

# Peru-Singapore Free Trade Agreement

## Chapter 10. Investment

### Article 10.1. DEFINITIONS

For the purposes of this Chapter, it is understood that:

1. Bilateral Investment Treaty means the Agreement between the Government of the Republic of Singapore and the Government of the Republic of Peru on the Promotion and Protection of Investments, done at Singapore, February 27, 2003;
2. enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party;
3. freely usable currency means freely usable currency as determined by the International Monetary Fund under its Articles of Agreement and any amendments thereto;
4. ICSID means the International Centre for Settlement of Investment Disputes;
5. ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;
6. investment means every kind of asset, owned or controlled, directly or indirectly, by an investor, that includes characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk, including but not limited to the following:
  - (a) an enterprise;
  - (b) shares, stock, and other forms of equity participation in an enterprise, including rights derived therefrom;
  - (c) bonds, debentures, and loans and other debt instrument including rights derived therefrom;
  - (d) futures, options, and other derivatives;
  - (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
  - (f) claims to money or to any contractual performance related to a business and having an economic value;
  - (g) intellectual property rights and goodwill;
  - (h) licenses, authorizations, permits, and similar rights conferred pursuant to applicable domestic law, including any concession to search for, cultivate, extract or exploit natural resources;<sup>10-4</sup> and
  - (i) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.
7. investor of a Party means:
  - (a) an enterprise of a Party; or
  - (b) a natural person who resides in the territory of a Party or elsewhere and who under the law of that Party:
    - (i) is a citizen of that Party; provided, however, that a natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship; or
    - (ii) has the right of permanent residence in that Party;that has made, is in the process of making, or is seeking to make an investment in the territory of the other Party;
8. negotiated restructuring means the restructuring or rescheduling of a debt instrument that has been effected through (i)

a modification or amendment of such debt instrument, as provided for under the terms of such debt instrument, or (ii) a comprehensive debt exchange or other similar process in which the holders of no less than seventy-five percent (75%) of the aggregate principal amount of the outstanding debt under such debt instrument have consented to such debt exchange or other process;

9. return means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, payments in connection with intellectual property rights, and all other lawful income. For the purposes of the definition of "investment", returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

10. service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

11. TRIMS Agreement means the Agreement on Trade-Related Investment Measures, done at Marrakesh, April 15, 1994;

12. TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, done at Marrakesh, April 15, 1994; and

13. UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

## **Article 10.2. SCOPE AND COVERAGE**

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) investors of the other Party;

(b) investments of investors of the other Party, made, in the process of being made, or sought to be made, in the territory of the former Party;

(c) with respect to Article 10.7 (Performance Requirements), all the investments in the territory of the Party.

2. This Chapter shall not apply to:

(a) any taxation measure unless otherwise provided;

(b) government procurement; and

(c) services supplied in the exercise of governmental authority within the territory of respective Party.

3. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail over this Chapter to the extent of the inconsistency.

4. This Chapter does not apply to measures adopted by a Party in respect of investors of the other Party and investments of such investors in the financial institutions in the other Party, except for the following provisions:

Article 10.8 (Investment and Environment);

Article 10.9 (Special Formalities and Information Requirements); Article 10.10 (Expropriation and Nationalisation);

Article 10.11 (Transfers);

Article 10.12 (Restrictions to Safeguard the Balance of Payments); Article 10.13 (Senior Management and Board of Directors); Article 10.15 (Denial of Benefits); and

Article 10.17 (InvestorState Dispute Settlement);

5. The requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that crossborder service. This Chapter applies to that Party's treatment of the posted bond or financial security.

6. This Chapter does not apply to claims arising out of events which occurred, or claims which had been raised, prior to the entry into force of this Agreement

## **Article 10.3. NATIONAL TREATMENT**

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

circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

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

#### **Article 10.4. MOSTFAVOURED 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 any nonParty 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 investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any nonParty with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

#### **Article 10.5. MINIMUM STANDARD OF TREATMENT**

A Party shall not adopt or maintain any duty, tax or other charge on the exportation of goods to the territory of the other Party, unless such duty, tax or charge is adopted or maintained on any such good when destined for domestic consumption.

1. Each Party shall accord to investments of investors of the other Party treatment in accordance with customary international law minimum standard of treatment of aliens<sup>106</sup>, 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 and do not create additional substantive rights.

(a) The obligation to provide fair and equitable treatment includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings.

(b) The obligation to provide full protection and security requires each Party to provide the level of police protection required under customary international law.

