EU-CHILE ADVANCED FRAMEWORK AGREEMENT

Chapter 10. INVESTMENT

Section A. GENERAL PROVISIONS

Article 10.1. Definitions

1. For purposes of this Chapter:

"juridical person of a Party" means (1):

(i) for the European Union:

A. a juridical person constituted or organised under the law of the European Union or of at least one of its Member States and engaged in substantive business operations (2) in the territory of the European Union; and

B. shipping companies established outside the European Union, and controlled by natural persons of a Member State of the European Union, whose vessels are registered in, and fly the flag of, a Member State of the European Union.

ii) for Chile:

A. a juridical person constituted or organised under the law of Chile and engaged in substantive business operations in the territory of Chile; and

B. shipping companies established outside Chile, and controlled by natural persons of Chile, whose vessels are registered in, and fly the flag of, Chile.

"enterprise" means a juridical person, branch or representative office set up through establishment, as defined under this Article;

"establishment" means the setting up, including the acquisition (3) of, an enterprise by an investor of one Party in the territory of the other Party;

"economic activities" means activities of an industrial, commercial or professional character and activities of craftsmen and including the supply of services, except activities performed in the exercise of governmental authority;

"operation" means the conduct, management, maintenance, use, enjoyment, sale or other disposal of an investment by an investor of one Party, in the territory of the other Party ;

"service" includes any service in any sector but not services supplied in the exercise of governmental authority;

"activities performed in the exercise of governmental authority" means activities performed, including services supplied neither on a commercial basis nor in competition with one or more economic operators

"cross-border supply of services" means the supply of a service:

i) from the territory of a Party into the territory of the other Party

ii) in the territory of a Party to the service consumer of the other Party;

"Investor of a Party" means a natural person or a juridical person of such Party, that seeks to establish, is making or has made an investment in the territory of another Party;

"covered investment" means an investment which is owned, directly or indirectly, or controlled, directly or indirectly, by investors of one Party in the territory of the other Party, made in accordance with applicable laws, in existence as of the date of entry into force of this Agreement or established thereafter;

"investment" means every asset that an investor owns or controls, directly or indirectly, which has the characteristics of an

investment, including a certain duration, the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. 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, or other debt instruments of an enterprise;

(d) futures, options and other derivatives;

(e) concessions, licenses, authorisations, permits, and similar rights conferred pursuant to domestic law (4);

(f) turnkey, construction, management, production, concession, revenue-sharing contracts, or other similar contracts including those that involve the presence of the property of an investor in the territory of the Parties;

(g) intellectual property rights;

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

For greater certainty:

(i) returns that are invested shall be treated as investment. Any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments, provided that the form taken by any investment or reinvestment maintains its compliance with the definition of investment;

(ii) investment does not include an order or judgment entered in a judicial or administrative action.

"freely convertible currency" means a currency, which can be freely exchanged against currencies, which are widely traded in international foreign exchange markets and widely used in international transactions;

"returns" means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, payments in connection with intellectual property rights, payments in kind and all other lawful income;

"aircraft repair and maintenance services during which an aircraft is withdrawn from service" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

"selling and marketing of air transport services" mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

"computer reservation system (CRS) services" mean services provided by computerised systems that contain information about air carriersâ schedules, availability, fares and fare tules, through which reservations can be made or tickets may be issued.

"ground handling services" mean the supply at an airport of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fuelling of an aircraft, aircraft servicing and cleaning; surface transport; flight operation, crew administration and flight planning.

Ground handling services do not include security, aircraft repair and maintenance, or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems

(1) For greater certainty, the shipping companies mentioned in this definition are only considered as juridical persons of a Party with respect to their activities relating to the supply of maritime transport services.

(2) In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union understands that the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

(3) The term "acquisition" shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

(4) For greater certainty, whether a concession, licence, authorisation, permit or similar instrument has the characteristics of an investment depends inter alia on factors such as the nature and extent of the rights that the holder has under that Party's law.

Article 10.2. Right to Regulate

The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, education, safety, environment, including climate change, or public morals, social or consumer protection, privacy and data protection or the promotion and protection of cultural diversity.

Article 10.3. Scope Exclusions

This Chapter shall not apply to measures adopted or maintained by a Party relating to [financial institutions] of another Party, investors of the other Party and to the investments of such investors, in [financial institutions] in the territory of the Party, as defined in Article X.1 (Financial Services Chapter - Definitions);

Article 10.4. Relation to other Chapters

1. In the event of inconsistency between this Chapter and the Financial Services Chapter, the latter shall prevail to the extent of the inconsistency.

2. A requirement of a Party that a service supplier of another Party post a bond or other form of financial security as a condition for the cross-border supply of a service in its territory, does not of itself make this Chapter applicable to such cross-border supply of that service. This Chapter applies to measures adopted or maintained by the Party relating to the bond or financial security, when such bond or financial security constitutes a covered investment.

Section B. LIBERALISATION OF INVESTMENTS AND NON-DISCRIMINATION

Article 10.5. Scope

1. This Section applies to measures adopted or maintained by a Party affecting the establishment of an enterprise or the operation of a covered investment in all economic activities by an investor of the other Party in its territory.

2. The provisions of this Section shall not apply to:

(a) audio-visual services;

(b) national maritime cabotage (5); and

(c) domestic and international air services (6), whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

(ii) the selling and marketing of air transport services;

(iii) computer reservation system (CRS) services;

(iv) groundhandling services.

3. The provisions of Articles 10.5 (Market Access), 10.6 (National Treatment), 10.8 (Most-Favoured-Nation Treatment), 10.9 (Performance Requirements) and 10.10 (Senior Management and Boards of Directors) shall not apply with respect to government procurement.

4. The provisions of Articles 10.5 (Market Access), 10.6 (National Treatment), 10.8 (Most-Favoured-Nation Treatment) and 10.10 (Senior Management and Boards of Directors) shall not apply with respect to subsidies granted by the Parties,

including government- supported loans, guarantees and insurances.

(5) Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Chile or a Member State of the European Union and another port or point located in Chile or that same Member State of the European Union, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in Chile or a Member State of the European Union.

(6) For greater certainty, Air services or related services in support of air services include, but are not limited to, the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting flight training, sightseeing, spraying, surveying mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; the rental of aircraft with crew; and airport operation services.

Article 10.6. Market Access

1. In the sectors or subsectors where market access commitments are undertaken, neither Party shall adopt or maintain, with respect to market access through establishment or operation by investors of the other Party or by enterprises constituting covered investments, either on the basis of its entire territory or on the basis of a territorial sub-division, a measure that:

(a) limits the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;

(b) limits the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limits the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (7)

(d) restricts or requires specific types of legal entity or joint venture through which an investor of the other Party may carry out an economic activity;

(e) limits the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

(7) Subparagraphs 1 (a), (b), and (c) do not cover measures taken in order to limit the production of an agricultural or fishery product.

Article 10.7. National Treatment

1. Each Party shall accord to investors of the other Party and to enterprises constituting covered investments treatment no less favourable than the treatment it accords, in like situations (8), to its own investors and to their enterprises with respect to the establishment in its territory.

2. Each Party shall accord to investors of the other Party and to covered investments, with respect to operation in its territory, treatment no less favourable than the treatment it accords, in like situations (9), to its own investors and to their investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means:

(a) with respect to a regional or local government of Chile, treatment no less favourable than the most favourable treatment accorded in like situations by that level of government to investors of Chile and to their investments in its territory;

(b) with respect to a government of or in a Member State of the EU, treatment no less favourable than the most favourable treatment accorded in like situations by that government to investors of that Member State and to investments of such investors in its territory (10).

(8) For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

(9) For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations

(10) For greater certainty, the treatment accorded by a government of or in a Member State of the EU includes the regional and local level of government, when applicable.

Article 10.8. Public Procurement

1. Each Party shall ensure that enterprises of the other Party established in its territory are accorded treatment no less favourable than that accorded, in like situations, to its own enterprises with respect to any measure regarding the purchase of goods or services by a procuring entity for governmental purposes.

2. The application of the national treatment obligation provided for in this Article remains subject to security and general exceptions as defined in Article x of the GP Chapter of this Agreement.

Article 10.9. Most Favoured Nation Treatment

1. Each Party shall accord to investors of the other Party and to enterprises constituting covered investments, treatment no less favourable than the treatment it accords, in like situations (11), to investors and their enterprises of any non-Party with respect to the establishment of enterprises in its territory.

2. Each Party shall accord to investors of the other Party and to covered investments, treatment no less favourable than the treatment it accords, in like situations (12), to investors and investments of any non-Party with respect to the operation of investments in its territory.

3. Paragraphs 1 and 2 shall not be construed to oblige a Party to extend to the investors of the other Party or to covered investments the benefit of any treatment resulting from:

(a) reference to double taxation agreements in case not covered by horizontal provisions in the Agreement]

(b) measures providing for recognition, including of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures.

4. For greater certainty the "treatment" referred to in paragraphs 1 and 2 does not include investment dispute resolution procedures or mechanisms provided for in other international investment treaties and other trade agreements. The substantive provisions in other international investment or trade agreements do not in themselves constitute âtreatmentâ as referred to in paragraphs 1 and 2, and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party. Measures applied pursuant to such substantive provisions may constitute "treatment" under this Article.

(11) For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

(12) For greater certainty, whether treatment is accorded in "like situations" requires a case-by-case, fact-based analysis and depends on the totality of the situations.

Article 10.10. Performance Requirements

1. Neither Party may, in connection with the establishment of any enterprise or the operation of any investment of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking to:

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

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

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

(d) 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) 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) transfer technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory;

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

(h) locate the headquarters of that investor for a specific region of the world, which is broader than the territory of the Party or the world market in its territory;

(i) hire a given number or percentage of its nationals;

(j) restrict the exportation or sale for export;

(k) adopt:

(i) a given rate or amount of royalty below a certain level under a licence contract; or

(ii) a given duration of the term of a licence contract,

in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future licence contract (13) freely entered into between the investor and a natural or juridical person or any other entity in its territory, provided that the requirement is imposed or the commitment or undertaking is enforced in a manner that constitutes a direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, paragraph (k) does not apply when the licence contract is concluded between the investor and a Party.

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

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

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

(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 or

(e) to restrict the exportation or sale for export.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with investments in its territory by an investor of a Party or a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.

4. Paragraph 1 (f) and (k) does not apply:

(a) if a Party authorises use of an intellectual property right in accordance with Article 31 or article 31 bis of the TRIPS Agreement or adopts or maintains measures requiring the disclosure of data or propriety information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement; or

(b) if 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 a violation of the Party's competition laws.

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

6. Paragraphs 2 (a) and 2 (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.

7. For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis where that Party adopts or maintains restrictions or prohibitions on such provision of services which are consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in Annex XX (annexes with non-conforming measures oF MA restrictions).

8. This Article is without prejudice to commitments of a Party made under the WTO Agreement.

(13) A licence contract referred to in this paragraph means a contract concerning the licencing of technology, production process, or other proprietary knowledge.

Article 10.11. Senior Management and Boards of Directors

A Party shall not require that an enterprise of that Party that is a covered investment appoints natural persons of a particular nationality as members of boards of directors, or to a senior management position, such as executives or managers.

Article 10.12. Non-Conforming Measures

1. Articles 10.7 (National Treatment), 10.9 (Most Favoured Nation Treatment), 10.10 (Performance Requirements) and 10.11 (Senior Management and Boards of Directors), do not apply to:

(a) any existing non-conforming measure that is maintained by:

For the European Union:

(i) the European Union, as set out in Annex I;

(ii) a central government of a Member State of the EU, as set out in Annex I;

(iii) a regional level of government of a Member State of the EU, as set out in Annex I; or

(iv) a local level of government; and

For Chile:

(i) the central government or a regional level of government, as set out in Annex I;

(ii) a local level of government;

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

(c) a modification to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the modification, with Articles 10.7 (National Treatment), 10.9 (Most Favoured Nation Treatment) or 10.10 (Performance Requirements) and 10.11 (Senior Management and Boards of Directors).

