

# Agreement between the Government of Canada and the Government of the United Republic of Tanzania for the Promotion and Reciprocal Protection of Investments

The Government of Canada and the Government of the United Republic of Tanzania, hereinafter referred to as the "Parties",

Desiring to intensify economic co-operation and promote sustainable development for the mutual benefit of both countries and to create and maintain favourable conditions for investments by investors of one Party in the territory of the other Party,

Recognizing that the promotion and reciprocal protection of such investments favour the economic prosperity and sustainable development of the two Parties by stimulating investment initiatives,

Have agreed as follows:

## **Section A. Definitions**

### **Article 1. Definitions**

For the purpose of this Agreement:

**Central government** means:

- (a) for Canada, the federal level of government; and
- (b) for Tanzania, the Government of the United Republic of Tanzania;

**Competition authority** means:

- (a) for Canada: the Commissioner of Competition or any successor; and
- (b) for the United Republic of Tanzania: the Commissioner for Fair Competition or any successor;

**Confidential information** means confidential business information and information that is privileged or otherwise protected from disclosure under a Party's domestic law;

**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;

**Disputing party** means either the respondent Party or the investor who has submitted a claim under Section C;

**Enterprise** means:

- (a) any entity constituted or organized under applicable law, whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association; and
- (b) 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:

(a) in the case of Canada, information within the scope of Section 29 of the Competition Act, R.S. 1985, c.34, or any successor provision; and

(b) in the case of the United Republic of Tanzania, information within the scope of Section 76 of the Fair Competition Act of 2003 or any successor provision;

**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:

(a) an enterprise;

(b) shares, stocks and other forms of equity participation in an enterprise;

(c) bonds, debentures, and other debt instruments of an enterprise;

(d) a loan to an enterprise;

(e) 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;

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

(g) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;

(h) 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, and concessions such as to search for, develop, extract and process natural resources, or

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

(i) intellectual property rights; and

(j) 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:

(k) 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 subparagraph (d); or

(l) 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:

(a) in the case of Canada, a natural person who is a citizen or permanent resident of Canada; and

(b) in the case of the United Republic of Tanzania, a natural person deriving his or her status as a national of the United Republic of Tanzania from the law in force in the United Republic of Tanzania,

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;

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

**Returns** means the amounts yielded by investments, and in particular, though not limited to, profits, capital gains, dividends, interest, royalties, returns in kind or other income;

**Returns in kind** means returns in the form of an article or commodity, for example in goods or natural produce, as opposed to money;

**Sub-national government** means:

(a) in the case of Canada, provincial, territorial or local governments;

(b) in the case of the United Republic of Tanzania, municipal authorities and local government authorities;

**Territory** means:

(a) the land territory, air space, internal waters and territorial sea over which a Party exercises sovereignty;

(b) the exclusive economic zone of a Party, as determined by its domestic law pursuant to Part V of the United Nations Convention on the Law of the Sea (UNCLOS), done at Montego Bay on 10 December 1982; and

(c) the continental shelf of a Party, as determined by its domestic law pursuant to Part VI of UNCLOS;

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

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, in their most recent form;

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

## **Article 2. Substantive Obligations**

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. The obligations in Section B 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 investors of the other Party to make investments in its territory.

## **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 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 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 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.

## **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 Article 16(6) (Reservations and Exceptions), each Party shall accord to investors of the other Party who suffer losses to their covered investments in its the territory, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State, with respect to restitution, indemnification, compensation or other settlement that it adopts or maintains, due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot. Resulting payments shall be transferable without delay in a freely convertible currency.

## **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 individuals of any particular nationality to senior management positions.
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. A Party may not impose the following requirements 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:

(a) to export a given level or percentage of a good or service;

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

(c) to purchase, use or accord a preference to a good produced or service provided in its territory, or to purchase a good or service from a person in its territory;

(d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;

(e) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales 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; or

(g) to supply exclusively from the territory of the Party a good that the investment produces or a service 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 is not inconsistent with subparagraph 1(f).

3. A Party may not 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 the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to a good produced in its territory, or to purchase a good from a producer in its territory;

(c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment; or

(d) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings;

4.

(a) Paragraph 3 does not 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 or of a non-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;

(b) Subparagraph 1(f) does not apply if 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 domestic competition law.