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

#### **Article 10.6. TREATMENT IN CASE OF STRIFE**

The Parties shall determine the customs value of goods traded between them in accordance with the provisions of Article VII of the GATT 1994 and the WTO Agreement on Implementation of Article VII of the GATT 1994.

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

2. Paragraph 1 does not apply to existing measures relating to subsidies or grants, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to investors of the Party or investments of investors of the Party, that would be inconsistent with Article 10.3 (National Treatment) and Article 10.4 (MostFavoured Nation Treatment) but for Article 10.14 (NonConforming Measures).

#### **Article 10.7. PERFORMANCE REQUIREMENTS**

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

(a) to export a given level or percentage of goods or services;

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

(c) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

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

(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, production process or other proprietary knowledge to a person in its territory; or

(g) to supply exclusively from the territory of the Party the goods that it produces or the services that it provides to a specific regional market or to the world market.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a nonParty, on compliance with any of the following requirements:

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

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

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

(d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a nonParty, 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) The provisions of paragraph 1(f) do not apply:

(i) when a party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, and to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with Article 39 of the TRIPS Agreement; or

(ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.

(c) Provided that such measures are not applied in an arbitrary, discriminatory or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;

(ii) necessary to protect human, animal, or plant life or health; or

(iii) necessary to the conservation of living or nonliving exhaustible natural resources.

(d) Paragraphs (1)(a), (b) and (c), and (2)(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.

(e) The provisions of paragraphs (2)(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

5. Nothing in this Article shall be construed so as to derogate from the rights and obligations of the Parties under the TRIMS

Agreement.

6. This Article does not preclude the application of any commitment, undertaking or requirement between private parties, where a Party did not impose or require the commitment, undertaking or requirement.

## **Article 10.8. INVESTMENT AND ENVIRONMENT**

Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

## **Article 10.9. SPECIAL FORMALITIES AND INFORMATION REQUIREMENTS**

1. Nothing in Article 10.3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investments of an investor of a Party, such as that investments of an investor of a Party be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and investments of an investor of the other Party pursuant to this Chapter. Parties shall endeavour to exchange information on any existing special formalities, and shall endeavour to inform each other of any special formalities that may be prescribed in the future.

2. Notwithstanding Article 10.3 (National Treatment) and Article 10.4 (Most Favoured Nation Treatment), a Party may require an investor of the other Party or investment of an investor of the other Party to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the investment of an investor of a Party. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## **Article 10.10. EXPROPRIATION AND NATIONALISATION**

1. Neither Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") the investments of investors of the other Party unless such a measure is taken on a nondiscriminatory basis, for a public purpose, in accordance with due process of law, and upon payment of compensation in accordance with this Article.

2. The expropriation shall be accompanied by the payment of prompt, adequate and effective compensation. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge. Compensation shall carry an appropriate interest, taking into account the length of time from the time of expropriation until the time of payment. Such compensation shall be effectively realisable, freely transferable in accordance with Article 10.11 (Transfers) and made without delay.

3. Notwithstanding paragraphs 1 and 2, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation and any subsequent amendments thereto relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

4. This Article does 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 TRIPS Agreement.

## **Article 10.11. TRANSFERS**

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

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a

loan agreement;

(e) payments made pursuant to Article 10.10 (Expropriation and Nationalisation) and 10.6 (Subrogation); and

(f) payments arising under Article 10.17 (Investor–State Dispute Settlement).

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

3. Each Party shall permit returns in kind relating to an investment of investors of the other Party to be made as authorized or specified in any written agreement between the Party and an investment by an investor of the other Party, or an investor of the other Party.

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

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

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

5. Nothing in this Chapter shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 10.12 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

## **Article 10.12. RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS**

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on payments or transfers related to investments. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund;

(b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(c) not exceed those necessary to deal with the circumstances described in paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;

(e) be applied on a national treatment basis and such that the other Party is treated no less favourably than any nonParty.

3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Party.

4. The Party adopting any restrictions under paragraph 1 shall commence consultations with the other Party in order to review the restrictions adopted by it.

## **Article 10.13. SENIOR MANAGEMENT AND BOARD OF DIRECTORS**

1. Neither Party may require that an enterprise of that Party that is an investment of an investor of the other Party appoint to senior management positions individuals of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is an investment of an investor of the other Party, 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 of the other Party to exercise control over its investment.