2. Articles 10.7 (National Treatment), 10.9 (Most Favoured Nation Treatment), 10.10 (Performance Requirements) and 10.11 (Senior Management and Board of Directors), do not apply to measures of a Party which are consistent with a reservation listed in Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex I, 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 10.6 (Market Access) does not apply to any measure of a Party which is consistent with a reservation listed in

Annex II.

5. Articles 10.7 (National Treatment) and 10.9 (Most-Favoured-Nation Treatment) shall not apply to any measure that constitutes an exception to or derogation from, Articles 3 or 4 of the TRIPS Agreement, as specifically provided in Articles 3 to 5 of the TRIPS Agreement.

6. For greater certainty, articles 10.7 (National Treatment) and 10.9 (Most Favoured Nation Treatment) shall not be construed as preventing a Party from prescribing information requirements including for statistical purposes in connection with the establishment or operation of investors of the other Party or of covered investments provided that it does not constitute a means to circumvent that Party's obligations under those articles.

Section C. INVESTMENT PROTECTION

Article 10.13. Scope

This Section applies to measures adopted or maintained by a Party affecting:

(a) covered investments; and

(b) investors of a Party with respect to the operation of a covered investment.

Article 10.14. Investment and Regulatory Measures

1. Article 10.2 (Right to Regulate) of this Chapter applies to this Section in accordance with the following paragraphs:

2. The provisions of this Section shall not be interpreted as a commitment from a Party that it will not change its legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or the investor's expectations of profits.

3. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party:

(a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or

(b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction or maintenance of that subsidy or grant,

does not constitute a breach of obligations of this Section (Investment Protection), even if there is loss or damage to the covered investment as a result.

4. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy (14) or requesting its reimbursement, where such action has been ordered by one of its competent authorities listed in [Annex X], or as requiring that Party to compensate the investor therefor.

(14) In the case of the EU, "subsidy" includes "state aid" as defined in EU law.

Article 10.15. Treatment of Investors and of Covered Investments

1. Each Party shall accord in its territory to covered investments of the other Party, and to investors with respect to their covered investments, fair and equitable treatment and full protection and security in accordance with paragraphs [2 to 6].

2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitutes (15):

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

(b) fundamental breach of due process in judicial and administrative proceedings; or

(c) manifest arbitrariness; or

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

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

3. In determining a breach of paragraph 2, a tribunal may take into account specific and unambiguous representations made to an investor by a Party, and upon which the investor reasonably relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.

4. Full protection and security refers to the Party's obligations relating to physical security of investors and covered investments. (16)

5. For greater certainty, a breach of another provision of this Agreement, or of any other international agreement, does not constitute a breach of this Article.

6. The fact that a measure breaches the law of a Party does not, in and of itself, establish a breach of this Article. In order to ascertain whether the measure breaches this Article, the Tribunal shall consider whether a Party has acted inconsistently with paragraphs 1 to 4.

(15) For greater certainty, in determining whether a measure or series of measures amounts to a breach of fair and equitable treatment, a tribunal shall take into account, inter alia, the following: (i) With regard to the subparagraphs 2 (a) and 2 (b), whether the measure or series of measures involves gross misconduct that offends judicial propriety. The mere fact that an investor's challenge of the impugned measure in domestic proceeding has been rejected or dismissed or has otherwise failed does not in itself constitute a denial of justice as referred to in the subparagraph 2 (a). (ii) With regard to the subparagraph 2 (c) and (d), whether the measure or series of measures were patently not founded on reason or fact or were patently founded on illegitimate grounds such as prejudice or bias. The mere illegality, or a merely inconsistent or questionable application of a policy or procedure, does not in itself constitute manifest arbitrariness as referred to in the subparagraph 2 (c), while a total and unjustified repudiation of a law or regulation, or a measure without reason, or a conduct that is specifically targeted to the investor or its covered investment with the purpose of causing damage are likely to constitute manifest arbitrariness as referred to in the subparagraphs 2 (c) and (d). (iii) With regard to the subparagraph 2 (e), whether a Party acted ultra vires, whether the episodes of alleged harassment or coercion were repeated and sustained.

(16) For greater clarity, full protection and security refers to Party's obligations to act as may be reasonably necessary to protect physical security of investors and covered investment.

Article 10.16. Treatment In Case of Strife

1. Investors of a Party whose covered investments suffer losses owing to war or other armed conflict, [revolution] or other civil strife, a state of national emergency (17) in the territory of the other Party shall be accorded by that Party, with respect to restitution, indemnification, compensation or other form of settlement, treatment no less favourable than that accorded by that Party to its own investors, or to the investors of any non-Party.

2. Without prejudice to paragraph 1 of this Article, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party shall be accorded prompt, adequate and effective restitution or compensation by the other Party, if these losses result from:

(a) requisitioning of their covered investment or a part thereof by the latterâs armed forces or authorities; or

(b) destruction of their covered investment or a part thereof by the latterâs armed forces or authorities, which was not required by the necessity of the situation.

The amount of such compensation shall be determined in accordance with the provisions of paragraph 2 of Article 10.17 (Expropriation), from the date of requisitioning or destruction until the date of actual payment.

(17) For greater certainty, the sole declaration of a state of national emergency does not by itself constitute a breach of this provision.

Article 10.17. Expropriation (18)

1. Neither Party shall nationalise or expropriate a covered investment either directly or indirectly through measures having an effect equivalent to nationalisation or expropriation (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;

(d) in accordance with due process of law.

2. The compensation referred to in paragraph 1 shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment at the time immediately before the expropriation took place ("the date of expropriation") or the impending expropriation became known, whichever is earlier;

(c) be fully realisable and freely transferable in any freely convertible currency

(d) include interest at a normal commercial rate from the date of expropriation until the date of payment.

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

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 such 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 Agreements ("TRIPS Agreement").(19)

(18) For greater certainty, this Article shall be interpreted in accordance with Annex X (Expropriation).

(19) For greater certainty, the term "revocation" of intellectual property rights referred to in this paragraph includes the cancellation or nullification of such rights, and the term "limitation" of intellectual property rights also includes exceptions to such rights.

Article 10.18. Transfers (20)

1. Each Party shall permit all transfers relating to a covered investment to be made in a freely convertible currency, freely and without delay and at the market rate of exchange prevailing on the date of transfer. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, capital gains and other returns, 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) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment;

(f) payments made pursuant to Article 10.16 (Treatment in Case of Strife) and Article 10.17 (Expropriation); and

(g) payments arising under the application of Section D [Resolution of Investment Disputes and Investment Court System].

2. Neither Party may require its investors to transfer, or penalise its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

(20) For greater certainty, this Article is subject to Annex XXX (Transfers).

Article 10.19. Subrogation

If a Party, or any agency 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 with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Chapter with respect to the covered investment but for the subrogation, and the investor

shall not pursue these rights to the extent of the subrogation.

Article 10.20. Denial of Benefits

A Party may deny the benefits of this Chapter to an investor of the other Party or to a covered investment if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

(a) prohibit transactions with that investor or covered investment, or

(b) would be violated or circumvented if the benefits of this Chapter where accorded to that investor or covered investment, including where the measures prohibit transactions with a natural or juridical person who owns or controls either of them.

Article 10.21. Termination

1. In the event that this Agreement is terminated pursuant to Article [X.X] (Duration), this Section and Section C (Resolution of Investment Disputes and Investment Court System) shall continue to be effective for a further period of 5 years from the date of termination, with respect to investments made before the date of termination of the present Agreement.

2. The period referred to in paragraph 1 shall be extended for a single additional period of 5 years, provided that no other investment protection agreement between the Parties is in force.

3. This Article shall not apply in the case where the provisional application of this Agreement is terminated and this Agreement does not enter into force.

Article 10.22. Relationship with other Agreements

1. Upon the entry into force of this Agreement, the agreements between Member States of the European Union and Chile listed in Annex XXXX (Agreements between the Member States of European Union and Chile) including the rights and obligations derived therefrom, shall cease to have effect and shall be replaced and superseded by this Agreement.

2. In the event of the provisional application in accordance with paragraph 4 of Article xxxx (Entry into Force), including this Chapter, the application of the agreements listed in Annex XXXX (Agreements between the Member States of the European Union and Chile), as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application. In the event that the provisional application of this Agreement is terminated and this Agreement does not enter into force, the suspension shall cease and the agreements listed in Annex XXXX (Agreements between the Member States of the European Union and Chile) shall have effect.]

3. Notwithstanding paragraphs 1 and 2, a claim may be submitted pursuant to an agreement listed in Annex XXXX (Agreements between the Member States of the European Union and Chile), in accordance with the rules and procedures established in that agreement, provided that:

(a) the claim arises from an alleged breach of that agreement that took place prior to the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement is not suspended pursuant to paragraph 2, prior to] the date of entry into force of this Agreement; and

(b) no more than three years have elapsed from the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement is not suspended pursuant to paragraph 2, from] the date of entry into force of this Agreement until the date of submission of the claim.

4. Notwithstanding paragraphs 1 and 2, if the provisional application of this Agreement, including this Chapter, is terminated and this Agreement does not enter into force, a claim may be submitted pursuant to this Agreement, in accordance with the rules and procedures established in this Agreement, provided that:

(a) the claim arises from an alleged breach of this Agreement that took place during the period of provisional application of this Agreement; and

(b) no more than three years have elapsed from the date of termination of the provisional application until the date of submission of the claim.

5. For the purposes of this Article, the definition of âentry into force of this Agreementâ provided for in paragraph 7 of Article [X.X] (Entry into Force) shall not apply.

Article 10.23. Responsible Business Conduct

1. Without prejudice to the TSD Chapter, each Party shall encourage covered investments to incorporate into their internal policies internationally recognised principles and guidelines of Corporate Social Responsibility / Responsible Business Conduct such as the OECD Guidelines for MNEs, the ILO Declaration for MNEs, and the UN Guiding Principles on Business and Human Right.

2. The Parties reaffirm the importance of investors conducting a due diligence process to identify, prevent, mitigate, and account for the environmental and social risks and impacts of its investment.

[Add ICS section + annexes]

Section D. RESOLUTION OF INVESTMENT DISPUTES AND INVESTMENT COURT SYSTEM

Subsection I. Scope and Definitions

Article 10.24. Scope and Definitions

1. This Section shall apply to a dispute between, on the one hand, a claimant of one Party and, on the other hand, the other Party arising from an alleged breach under Article 10.7(2) (National Treatment) or Article 10.9(2) (Most Favoured Nation Treatment) of Section B (Liberalisation of Investments) or Section C (Investment Protection), which breach allegedly causes loss or damage to the claimant or its locally established company.

2. Where applicable, this Section shall also apply to counterclaims in accordance with article 10.30 (Counterclaims).

3. Acclaim with respect to the restructuring of debt of a Party shall be decided in accordance with Annex [numbering tbd] (Public debt) to Section C (Investment Protection).

4. For the purposes of this Section:

(a) "proceeding", unless otherwise specified, means a proceeding before the Tribunal or Appeal Tribunal under this Section;

(b) "disputing parties" means the claimant and the respondent;

(c) "claimant" means an investor of a Party, as defined in Article 10.1 (Definitions) of Section A (General Provisions), that is a party to an investment dispute with the other Party which seeks to submit or has submitted a claim, pursuant to this Section, either

(i) acting on its own behalf; or

(ii) acting on behalf of a locally established enterprise which it owns or controls.

The locally established company shall be treated as a national of another Contracting State for the purposes of Article 25 (2) (b) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID-Convention).

(d) "non-disputing Party" means either Chile, when the respondent is the European Union or a Member State of the European Union; or the European Union, when Chile is the respondent.