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

6. The provisions of:

(a) subparagraphs 1(a), (b) and (c), and 3(a) and (b), do not apply to a qualification requirement for a good or service with respect to export promotion and foreign aid programs;

(b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b), do not apply to procurement by a Party or a State enterprise; and

(c) subparagraphs 3(a) and (b) do not apply to a requirement imposed by an importing Party relating to the content of a good necessary to qualify for a preferential tariff or preferential quota.

## **Article 10 . Expropriation**

1. A Party shall not 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 purpose which is in the public interest, in accordance with due process of law, in a non-discriminatory manner and on payment of 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 the declared tax value of tangible property, and other criteria 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 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. For the purposes of this Article, direct expropriation occurs where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure and indirect expropriation results from a measure or series of measures of a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

In the context of a any dispute arising under Section C, the determination of whether a measure or series of measures of a Party constitute an indirect expropriation shall be determined through a case-by-case, fact-based inquiry that shall consider, among other factors:

(a) 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 shall not establish that an indirect expropriation has occurred;

(b) the extent to which the measure or series of measures interfere with distinct, reasonable investment-backed expectations; and

(c) the character of the measure or series of measures.

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.

6. 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 applicable international trade agreements to which both Parties are party.

## **Article 11. Transfers (1)**

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.

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. A Party may not require its investors to transfer, or penalize its investors for failure 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 international agreements to which both Parties are party and as set out in paragraph 3.

(1) It is understood that in accordance with Article 14 (Transfers), nothing in the Agreement prevents a Party from requiring, prior to the transfer of payments relating to a covered investment and in accordance with its tax laws and regulations, the fulfilment by investors of tax obligations in relation to such an investment.

## **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 published or otherwise made available in a timely manner so as to enable interested persons and the other Party to become acquainted with them.

2. Each Party shall if required by its laws and regulations:

- (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.

## **Article 13. Subrogation**

1. If a Party or any agency 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 to any right or title held by the investor.

2. A Party or any agency that 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, or by the investor if the Party or any agency so authorizes.

## **Article 14. Taxation Measures**

1. Except as set out in this Article, this Agreement shall not apply to taxation measures.

2. This Agreement shall not 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.

3. This Agreement shall not 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.

4. Subject to paragraph 2, the provisions of Articles 4 (National Treatment) and 5 (Most Favoured Nation Treatment) shall apply to all taxation measures, other than taxation measures on income, capital gains or on the taxable capital of corporations, except that nothing in those Articles shall apply (2):

(a) to a non-conforming provision of any existing taxation measure, to its continuation or prompt renewal or to its amendment to the extent that the amendment does not decrease its conformity at the time of the amendment with any of those Articles;

(b) to 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) and that does not arbitrarily discriminate between persons, goods or services of the Parties.

5. Provided that the conditions in paragraph 6 are met:

(a) a claim by an investor that a taxation measure of a Party is in breach of an agreement between a central government authority of a Party and the investor concerning an investment shall be considered a claim for breach of this Agreement; and

(b) the provisions of Article 10 (Expropriation) shall apply to taxation measures.

6. An investor may not make a claim pursuant to paragraph 5 unless:

(a) the investor provides a copy of the notice of claim to the taxation authorities of the Parties; and

(b) six months after receiving notification of the claim by the investor, the taxation authorities of the Parties fail to reach a joint determination that, in the case of 5(a), the measure does not contravene such determination, or that, in the case of 5(b), the measure in question is not an expropriation

7. 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. 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.

8. The taxation authorities referred to in this Article shall be the following until otherwise notified by a Party:

(a) for Canada: the Assistant Deputy Minister, Tax Policy, of the Department of Finance or his successor;

(b) for the United Republic of Tanzania: the Minister responsible for Finance or an authorized representative of the Minister or his successor.

(2) It is understood that Article 14 (4) (Taxation Measures) does not apply to taxation measures that are the object of the Agreement between Canada and the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, done at Dar es Salaam on 15 December 1995.

