AGREEMENT BETWEEN THE SWISS FEDERAL COUNCIL AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

PREAMBLE

The Swiss Federal Council and the Government of the Republic of Indonesia, hereinafter referred to as the "Parties" or individually as a "Party";

DESIRING to intensify economic cooperation to the mutual benefit of both States;

RECOGNISING that the creation of a business-friendly environment will be conducive to the stimulation of business initiative for increased investments by investors of one Party in the territory of the other Party;

ACKNOWLEDGING the important contribution that investments can make to sustainable development, and seeking to promote and facilitate such investments within the territories of the Parties;

RECOGNISING that the encouragement and reciprocal protection of investments can stimulate business initiative, foster the inflow of capital and technology, and increase economic development and prosperity in both States;

CONVINCED that these objectives can be achieved without weakening health, safety, labour and environmental standards of general application;

AFFIRMING the mutual supportiveness of investment, environment and labour policies in this respect;

REAFFIRMING their commitment to the principles and objectives set out in the United Nations Charter and the Universal Declaration of Human Rights, including democracy, the rule of law, human rights and fundamental freedoms;

HAVE AGREED AS FOLLOWS:

Chapter I. DEFINITIONS AND SCOPE

Article 1. Definitions

For the Purposes of this Agreement:

1. "Freely convertible currency" means a currency, which is widely traded in international foreign exchange market and widely used in international transaction;

2. "ICSID" means the International Centre for Settlement of Investment Disputes;

3. "ICSID Additional Facility Rules" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes, as amended and in effect on 10 April 2006;

4. "ICSID Arbitration Rules" means the Rules of Procedure for Arbitration Proceedings (Arbitration Rules), as amended and in effect on 10 April 2006;

5. "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;

6. "Investment" means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk or certain duration. Forms that an investment may take include:

(a) an enterprise;

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

(c) bonds, debentures and other debt instruments and loans; (1) (2)

(d) intellectual property rights;

(e) claims to money or to any contractual performance related to a business and having financial value; (3)

(f) turnkey, construction, management, production concession, revenue-sharing and other similar contracts;

(g) licences, authorisations, permits and similar rights conferred in accordance with the Party's laws; (4) and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges.

The term "investment" does not include an order or judgment entered in a judicial or administrative action or an arbitral award made in an arbitral proceeding.

For the purpose of the definition of investment in this Article, 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.

7. "Investor" means:

(a) a natural person who, under to the law of a Party, is a national of that Party; or

(b) a legal entity, including companies, corporations, business associations and other organisations, which is constituted or otherwise duly organised under the law of that Party and has its seat, together with real economic activities, in the territory of the same Party;

that has made an investment;

8. "Locally established enterprise" means an enterprise owned or controlled directly or indirectly by an investor of a Party, established in the territory of the other Party. An enterprise is:

(a) owned by natural persons or enterprises of a Party if more than 50 per cent of the equity interest in it is beneficially owned by natural persons or enterprises of that Party;

(b) controlled by natural persons or enterprises of a Party if such natural persons or enterprises have the power to name a majority of its directors or otherwise to legally direct its actions.

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

10. "Returns" means amounts yielded by or derived from an investment, including, but not limited to, any profits, interest, capital gains, dividends, royalties or fees;

11. "Territory" means the territory of a Party as defined by the laws of the Party concerned in accordance with international law;

12. "UNCITRAL Arbitration Rules" means the Arbitration Rules of the United Nations Commission on International Trade Law, as adopted by the United Nations General Assembly on 15 December 1976.

(1) Some forms of debt, such as bonds, debentures and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

(2) A loan issued by one Party to the other Party is not an investment.

(3) For greater certainty, investment does not mean claims to money that arise solely from: (a) commercial contracts for sale of goods or services; or (b) the extension of credit in connection with such commercial contracts.

(4) Whether a particular type of licence, authorisation, permit or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the Party's law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party's law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.

Article 2. Scope of Agreement

1. This Agreement applies to investments in the territory of one Party, which have been established or acquired and, where applicable, admitted (5) in accordance with its laws and regulations by investors of the other Party, whether prior to or after the entry into force of this Agreement.

2. This Agreement does not apply to claims or disputes arising from events, which occurred (6) prior to its entry into force.

3. This Agreement shall not apply to government procurement.

4. Article 5 (National Treatment) shall not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurances, 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.

(5) For greater certainty, in the case of Indonesia, "admitted in accordance with its laws and regulations" may include a requirement for specific approval in writing.

(6) For greater certainty, this Agreement shall not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement for that Party.

Article 3. Taxation Measures

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

(a) they are granted or imposed under Article 7 (Expropriation); or

(b) they are granted or imposed under Article 9 (Transfers).

3. Where Paragraphs 2(a) or 2(b) apply, Section One (Settlement of Disputes between a Party and an Investor of the other Party) of Chapter III (Dispute Settlement), shall also apply in respect of taxation measures.