(e) "respondent" means either Chile, or in the case of the European Union, either the European Union or the Member State of the European Union concerned as determined pursuant to Article 10.27 (Request for Determination of the Respondent).

(f) "locally established enterprise" means a juridical person established in the territory of one Party, and owned or controlled by an investor of the other Party. (21)

(g) "UNCITRAL Transparency Rules" means the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

(h) "Third Party funding" means any funding provided to a disputing party, by a natural or legal person who is not a party to the dispute, to finance part or all of the cost of the proceedings in return for a remuneration dependent on the outcome of the dispute or in the form of a donation or grant. (22)

(i) "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;

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

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

(l) "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law.

(21) A juridical person is: (i) owned by natural or juridical persons of the other Party if more than 50 per cent of the equity interest in it is beneficially owned by natural or juridical persons of that Party; (ii) controlled by natural or juridical persons of the other Party if such natural or juridical persons have the power to name a majority of its directors or otherwise to legally direct its actions.

(22) For greater certainty, such funding may be provided directly or indirectly, to a disputing party, its affiliate or representative.

Subsection 2. Alternative Dispute Resolution and Consultations

Article 10.25. Mediation

1. The disputing parties may at any time agree to have recourse to mediation.

2. Recourse to mediation is voluntary and without prejudice to the legal position of either disputing party.

3. Mediation procedures shall be governed by the rules set out in Annex [numbering tbd] (Mediation Mechanism for Investor-to-State Disputes) and, where available, rules on mediation adopted by the [Investment] Committee. (23) The [Investment] Committee shall make best efforts to ensure that the rules on mediation are adopted no later than the first day of the [provisional application or] entry into force of this Agreement, as the case may be, and in any event no later than two years after such date.

4. The [...] Committee shall, upon the entry into force of this Agreement, establish a list of six individuals, of high moral character and recognised competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment and who are willing and able to serve as mediators.

5. The mediator shall be appointed by agreement of the disputing parties. The disputing parties may jointly request the President of the Tribunal to appoint a mediator from the list established pursuant to this Article, or, in the absence of a list, from individuals proposed by either Party.

6. Once the disputing parties agree to have recourse to mediation, the time-limits set out in Articles 10.26 (5) (Consultations and amicable resolution), 2.22 (7) (Consultations and amicable resolution), 10.53 (10) (Provisional Award) and 10.54 (5) (Appeal Procedure) shall be suspended from the date on which it was agreed to have recourse to mediation to the date on which either disputing party decides to terminate the mediation, by way of written notice to the mediator and the other disputing party. At the request of both parties, the Tribunal or the Appeal Tribunal shall stay the proceedings.

(23) Any time limit mentioned in Annex [numbering tbd] (Mediation Mechanism for Investor-to-State Disputes) may be modified by agreement between the disputing parties.

Article 10.26. Consultations and Amicable Resolution

1. A dispute may, and should as far as possible, be settled amicably through negotiations, good offices or mediation and, where possible, before the submission of a request for consultations pursuant to this article. Such settlement may be agreed at any time, including after proceedings under this Section have been commenced.

2. A mutually agreed solution between the disputing parties pursuant to paragraph 1 shall be notified to the non-disputing Party within 15 days of the mutually agreed solution being agreed. Each disputing party shall abide by and comply with any mutually agreed solution teached in accordance with this article or with Article 10.25 (Mediation). The [..] Committee shall keep under surveillance the implementation of such mutually agreed solutions and the Party to the mutually agreed solution shall regularly report to the [..] Committee on the implementation of such solution.

3. Where a dispute cannot be resolved as provided for under paragraph 1, a claimant of a Party alleging a breach of the provisions referred to in Article 10.24 (1) (Scope and Definitions) and seeking to submit a claim shall submit a request for

consultations to the other Party.

4. The request shall contain the following information:

(a) the name and address of the claimant and, where such request is submitted on behalf of a locally established company, the name, address and place of incorporation of the locally established company

(b) a description of the investment and of its ownership and control;

(c) the provisions referred to in Article 10.24 (1) (Scope and Definitions) alleged to have been breached;

(d) the legal and factual basis for the claim, including the measure alleged to be inconsistent with the provisions in Article 10.24 (1) (Scope and Definitions);

(e) the relief sought and the estimated amount of damages claimed; and

(f) information concerning the ultimate beneficial owner and corporate structure of the claimant and evidence establishing that the claimant is an investor of the other Party and that it owns or controls the investment and, where it acts on behalf of a locally established enterprise, that it owns or controls the locally established enterprise.

5. Unless the disputing parties agree to a longer period, consultations shall commence no later than 60 days of the submission of the request for consultations.

Unless the disputing parties agree otherwise, the place of consultation shall be:

(a) Santiago de Chile where the consultations concern an alleged breach by Chile;

(b) Brussels where the consultations concern an alleged breach by the European Union; or

(c) the capital of the Member State of the European Union concerned, where the consultations concern an alleged breach by that Member State exclusively.

The disputing parties may agree to hold consultations through videoconference or other means where appropriate.

7. The request for consultations must be submitted:

(a) within three years of the date on which the claimant or, if the claimant acts on behalf of the locally established enterprise, the date on which the locally established enterprise, first acquired, or should have first acquired, knowledge of the measure alleged to be inconsistent with the provisions referred to in Article 10.24 (1) (Scope and Definitions) and of the loss or damage alleged to have been incurred thereby; or

(b) within two years of the date on which the claimant or, if the claimant acts on behalf of the locally established enterprise, the date on which the locally established enterprise ceases to pursue claims or proceedings before a tribunal or court under the domestic law of a Party; and, in any event, no later than 5 years after the date on which the claimant or, if the claimant acts on behalf of the locally established enterprise, the date on which the locally established enterprise first acquired, or should have first acquired knowledge, of the measure alleged to be inconsistent with the provisions referred to in Article 10.24 (1) (Scope and Definitions) and of the loss or damage alleged to have been incurred thereby.

8. In the event that the claimant has not submitted a claim pursuant to Article 10.29 (Submission of a Claim) within 18 months of submitting the request for consultations, the claimant shall be deemed to have withdrawn its request for consultations and, where applicable, the notice requesting a determination of the respondent pursuant to Article 10.27 (Request for Determination of the Respondent) and may not submit a claim under this Section with respect to the same alleged breach. This period may be extended by agreement between the parties involved in the consultations.

9. A continuing breach may not renew or interrupt the periods set out in paragraph 7.

10. In the event that the request for consultations concerns an alleged breach of the Agreement by the European Union, or by a Member State of the European Union, it shall be sent to the European Union. Where an alleged breach of the Agreement by a Member State of the European Union is identified, it shall also be sent to the Member State concerned.

Subsection 3. Submission of a Claim and Conditions Precedent

Article 10.27. Request for Determination of the Respondent

1. If the dispute cannot be settled within 90 days of the submission of the request for consultations, the request concerns an

alleged breach of the Agreement by the European Union or a Member State of the European Union and the claimant intends to initiate proceedings pursuant to Article 10.29 (Submission of a Claim), the claimant shall deliver a notice to the European Union requesting a determination of the respondent.

2. The notice shall identify the measures in respect of which the claimant intends to initiate proceedings. Where a measure of a Member State of the European Union is identified, such notice shall also be sent to the Member State concerned.

3. The European Union shall, after having made a determination, inform the claimant as soon as possible, and in any case no later than 60 days of the receipt of the notice referred to in paragraph 1, as to whether the European Union or a Member State of the European Union shall be the respondent (24).

4. If the claimant has not been informed of the determination within 60 days after delivering the notice referred to in paragraph 1, the respondent shall be:

(a) the Member State, if the measure or measures identified in the notice are exclusively measures of a Member State of the European Union; or

(b) the European Union, if the measure or measures identified in the notice include measures of the European Union.

5. If the claimant submits a claim pursuant to Article 10.29 (Submission of a Claim), it shall do so on the basis of such determination and, if no such determination has been communicated to the investor, on the basis of the application of paragraph 4.

6. Where either the European Union or a Member State of the European Union acts as respondent following a determination made pursuant to paragraph 3, neither the European Union nor the Member State concerned may assert the inadmissibility of the claim, lack of jurisdiction of the Tribunal or otherwise assert that the claim or award is unfounded or invalid on the ground that the proper respondent should be or should have been the European Union rather than the Member State or vice versa.

7. The Tribunal and the Appeal Tribunal shall be bound by the determination made pursuant to paragraph 3 and, if no such determination has been communicated to the claimant, the application of paragraph 4.

8. Nothing in this Agreement or the applicable rules on dispute settlement shall prevent the exchange of all information relating to a dispute between the European Union and the Member State concerned.

(24) For greater certainty, the European Union shall make such determination solely based on the application of the FRR 912/2014.

Article 10.28. Requirements for a Submission of a Claim

1. Before submitting a claim the claimant shall:

(a) Withdraw any pending claim or proceeding before any domestic or international court or tribunal under domestic or international law concerning any measure alleged to constitute a breach referred to in Article 10.24 (1) (Scope and Definitions);

(b) provide a written waiver that it will not initiate any claim or proceedings before any domestic or international court or tribunal under domestic or international law concerning any measure alleged to constitute a breach referred to in Article 10.24 (1) (Scope and Definitions);

(c) a declaration that it will not enforce any award rendered pursuant to this Section before such award has become final pursuant to Article 10.55 (Final Award), and will not seek to appeal, review, set aside, annul, revise or initiate any other similar procedure before an international or domestic court or tribunal, as regards an award pursuant to this section.

2. The Tribunal shall dismiss a claim by a claimant who has submitted a claim to the Tribunal or to any other domestic or international court or tribunal concerning the same measure as that alleged to be inconsistent with the provisions referred to in Article 10.24 (1) (Scope and Definitions) unless the claimant withdraws such pending claim. This paragraph shall not apply where the claimant submits a claim to a domestic court or tribunal seeking interim injunctive or declaratory relief.

3. For the purposes of this Article, the term "claimant" includes the investor and, if the investor acted on behalf of the locally established enterprise, the locally established enterprise. In addition, for the purposes of paragraphs 1(a) and 2 this Article the term "claimant" also includes:

(a) where the claim is submitted by an investor acting on its own behalf, all persons who, directly or indirectly, have an

ownership interest in or are controlled by the investor; or

(b) where the claim is submitted by an investor acting on behalf of a locally established enterprise, all persons who, directly or indirectly, have an ownership interest in or are controlled by the locally established enterprise, and claim to have suffered the same loss or damage as the investor or locally established enterprise. (25)

(25) For greater certainty, the same loss or damage means loss or damage flowing from the same measure which the person seeks to recover in the same capacity as the claimant (e.g. if the claimant sues as a shareholder, this provision would cover a related person also pursuing recovery as a shareholder).

Article 10.29. Submission of a Claim

1. If the dispute cannot be settled within six months of the submission of the request for consultations and, where applicable, at least three months have elapsed from the submission of the notice requesting a determination of the respondent pursuant to Article 10.27 (Request for Determination of the Respondent), the claimant, provided that it satisfies the requirements set out in this Article and in Article 10.31 (Consent), may submit a claim to the Tribunal established pursuant to Article 10.33 (Tribunal of First Instance ("Tribunal")).

2. A claim may be submitted to the Tribunal under one of the following sets of rules on dispute settlement:

(a) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID) provided that both the respondent and the State of the claimant are parties to the ICSID Convention;

(b) the ICSID Additional Facility Rules provided that either the respondent or the State of the claimant is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) any other rules agreed by the disputing parties at the request of the claimant.

3. The rules on dispute settlement referred to in paragraph 2 shall apply subject to the rules set out in this Chapter, as supplemented by any rules adopted by the [...] Committee.

4. All the claims identified by the claimant in the submission of its claim pursuant to this Article must be based on information identified in its request for consultations pursuant to Article 10.26 (4) (c) and (d) (Consultations and amicable resolution).