## **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 9 (Performance Requirements) shall not apply to:

(a) any measure:

(i) existing and non-conforming, maintained in the territory of a Party,

(ii) 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, prohibits or imposes limitations on the ownership or control of equity interests or assets or imposes nationality requirements relating to senior management or members of the board of directors;

(b) In the case of the United Republic of Tanzania, the legislation to regulate the oil and gas sectors, in relation to ensuring domestic supply, foreign ownership restrictions and provisions regarding the composition of senior management and board of directors in these sectors, which is still in the process of development at the date of entry into force of this Agreement, shall be considered an existing measure, once in force. It is understood that this existing non-conforming measure is subject to the obligations of the Agreement;

(c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a) or (b); or

(d) an amendment to any non-conforming measure referred to in subparagraph (a) or (b) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 8 (Senior Management, Boards of Directors, and Entry of Personnel) and 9 (Performance Requirements).

2. For illustrative purposes only and without prejudice to paragraph 1, each Party shall, to the extent possible, set out in its Schedule to Annex I any existing non-conforming measures it maintains at the national level.

3. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 8 (Senior Management, Boards of Directors, and Entry of Personnel) and 9 (Performance Requirements) 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.

4. Article 5 (Most-Favoured-Nation Treatment) shall not apply to treatment accorded under any bilateral or multilateral international agreement in force or signed prior to January 1, 1994.

5. Article 5 (Most-Favoured-Nation Treatment) shall not apply to a Party which has concluded or may conclude an agreement:

(a) regarding the establishment, strengthening or expansion of a customs union, a common market, or a free trade area; or

(b) relating to aviation, fisheries or maritime matters, including salvage.

6. In respect of intellectual property rights, a Party may derogate from Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment) in a manner that is consistent with the WTO Agreement.

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

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

9. In view of the need to strengthen the capacity of national entrepreneurs, the United Republic of Tanzania maintains the right to grant limited capacity-building special incentives to its nationals and companies. Article 4 (National Treatment) shall not apply to such incentives provided that they do not significantly affect the investments and activities of investors of the other Party. Subject to the strengthening of the capacity of local industries, the United Republic of Tanzania shall eliminate progressively such special incentives.

## **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, this Agreement shall not 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 this Agreement; or

(c) for the conservation of living or non-living exhaustible natural resources.

2. This Agreement shall not 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, policyholders, 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. This Agreement shall not 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. This Agreement shall not 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. This Agreement shall not 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. This Agreement shall not be construed to require 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 provisions of this Agreement shall not apply to investments in cultural industries. "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.

8. 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 may not claim that such a conforming measure is in breach of this Agreement.

## **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 enterprise or to its investment.

2. 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 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, this Section establishes a mechanism for the settlement of investment disputes.

### **Article 20. Claim by an Investor of a Party**

A disputing investor may submit to arbitration under this Section a claim that:

(a) the respondent Party has breached an obligation under Section B, other than an obligation under Article 8(3) (Senior Management, Boards of Directors and Entry of Personnel), 12 (Transparency) or 15 (Health, Safety and Environmental Measures); and

(b) the disputing investor or a covered investment of the investor 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 90 days of the submission of the notice of intent to submit a claim to arbitration, unless the disputing parties otherwise agree. The place of consultation shall be the capital of the respondent Party, unless the disputing parties otherwise agree.

2. A disputing investor may submit a claim to arbitration under Article 20 (Claim by an Investor of a Party) only if:

(a) the disputing investor consent to arbitration in accordance with the procedures set out in this Agreement;

(b) at least 180 days have elapsed since the events giving rise to the claim;

(c) the disputing investor has delivered to the respondent Party written notice of its intent to submit a claim to arbitration at least 180 days prior to submitting the claim, which notice shall specify:

(i) the name and address of the disputing investor,

(ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,

(iii) the issues and the factual basis for the claim, including the measures at issue, and

(iv) the relief sought and the approximate amount of damages claimed;

(d) the disputing investor has delivered evidence establishing that it is an investor of the other Party with its notice of intent to submit a claim to arbitration under paragraph 2(c); and

(e) in the case of a claim submitted under Article 20(1) (Claim by an Investor of a Party):

(i) 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

(ii) the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the other 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 respondent Party that is alleged to be a breach referred to in Article 20 (Claim by an Investor of a Party) 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 respondent Party.

3. A consent and waiver required under paragraph 2 shall be delivered to the respondent Party and shall be included in the submission of a claim to arbitration.