4. Where an investor claims that the disputing Party has breached Article 7 (Expropriation) or Article 9 (Transfers) by the adoption or enforcement of a taxation measure, the competent authorities of the disputing Party may request consultations with the competent authorities of the non-disputing Party at the time that the disputing Party receives the investor's notice of intent under Article 19 (Submission of a Claim). The competent authorities of the Parties shall hold consultations with a view to determining whether the taxation measure constitutes an expropriation according to Article 7 (Expropriation) or whether Article 9 (Transfers) has been breached. Any arbitral tribunal that may be established in accordance with Section One (Settlement of Disputes between a Party and an Investor of the other Party) of Chapter III (Dispute Settlement) to consider taxation measures, shall accept as binding the decision of the competent authorities under this Paragraph.

If the competent authorities of the Parties fail to determine whether the taxation measure constitutes an expropriation according to Article 7 (Expropriation) or whether Article 9 (Transfers) has been breached within 360 days of the date of receipt of the request for consultations by the non-disputing Party, the investor may submit its claim to arbitration under Article 19 (Submission of a Claim).

5. In assessing whether a measure related to taxation constitutes expropriation, the following considerations shall be taken into account:

(a) the imposition of taxes does not generally constitute expropriation. The mere introduction of new taxation measures or the imposition of taxes in more than one jurisdiction in respect of an investment, does not in and of itself constitute

expropriation;

(b) enforcement activities of the tax laws including seizure of property for the purpose of tax collection do not generally constitute expropriation;

(c) taxation measures which are consistent with internationally recognized tax policies, principles and practices do not generally constitute expropriation. In particular, taxation measures aimed at preventing the avoidance or evasion of taxes should not be considered to be expropriatory; and

(d) taxation measures which are applied on a non-discriminatory basis, as opposed to being targeted at investors of a particular nationality or specific individual taxpayers, are not likely to constitute expropriation. A taxation measure should not constitute expropriation if, when the investment is made, it was already in force and information about the measure was made public or otherwise made publicly available.

6. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention that convention shall prevail to the extent of the inconsistency. The competent authorities under that convention shall have the sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

7. For the purposes of this Article:

(a) "tax convention" in Paragraph 6 means a convention for the avoidance of double taxation or other international taxation agreement or arrangement to which the Parties are party;

(b) "competent authorities" in Paragraph 4 means:

(i) with respect to Indonesia, the Minister of Finance or his or her authorised representative;

(ii) with respect to Switzerland, The Head of the Federal Department of Finance, or his or her authorised representative.

Chapter II. INVESTMENT PROTECTION

Article 4. Treatment of Investment

1. Each Party shall in its territory accord to investments of investors of the other Party fair and equitable treatment as well as full protection and security in accordance with this Article.

2. A Party breaches the obligation of fair and equitable treatment referenced in Paragraph 1 if a measure or series of measures constitutes:

(a) a denial of justice in criminal, civil or administrative proceedings;

(b) a fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;

(c) manifest arbitrariness;

(d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or

(e) abusive treatment, such as coercion, duress or harassment.

3. The Parties shall, upon request of a Party, review the content of the obligation to provide fair and equitable treatment, pursuant to the procedure for amendments set out in Article 44 (Entry into Force, Duration and Termination), in particular, whether treatment other than those listed in Paragraph 2 can also constitute a breach of fair and equitable treatment.

4. Full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the investment.

5. When applying the above fair and equitable treatment obligation, the arbitral tribunal may take into account whether a Party made a specific written commitment to an investor to induce an investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the investment, but that the Party subsequently frustrated.

6. The mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the investment as a result.

7. 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 5. National Treatment

1. Each Party shall in its territory accord to investments of investors of the other Party treatment no less favourable than that which it accords, in like circumstances (7), to investments of its own investors. (8)

2. Each Party shall in its territory accord to investors of the other Party, as regards the management, maintenance, use, enjoyment, extension, or disposal of their investments, treatment no less favourable than that which it accords, in like circumstances, to its own investors.

3. For greater certainty, the treatment to be accorded by a Party under Paragraph 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

(7) For greater certainty, whether treatment is accorded in "like circumstances" under Article 5 (National Treatment) or Article 6 (Most Favoured Nation) depends on the totality of the circumstances, including the relevant economic or business sector or sectors concerned and whether the relevant treatment distinguishes between investments on the basis of legitimate public welfare objectives.

(8) For greater certainty, this Article shall not apply to any measure relating to the divestment of investment where the foreign investors were made aware, as of the date or during the registration of their investment, that their investment would be divested in the future in accordance with the host Party's domestic legislation.

Article 6. Most-Favoured-Nation Treatment

1. Each Party shall in its territory accord to investments of investors of the other Party treatment no less favourable than the treatment it accords, in like circumstances, to investment of investors of any non-Party.

2. Each Party shall in its territory accord to investors of the other Party, as regards the management, maintenance, use, enjoyment, extension or disposal of their investments, treatment no less favourable than that which it accords, in like circumstances, to investors of any non-Party.