5. Claims submitted in the name of a class composed of a number of unidentified claimants, or submitted by a representative intending to conduct the proceedings in the interests of a number of identified or unidentified claimants that delegate all decisions relating to the proceedings on their behalf, shall not be admissible.

6. For greater certainty, a claimant may not submit a claim under this Section if its investment has been made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.

Article 10.30. Counterclaims

1. The respondent may submit a counterclaim on the basis of an investor's failure to comply with an international obligation applicable in the territories of both Parties, (26) arising in connection with the factual basis of the claim. (27)

2. The counterclaim shall be submitted no later than in the Respondent's counter-memorial or statement of defence, or at a later stage in the proceedings if the Tribunal decides that the delay was justified under the circumstances.

3. For greater certainty, claimant's consent to the procedures under this Section includes the submission of counterclaims by the respondent.

(26) For greater certainty, the obligations referred to in this paragraph shall be based on legal commitments that the Parties have consented to.

(27) The Joint Council/Committee shall, at the request of a Party, issue binding interpretations pursuant to article [insert] to clarify the scope of international obligations that are referred to in this paragraph.

Article 10.31. Consent

1. The respondent consents to the submission of a claim under this Section.

2. The consent under paragraph 1 and the submission of a claim under this Section shall be deemed to satisfy the requirements of:

(a) Article 25 of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the disputing parties; and,

(b) Article II of the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards for an "agreement in writing".

3. The claimant is deemed to give consent in accordance with the procedures provided for in this Section at the time of submitting a claim pursuant to Article 10.29 (Submission of a Claim).

Article 10.32. Third Party Funding

1. If a disputing party has received or is receiving third party funding, or has arranged to receive third party funding, the disputing party benefiting from it shall disclose to the other disputing party and to the division of the Tribunal, or where the division of the Tribunal is not established, to the President of the Tribunal, the name and address of the third party funder, and where applicable, ultimate beneficial owner and corporate structure.

2. This disputing party shall make the disclosure under paragraph 1 at the time of submission of a claim, or, if the third party funding is arranged after the submission of a claim, without delay, as soon as the arrangement is concluded or the donation or grant is made. The disputing party shall immediately notify the tribunal of any changes to the information disclosed.

3. The Tribunal may order disclosure of further information regarding the funding arrangement and the third party funder if it deems it necessary at any stage of the proceeding.

Subsection 4. Investment Court System

Article 10.33. Tribunal of First Instance ("Tribunal")

1. A Tribunal of First Instance ("Tribunal") is hereby established to hear claims submitted pursuant to Article 10.29 (Submission of a Claim).

2. The [...] Committee shall, upon the entry into force of this Agreement, appoint nine Judges to the Tribunal. Three of the Judges shall be nationals of a Member State of the European Union, three shall be nationals of Chile and three shall be nationals of third countries. In appointing the Judges, the Committee is encouraged to consider the need to ensure diversity and a fair gender representation.

3. The [...] Committee may decide to increase or to decrease the number of the Judges by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.

4. The Judges shall possess the qualifications required in their respective countries for appointment to judicial office, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements.

5. The Judges appointed pursuant to this Section shall be appointed for a five-year term. However, the terms of five (two nationals of a Member State of the European Union, two nationals of Chile and one national of third countries) of the nine persons appointed immediately after the entry into force of the Agreement, to be determined by lot, shall extend to eight years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessorâs term. A person who is serving on a division of the Tribunal when his or her term expires may, with the authorization of the President of the Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Judge of the Tribunal.

6. The Tribunal shall have a President and Vice-President responsible for organisational issues, with the assistance of the Secretariat. The President and the Vice-President shall be selected by lot for a two-year term from among the Judges who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the Chair of the [...] Committee. The Vice-President shall replace the President when the President is unavailable.

7. The Tribunal shall hear cases in divisions consisting of three Judges, of whom one shall be a national of a Member State of the European Union, one a national of Chile and one a national of a third country. The division shall be chaired by the Judge who is a national of a third country.

8. When a claim is submitted pursuant to 10.29 (Submission of a Claim), the composition of the division of the Tribunal hearing the case shall be established by the President of the Tribunal on a rotation basis, ensuring that the composition of the divisions is random and unpredictable, while giving equal opportunity to all Judges to serve.

9. Notwithstanding paragraph 7, the disputing parties may agree that a case be heard by a sole Judge who is a national of a third country, to be selected by the President of the Tribunal. The respondent shall give sympathetic consideration to such a request from the claimant, in particular where the compensation or damages claimed are relatively low. Such a request should be made at the same time as the filing of the claim pursuant to Article 10.29 (Submission of a Claim).

10. The Tribunal shall draw up its own working procedures, after discussing with the Parties.

11. The Judges shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities under this Agreement.

12. In order to ensure their availability, the Judges shall be paid a monthly retainer fee to be fixed by decision of the [...] Committee. The President of the Tribunal and, where applicable, the Vice-President, shall receive a fee equivalent to the fee determined pursuant to Article 10.34 (11) (Appeal Tribunal) for each day worked in fulfilling the functions of President of the Tribunal pursuant to this Section.

13. The retainer fee shall be paid by both Parties taking into account their respective levels of development into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest. The Committee shall regularly review the amount and repartition of the fees referred to above and may recommend relevant adjustments.

14. Unless the [...] Committee adopts a decision pursuant to paragraph 15, the amount of the other fees and expenses of the Judges on a division of the Tribunal shall be those determined pursuant to Regulation 14 (1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 10.53 (4 [specific paras tbd]) (Provisional Award).

15. Upon a decision by the [...] Committee, the retainer fee and other fees and expenses may be permanently transformed into a regular salary. In such an event, the Judges shall serve on a full-time basis and the [...] Committee shall fix their remuneration and related organisational matters. In that event, the Judges shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Tribunal.

16. The Secretariat of ICSID shall act as Secretariat for the Tribunal and provide it with appropriate support. The expenses for such support shall be allocated by the Tribunal among the disputing parties in accordance with Article 10.53 (Provisional Award) paragraphs 4, 5 and 6 [specific paras tbd].

Article 10.34. Appeal Tribunal

1. A permanent Appeal Tribunal is hereby established to hear appeals from the awards issued by the Tribunal.

2. The [...] Committee shall, upon the entry into force of this Agreement, appoint six Members to the Appeal Tribunal. Two of the Members shall be nationals of a Member State of the European Union, two shall be nationals of Chile and two shall be nationals of third countries. In appointing the Members of the Appeal Tribunal, the Committee is encouraged to consider the need to ensure diversity and a fair gender representation.

3. The Committee may decide to increase the number of the Members of the Appeal Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.

4. The Members of the Appeal Tribunal shall possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements.

5. Members of the Appeal Tribunal shall be appointed for a five-year term. However, the terms of three of the six persons appointed immediately after the entry into force of the Agreement, to be determined by lot, shall extend to eight years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person who is serving on a division of the Tribunal when his or

her term expires may, with the authorization of the President of the Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Appeal Tribunal.

6. The Appeal Tribunal shall have a President and Vice-President responsible for organisational issues, with the assistance of the Secretariat. The President and the Vice- President shall be selected by lot for a two-year term from among the Members who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the Chair of the [...] Committee. The Vice-President shall replace the President when the President is unavailable.

7. The Appeal Tribunal shall hear appeals in divisions consisting of three Members, of whom one shall be a national of a Member State of the European Union, one a national of Chile and one a national of a third country. The division shall be chaired by the Member who is a national of a third country.

8. The composition of the division hearing each appeal shall be established in each case by the President of the Appeal Tribunal on a rotation basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to serve.

9. The Appeal Tribunal shall draw up its own working procedures, after discussing with the Parties.

10. All Members serving on the Appeal Tribunal shall be available at all times and on short notice and shall stay abreast of other dispute settlement activities under this agreement.

11. In order to ensure their availability, the Members of the Appeal Tribunal shall be paid a monthly retainer fee and receive a fee for each day worked as a Member, to be determined by decision of the [...] Committee. The President of the Appeal Tribunal and, where applicable, the Vice-President, shall receive a fee for each day worked in fulfilling the functions of President of the Appeal Tribunal pursuant to this Section.

12. The remuneration of the Members shall be paid by both Parties taking into account their respective levels of development into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest. The Committee shall regularly review the amount and repartition of the abovementioned fees and may recommend relevant adjustments.

13. Upon a decision by the [...] Committee, the retainer fee and the fees for days worked may be permanently transformed into a regular salary. In such an event, the Members of the Appeal Tribunal shall serve on a full-time basis and the [...] Committee shall fix their remuneration and related organisational matters. In that event, the Members shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Appeal Tribunal.

14. The Secretariat of ICSID shall act as Secretariat for the Appeal Tribunal and provide it with appropriate support. The expenses for such support shall be allocated by the Appeal Tribunal among the disputing parties in accordance with Article 10.53 (Provisional Award) paragraphs 4, 5, 6 and 7 [specific paras tbd].

Article 10.35. Ethics

1. The Judges of the Tribunal and the Members of the Appeal Tribunal shall be chosen from persons whose independence is beyond doubt. They shall not be affiliated with any government. (28) They shall not take instructions from any government or organisation with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. In so doing they shall comply with Annex [numbering tbd] (Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators). In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new investment dispute under this or any other agreement or domestic law.

2. If a disputing party considers that a Judge or a Member does not meet the requirements set out in paragraph 1, it shall send a notice of challenge to the appointment to the President of the Tribunal or to the President of the Appeal Tribunal, respectively. The notice of challenge shall be sent within 15 days of the date on which the composition of the division of the Tribunal or of the Appeal Tribunal has been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.

3. If, within 15 days from the date of the notice of challenge, the challenged Judge or Member has elected not to resign from that division, the President of the Tribunal or the President of the Appeal Tribunal, respectively, shall, after hearing the disputing parties and after providing the Judge or the Member an opportunity to submit any observations, issue a decision within 45 days of receipt of the notice of challenge and forthwith notify the disputing parties and other Judges or Members

of the division.

4. Challenges against the appointment to a division of the President of the Tribunal shall be decided by the President of the Appeal Tribunal and vice-versa.

5. Upon areasoned recommendation from the President of the Appeal Tribunal, (29) the Parties, by decision of the [...] Committee, may decide to remove a Judge from the Tribunal or a Member from the Appeal Tribunal where their behaviour is inconsistent with the obligations set out in paragraph 1 and incompatible with their continued membership of the Tribunal or Appeal Tribunal. If the behaviour in question is alleged to be that of the President of the Appeal Tribunal then the President of the Tribunal of First Instance shall submit the reasoned recommendation. Articles 10.33 (2) (Tribunal of First Instance ("Tribunal")) and 10.34 (2) (Appeal Tribunal) shall apply mutatis mutandis for filling vacancies that may arise pursuant to this paragraph.

(28) For greater certainty, the fact that a person receives an income from the government, or was formerly employed by the government, or has a family relationship with a government official, does not in itself render that person ineligible.

(29) This recommendation is without prejudice to the ability of the Committee to draw the attention of the President of the Appeal Tribunal to the behaviour of a Judge from the Tribunal or a Member from the Appeal Tribunal that may be inconsistent with the obligations set out in paragraph 1 and incompatible with their continued membership of the Tribunal or Appeal Tribunal.

Article 10.36. Multilateral Dispute Settlement Mechanisms

The Parties shall endeavor to cooperate for the establishment of a multilateral investment tribunal and appellate mechanism for the resolution of investment disputes. Upon the entry into force between the Parties of an international agreement providing for such a multilateral mechanism applicable to disputes under this Agreement, the relevant parts of this Section shall cease to apply. The [...] Committee may adopt a decision specifying any necessary transitional arrangements.

Subsection 5. Conduct of Proceedings

Article 10.37. Applicable Law and Rules of Interpretation

1. The Tribunal shall determine whether the measure in respect of which the claimant is submitting a claim is inconsistent with any of the provisions referred to in Article 10.24 (1) (Scope and Definitions).