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

1. With respect to:

(a) financial institutions of a Party; and

(b) investors of a Party, and investments of such investors, in financial institutions in the other Party's territory,

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

2. Where a disputing investor or respondent 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 respondent Party's territory, or where the respondent Party invokes Articles 11(6) (Transfers), 17(2), or 17(3) (General Exceptions), in addition to the criteria set out in Article 25 (2) (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 respondent Party invokes Articles 11(6), 17(2), or 17(3) (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 concurrence following consultations, or by means of an arbitral panel in accordance with Section D. 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 to:

(a) ICSID under the ICSID Convention, provided that both the respondent Party and the Party of the disputing investor are parties to the Convention;

(b) a tribunal constituted pursuant to and governed by the Additional Facility Rules of ICSID, provided that either the respondent Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention; or

(c) an ad hoc tribunal set up under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

2. The applicable arbitration rules shall govern the arbitration except as provided by this Section.

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

(a) the request for arbitration under Article 36(1) of the ICSID Convention is received by the Secretary-General of ICSID;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General of ICSID; or

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the respondent Party.

4. Delivery of notice and other documents on a Party shall be made to the place named for that Party below or any other place designated by the Parties through an exchange of diplomatic notes:

For Canada:

Office of the Deputy Attorney General of Canada

Justice Building

239 Wellington Street

Ottawa, Ontario K1A 0H8

Canada

For Tanzania:

Office of the Attorney General of Tanzania

Attorney General's Chambers

Kivukoni Front

P.O. Box 9050

Dar Es Salaam

Tanzania

## **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 by a disputing investor of a claim to arbitration shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties when the claim has been submitted under the ICSID Convention or the Additional Facility Rules; and

(b) 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 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 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 or the disputing investor.

3. If a Tribunal, other than a Tribunal established under Article 27, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General of ICSID, on the request of either disputing party, shall appoint, in his or her discretion, 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 ground other than nationality, citizenship or permanent residence:

(a) the respondent Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules; and

(b) a disputing investor referred to in Article 20(1) (Claim by an Investor of a Party) 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.

## **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 Section C.

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:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims; or

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

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General of ICSID to establish a Tribunal and shall specify in the request:

(a) the name of the respondent Party or disputing investors against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

4. The disputing party shall deliver a copy of the request to the respondent Party or disputing investors against which the order is sought.

5. Within 60 days of receipt of the request, the Secretary-General of ICSID shall establish a Tribunal comprising three arbitrators. The Secretary-General of ICSID shall appoint one member who is a national of the respondent 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:

(a) the name and address of the disputing investor;

(b) the nature of the order sought; and

(c) 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 respondent Party shall deliver to the other Party to this Agreement a copy of the notice of intent to submit a claim to arbitration and other documents no later than 30 days after the date that such documents have been delivered to the respondent Party. The other Party shall be entitled, at its cost, to receive from the respondent 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 respondent Party.

2. The other Party to this Agreement shall have the right to attend any hearings held under Section C. 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**

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a country that is a party to the New York Convention, selected in accordance with:

(a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or

(b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

## **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 federal 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 respondent Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception in Annex I or Annex II, on request of the respondent Party, the Tribunal shall request the joint interpretation of the Parties on the issue. Within 60 days of delivery of the request, the Parties shall submit in writing their joint interpretation to the Tribunal. The interpretation shall be binding on the Tribunal. If the Parties fail to submit their joint interpretation within 60 days, the Tribunal shall decide the issue.

## **Article 33. 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). For purposes of this

paragraph, an order includes a recommendation.

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

(a) monetary damages and any applicable interest;

(b) restitution of property, in which case the award shall provide that the respondent 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. A Tribunal may not order a respondent Party to pay punitive damages.

## **Article 34. 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:

(a) in the case of a final award made under the ICSID Convention:

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

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

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 35. Receipts Under Insurance or Guarantee Contracts**

In an arbitration under this Section, a respondent 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 36. 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 the respondent Party invokes Article 11(6) (Transfers), 17(2), or 17(3) (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 make a determination on the manner in which to resolve their dispute. Such determination shall normally implement the decision of the panel. If the Parties fail to make a determination, 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 37. 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:

- (a) the implementation of this Agreement;
- (b) the interpretation or application of this Agreement.

3. Further to consultations under this Article, the Parties may take any action as they may decide, including making and adopting rules supplementing the applicable arbitral rules under Section C.

### **Article 38. 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 39. Exclusions**

The dispute settlement provisions of Sections C and D shall not apply to the matters in Annex III.