3. Treatment as referred to in Paragraphs 1 and 2 shall not include:

(a) existing bilateral or regional investment agreements that were signed or have entered into force prior to the entry into force of this Agreement;

(b) arrangements with a non-Party in the same geographical region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects;

(c) existing or future agreements establishing a free trade area, a customs union or a common market according preferential treatment by a Party to investors of any non-Party; or

(d) existing or future agreements on the avoidance of double taxation or any other tax conventions.

4. For greater certainty, Paragraphs 1 and 2 shall not apply to international dispute resolution procedures or mechanisms in other international agreements, and shall not be construed as granting to investors dispute resolution procedures or mechanisms other than those set out in Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter II (Dispute Settlement).

5. For greater certainty, substantive obligations in other international investment agreements concluded by a Party do not in themselves constitute most-favored-nation treatment as referred to in Paragraphs 1 and 2 and thus cannot give rise to a breach of this Article in the absence of concrete measures adopted or maintained by that Party pursuant to such obligations.

Article 7. Expropriation

1. Neither Party shall expropriate or nationalise an investment of an investor of the other Party either directly or indirectly through measures equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate and effective compensation in accordance with Paragraphs 3 and 4; and

(d) in accordance with due process of law.

This Paragraph shall be interpreted in accordance with Annex A on Expropriation.

2. At the request of an investor, any measure of expropriation or valuation will be reviewed by a judicial or other independent authority in the manner prescribed by the laws of the Party taking the measure.

3. Compensation referred to in Paragraph 1(c) shall:

(a) be paid without delay (9);

(b) be equivalent to the fair market value (10) of the expropriated investment immediately before the expropriation took place (the date of expropriation) or before the impending expropriation became public knowledge, whichever is earlier;

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be effectively realizable and freely transferable in accordance with Article 9 (Transfers).

4. The amount of compensation shall include interest at an appropriate market rate, from the date of expropriation until the date of payment. Valuation criteria used to determine fair market value may include going concern value, asset value including the declared tax value of tangible property and other criteria, as appropriate.

5. Notwithstanding Paragraphs 1, 3 and 4, any measure of direct expropriation relating to land, which shall be defined in the legislation of the expropriating Party, shall be for a public purpose and upon payment of compensation at fair market value, in accordance with the aforesaid legislation.

6. 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 Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement. (11)

(9) The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

(10) The valuation of fair market value of the expropriated investment shall exclude any speculative or windfall profits.

(11) For greater certainty, the Parties recognised for the purpose of this Article, the term "revocation" of intellectual property rights includes the cancellation or nullification of such rights, and the term "limitation" of intellectual property rights includes exceptions to such rights.

Article 8. Compensation for Losses

1. Investors of a Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, civil disturbances, a state of national emergency, revolt, insurrection, riot or other similar situations in the territory of the latter Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Party accords to investors of any non-Party or to its own investors, whichever is more favourable.

2. Notwithstanding Paragraph 1, an investor of a Party who, in any of the situations referred to in that Paragraph, suffers a loss in the territory of the other Party resulting from:

(a) requisitioning of the investment or part thereof by its forces or authorities; or

(b) destruction of the investment or part thereof by its forces or authorities which was not required by the necessity of the situation,

shall be accorded by the other Party restitution or compensation. With respect to compensation, the value shall not exceed

the loss suffered.

Article 9. Transfers

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

(a) contributions to capital, including the initial contribution, profits, capital gains, dividends, royalties, technical assistance and technical and management fees, interest and other current income accruing from any investment;

(b) proceeds from the total or partial sale or liquidation of any investment;

(c) payments made under a contract, entered into by an investor, or its investment, including payments made pursuant to a loan agreement;

(d) payments made pursuant to Article 7 (Expropriation) and Article 8 (Compensation for Losses);

(e) earnings and other remuneration of personnel engaged from abroad in connection with that investment; and

(f) payments arising out of the settlement of a dispute under Chapter III (Dispute Settlement).

2. Unless otherwise agreed with the investor, each Party shall permit such transfers to be made in a freely convertible currency at the market rate of exchange prevailing at the time of transfer.

3. Nothing in this Article shall be construed to prevent a Party from applying, in an equitable, non-discriminatory manner and in good faith, 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) criminal or penal offenses;

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

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

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

(g) severance entitlements of employees; or

(h) taxation.

4. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions, which are in conformity with the Articles of Agreement of the International Monetary Fund.

5. A transfer shall be deemed to have been made "without delay" if effected within such a period as is normally required for the completion of transfer formalities imposed by the central bank and other relevant authorities of a Party. The said period shall commence on the day on which the request for transfer is submitted and may on no account exceed two months. Such formalities shall apply to investors without discrimination.

Article 10. Restrictions to Safeguard Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof or if, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies, it may adopt or maintain restrictions on payments or capital movements related to investments.

2. Restrictions adopted or maintained under 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;

(f) ensure that the other Party is treated as favourably as any non-Party;

(g) not restrict payments or transfers for current transactions, unless the imposition of such measures complies with the procedures stipulated in the Articles of Agreement of the International Monetary Fund.