2. In making such determination, the Tribunal shall apply the provisions of this Agreement and other rules of international law applicable between the Parties. It shall interpret this Agreement in accordance with customary rules of interpretation of public international law, as codified in the Vienna Convention on the Law of Treaties.

3. For greater certainty, in determining the consistency of a measure with the provisions referred to in Article 10.24 (1) (Scope and Definitions), the Tribunal shall consider, when relevant, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or authorities of that Party.

4. For greater certainty, the Tribunal shall not have jurisdiction to determine the legality of a measure alleged to constitute a breach of the provisions referred to in Article 10.24 (1) (Scope and Definitions) under the domestic law of the disputing Party.

5. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 10.15 (Treatment of Investors and Covered Investment), the investor has the burden of proving its claims, consistent with general principles of international law applicable to the dispute.

6. Where serious concerns arise as regards matters of interpretation relating to [the Investment Protection (30) or the Resolution of Investment Disputes and Investment Court System Section of this Agreement], the [...] Committee may adopt decisions interpreting this Agreement. Any such interpretation shall be binding on the Tribunal and the Appeal Tribunal. The [...] Committee may decide that an interpretation shall have binding effect from a specific date.

(30) As referred to in Article 2.19 (Scope and Definitions).

Article 10.38. Interpretation of Annexes

Following a request for consultations pursuant to Article 10.26(3) (Consultations and amicable resolution), the respondent may request in writing to the [Committee] that it determines whether and, if so, to what extent the measure which is the subject of the request for consultations falls within the scope of a non-conforming measure set out in Annex [numbering tbd] (Reservations for Existing Measures) or Annex [numbering tbd] (Reservations for Future Measures). This referral shall be made as soon as possible after the reception of the request for consultations. Upon the referral to the [Committee] the periods of time referred to in Article [...] shall be suspended. The [Committee] shall attempt in good faith to make a determination. Any such determination shall be transmitted promptly to the disputing parties. If the [Committee] has not made a determination within three months after the referral of the matter, the suspension of the periods of time referred to above ceases to apply.

Article 10.39. Other Claims

Where claims are brought pursuant to this Section and Section X (State to State dispute settlement) or another international agreement concerning the same alleged breach referred to in Article 10.24 (1) (Scope and Definitions), and there is a potential for overlapping compensation; or the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Section, the Tribunal shall, where relevant, after hearing the disputing parties, take into account proceedings pursuant to Section X (State to State dispute settlement) or another international agreement in its decision, order or award. To this end, it may also stay its proceedings. In acting pursuant to this provision the Tribunal shall respect Article 10.53 (10) (Provisional Award).

Article 10.40. Anti-Circumvention

For greater certainty, the Tribunal shall decline jurisdiction where the dispute had arisen, or was reasonably foreseeable, at the time when the claimant acquired ownership or control of the investment subject to the dispute or engaged in a corporate restructure and the Tribunal determines, on the basis of the facts of the case, that the claimant has acquired ownership or control of the investment or engaged in the corporate restructure for the main purpose of submitting the claim under this Section. The possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the Tribunal.

Article 10.41. Claims Manifestly without Legal Merit

1. The respondent may, no later than 30 days after the constitution of the division of the Tribunal pursuant to Article 10.33 (7) (Tribunal of First Instance (âTribunalâ)), and in any event before the first session of the division of the Tribunal, or 30 days after the respondent became aware of the facts on which the objection is based, file an objection that a claim is manifestly without legal merit.

2. The respondent shall specify as precisely as possible the basis for the objection.

3. The Tribunal, after giving the disputing parties an opportunity to present their observations on the objection, shall, at the first session of the division of the Tribunal or promptly thereafter, issue a decision or provisional award on the objection, stating the grounds therefor. In the event that the objection is received after the first session of the division of the Tribunal, the Tribunal shall issue such decision or provisional award as soon as possible, and no later than 120 days after the objection was filed. In deciding the objection, the Tribunal shall assume the facts as alleged by the claimant to be true, and may also consider any relevant facts not in dispute.

4. The decision of the Tribunal shall be without prejudice to the right of a disputing party to object, pursuant to Article 10.42 (Claims Unfounded as a Matter of Law) or in the course of the proceeding, to the legal merits of a claim and without prejudice to the Tribunal's authority to address other objections as a preliminary question.

Article 10.42. Claims Unfounded as a Matter of Law

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at any appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted under this Section is not a claim for which an award in favour of the claimant may be made under Article 10.53 (Provisional Award), even if the facts as alleged by the claimant were assumed to be true. The Tribunal may also consider any relevant facts not in dispute.

2. An objection under paragraph 1 shall be submitted to the Tribunal as soon as possible after the division of the Tribunal is constituted, and in no event later than the date the Tribunal fixes for the respondent to submit its counter-memorial or statement of defence. An objection may not be submitted under paragraph 1 as long as proceedings under Article 10.41 (Claims manifestly without legal merit) are pending, unless the Tribunal grants leave to file an objection under this Article, after having taken due account of the circumstances of the case.

3. On receipt of an objection under paragraph 1, and unless it considers the objection manifestly unfounded, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or provisional award on the objection, stating the grounds therefor.

Article 10.43. Transparency

1. The "UNCITRAL Transparency Rules" shall apply to disputes under this Section mutatis mutandis, with the following additional obligations.

2. The following documents shall be included in the list of documents referred to in Article 3(1) of the UNCITRAL Transparency Rules: the agreement to mediate referred to in Article 10.25, the request for consultations referred to in Article 10.26, the notice requesting a determination of the respondent and the determination of the respondent referred to in Article 10.27, the notice of challenge and the decision on this challenge referred to in Article 10.35, and the consolidation request referred to in Article 10.52 [para xx].

3. For greater certainty, exhibits may be made available to the public in accordance with Article 3.3 of the of the UNCITRAL Transparency Rules.

4. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, the European Union or Chile as the case may be shall make publicly available in a timely manner and prior to the constitution of the division, the request for consultations referred to in Article 10.26 (Consultations and amicable resolution), the request for determination of the Respondent and the determination of the Respondent referred to in Article 10.27 (Request for Determination of the Respondent), subject to the redaction of confidential or protected information. Such documents may be made publicly available by communication to the repository referred to in the UNCITRAL Transparency Rules.

5. Any disputing party that intends to use information in a hearing that is designated as confidential or protected information shall so advise the tribunal.

6. Any disputing party claiming that certain information constitutes protected or confidential information, shall clearly designate it as such when it is submitted to the tribunal.

7. For greater certainty, nothing in this Section requires the respondent to withhold from the public information required to be disclosed by its law.

Article 10.44. Interim Measures

The Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. The Tribunal may not order the seizure of assets nor may it prevent the application of the treatment alleged to constitute a breach.

Article 10.45. Discontinuance

If, following the submission of a claim under this Section, the claimant fails to take any steps in the proceeding during 180 consecutive days or such periods as the disputing parties may agree, the claimant shall be deemed to have withdrawn its claim and to have discontinued the proceedings. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, take note of the discontinuance in an order and issue an award on costs. After such an order has been rendered the authority of the Tribunal shall lapse. The claimant may not subsequently submit a claim on the same matter.

Article 10.46. Security for Costs

1. For greater certainty, upon request by the respondent, the Tribunal may order the claimant to provide security for all or a part of the costs if there are reasonable grounds to believe that the claimant risks not being able to honour a possible decision on costs issued against it.

2. If the security for costs is not provided in full within 30 days after the Tribunalâs order or within any other time period set by the Tribunal, the Tribunal shall so inform the disputing parties. The Tribunal may order the suspension or termination of the proceedings.

3. The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (1), including the existence of third-party funding.

Article 10.47. The Non-Disputing Party to the Agreement

1. The respondent shall, within 30 days after receipt or promptly after any dispute concerning confidential or protected information has been resolved, (31) deliver to the non- disputing Party:

(a) a request for consultations referred to in Article 10.26 (Consultations and amicable resolution), a notice requesting a determination referred to in Article 10.27 (Request for Determination of the Respondent), a claim referred to in Article 10.29 (Submission of a Claim) and any other documents that are appended to such documents;

(b) on request:

(i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;

(ii) written submissions made to the Tribunal by a third person;

(iii) minutes or transcripts of hearings of the Tribunal, where available; and

(iv) orders, awards and decisions of the Tribunal.

(c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been submitted to the Tribunal.

2. The non-disputing Party has the right to attend a hearing held under this Section.

3. The Tribunal shall accept or, after consultation with the disputing parties, may invite written or oral submissions on issues relating to the interpretation of this Agreement from the non-disputing Party. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the non-disputing Party.

(31) For greater certainty, the term confidential or protected information shall be understood as defined in and determined pursuant to Article 7 of the UNCITRAL Transparency Rules.

Article 10.48. Intervention by Third Parties

1. The Tribunal shall permit any natural or legal person which can establish a direct and present interest in the specific circumstances of the dispute (the intervener) to intervene as a third party. The intervention shall be limited to supporting, in whole or in part, the legal position of one of the disputing parties.

2. An application to intervene must be lodged within 90 days of the publication of submission of the claim pursuant to Article 10.29 (Submission of a Claim). The Tribunal shall tule on the application within 90 days, after giving the disputing parties an opportunity to submit their observations.

3. If the application to intervene is granted, the intervener shall receive a copy of every procedural order served on the disputing parties, save, where applicable, confidential or protected information. The intervener may submit a statement in intervention within a time period set by the Tribunal after the communication of the procedural orders. The disputing parties shall have an opportunity to reply to the statement in intervention. The intervener shall be permitted to attend the hearings held under this Chapter and to make an oral statement.

4. In the event of an appeal, a natural or legal person who has intervened before the Tribunal shall be entitled to intervene before the Appeal Tribunal. Paragraph 3 shall apply mutatis mutandis.

5. The right of intervention conferred by this Article is without prejudice to the possibility for the Tribunal to accept amicus curiae briefs from third persons that have a significant interest in the proceedings in accordance with Article 4 of the UNCITRAL Transparency Rules.

6. For greater certainty, the fact that a natural or legal person is a creditor of the claimant shall not be considered as sufficient in itself to establish that it has a direct and present interest in the result of the dispute.

Article 10.49. Expert Reports

Without prejudice to the appointment of other kinds of experts where authorised by the applicable rules referred to in Article 10.29 (Submission of a claim) paragraph 2, a tribunal, the request of a disputing party or, after consulting the disputing parties, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other matters raised by a disputing party in a proceeding.

Article 10.50. Indemnification and other Compensation

The Tribunal shall not accept as a valid defence or similar claim the fact that the claimant or the locally established enterprise has received, or will receive indemnification or other compensation pursuant to an insurance or guarantee contract in respect of all or part of the compensation sought in a dispute initiated pursuant to this Section.

Article 10.51. Role of the Parties to the Agreement

1.No Party shall bring an international claim, in respect of a dispute submitted pursuant to Article 10.29 (Submission of a Claim) unless the other Party has failed to abide by and comply with the award rendered in such dispute. This shall not exclude the possibility of dispute settlement under Section X (State to State dispute settlement) in respect of a measure of general application even if that measure is alleged to have violated the Agreement as regards a specific investment in respect of which a dispute has been initiated pursuant to Article 10.29 (Submission of a Claim). This is without prejudice to Article 10.47 (The Non-Disputing Party to the Agreement).

2. Paragraph 1 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 10.52. Consolidation

1. In the event that two or more claims that have been submitted separately under this Section have a question of law or fact in common and arise out of the same events and circumstances, the respondent may submit to the President of the Tribunal a request for the consolidated consideration of all such claims or part of them. The request shall stipulate:

(a) the names and addresses of the disputing parties to the claims sought to be consolidated;

(b) the scope of the consolidation sought; and

(c) the grounds for the request sought.

The respondent shall also deliver the request to each claimant in a claim which the respondent seeks to consolidate.