### **Article 40. Application and Entry Into Force**

1. 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.

2. This Agreement shall remain in force for a period of 10 years. Thereafter it shall remain in force until 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 paragraph 2 of this Article and Article 42 (Amendment of the Agreement), shall remain in force for a period of fifteen years.

## **Article 41. Amendment of the Agreement**

This Agreement may be amended by a joint decision of the Parties. An amendment shall enter into force when each Party has notified the other in writing of the completion of the procedures required in its territory for the entry into force of the amendment. The amendment shall enter into force on the date of the later of the two notifications.

## **Article 42. Annexes and Footnotes**

All Annexes and Footnotes shall form an integral part of this Agreement.

In witness whereof the undersigned, duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at Dar es Salaam, this 16th day of May 2013, in the English and French languages, each version being equally authentic.

John Baird (Minister of Foreign Affairs of Canada)

For the Government of Canada

Bernard Membe (Minister of Foreign Affairs and International Cooperation of the United Republic of Tanzania)

For the Government of the Republic of Tanzania

## **Annex I - canada - Reservations for Existing Measures and Liberalization Commitments**

### **Illustrative Schedule of Canada**

1. Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)

Investment Canada Regulations, SOR/85-611

These measures deal with the acquisition and establishment of businesses by non-Canadians and state that the establishment of new businesses by non-Canadians may be subject to review. They are reserved from the obligations imposed by Articles 4 (National Treatment), 8 (Senior Management, Board of Directors and Entry of Personnel) and 9 (Performance Requirements).

2. Canada Business Corporations Act, R.S.C. 1985, c. C-44

Canada Business Corporations Regulations, (2001), SOR/2001-512

Canada Cooperatives Act, S.C. 1998, c. 1

Canada Cooperatives Regulations, SOR/99-256

Canada Corporations Act, R.S.C. 1970, c. C-32

The Canada Business Corporations Act provides for constraints on shares of businesses and cooperatives incorporated pursuant to Canadian legislation to maintain participation requirements and Canadian ownership and control levels set out in the Canada Business Corporations Regulations. These measures are reserved from the obligations imposed by Article 4 (National Treatment).

3. Canada Business Corporations Act, R.S.C. 1985, c. C-44

Canada Business Corporations Regulations, (2001), SOR/2001-512

Canada Cooperatives Act, S.C. 1998, c. 1

Canada Cooperatives Regulations, SOR/99-256

Canada Corporations Act, R.S.C. 1970, c. C-32

Special Acts of Parliament incorporating specific companies

These measures contain provisions dealing with the nationality of senior management or directors of Canadian businesses. They are reserved from the obligations imposed by Article 8 (Senior Management, Board of Directors and Entry of Personnel).

4. Citizenship Act, R.S.C. 1985, c. C-29

Foreign Ownership of Land Regulations, SOR/79-416

These measures deal with foreign ownership of land. They are reserved from the obligations imposed by Article 4 (National Treatment).

5. Air Canada Public Participation Act, R.S.C. 1985, c. 35 (4th Supp.)

Canadian Arsenals Limited Divestiture Authorization Act, S.C. 1986, c. 20

Eldorado Nuclear Limited Reorganization and Divestiture Act, S.C. 1988, c. 41

Nordion and Theratronics Divestiture Authorization Act, S.C. 1990, c. 4

These measures set out non-resident ownership restrictions on the shares of certain companies. They are reserved from the obligations imposed by Article 4 (National Treatment).

6. Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Customs Brokers Licensing Regulations, SOR/86-1067

These measures set out residency requirements for customs brokers. They are reserved from the obligations imposed by Articles 4 (National Treatment) and 8 (Senior Management, Board of Directors and Entry of Personnel).

7. Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)

Duty Free Shop Regulations, SOR/86-1072

These measures set out residency and other requirements for duty free shop operations. They are reserved from the obligations imposed by Article 4 (National Treatment).

8. Cultural Property Export and Import Act, R.S.C. 1985, c. C-51

This measure sets out restrictions on foreign participation in the import or export of cultural property. This measure is reserved from the obligations imposed by Article 4 (National Treatment).

9. Patent Act, R.S.C. 1985, c. P-4 Patent Rules, SOR/96-423

These measures set out Canadian residency requirements for registered patent agents. They are reserved from the obligations imposed by Articles 4 (National Treatment) and 9 (Performance Requirements).