Article 11. Subrogation

1. If a Party, or any agency, institution, statutory body or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into on non-commercial risks with respect to an investment, the other Party in whose territory the investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Agreement with respect to the investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

2. The subrogated or transferred rights or claims shall not be greater than the original rights or claims of the said investor.

Article 12. Right to Regulate

1. For the purpose of this Agreement, the Parties reaffirm their right to regulate within their territories necessary to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, environment or public morals, social or consumer protection, privacy and data protection, and the promotion and protection of cultural diversity.

2. For greater certainty, the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under this Agreement.

Article 13. Corporate Social Responsibility

Each Party shall encourage legal entities operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party.

Article 14. Measures Against Corruption

1. Aninvestor of a Party and its investments shall not, prior to the establishment of an investment in the territory of the other Party or afterwards, offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a public official of the other Party for that official or for a third party, in order that the official or third party act or refrain from acting in relation to the performance of official duties, in order to achieve any favour in relation to an investment.

2. An investor of a Party and its investments, in the territory of the other Party, shall not be complicit in any act described in Paragraph 1, including incitement and aiding to commit such acts.

Chapter III. DISPUTE SETTLEMENT

Section ONE. SETTLEMENT OF DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY

Article 15. Scope

1. This Section shall apply to disputes between a Party and an investor of the other Party ("disputing parties") concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor (hereinafter referred to as an "investment dispute").

2. This Section shall not apply to investment disputes, which have occurred prior to the date of entry into force of this Agreement.

3. Anatural person possessing the nationality or citizenship of a Party may not pursue a claim against that Party under this Section.

4. A legal entity of a Party and its subsidiaries may not pursue a claim against the other Party under this Section, if the legal entity is owned or controlled by an investor of a non-Party, and such other Party does not maintain diplomatic relations with the non-Party.

Article 16. Transparency of Arbitral Proceedings

1. Subject to Paragraph 2, the disputing Party shall make publicly available all awards and decisions produced by the arbitral tribunal.

2. Any information specifically designated as confidential that is submitted to the arbitral tribunal or the disputing parties shall be protected from disclosure to the public.

3. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the arbitral tribunal. The arbitral tribunal shall make appropriate arrangements to protect the information from disclosure.

4. The hearings of the arbitral tribunal shall be closed for the duration of any discussion of confidential information. Otherwise, the hearing shall be open to the public, unless the disputing parties decide otherwise.

5. The arbitral tribunal shall not require a disputing party to provide confidential business information or confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the security interest of the disputing Party, or which would prejudice the legitimate commercial interests of particular legal entities, public or private.

Article 17. Consultations

1. In the event of an investment dispute, the disputing parties shall initially seek to resolve the dispute with a view towards reaching an amicable settlement through consultation. Such consultations shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Party.

2. With the objective of resolving a dispute through consultations, the written request for consultations shall contain information regarding the legal and factual basis for the investment dispute, including the name and address of the disputing investor, the provisions of this Agreement alleged to have been breached, the relief sought, the estimated amount of damages claimed, and evidence establishing that the disputing investor is an investor of the other Party and that it owns or controls the investments.

Article 18. Mediation

1. If the investment dispute cannot be resolved through consultations, a disputing party may request the other disputing party to have recourse to a non-binding, third party procedure, such as good offices, conciliation or mediation. Such process shall be initiated by a written request delivered by a disputing party to the other disputing party and requires the consent of both disputing parties.

2. The process under this Article can only be initiated by a disputing party within 6 months from the date of receipt of the written request for consultations by the disputing Party.

3. Expenses incurred in relation to the process under this Article shall be borne equally by the disputing parties. Each disputing party shall bear its own expenses derived from the participation in the process.

Article 19. Submission of a Claim

1. If an investment dispute cannot be resolved within 12 months from the receipt of the written request for consultations by the disputing Party, unless the disputing parties agree otherwise, the disputing investor may submit, on its own behalf or on behalf of its locally established enterprise (12), the dispute to the courts or to the administrative tribunals of the Party concerned or to international arbitration. In the latter event, the disputing investor has the choice between any of the following rules:

(a) the ICSID Convention and the ICSID Arbitration Rules, provided that the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;

(b) the ICSID Additional Facility Rules, provided that either the disputing Party or the Party of the disputing investor is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) any other arbitral institutions or under any other arbitration rules, if the disputing parties so agree.

2. In case of any conflict between the provisions of this Agreement and the provisions of the applicable arbitration rules, the provisions of this Agreement shall prevail to the extent of any such inconsistency.

3. Each Party hereby consents to the submission of a dispute to arbitration under Paragraph 1 in accordance with the provisions of this Section, conditional upon the requirements for such submission defined in this Article.

4. The consent under Paragraph 3 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

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

(b) Article Il of the New York Convention for an "agreement in writing".