## **Article 10.14. NONCONFORMING MEASURES**

1. Article 10.3 (National Treatment), Article 10.4 (Most Favoured Nation Treatment), Article 10.7 (Performance Requirements) and Article 10.13 (Senior Management and Board of Directors) do not apply to:

(a) any existing nonconforming measure that is maintained by a Party in regard to investment and investors at:

(i) the central level of government, as set out by that Party in Annex 11B (Peru's CrossBorder Trade in Services and Investment Reservations for Existing Measures and Liberalisation Commitments) and Annex 11C (Singapore's CrossBorder Trade in Services and Investment Reservations for Existing Measures and Liberalisation Commitments), as applicable to the Party;

(ii) a regional level of government, as set out by that Party in Annex 11B (Peru's CrossBorder Trade in Services and Investment Reservations for Existing Measures and Liberalisation Commitments) and Annex 11C (Singapore's CrossBorder Trade in Services and Investment Reservations for Existing Measures and Liberalisation Commitments), as applicable to the Party; or

(iii) a local level of government;

(b) the continuation or prompt renewal of any nonconforming measure referred to in subparagraph (a); or

(c) an amendment to any nonconforming 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 Article 10.3 (National Treatment), Article 10.4 (Most Favoured Nation Treatment), Article 10.7 (Performance Requirements) and Article 10.13 (Senior Management and Board of Directors).

2. Article 10.3 (National Treatment), Article 10.4 (Most Favoured Nation Treatment), Article 10.7 (Performance Requirements) and Article 10.13 (Senior Management and Board of Directors) do not apply to any measure that a Party adopts or maintains in regard to investments and investors with respect to sectors, subsectors, or activities, as set out in Annex 11D (Peru's CrossBorder Trade in Services and Investment Reservations for Future Measures) and Annex 11E (Singapore's Cross Border Trade in Services and Investment Reservations for Future Measures), as applicable to the Party.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by Annex 11D (Peru's CrossBorder Trade in Services and Investment Reservations for Future Measures) and Annex 11E (Singapore's CrossBorder Trade in Services and Investment Reservations for Future Measures), as applicable to the Party, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Article 10.3 (National Treatment), Article 10.4 (Most Favoured Nation Treatment) and Article 10.13 (Senior Management and Board of Directors) shall not apply to subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to investors of the Party or investments of investors of the Party, including government supported loans, guarantees and insurance.

5. Article 10.3 (National Treatment) and Article 10.4 (Most Favoured Nation Treatment) do not apply to any measure that is an exception to, or derogation from, a Party's obligations under the TRIPS Agreement, as specifically provided for in that Agreement.

## **Article 10.15. Denial of Benefits**

Subject to prior notification and consultation according to the procedures set out in Article 17.4 (Consultations), a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such an investor where the Party establishes that the enterprise is owned or controlled by persons of a nonParty, or of the denying Party, and has no substantive business operations in the territory of the other Party.

## **Article 10.16. SUBROGATION**

1. If a Party or a designated agency of a Party makes a payment to any of its investors under a guarantee, a contract of

insurance or other form of indemnity it has granted in respect of an investment of an investor of that Party, the other Party shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or a designated agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the designated agency of the Party making the payment, pursue those rights and claims against the other Party.

## **Article 10.17. INVESTORSTATE DISPUTE SETTLEMENT**

1. This Article shall apply to disputes between a Party and an investor of the other Party concerning an alleged breach of an obligation of the former under this Chapter which causes loss or damage to the investor or its investment.

2. The parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations.

3. Where the dispute cannot be resolved as provided for under paragraph 2 within six (6) months from the date of a request for consultations and negotiations, then, unless the disputing investor and the disputing Party agree otherwise, or if the investor concerned has already submitted the dispute for resolution before the courts or administrative tribunals of the disputing Party, or if the dispute is already otherwise subject to other binding dispute settlement proceedings (excluding proceedings for interim measures of protection referred to in paragraph 5 below), the investor concerned may submit the dispute for settlement to:

(a) ICSID for conciliation or arbitration pursuant to Articles 28 or 36 of the ICSID Convention, if both Parties are parties to the ICSID Convention;

(b) arbitration under the UNCITRAL Arbitration Rules; or

(c) any other arbitration institution or under any other arbitration rules, if the disputing investor and the disputing Party agree.