10. Trade-Marks Act, R.S.C. 1985, c. T-13

Trade-mark Regulations, SOR/96-195

These measures set out Canadian residency requirements for registered trade-mark agents. They are reserved from the obligations imposed by Articles 4 (National Treatment) and 9 (Performance Requirements).

11. Canada Petroleum Resources Act, R.S.C. 1985, c. 36 (2nd Supp.)

Territorial Lands Act, R.S.C. 1985, c. T-7

Federal Real Property and Federal Immovables Act, S.C. 1991, c. 50

Canada-Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28

Canada Oil and Gas Land Regulations, C.R.C. 1978, c. 1518

These measures set out Canadian ownership requirements for oil and gas production licenses. They are reserved from the obligations imposed by Article 4 (National Treatment).

12. Canada Oil and Gas Production and Conservation Act, R.S.C. 1985, c. O-7, as amended by the Canada Oil and Gas Operations Act, S.C. 1992, c. 35

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28

Canada Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Measures implementing the Canada-Yukon Oil and Gas Accord Measures implementing the Northwest Territories Oil and Gas Accord

These measures deal with benefits plans required to obtain authorisations set out in these measures. They are reserved from the obligations imposed by Article 9 (Performance Requirements).

13. Canada Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3

Hibernia Development Project Act, S.C. 1990, c. 41

These measures deal with benefits plans and performance requirements. They are reserved from the obligations imposed by Article 9 (Performance Requirements).

14. Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)

Investment Canada Regulations, SOR/85-611

Non-Resident Ownership Policy in the Uranium Mining Sector, 1987

These measures deal with non-resident ownership in the uranium mining sector. They are reserved from the obligations imposed by Articles 4 (National Treatment) and 5 (Most-Favoured-Nation Treatment).

15. Canada Transportation Act, S.C. 1996, c.10

Aeronautics Act, R.S.C. 1985, c.A-2

Canadian Aviation Regulations, SOR/96-433

Part II "Aircraft Identification and Registration and Operation of a Leased Aircraft by a Non-Registered Owner"

Part IV "Personnel Licensing and Training"

Part VII "Commercial Air Services"

These measures set out restrictions on non-Canadians wishing to register or operate Canadian aircraft or to provide air services in Canada. They are reserved from the obligations imposed by Article 4 (National Treatment).

16. Canada Shipping Act, 2001, S.C. 2001, c. 26

This measure sets out requirements to own a ship on the Canadian register. It is reserved from the obligations imposed by Article 4 (National Treatment).

17. Canada Shipping Act, 2001, S.C. 2001, c. 26

These measures set out restrictions on the provision of services on Canadian ships by non-Canadians. They are reserved from the obligations imposed by Article 8 (Senior Management, Board of Directors and Entry of Personnel).

18. Pilotage Act, R.S.C. , 1985, c. P-14

General Pilotage Regulations, SOR/2000-132

Atlantic Pilotage Authority Regulations, C.R.C. 1978, c. 1264

Laurentian Pilotage Authority Regulations, C.R.C. 1978, c. 1268

Great Lakes Pilotage Regulations, C.R.C. 1978, c. 1266

Pacific Pilotage Regulations, C.R.C. 1978, c. 1270

These measures set out restrictions on non-Canadians in relation to pilotage. They are reserved from the obligations imposed by Article 8 (Senior Management, Board of Directors and Entry of Personnel).

## **Annex I - Tanzania - Reservations for Existing Measures and Domestic Commitments**

### **Illustrative Schedule of the United Republic of Tanzania**

#### 1. Tanzania Investment Act, (CAP 38), Section 3

These measures deal with minimum capital requirement for registration of an investment at the Tanzania Investment Center by non-Tanzanians. They are reserved from obligations imposed by Article 4 (National Treatment).

#### 2. Special Economic Zones Act, (CAP 420), Section 27, read together with 2011 amendments of Export Processing Zones Act, (CAP 373)

The regulations under this Act provide that capital requirement for new investment by non-Tanzanians to be US\$ 5million in a Special Economic Zone. They are reserved from obligations imposed by Article 4 (National Treatment).