5. The disputing investor may only submit the claim to arbitration if the disputing investor, cumulatively:

(a) provides a written notice to the disputing Party of its intent to submit the dispute to such arbitration at least 90 days before the claim is submitted, which contains information regarding the legal and factual basis of the investment dispute provided by the disputing investor in its request for consultations and any changes to the information therein;

(b) delivers to the disputing Party, with the submission of a claim, its consent to the settlement of the dispute in the arbitration in accordance with the procedures set out in this Section;

(c) does not identify a measure in its claim that was not identified in its request for consultations;

(d) withdraws or discontinues any existing proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim; and

(e) waives its right to raise any claim or initiate any proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim.

Letters (d) and (e) above do not apply for injunctive, declaratory or other non-pecuniary legal remedy provided that the action is brought for the sole purpose of preserving the disputing investor's or the enterprise's rights and interests during the pendency of the arbitration.

6. A claim may only be submitted to arbitration under this Chapter if no final award concerning the same measure as alleged to breach the provisions of Chapter II (Investment Protection) has been rendered in a claim submitted by the disputing investor to another arbitral tribunal established pursuant to this Section, or any other treaty including investment protection.

7. In the event that the investor has not submitted the dispute to international arbitration pursuant to Paragraph 1 within 24 months of the date of receipt by the disputing Party of the written request for consultations, the investor shall be deemed to have withdrawn its request for consultations and may no longer submit the same dispute to international arbitration pursuant to Paragraph 1. This period may be extended by written agreement between the disputing parties before such period has expired.

8. The consent of the Parties to the submission of a dispute to arbitration under Paragraph 1 in accordance with the provisions of this Section, shall be subject to the condition that the investment dispute is submitted within five years of the time at which the disputing investor became aware, or should have reasonably become aware, of a breach of an obligation under this Agreement causing loss or damage to the disputing investor or its investment. This period may be extended by written agreement between the disputing parties before such period has expired.

Article 20. Third-Party Funding

1. The disputing parties shall notify the arbitral tribunal of the name and address of the third-party funder if they benefit

from third-party funding.

2. Such notification shall be made at the time of submission of a claim, or without delay as soon as the third-party funding is agreed, donated or granted, as applicable.

3. If the disputing parties fail to disclose third party funding under this Article, the arbitral tribunal may consider the conduct of the disputing parties as a factor in allocating costs or order the suspension or termination of the proceedings.

Article 21. Constitution of the Arbitral Tribunal

1. Unless the disputing parties otherwise agree, the arbitral tribunal shall be composed of three arbitrators, who shall not be nationals or permanent residents of either Party. Each disputing party shall appoint one arbitrator and the appointed arbitrators shall agree upon a third arbitrator, who shall be the chairman of the arbitral tribunal. The chairman of the arbitral tribunal shall be a national of a non-Party which has diplomatic relations with the disputing Party and the non-disputing Party.

2. If an arbitral tribunal has not been established within 90 days from the date on which the claim was submitted to arbitration, either because a disputing party failed to appoint an arbitrator or because the appointed arbitrators failed to agree upon the chairman, the Secretary-General of ICSID, upon request of either disputing party, shall appoint, at his own discretion, the arbitrator or arbitrators not yet appointed. If the Secretary-General is a national or permanent resident of either Party, or he or she is otherwise unable to act, the Deputy Secretary-General of ICSID, who is not a national or permanent resident of either Party, may be invited to make the necessary appointments.

3. The arbitrators shall have experience or expertise in public international law, international investment law and the resolution of disputes arising under international investment law. The arbitrators shall be independent from the Parties and the disputing investor, and not be affiliated to or receive instructions from any of them.

4. Where any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and the successor shall have all the powers and duties of the original arbitrator.

5. Arbitrators appointed under this Section shall comply with the Code of Conduct of Arbitrators in Annex B of this Agreement.

Article 22. Governing Law and Joint Interpretation

1. An arbitral tribunal established in conformity with Article 21 (Constitution of the Arbitral Tribunal) shall decide the issues in dispute based on the provisions of this Agreement interpreted in accordance with applicable rules of international law. In addition, it may apply other rules of international law and rules of domestic law wherever appropriate in light of the issues to be resolved.

2. Where concerns arise as regards matters of interpretation of a provision of the Agreement, the Parties may adopt a joint interpretation. Such joint interpretation of the respective provision shall be binding on an arbitral tribunal established under this Chapter. The Parties may decide that this joint interpretation shall have binding effect from a specific date.

Article 23. Seat of Arbitration

Unless the disputing parties otherwise agree, the arbitral tribunal shall determine the seat of arbitration in accordance with the applicable arbitration rules, provided that the seat shall be in the territory of a State that is a party to the New York Convention.

Article 24. Arbitral Proceedings

1. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, an arbitral tribunal shall decide the matter before proceeding to the merits.