2. In the event that all disputing parties to the claims sought to be consolidated agree on the consolidated consideration of the claims, the disputing parties shall submit a joint request to the President of the Tribunal pursuant to paragraph 1. Unless the President of the Tribunal determines that the request is manifestly unfounded, the President of the Tribunal shall, within 30 days after receiving such joint request, constitute a new division (the "consolidating division") of the Tribunal pursuant to Article 10.33 (Tribunal of First Instance ("Tribunal")) which shall have jurisdiction over some or all of the claims, in whole or in part, which are subject to the joint consolidation request.

3. In the event that the disputing parties referred to in paragraph 2 have not reached an agreement on consolidation within thirty days of the receipt of the request for consolidation referred to in paragraph 1 by the last claimant to receive it, the President of the Tribunal shall constitute a consolidating division of the Tribunal pursuant to Article 10.33 (Tribunal of First Instance ("Tribunal")). The consolidating division shall assume jurisdiction over some or all of the claims, in whole or in part, if, after considering the views of the disputing parties, it is satisfied that claims submitted pursuant to Article 10.29 (Submission of a Claim) have a question of law or fact in common and arise out of the same events or circumstances, and consolidation would best serve the interests of fair and efficient resolution of the claims including the interest of consistency of awards.

4. If the claimants have not agreed upon the dispute settlement rules from the list contained in Article 10.29 (Submission of a Claim) paragraph 2 within 30 days after the date of receipt of the request for consolidated consideration by the last claimant to teceive it, the consolidated consideration of the claims shall be submitted to the consolidating division of the Tribunal under application of the UNCITRAL Arbitration Rules subject to the rules set out in this Chapter.

5. Divisions of the Tribunal constituted under Article 10.33 (Tribunal of First Instance ("Tribunal")) shall cede jurisdiction in relation to the claims, or parts thereof, over which the consolidating division has jurisdiction and the proceedings of such

divisions shall be suspended. The award of the consolidating division of the Tribunal in relation to the parts of the claims over which it has assumed jurisdiction shall be binding on the divisions which have jurisdiction over the remainder of the claims, as of the date the award becomes final pursuant to Article 10.52 (Final Award).

6. A claimant whose claim is subject to consolidation may withdraw its claim or the part thereof subject to consolidation from the dispute settlement proceedings under this Article and such claim or part thereof may not be resubmitted under Article 10.29 (Submission of a Claim).

7. At the request of the respondent, the consolidating division of the Tribunal, on the same basis and with the same effect as paragraphs 3 and 6 above, may decide whether it shall have jurisdiction over all or part of a claim falling within the scope of paragraph 1 above, which is submitted after the initiation of the consolidation proceedings.

8. At the request of one of the claimants, the consolidating division of the Tribunal may take measures in order to preserve the confidentiality of protected information of that claimant vis-a-vis other claimants. Such measures may include the submission of redacted versions of documents containing protected information to the other claimants or arrangements to hold parts of the hearing in private.

Article 10.53. Provisional Award

1. Where the Tribunal concludes that the respondent has breached any of the provisions referred to in Article 10.24 (1) (Scope and Definitions) alleged by the claimant, the Tribunal may, on the basis of a request from the claimant, and after hearing the disputing parties, award only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages, and any applicable interest in lieu of restitution, determined in a manner consistent with Article 10.17 (Expropriation) of Section C (Investment Protection) of Chapter 10 (Investment).

Where the claim was submitted on behalf of a locally-established company, any award under this paragraph shall provide that:

(a) any monetary damages and interest shall be paid to the locally established company;

(b) any restitution of property shall be made to the locally established company.

For greater certainty, the Tribunal may not award remedies other than those referred to in paragraph 1, nor may order the repeal, cessation or modification of the measure concerned.

2. Monetary damages shall not be greater than the loss suffered by the claimant or, if the claimant acted on behalf of the locally established enterprise, by the locally established enterprise, as a result of the breach of the relevant provisions of the Agreement, reduced by any prior damages or compensation already provided by the Party concerned. The Tribunal shall establish such monetary damages based on the submissions of the disputing parties, and shall consider, if applicable, contributory fault, whether deliberate or negligent, or failure to mitigate damages.

3. For greater certainty, if an investor of a Party submits a claim pursuant Article 10.29 (Submission of a Claim) it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.

4. The Tribunal may not award punitive damages.

5. The Tribunal shall order that the costs of the conduct of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion such costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the case.

6. The Tribunal shall also allocate other reasonable costs, including the reasonable costs of legal representation and assistance, to be borne by the unsuccessful disputing party when it dismisses a claim and renders an award pursuant to Articles 10.41 (Claims manifestly without legal merit) and 10.42 (Claims unfounded as a matter of law). In other circumstances, the Tribunal shall determine the allocation of other reasonable costs, including the reasonable costs of legal representation and assistance among the disputing parties, considering the outcome of the proceedings and other relevant circumstances, such as the conduct of the parties.

7. Where only some parts of the claims have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

8. The Appeal Tribunal shall deal with costs in accordance with this Article.

9. No later than one year after the entry into force of this Agreement, the [...] Committee shall adopt supplemental rules on fees for the purpose of determining the maximum amount of costs of legal representation and assistance that may be borne by specific categories of unsuccessful disputing parties, taking into account their financial resources.

10. The Tribunal shall issue a provisional award within 24 months of the date of submission of the claim. If that deadline cannot be respected, the Tribunal shall adopt a decision to that effect, which will specify to the disputing parties the reasons for such delay and indicate an estimated date for the issuance of the provisional award.

Article 10.54. Appeal Procedure

1. Either disputing party may appeal before the Appeal Tribunal a provisional award, within 90 days of its issuance. The grounds for appeal are:

(a) that the Tribunal has erred in the interpretation or application of the applicable law;

(b) that the Tribunal has manifestly erred in the appreciation of the facts, including where relevant the appreciation of domestic law; or

(c) those provided for in Article 52 of the ICSID Convention, in so far as they are not covered by (a) and (b).

2. The Appeal Tribunal shall reject the appeal where it finds that the appeal is unfounded. It may also reject the appeal on an expedited basis where it is clear that the appeal is manifestly unfounded.

3. If the Appeal Tribunal finds that the appeal is well founded, the decision of the Appeal Tribunal shall modify or reverse the legal findings and conclusions in the provisional award in whole or part. Its decision shall specify precisely how it has modified or reversed the relevant findings and conclusions of the Tribunal.

4. When the facts established by the Tribunal so permit, the Appeal Tribunal shall apply its own legal findings and conclusions to such facts and render a final decision. When that is not possible, it shall refer the matter back to the Tribunal.

5. As a general rule, the appeal proceedings shall not exceed 180 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appeal Tribunal issues its decision. When the Appeal Tribunal considers that it cannot issue its decision within 180 days, it shall inform the disputing parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its decision. In no case should the proceedings exceed 270 days.

6. A disputing party lodging an appeal shall provide security for the costs of appeal.

7. The provisions of Articles 10.32 (Third Party Funding), 10.43 (Transparency), 10.44 (Interim Measures), 10.45 (Discontinuance), 10.47 (The Non-Disputing Party to the Agreement) and, where relevant, other provisions of this Section, shall apply mutatis mutandis in respect of the appeal procedure.

Article 10.55. Final Award

1. A provisional award issued pursuant to this Section shall become final if neither disputing party has appealed the provisional award pursuant to Article 10.54 (Appeal Procedure).

2. When a provisional award has been appealed and the Appeal Tribunal has rejected the appeal pursuant to Article 10.54 (Appeal Procedure), the provisional award shall become final on the date of rejection of the appeal by the Appeal Tribunal.

3. When a provisional award has been appealed and the Appeal Tribunal has rendered a final decision, the provisional award as modified or reversed by the Appeal Tribunal shall become final on the date of the issuance of the final decision of the Appeal Tribunal.

4. When a provisional award has been appealed and the Appeal Tribunal has modified or reversed the legal findings and conclusions of the provisional award and referred the matter back to the Tribunal, the Tribunal shall, after hearing the disputing parties if appropriate, revise its provisional award to reflect the findings and conclusions of the Appeal Tribunal. The Tribunal shall be bound by the findings made by the Appeal Tribunal. The Tribunal shall seek to issue its revised award within 90 days of receiving the decision of the Appeal Tribunal. The revised provisional award will become final 90 days after its issuance.

5. The term "final award" shall include any final decision of the Appeal Tribunal rendered pursuant to Article 10.54 (Appeal Procedure).

Article 10.56. Enforcement of Awards

1. An award rendered pursuant to this Section shall not be enforceable until it has become final pursuant to Article 10.55 (Final Award). Final awards issued pursuant to this Section by the Tribunal shall be binding between the disputing parties and shall not be subject to appeal, review, set aside, annulment or any other remedy (32).

2. Each Party shall recognize an award rendered pursuant to this Agreement as binding and enforce the pecuniary obligation within its territory as if it were a final judgement of a court in that Party.

3. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where such execution is sought.

4. For greater certainty, Article X [numbering tbd] (Rights and obligations of natural or juridical persons under this Agreement, Chapter Y) shall not prevent the recognition, execution and enforcement of awards rendered pursuant to this Section.

5. For the purposes of Article 1 of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, final awards issued pursuant to this Section are arbitral awards relating to claims that are considered to arise out of a commercial relationship or transaction.

6. For greater certainty and subject to paragraph 1, where a claim has been submitted to dispute settlement pursuant to Article 10.29 (2) (a) (Submission of a Claim), a final award issued pursuant to this Section shall qualify as an award under Section 6 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID).

(32) For greater certainty, this does not prevent a disputing party from requesting the Tribunal to revise an award or to interpret an award in accordance with the applicable rules on dispute settlement where this possibility is available under the applicable rules.

ANNEX [numbering tbd] . MEDIATION MECHANISM FOR INVESTOR-TO-STATE DISPUTES

1. Initiation of the Procedure

1. Either disputing party may request, at any time, the commencement of a mediation procedure. Such request shall be addressed to the other party in writing.

Where the request concerns an alleged breach of the Agreement by the authorities of the European Union or by the authorities of the Member States of the European Union, and no respondent has been determined pursuant to Article 10.27 (Request for Determination of the Respondent) of Section D (Resolution of Investment Disputes and Investment Court System), it shall be addressed to the European Union. Where the request is accepted, the response shall specify whether the European Union or the Member State concerned will be a party to the mediation (33).

2. The party to which such request is addressed shall give sympathetic consideration to the request and accept or reject it in writing within 20 working days of its receipt.

(33) For greater certainty, where the request concerns an alleged breach by the European Union, the party to the mediation shall be the European Union and any Member State concerned shall be fully associated in the mediation. Where the request concerns exclusively an alleged breach by a Member State, the party to the mediation shall be the Member State concerned, unless it requests the European Union to be party.

2. Rules of the Mediation Procedure

1. The disputing parties shall endeavour to reach a mutually agreed solution within 90 days from the appointment of the mediator. Pending a final agreement, the disputing parties may consider possible interim solutions.

2. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a disputing party has designated as confidential or protected.

3. Relationship to Dispute Settlement

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under this Agreement or another agreement. A disputing party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall any adjudicative body take into consideration:

(a) positions taken by a disputing party in the course of the mediation procedure;

(b) the fact that a disputing party has indicated its willingness to accept a solution to the measure subject to mediation; or

(c) advice given or proposals made by the mediator.

2. The mediation mechanism is without prejudice to the rights and obligations of the Parties and the disputing parties under Section D (Resolution of Investment Disputes and Investment Court System) and Chapter YY (State to State Dispute Settlement).

3. Unless the disputing parties agree otherwise, and without prejudice to Article 10.26 (6 specific paras tod) (Consultations and amicable resolution), all steps of the procedure, including any advice or proposed solution, shall be confidential. However, the Party engaged in mediation may disclose to the public that mediation is taking place.