#### 3. Public Private Partnership Act, (No. 18 of 2010), Section 25

The Act provides that Public Private Partnership Agreements shall endeavour to provide opportunity for empowerment of the citizens of Tanzania as provided for under the National Economic Empowerment Act. It is reserved from obligations imposed by Article 4 (National Treatment).

#### 4. The Land Act,(CAP 113), Section 20

The Village Land Act, (CAP 114), Section 12 The Land,(Amendment Act), 2004, Section 3

These are measures on how non-Tanzanians can obtain land for investment in Tanzania. They are reserved from obligations imposed by Article 4 (National Treatment).

#### 5. Tourism Act, 2008, Section 58(2)

These measures exclude non-Tanzanians in engaging into the business of travel agency (save for foreign airlines); mountain climbing or trekking; tour guide; car rental or any other activity to be so specified by the Minister responsible for tourism. They are reserved from obligations imposed by Article 4 (National Treatment).

#### 6. Wildlife Conservation Act, (CAP 283, Section 39(2)(a)

These measures provide for mandatory local shareholding in any hunting company operating in Tanzania. They are reserved from obligations imposed by Article 4 (National Treatment) and 9 (Performance requirements).

#### 7. Broadcasting Services Act, (CAP 306), Section 10 (1)(b)

These measures provide for mandatory local shareholding in any Broadcasting Company operating in Tanzania. They are reserved from obligations imposed by Article 4 (National Treatment) and 9 (Performance requirements).

#### 8. Mining Act 2010, Section 8(2)

These measures restrict issuance of primary mining licenses only to Tanzanians. They are reserved from obligations imposed by Article 4 (National Treatment).

#### 9. Mining Act 2010, Section 8(3)

These measures exclude non-Tanzanians in the mining of gemstones. They are reserved from obligations imposed by Article 4 (National Treatment).

#### 10. Forest Act, (CAP 323), Section 42(1)

These measures provide for formation of communal groups for purposes of ownership, use and management of community forest reserve. They are reserved from obligations imposed by Articles 4 (National Treatment) and 8 (Senior Management, Board of Directors and Entry of Personnel).

#### 11. Public Procurement Act,(CAP 410), Section 49(3)

These measures aim at providing margin of preference to local contractors or consultants in tender evaluation process.

They are reserved from obligations imposed by Article 4 (National Treatment).

12. Immigration Act,(CAP 54), Section 18 Tanzania Investment Act,(CAP 38), Section 24

These measures govern the employment of expatriates in Tanzania. They are reserved from obligations imposed by Articles 4 (National Treatment) and 8 (Senior Management, Board of Directors and Entry of Personnel).

13. Banking and Financial Institutions (Licensing Regulation 2008),Regulation 27

Banks and Financial institutions can only employ a maximum of five (5) expatriates in the management positions. Other restriction on employment of expatriates are as provided in the Immigration Act, 1995, Section 18 and the Tanzania Investment Act 1997. They are reserved from obligations imposed by Articles 4 (National Treatment) and 8 (Senior Management, Board of Directors and Entry of Personnel).

14. Export processing Zones (Amendments) Act,(CAP.373) - read together with 2011 amendments

These provisions provide for incentives granted for investments in the Export Processing Zones and Restrictions on exportation of goods into customs territory by export processing Zones. They are reserved from obligations imposed by Article 4 (National Treatment).

15. The Capital Market Securities (Foreign companies public offers eligibility and cross-listing requirements) Amendment Regulation, 2005, Regulations 4, 5, 6, 7 and 8

These regulations provide for the participation in the Capital Markets by foreign issuers of securities in terms of eligibility criteria and the disclosure requirements for such companies to make public offers on cross-listing at the Dar es Salaam Stock Exchange (DSE). They are reserved from obligations imposed by Article 4 (National Treatment).

16. Capital Markets and Securities (foreign investors) Regulations, 2003

These regulations set out the limit of aggregate securities to be held by foreign investors. The regulations also prescribe the manner and conditions under which foreign investors will participate at the Dar es Salaam Stock Exchange, the mechanism by which the Authority can monitor observance of the prescribed limits by DSE and Central Deposit System.

Regulation 3(2) provides that foreign investors are not allowed to participate in selling, purchasing or otherwise of Government securities.

Regulation 3 (4) provides that a foreign investor may purchase the securities of an issuer if the aggregate of the securities to be held by the foreign investors does not exceed a maximum limit of sixty percent of the total number of the issued securities of an issuer. They are reserved from obligations imposed by Article 4 (National Treatment).