2. The disputing Party may, no later than 45 days after the constitution of the arbitral tribunal, file as a preliminary objection that a claim is excluded under Article 15 (Scope of Agreement). The disputing Party may also file an objection that a claim is otherwise outside of the jurisdiction or competence of the arbitral tribunal or any other objection, for example, that a claim is frivolous or manifestly without legal merit, even if the facts alleged were assumed to be true. The disputing Party shall specify as precisely as possible the basis for the objection. This is without prejudice to a disputing Party's ability to raise such

an objection at a later stage in the proceedings.

3. The arbitral tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the arbitral tribunal. If the arbitral tribunal decides that the claim is excluded under Article 15 (Scope of Agreement), or is otherwise not within the jurisdiction or competence of the arbitral tribunal, or if it accepts any other objection, it shall render an award or a decision to that effect.

4. The arbitral tribunal shall decide on an expedited basis any preliminary objection raised under this Article. The arbitral tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefore, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the arbitral tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, an arbitral tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

Article 25. Diplomatic Protection

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

Article 26. Awards

1. Where an arbitral tribunal makes a final award against a disputing Party, the arbitral tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, provided that the disputing Party may pay monetary damages and any applicable interest, representing the fair market value of the property at the time immediately before the expropriation or impending expropriation became known, whichever is earlier, in lieu of restitution.

2. An arbitral tribunal may also award costs of the proceedings and costs of legal representation and assistance in accordance with this Section and the applicable arbitration rules.

3. An arbitral tribunal may not award punitive damages.

4. The award shall be binding and shall not be subject to any review mechanism other than those provided for in the ICSID Convention or other applicable arbitration rules on which the arbitral proceedings chosen by the disputing investor are based.

5. A disputing investor may not seek enforcement of a final award until:

(a) in the case of a final award 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;

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Apbitration Rules, or the arbitration rules selected pursuant to Paragraph 1(d) of Article 19 (Submission of a Claim):

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

6. Subject to Paragraph 5 and the applicable review procedures, the disputing parties shall abide by and comply with an award without delay.

Article 27. Costs

1. The arbitral tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the arbitral tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the case. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the arbitral tribunal determines that such apportionment is unreasonable in the circumstances of the case. If only parts of the claims have been successful, the costs shall be allocated proportionately according to the number or extent of the successful parts of the claims.

2. The arbitral tribunal shall ensure that all decisions on costs are reasoned and form part of the award.

Article 28. Security for Costs

1. Upon request of a disputing party, the arbitral tribunal may order any disputing party asserting a claim or counterclaim to provide security for costs.

2. In determining whether to order a disputing party to provide security for costs, the arbitral tribunal shall consider all relevant circumstances, including:

(a) that disputing party's ability to comply with an adverse decision on costs;

(b) that disputing party's willingness to comply with an adverse decision on costs;

(c) the effect that providing security for costs may have on that disputing party's ability to pursue its claim or counterclaim; and

(d) the conduct of the disputing parties.

3. The arbitral tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.

4. If a disputing party fails to comply with an order to provide security for costs within 30 days after the arbitral tribunal's order or within any other time period set by the arbitral tribunal, the arbitral tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the arbitral tribunal may, after consulting with the disputing parties, order the discontinuance of the proceeding.

5. A disputing party shall promptly disclose any material change in the circumstances upon which the arbitral tribunal ordered security for costs.

6. The arbitral tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a disputing party's request.

Article 29. Consolidation

Where two or more claims have been submitted separately to arbitration under Article 19 (Submission of a Claim) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims.

Article 30. Discontinuance

If, following the submission of a claim under this Section, the disputing investor fails to take any steps in the proceedings within 180 days or such period as the disputing parties may agree, the disputing investor shall be deemed to have withdrawn its claim and to have discontinued the proceedings. The arbitral tribunal shall, at the request of the disputing Party, and after giving notice to the disputing parties, issue an order taking note of the discontinuance of the proceedings. After such an order has been rendered, the authority of the arbitral tribunal shall lapse.

Article 31. Service of Documents

1. Notices and other documents in disputes under this Section shall be served on Indonesia by delivery to:

Director General for Legal Affairs and International Treaties

Ministry of Foreign Affairs

Jl. Taman Pejambon No. 6

Jakarta 10110

INDONESIA

2. Notices and other documents in disputes under this Section shall be served on Switzerland by delivery to:

State Secretariat for Economic Affairs SECO

Holzikofenweg 36

3003 Bern

SWITZERLAND

Section TWO. SETTLEMENT OF DISPUTES BETWEEN THE PARTIES

Article 32. Scope

This Section applies to the settlement of disputes between the Parties arising from the interpretation or application of the provisions of this Agreement.

Article 33. Consultations

1. Either Party may request in writing consultations on the interpretation or application of this Agreement. If a dispute arises between the Parties on the interpretation or application of this Agreement, it shall, to the extent possible, be settled amicably through consultations.

2. In the event the dispute is not settled through the means mentioned above within 6 months from the date such consultations were requested in writing, then, unless the Parties agree otherwise, either Party may submit such dispute to an arbitral tribunal established in accordance with this Section or, by agreement of the Parties, to any other international tribunal.