ANNEX [numbering tbd] . CODE OF CONDUCT FOR MEMBERS OF THE TRIBUNAL, THE APPEAL TRIBUNAL AND MEDIATORS

(text not available)

ANNEX XXXX . EXPROPRIATION

The Parties confirm their shared understanding that:

1. Expropriation under Article 10.17 (Expropriation) may be either direct or indirect:

(a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

(b) indirect expropriation occurs where a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formaltransfer of title or outright seizure.

2. The determination of whether a measure or series of measures by a Party, in a specific situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

(b) the duration of the measure or series of measures by a Party; and

(c) the character of the measure or series of measures, including their object, purpose and context.

3. For greater certainty, non-discriminatory measures by a Party that are designed and applied to achieve legitimate policy objectives, such as the protection of public health, social services, education, safety, environment, including climate change, or public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity, do not constitute indirect expropriations, unless the impact of a measure or series of measures is so severe in light of its purpose that it is manifestly excessive.

ANNEX XXXX . TRANSFERS-CHILE (34)

1. Notwithstanding Article 10.18 (Transfers), Chile reserves the right of the Central Bank of Chile (Banco Central de Chile) to maintain or adopt measures in conformity with Law 18.840, Constitutional Organic Law of the Central Bank of Chile (Ley 18.840, Ley Organica Constitucional del Banco Central de Chile) , Decreto con Fuerza de Ley N°3 de 1997, Ley General de Bancos (General Banking Act) and Ley de Mercado de Valores N°18.045 (Securities Market Law), in order to ensure currency stability and the normal operation of domestic and foreign payments. Such measures include, inter alia, the establishment

of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement (encaje).

2. Notwithstanding paragraph 1, the reserve requirement that the Central Bank of Chile can apply pursuant to Article 49 N°2 of Law 18.840, shall not exceed 30 percent of the amount transferred and shall not be imposed for a period which exceeds two years.

(34) For greater certainty this Annex shall apply to transfers covered by Article 10.18 (Transfers) of the Investment Chapter, and by the Capital Movement Chapter.

ANNEX XXXX . PUBLIC DEBT

1. No claim that a restructuring of debt of a Party breaches an obligation under Section C (Investment Protection) may be submitted to, or if already submitted, be pursued under Section D (Resolution of Investment Disputes and Investment Court System) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission.

2. Notwithstanding Article xxxx (Submission of a Claim) of Section D (Resolution of Investment Disputes and Investment Court System), and subject to paragraph [1] of this Annex, an investor of the other Party may not submit a claim under Section D (Resolution of Investment Disputes and Investment Court System) that a restructuring of debt of a Party breaches Articles 10.7 (National Treatment) or 10.9 (Most Favoured Nation Treatment) (35) or an obligation under Section C (Investment Protection), unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article xxxx (Consultations) of Sub-Section 1 (Scope and Definitions) of Section D (Resolution of Investment Disputes and Investment Court System).

3. For the purposes of this Annex:

(a) "negotiated restructuring" means the restructuring or rescheduling of debt of a Party that has been effected through (i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or (ii) a debt exchange or other similar process in which the holders of no less than 66% of the aggregate principal amount of the outstanding debt subject to restructuring, excluding debt held by that Party or by entities owned or controlled by it, have consented to such debt exchange or other process.

(b) "governing law" of a debt instrument means a jurisdiction's legal and regulatory framework applicable to that debt instrument.

4. For greater certainty, "debt of a Party" includes, in the case of the European Union, debt of a government of a Member State at the central, regional or local level.

(35) For greater certainty, a breach of Article 2.3 (National Treatment) or Article 2.4 (Most Favoured Nation Treatment) of Section A (Liberalisation of Investments) does not occur merely by virtue of a different treatment provided by a Party to certain categories of investors or investments on grounds of a different macroeconomic impact, for instance to avoid systemic risks or spillover effects, or on grounds of eligibility for debt restructuring.

ANNEX XXXX . COMPETENT AUTHORITIES MENTIONED IN ARTICLE 10.14 PARAGRAPH 4 OF SECTION C (INVESTMENT PROTECTION)

In the case of the EU, the competent authorities entitled to order the actions mentioned in Article 10.14 (Investment and Regulatory Measures) paragraph 4 are the European Commission or a court or tribunal of a Member State when applying EU law on state aid.

ANNEX XXXX . AGREEMENTS BETWEEN MEMBER STATES OF THE EUROPEAN UNION AND CHILE

1. Agreement between the Belgo-Luxembourg Economic Union and the Republic of Chile on the Promotion and Reciprocal Protection of Investments, done in Brussels on 15 July 1992;

2. Agreement between the Government of the Czech Republic and the Government of the Republic of Chile on the

Reciprocal Promotion and Protection of Investments, done in Prague on 24 April 995;

3. Agreement between the Government of the Kingdom of Denmark and the Government of the Republic of Chile concerning the Promotion and Reciprocal Protection of Investments, done in Copenhagen on 28 May 1993;

4. Agreement between the Federal Republic of Germany and the Republic of Chile on the Promotion and Reciprocal Protection of Investment, done in Santiago de Chile on 21 October 1991;

5. Agreement between the Government of the Hellenic Republic and the Government of the Republic of Chile on the Promotion and Reciprocal Protection of Investments, done in Athens on 10 July 1996;

6. Agreement between the Kingdom of Spain and the Republic of Chile on the Reciprocal Protection and Promotion of Investments, done in Santiago de Chile on 2 October 1991;

7. Agreement between the Government of the Republic of France and the Government of the Republic of Chile on the Reciprocal Promotion and Protection of Investments, done in Paris on 4 July 1992;

8. Agreement between the Government of the Republic of Croatia and the Government of the Republic of Chile on the Reciprocal Promotion and Protection of Investments, done in Santiago de Chile on 28 November 1994;

9. Agreement between the Government of the Republic of Chile and the Government of the Italian Republic on the Promotion and Protection of Investments, done at Santiago de Chile on 8 March 1993;

10. Agreement between the Republic of Austria and the Republic of Chile on the Promotion and Reciprocal Protection of Investments, done in Santiago de Chile on 8 September 1997;

11. Agreement between the Government of the Republic of Poland and the Government of the Republic of Chile on the Reciprocal Promotion and Protection of Investments, done in Warsaw on 5 July 1995;

12. Agreement between the Portuguese Republic and the Republic of Chile on the Promotion and Reciprocal Protection of Investments, done in Lisbon on 28 April 1995;

13. Agreement between the Government of Romania and the Government of the Republic of Chile on the Reciprocal Promotion and Protection of Investments, done in Bucharest on 4 July 1995;

14. Agreement between the Government of the Republic of Finland and the Government of the Republic of Chile on the Promotion and Reciprocal Protection of Investments, done at Helsinki on 27 May 1993;

15. Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Chile on the Promotion and Reciprocal Protection of Investments, done in Stockholm on 24 May 1993

Joint Interpretative Declaration on the Investment Protection Agreement between Chile and the European Union and its Member States

The European Union and its Member States and Chile make the following Joint Interpretative Declaration at the time of signature of the Investment Protection Agreement between them.

In light of their commitments under the Paris Agreement, the Contracting Parties confirm that their investors should expect that the Contracting Parties will adopt measures that are designed and applied to combat climate change or address its present or future consequences, by mitigation, adaptation, reparation, compensation or otherwise. When interpreting the provisions of the Investment Protection Agreement, the Tribunal should take due consideration of the commitments of the Parties under the Paris Agreement and their respective climate neutrality objectives. Thus, the Parties confirm their understanding that the provisions of the Investment Protection Agreement shall be interpreted and applied by the Tribunal by taking due consideration of the commitments of the Parties under the Paris Agreement and their respective climate neutrality objectives and in a way that allows the Parties to pursue their respective climate change mitigation and adaptation policies.

Chapter 18. FINANCIAL SERVICES

Article 18.1

Scope

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

(a) financial institutions of the other Party;

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

(c) cross-border trade in financial services.

2. For greater certainty, the provisions of Chapter 10 (Investment) apply to:

(a) a measure relating to an investor of a Party, and an investment of that investor, in a financial service supplier that is not a financial institution; and

(b) a measure, other than a measure relating to the supply of financial services, relating to an investor of a Party or an investment of that investor in a financial institution.

3. Chapter 10 (Investment) and Chapter 11 (Cross-Border Trade in Services) shall apply to measures described in paragraph 1 only to the extent that those Chapters or Articles of those Chapters are incorporated into and made part of this Chapter.

4. Article 10.14 (Investment and Regulatory Measures), Article 10.15 (Treatment of Investors and Covered Investments), Article 10.16 (Treatment in Case of Strife), Article 10.17 (Expropriation), Article 10.18 (Transfers), Article 10.19 (Subrogation), Article 10.20 (Denial of Benefits), Article 10.21 (Termination), Article 10.22 (Relationship with Other Agreements), and Article 11.10 (Denial of Benefits) are hereby incorporated into and made a part of this Chapter.

5. Section D (Settlement of disputes between a Party and an investor of the other Party) of Chapter 10 (Investment) is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 10.14 (Investment and Regulatory Measures), Article 10.15 (Treatment of Investors and Covered Investments), Article 10.16 (Treatment in Case of Strife), Article 10.17 (Expropriation), Article 10.18 (Transfers), Article 10.19 (Subrogation), Article 10.20 (Denial of Benefits), paragraph 2 of Article 10.7 (National Treatment), and paragraph 2 of Article 10.9 (Most Favoured Nation Treatment) .

6. This Chapter shall not apply to a measure adopted or maintained by a Party relating to:

1. (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(b) activities or services forming part of a public retirement plan or statutory system of social security; or

(c) activities or services conducted for the account of the Party, with the guarantee or using the financial resources of the Party, including its public entities,

except that this Chapter shall apply to the extent that a Party allows any of the activities or services referred to in subparagraph (a) or (b) to be conducted by its financial institutions in competition with a public entity or a financial institution.

7. The provisions of Articles 18.3 (National Treatment), 18.5 (Most-Favoured-Nation Treatment), 18.6 (Market Access), 18.7 (Cross-border trade in services), 18.8 (Senior Management and Boards of Directors) and 18.9 (Performance Requirements), shall not apply with respect to government procurement.

8. The provisions of Articles 18.3 (National Treatment), 18.5 (Most-Favoured-Nation Treatment), 18.6 (Market Access), 18.7 (Cross-border trade in services), and 18.8 (Senior Management and Boards of Directors), shall not apply with respect to subsidies granted by the Parties, including government-supported loans, guarantees and insurances.

Article 18.2

Definitions

For the purposes of this Chapter:

(a) “financial service” means a service of a financial nature, including insurance and insurance-related services, banking and other financial services (excluding insurance). Financial services include the following activities:

(i) insurance and insurance-related services

(A) direct insurance (including co-insurance):

(aa) life;

(bb) non-life;

(B) reinsurance and retrocession;

(C) insurance inter-mediation, such as brokerage and agency; and

(D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

(ii) banking and other financial services (excluding insurance):

(A) acceptance of deposits and other repayable funds from the public;

(B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(C) financial leasing;

(D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(E) guarantees and commitments;

(F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(aa) money market instruments (including cheques, bills, certificates of deposits);

(bb) foreign exchange;

(cc) derivative products including, but not limited to, futures and options;

(dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(ee) transferable securities;

(ff) other negotiable instruments and financial assets, including bullion;

(G) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(H) money broking;

(I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(K) provision and transfer of financial information, and financial data processing and related software;

(L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) through (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

cross-border financial service supplier of a Party means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border supply of such service;

cross-border supply of financial services or cross-border trade in financial services means the supply of a financial service:

(a) from the territory of a Party into the territory of the other Party; or

(b) in the territory of a Party by a person of that Party to a services consumer of the other Party;

financial institution means a supplier that supplies one or more of the services defined as being financial services in this Article, if the supplier is regulated or supervised in respect of the supply of those services as a financial institution under the law of the Party in whose territory it is located, including a branch in the territory of the Party of that financial service supplier whose head offices are located in the territory of the other Party;

(b) “financial service supplier of a Party” means any natural or juridical person of a Party that seeks to supply or supplies a financial service but does not include a public entity.

investment means "investment" as defined in Article 10.1 (Definitions), except that for the purposes of this Chapter, with respect to "loans" and "debt instruments" referred to in that Article:

(a) a loan to or debt instrument issued by a financial institution is an investment only if it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt instrument owned by a financial institution, other than a loan to or debt instrument issued by a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty, a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment for the purposes of Chapter 10 (Investment), if such loan or debt instrument meets the criteria for investments set out in Article 10.1 (Definitions);

investor of a Party means a natural person or a juridical person of such Party that seeks to make, is making or has made an investment in the territory of the other Party.