4. Each Party hereby consents to the submission of a dispute to conciliation or arbitration under paragraphs 3(a) to 3(c) in accordance with the provisions of this Article, conditional upon:

(a) the submission of the dispute to such conciliation or arbitration taking place within three (3) years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Chapter causing loss or damage to the disputing investor or its investment;

(b) the disputing investor providing written notice ("notice of intent"), which shall be submitted at least thirty (30) days before the claim is submitted, to the disputing Party of its intent to submit the dispute to such conciliation or arbitration and which:1011

(i) states the name and address of the disputing investor and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(ii) nominates either paragraph 3(a), 3(b) or 3(c) of this Article as the forum for dispute settlement (and, in the case of ICSID, nominates whether conciliation or arbitration is being sought);

(i) states the name and address of the disputing investor and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;

(ii) nominates either paragraph 3(a), 3(b) or 3(c) of this Article as the forum for dispute settlement (and, in the case of ICSID, nominates whether conciliation or arbitration is being sought);

(iii) waives its right to initiate any proceedings (excluding proceedings for interim measures of protection referred to in paragraph 5) before any of the other dispute settlement fora referred to in paragraph 3 in relation to the matter under dispute;

(iv) for each claim, briefly summarises the alleged breach of the disputing Party under this Chapter, including the articles alleged to have been breached, and its legal and factual basis; and

(v) states the approximate amount of loss or damage allegedly caused to the disputing investor or its investment.



5. Neither Party Shall prevent the disputing investor from seeking interim measures of protection, not involving the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the disputing Party, prior to the institution of proceedings before any of the dispute settlement fora referred to in paragraph 3, for the preservation of its rights and interests.

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

7. The responsibility among the Parties for the assumption of expenses derived from their participation in the arbitration or conciliation shall be established:

(a) by the arbitration or conciliation institution which the dispute has been submitted to, according to its rules of procedure for arbitration or conciliation proceedings; or

(b) according to the rules of procedure for arbitration or conciliation proceedings agreed by the disputing investor and the disputing Party, where applicable.

## **Section 10.18. PUBLIC DEBT**

1. The Parties recognize that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award may be made in favour of a disputing investor for a claim with respect to default or non payment of debt issued by a Party unless the disputing investor meets its burden of proving that such default or nonpayment constitutes an uncompensated expropriation for purposes of Article 10.10 (Expropriation and Nationalisation) or a breach of any other obligation under this Chapter.

2. No claim that a restructuring of debt issued by a Party breaches an obligation under this Chapter may be submitted to, or if already submitted continue in, arbitration under this Chapter if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 10.3 (National Treatment) or Article 10.4 (Most-Favoured-Nation Treatment).

3. Subject to paragraph 2, an investor of the other Party may not submit a claim under this Chapter that a restructuring of debt issued by a Party breaches an obligation under this Chapter (other than Article 10.3 (National Treatment) or 10.4 (Most-Favoured-Nation Treatment)) unless two hundred and seventy (270) days have elapsed from the date of the events giving rise to the claim.

## **Article 10.19. SAVINGS CLAUSE**

In the event that this Agreement is terminated, the following provisions shall continue in effect with respect to investments made or acquired before the date of termination of this Agreement for a further period of fifteen (15) years after the date of termination and without prejudice to the application thereafter of the rules of general international law:

(a) the provisions of this Chapter except Article 10.14 (Non Conforming Measures) and the commitments contained in Annex 11B (Peru's CrossBorder Trade in Services and Investment Reservations for Existing Measures and Liberalisation Commitments), Annex 11C (Singapore's Cross Border Trade in Services and Investment Reservations for Existing Measures and Liberalisation Commitments), Annex 11D (Peru's CrossBorder Trade in Services and Investment Reservations for Future Measures) and Annex 11E (Singapore's CrossBorder Trade in Services and Investment Reservations for Future Measures) in regard to investments and investors;

(b) the provisions in Chapter 17 (Dispute Settlement); and

(c) such other provisions in the Agreement as may be necessary for or consequential to the application of this Chapter.

## **Article 10.20. TERM OF THE BILATERAL INVESTMENT TREATY**

1. Subject to paragraph 2, the Parties hereby agree that the Bilateral Investment Treaty, as well as all the rights and obligations derived from the said Treaty, will cease to have effect on the date of entry into force of this Agreement.

2. Any and all investments made pursuant to the Bilateral Investment Treaty before the entry into force of this Agreement will be governed by the rules of the said Treaty regarding any matter arising while the Treaty was in force. An investor may

only submit an arbitration claim pursuant to the Bilateral Investment Treaty, regarding any matter arising while the said Treaty was in force, pursuant to the rules and procedures established in it, and provided that no more than three (3) years have elapsed since the date of entry into force of this Agreement.