Article 34. Constitution of Arbitral Tribunal

1. Arbitration proceedings shall initiate upon written notice delivered by one Party (hereinafter referred to as "requesting Party") to the other Party (hereinafter referred to as "respondent Party") through diplomatic channels. The notice shall identify the specific measure at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the arbitral tribunal) sufficient to present the problem clearly.

2. Each Party shall appoint one arbitrator, and these two arbitrators shall appoint a chairman who shall be a national ofa non-Party which has diplomatic relations with the Parties. If one of the Parties has not appointed its arbitrator and has not followed the invitation of the other Party to make that appointment within two months of the notice for arbitration, the arbitrator shall be appointed at the request of that Party by the Secretary General of ICSID. If the arbitrators cannot agree on the choice of the chairman within two months of their appointment, the chairman shall be appointed at the request of either Party by the Secretary General of ICSID.

3. If the Secretary General of ICSID is prevented from carrying out the said function or is a national of one of the Parties, the President of the International Court of Justice shall act as appointing authority. If the President of the International Court of Justice is prevented from carrying out the said function or is a national of one of the Parties, the appointments shall be made by the Vice-President, and if the latter is prevented or is a national of one of the Parties, the appointments shall be made by the next senior member of the Court who is not a national of a Party.

4. The arbitrators shall have experience or expertise in public international law and investment law and the resolution of disputes arising under international investment law. The arbitrators shall be independent from the Parties, and not be affiliated to or receive instructions from either of them.

5. Inthe event an arbitrator appointed under this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator, and he or she shall have the same powers and duties that the original arbitrator had.

6. Each Party shall bear the costs of its appointed arbitrator and of any legal representation in the proceedings. The costs of

the chairman of the arbitral tribunal and of other expenses associated with the conduct of the arbitration shall be borne equally by the Parties, unless the arbitral tribunal decides otherwise.

Article 35. Seat of Arbitration

Unless the Parties agree otherwise, the seat of arbitration shall be determined by the arbitral tribunal.

Article 36. Arbitral Proceedings

1. An arbitral tribunal established under this Section shall decide all questions submitted by the requesting Party and, subject to any agreement between the Parties, determine its own procedure. At any stage of the proceedings, the arbitral tribunal may propose to the Parties that the dispute be settled amicably.

2. An arbitral tribunal established in conformity with Article 34 (Constitution of Arbitral Tribunal) shall decide the issues in dispute based on the provisions of this Agreement interpreted in accordance with applicable rules of international law. In addition, it may apply other rules of international law and rules of domestic law wherever appropriate in light of the issues to be resolved.

3. The award shall be issued in writing and shall contain the applicable factual and legal findings. The award shall be final and binding on the Parties and on each arbitral tribunal constituted under this Agreement.

Chapter IV. GENERAL PROVISIONS, EXCEPTIONS AND FINAL PROVISIONS

Article 37. More Favourable Conditions

If the legislation of either Party, or international obligations existing at present or established hereafter between the Parties in addition to this Agreement, result in a position entitling investment by investors of the other Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement.

Article 38. Denial of Benefits

1. A Party may deny the benefits of this Agreement to an investor of the other Party that is a legal entity of such other Party and to investments of such investor if an investor of a non-Party or the denying Party owns or controls the legal entity and the legal entity has no substantive business operations in the territory of such other Party.

2. A Party may deny the benefits of this Agreement to an investor of the other Party that is a legal entity of such other Party and to investments of such investor if persons of a non-Party own or control the legal entity and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that relate to the maintenance of international peace and security and prohibit transactions with the legal entity or that would be violated or circumvented if the benefits of this Agreement were accorded to the legal entity or to its investments.

Article 39. Transparency

1. Each Party shall without delay publish or otherwise make publicly available its laws, regulations and international agreements that may affect the investments of investor of the other Party.

2. Each Party shall, upon request by the other Party, respond within a reasonable period of time to specific questions from and provide information to the other Party with respect to matters referred to in Paragraph 1.

Article 40. Disclosure of Information

1. Notwithstanding Article 5 (National Treatment), a Party may require an investor of the other Party, or its investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or its investment. 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.

2. Nothing in this Agreement shall require either Party to provide confidential information the disclosure of which would

impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular legal entities, public or private.

Article 41. General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the other Party or its investors where like conditions prevail, or a disguised restriction on investments of investors of the other Party in the territory of a Party, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals or to maintain public order (13);

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

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on a contract;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety.

(d) imposed for the protection of national treasures of artistic, historic or archaeological value; or

(e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

(13) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

Article 42. Prudential Measures

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures in a non-discriminatory manner relating to financial services for prudential reasons (14), including:

(a) the protection of investors, depositors, policy holders, policy claimants, as well as financial market participants, or persons to whom a fiduciary duty is owed by a financial institution;

(b) ensuring the integrity and stability of a Party's financial system.

2. The measures taken by a Party pursuant to Paragraph 1 shall not be used as a means of avoiding the commitments or obligations of the Party under this Agreement.

