (Performance Requirement) of this Agreement.

Any measures relating to admission of investment in its railway transportation sector, where the measure does not conform to the obligations imposed by Article 4 (National Treatment), or Article 9 (Performance Requirement) of this Agreement.

Any measures relating to admission of investment in real estate development and ownership and trading by foreign citizen and legal entities, where the measure does not conform to the obligations imposed by Article 4 (National Treatment) of this Agreement.

1. Article 5 (Most-Favoured-Nation Treatment) shall not apply to treatment accorded by a Party under a bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

2. Article 5 (Most-Favoured-Nation Treatment) shall not apply to treatment by a Party under an existing or future bilateral or multilateral agreement:

1. establishing, strengthening or expanding a free trade area or customs union;

2. relating to:

1. aviation;

2. fisheries; or

3. maritime matters, including salvage.

#### Schedule of Mongolia

1. Article 5 (Most-Favoured-Nation Treatment) shall not apply to treatment accorded by a Party under bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement.

2. Article 5 (Most-Favoured-Nation Treatment) shall not apply to treatment by a Party under an existing or future bilateral or multilateral agreement:

1. establishing, strengthening or expanding a free trade area or customs union;

2. relating to:

1. aviation;

2. animal/livestock raw materials; or

3. railway transportation;

3. Article 5 (Most-Favoured-Nation Treatment) shall not apply to a current and future technical assistance and development aid programmes under any bilateral and multilateral agreements.

1. A decision by Canada following a review under the Investment Canada Act is not subject to the dispute settlement provisions under Section C (Settlement of Disputes between an Investor and the Host Party) or D (State-to-State Dispute Settlement Procedures) of this Agreement.

2. A decision by Mongolia to prohibit or restrict the acquisition of an investment in its territory by an investor of Canada, or its investment, pursuant to paragraph 4 of Article 17 (General Exceptions) shall not be subject to the dispute settlement provisions under Section C (Settlement of Disputes between an Investor and the Host Party) or D (State-to-State Dispute Settlement Procedures) of this Agreement.

#### Footnotes

Footnote 1 For greater certainty, paragraph 1 of Article 10 shall be interpreted in accordance with Annex B.10.

Footnote 2 Maritime cabotage means (a) the transportation of either goods or passengers by ship between points in the territory of Canada or above the continental shelf of Canada, either directly or by way of a place outside Canada; but with respect to waters above the continental shelf of Canada, the transportation of either goods or passengers only in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of

Canada; and (b) the engaging by ship in any other marine activity of a commercial nature in the territory of Canada and, with respect to waters above the continental shelf, in such other marine activities of a commercial nature that are in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of Canada