17. Insurance Act, 2009,(CAP 394), Section 16

An insurer shall not be registered as an insurer within the United Republic of Tanzania unless it is a body corporate incorporated under the Companies Act or any other law in the United Republic of Tanzania and is deemed to be a resident in Tanzania and at least one third of the controlling interest whether in terms of shares, paid up capital or voting rights are held by citizens of Tanzania and at least one third of the members of the board of that company are citizens of Tanzania. They are reserved from obligation imposed by Articles 4 (National Treatment) and 8 (Senior Management, Board of Directors and Entry of Personnel).

18. The Petroleum (Exploration and Protection) Act (CAP 328), Section 13

The Act provides for restriction on person to whom a license may be granted and stipulates that no license shall be granted to an individual unless he is a citizen of Tanzania. They are reserved from obligation imposed by Articles 4 (National Treatment) and 8 (Senior Management, Board of Directors and Entry of Personnel).

19. The Fisheries Act,(CAP 279),Section 19 and Section 20

This Act provides for Prohibition of foreign fishing in territory waters except for the purposes of Scientific Research, Complementary's educational and food supply. It is

Reserved from obligations imposed by Article 4 (National Treatment).

20. Contractors Registration Acts, (CAP 235) - read together with 2008 amendments, Section 12

These Acts provide that no person who is not a citizen of the United Republic shall be allowed to form a local contracting firm unless the majority of its shares are owned by citizens of the United Republic. They are reserved from obligations

imposed by Article 4 (National Treatment).

## **Annex II - Canada - Reservations for Future Measures**

### **Schedule of Canada**

In accordance Article 16(2) 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);
- 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) or Article 9 (Performance Requirements);
- 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);
- Residency requirements for ownership of oceanfront land, where the measure does not conform with the obligations imposed by Article 4 (National Treatment);
- 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);
- Maritime cabotage, which 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; 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);
- 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);
- 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) 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), 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, done at Marrakech on 15 April 1994.

## **Annex II - Tanzania - Reservations for Future Measures**

### **Schedule of the United Republic of Tanzania**

In accordance with Article 16(3) (Reservations and Exceptions) of this Agreement, the United Republic of Tanzania reserves the right to adopt or maintain any measure with respect to the following sectors or matters:

- The rights or preferences provided to licensed artisanal and small scale miners in mining of gemstones where measures do

not conform with Article 4 (National Treatment);

- Licensing fishing or fishing related activities, including entry of foreign fishing vessels to Tanzania exclusive economic zone, territorial sea, internal waters or ports and use of any services therein, where measures do not conform with the obligations under Article 4 (National Treatment) or 5 (Most-Favoured - National Treatment);

- Government securities (i.e. acquisition, sale or other disposition by nationals of the other Party of either bonds, treasury bills or other kinds of debt securities issued by the Government of the United Republic of Tanzania) where the measure does not conform with the obligations imposed by Article 4 (National Treatment);

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

- 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) by limiting foreign investment in facilities-based telecommunications service suppliers;

- The establishment or acquisition in Tanzania 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), provided that the measure is consistent with Tanzania's obligations under Articles II, XVI, XVII and XVIII of the WTO General Agreement on Trade in Services.

## **Annex Iii - Exclusions from Dispute Settlement**

### 1. For Canada:

A decision by Canada following a review under the Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.), with respect to whether or not to permit an investment that is subject to review, is not subject to the dispute settlement provisions under Sections C (Settlement of Disputes Between an Investor and the Host Party) or D (State-to-State Dispute Settlement Procedures).

### 2. For the United Republic of Tanzania:

(i) A decision by the Minister responsible for investment on whether or not to register an investment under Regulation 43(2) of the Investment Regulations, 2002 is not subject to the dispute settlement provisions under Sections C (Settlement of Disputes between an investor and the Host Party) or D (State-to-State Disputes Settlement Procedures).

(ii) Decision by the President on an issue or matter referred to him by the Minister responsible for investment in respect of granting benefits for strategic or major investments under Section 20 (2) of the Tanzania Investment Act, (CAP 38) is not subject to the Dispute Settlements provisions under Sections C (Settlement of Disputes between an investor and the Host Party) or D (State-to-State Disputes Settlement Procedures).