(14) The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, integrity or financial responsibility of individual financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

Article 43. Promotion and Facilitation of Investments

1. Subject to its laws and regulations, each Party shall endeavour to cooperate in the facilitation of investments between the Parties including through:

(a) creating the necessary environment for all forms of investments;

(b) simplifying procedures for investment applications and approvals;

(c) promoting dissemination of investment information, including investment rules, regulations, policies and procedures; and

(d) establishing an appropriate mechanism, to the extent possible, to provide assistance and advisory services to investors including facilitation of operating licences and permits.

2. Subject to its laws and regulations, cooperation activities under Paragraph 1(d) may be built on existing agreements or arrangements already in place for economic cooperation.

3. Nothing in this Article shall be construed to affect any obligation in the provisions of Chapter II (Investment Protection), or be subject to or otherwise affect any dispute resolution proceedings under this Agreement.

Article 44. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force on the day of receipt of the second notification through diplomatic channels confirming that both Parties have complied with the legal requirements for the entry into force of international agreements.

2. Notwithstanding Article 2 (Scope of Agreement), a claim may be submitted pursuant to the provisions of the Agreement of 6 February 1974 between the Government of the Swiss Confederation and the Government of the Republic of Indonesia on the promotion and reciprocal protection of investments, the termination of which became effective on 8 April 2016 (hereinafter referred to as "previous Agreement"), pursuant to the rules and procedures established in the previous Agreement, and provided that no more than one year have elapsed since the date of entry into force of this Agreement.

3. This Agreement may be amended by mutual consent of the Parties in writing. The amendments shall enter into force in accordance with the same legal procedure prescribed under Paragraph 1.

4. This Agreement shall remain in force for a period of 10 (ten) years and shall continue in force thereafter, unless, at any time after the expiry of the initial period of 10 (ten) years, either Party notifies in writing the other Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Party.

5. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a further period of 10 (ten) years from that date.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Davos on..... in the French, Indonesian, and English languages, all texts being equally authentic. If there is any divergence concerning interpretation, the English text shall prevail.

For the Swiss Federal Council

For the Government of the Republic of Indonesia

ANNEX A. EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Paragraph 1 of Article 7 (Expropriation) addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Paragraph 1 of Article 7 (Expropriation) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case- by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an

adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the duration of the action or series of actions by a Party;

(iii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations (15); and

(iv) the character of the government action, notably its objective and whether the action is disproportionate to the public purpose.

(b) For greater certainty, except in rare circumstances when the impact of an action or series of actions is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations.

(15) For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

ANNEX B. CODE OF CONDUCT OF ARBITRATORS

Responsibilities in the Process

1. Every arbitrator shall avoid impropriety and the appearance of impropriety, be independent and impartial, avoid direct and indirect conflicts of interests and observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved. Former arbitrators shall comply with the obligations in Paragraphs 17, 18 and 20.

Disclosure Obligations

2. Prior to confirmation of his or her selection as an arbitrator under this Agreement, a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

3. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of any interests, relationships and matters referred to in Paragraph 2 and shall disclose them by communicating them in writing to the disputing parties. The obligation to disclose is a continuing duty, which requires an arbitrator to disclose any such interests, relationships and matters that may arise at any stage of the proceeding.

Performance of Duties by Arbitrators

4. An arbitrator shall comply with the provisions of Chapter II (Dispute Settlement) and the applicable rules of procedure.

5. Once selected, an arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceeding with fairness and diligence.

6. An arbitrator shall not deny other arbitrators the opportunity to participate in all aspects of the proceeding.

7. An arbitrator shall not go beyond the request of the disputing parties and shall not delegate the duty to decide to any other person.

8. An arbitrator shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with, Paragraphs 1, 2,3, 18, 19 and 20.

9. After the arbitral tribunal has been constituted, an arbitrator shall not engage in ex parte contacts concerning the proceeding.

10. An arbitrator shall not communicate matters concerning actual or potential violations by another arbitrator unless the communication is to both disputing parties or is necessary to ascertain whether that arbitrator has violated or may violate this Annex.

Independence and Impartiality of Arbitrators

11. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall avoid creating an

appearance of impropriety or bias.

12. An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or a disputing party or fear of criticism.

13. An arbitrator shall not, directly or indirectly, assume any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.

14. An arbitrator shall not use his or her position on the arbitral tribunal to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator. An arbitrator shall make every effort to prevent or discourage others from representing themselves as being in such a position.

15. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence the arbitrator's conduct or judgment.

16. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or bias.

Duties in Certain Situations

17. An arbitrator or former arbitrator shall avoid actions that may create the appearance that the arbitrator was biased in carrying out his or her duties or would benefit from the decision or award of the arbitral tribunal.

Maintenance of Confidentiality

18. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding and to the extent that disclosure may be required by legal or constitutional requirements, and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interest of others.

19. An arbitrator shall not disclose an arbitral tribunal award or parts thereof prior to its publication.

20. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitral tribunal, or any arbitrator's view, except as required by legal or constitutional requirements.