“new financial service” means a service of a financial nature including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party;

“public entity” means:

(i) a government, a central bank or a monetary authority, of a Party, or any entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, but does not include an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, that performs functions normally performed by a central bank or monetary authority, when exercising those functions.

“self-regulatory organisation” means a non-governmental body, including a securities or futures exchange or market, clearing agency, or other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers or financial institutions by statute or delegation from central, regional or local governments or authorities, where applicable.

Article 18.3

National treatment

1. Article 10.7 (National treatment) is incorporated into and made a part of this Chapter and applies to treatment of investors of the other Party and their investments in financial institutions.

2. The treatment accorded by a Party to its own investors and investments of its own investors under Article 10.7 (National treatment) means treatment accorded to its own investors and their investments in financial institutions.

Article 18.4

Public Procurement

1. Each Party shall ensure that financial institutions of the other Party established in its territory are accorded treatment no less favourable than that accorded, in like situations, to its own financial institutions with respect to any measure regarding the purchase of goods or services by a procuring entity for governmental purposes.

2. The application of the national treatment obligation provided for in this Article remains subject to the security and general exceptions defined in Article III of the GP Chapter of this Agreement.

Article 18.5

Most Favoured Nation Treatment

1. Article 10.9 (Most Favoured Nation Treatment) is incorporated into and made a part of this Chapter and applies to treatment of investors of a non-Party and their investments in financial institutions.

2. The treatment accorded by a Party to investors of a non-Party and investments of such investors under Article 10.9 (Most Favoured Nation Treatment) means treatment accorded to investors of a non-Party and their investments in financial institutions.

Article 18.6

Market access

1. In the sectors or subsectors listed in Annex X (Market Access) where market access commitments are undertaken, neither Party shall adopt or maintain, with respect to market access through establishment or operation of financial institutions, either on the basis of its entire territory or on the basis of a territorial subdivision, a measure that:

(a) imposes limitations on:

(i) the number of financial institutions, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

(ii) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of financial service operations or the total quantity of financial services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; or

(iv) the total number of natural persons that may be employed in a particular financial services sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restricts or requires specific types of legal entity or joint venture through which a financial institution may supply a service.

Drafters Note: Parties to ensure consistency with wording of the Market Access article agreed in the investment chapter

2. For greater certainty, this Article does not prevent a Party from requiring a financial institution to supply certain financial services through separate legal entities if, under the law of the Party, the range of financial services supplied by the financial institution may not be supplied through a single entity.

Article 18.7

Cross-border supply of financial services

1. Articles 11.5 (National Treatment), 11.6 (Most Favoured Nation), 11.8 (Market Access), 11.7 (Local Presence) are incorporated into and made part of this Chapter and apply to measures affecting cross-border financial service suppliers supplying the financial services specified in Section A of its Schedule in Annex XX (Financial Services Non-Conforming Measures).

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of another Party located in the territory of a Party other than the permitting Party. This obligation does not require a Party to permit those suppliers to do business or solicit in its territory. A Party may define “doing business” and “solicitation” for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration or authorisation of cross-border financial service suppliers of another Party and of financial instruments.

Article 18.8

Senior management and boards of directors

A Party shall not require that a financial institution of the other Party, which is established in the first Party, appoints natural persons of a particular nationality as members of boards of directors or to a senior management position, such as executives or managers.

[Drafters note: review drafting.]

Article 18.9

Performance Requirements

1. Neither Party may, in connection with the establishment or operation of any financial institution of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking to:

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

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

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

(d) 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 financial institution;

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

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

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

(h) locate the headquarters of that financial institution for a specific region of the world, which is broader than the territory of the Party or of the world market in its territory;

(i) hire a given number or percentage of its nationals;

(j) restrict the exportation or sale for export.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment or the operation of a financial institution in its territory, of a Party or of a non-Party, on compliance with any of the following requirements:

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

(b) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises 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 financial institution;

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

(e) to restrict the exportation or sale for export.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or the operation of financial institutions in its territory by an investor of a Party or a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.

4. Paragraph 1 (f) does not apply

(a) if a Party authorises use of an intellectual property right in accordance with Article 31 or article 31 bis of the TRIPS Agreement or adopts or maintains measures requiring the disclosure of data or propriety information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement; or

(b) if 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 a violation of the Party's competition laws.

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

7. Paragraphs 2 (a) and 2 (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.

8. For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis where that Party adopts or maintains restrictions or prohibitions on such provision of services which

are consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in Annex XXX (annexes with non-conforming measures or MA restrictions).

[DN: "Within 30 days following the political conclusion of this agreement, Chile may amend its schedule as required. Any amendment must be limited to the listing of reservations that do not conform with the performance requirements obligation under this Chapter, in Section C [existing measures] of Annex XXX [FFSS]. In addition, the schedule sent by CL the 25 of October does not include a reservation covering performance requirements on social welfare, which will nonetheless be considered as making part of the current schedule.]

9. This Article is without prejudice to commitments of a Party made under the WTO Agreement.

Article 18.10

Non-conforming Measures

1. Article 18.3 (National Treatment)1, Article 18.5 (MFN), Article 18.7 (Cross-Border Trade in Financial Services) and Article 18.8 (Senior Management and Boards of Directors), Article 18.9 (Performance Requirements) do not apply to:

1 Drafters Note: the EU considers that this reference should be revised to take into account the final content of the investment chapter. The NCM should apply (with regard to investment) as they apply in the investment chapter.

1. (a) any existing non-conforming measure that is maintained by:

For the European Union:

(i) the European Union as set out [in its Schedule in Annex XX (Financial Services Non-Conforming Measures)];

(ii) a central government of a Member State of the European Union, as set out in [Section A of its Schedule in Annex XX (Financial Services Non-Conforming Measures)];

(iii) a regional level of government of a Member State of the European Union, as set out in [Section C of its Schedule in Annex XX (Financial Services Non-Conforming Measures)]; or

(iv) a local of government; and

For Chile:

(ii) the central government or a regional level of government, as set out in [Section C of its Schedule in Annex XX (Financial Services Non-Conforming Measures)];

(iv) a local level of government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed immediately before the amendment, with Article 18.3

(National Treatment), Article 18.5 (Most Favored Nation Treatment),Article 18.8 (Senior Management and Boards of Directors) , Article 18.7 (Cross-Border Trade in Financial Services) or Article 18.9 (Performance Requirements); or

2. Article 18.3 (National Treatment), Article 18.5 (Cross-Border Trade in Financial Services) and Article 18.8 (Senior Management and Boards of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out by that Party in Section D of its Schedule in Annex XX (Financial Services Non-Conforming Measures).

3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by D of its Schedule in Annex XX (Financial Services Non-Conforming Measures), require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of its financial institution existing at the time the measure becomes effective.

4. Article 18.6 (Market Access) does not apply to any measure of a Party which is consistent with a reservation set out in Section D of its Schedule in Annex XX (Financial Services Non-Conforming Measures).

5. Where a Party has set out a reservation to Article 10.7 (National Treatment), Article 10.11 (Senior Management and Boards of Directors), Article 11.5 (National Treatment), or Article 10.10 (Performance requirements) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Article 18.3 (National Treatment), Article 18.5 (Cross-Border Trade in Financial Services), Article 18.8 (Senior Management and Boards of Directors) , or Article 18.9 (Performance requirements),

as the case may be, to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

[Drafters note: Article (not only paras 2 and 3) must be consistent with Investment and CBTS Chapter.]

Article 18.11

Prudential Carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or

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

2. Where such measures do not conform to the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

Article 18.12

Treatment of information

Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 18.13

Domestic regulation and transparency

1. Chapter 13 (Domestic Regulation) of Chapter V (Regulatory Framework) and chapter 29 (Good Regulatory Practices) shall not apply to measures relating to the subject matter of this Chapter.

[Drafters' note: the Parties will assess the need to replicate or refer to the definitions included in the horizontal disciplines on domestic regulation]

2. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall :

(a) publish in advance

1. (i) the laws and regulations of general application it proposes to adopt in relation to matters falling within the scope of this Chapter; or

1. (ii) documents that provide sufficient details about such a possible new law or regulation to allow interested persons and the other Party to assess whether and how their interests might be significantly affected.

(b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures or documents published under (a);

(c) consider comments received under (b); and

(d) allow a reasonable time between the publication of the measures referred to in (a)(i) and the date on which service suppliers must comply with them.

3. This article shall apply to measures relating to licensing requirements, licensing procedures, and qualification requirements and qualification procedures in sectors for which the Party has undertaken specific commitments and to the extent that these specific commitments apply.

4. If a Party adopts or maintains measures relating to the authorisation for the supply of a financial service, that Party shall ensure that:

(a) such measures are based on objective and transparent criteria2;

2 Such criteria may include inter alia competence and the ability to supply a service, including to do so in a manner consistent with a Party's regulatory requirements. Competent authorities may assess the weight to be given to each criterion.

3 For the purposes of this Chapter, 'authorisation' means the permission to supply a financial service, resulting from a procedure to which an applicant must adhere in order to demonstrate compliance with licensing requirements or qualification requirements.

(b) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist; and

(c) the procedures do not in themselves unjustifiably prevent fulfilment of the requirements.

5. Where authorisation3 is required each Party shall promptly publish or otherwise make publicly available the information necessary for the applicant to comply with the

requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, inter alia, where it exists:

(a) the requirements and procedures;

(b) contact information of relevant competent authorities;

(c) procedures for appeal or review of decisions concerning applications;

(d) procedures for monitoring or enforcing compliance with the terms and conditions of licenses and qualifications; or

(e) opportunities for public involvement, such as through hearings or comments.

6. If a Party requires authorization for the supply of a financial service, the competent authorities of a Party shall:

(a) to the extent practicable, permit an applicant to submit an application at any time throughout the year4;

4 For greater certainty, competent authorities are not required to start considering applications outside of their official working hours and working days.

(b) allow a reasonable period for the submission of an application if specific time periods for applications exist;

(c) initiate the processing of the application without undue delay;

(d) endeavour to accept applications in electronic format under the same conditions of authenticity as paper submissions; and

(e) accept copies of documents, which are authenticated in accordance with the Party's domestic law, in place of original documents, unless they require original documents to protect the integrity of the authorisation process.

7. Each Party shall endeavour to make authorisation procedures and formalities as simple as possible and shall not unduly complicate or delay the provision of the service.

8. Each Party shall endeavour to establish the indicative timeframe for processing of an application and shall, at the request of the applicant and without undue delay, provide information concerning the status of the application.

X If the competent authorities consider an application incomplete for processing under the Party's domestic laws and regulations, within a reasonable period of time, to the extent practicable:

(i) inform the applicant that the application is incomplete;

(ii) at the request of the applicant, identify the additional information required to complete the application, or otherwise provide guidance on why the application is considered incomplete; and

(iii) provide the applicant with the opportunity5 to provide the additional information that is required to complete the application;

5 Such opportunity does not require a competent authority to provide extensions of deadlines.

6 Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that they so inform the applicant within a reasonable period of time.

9. Each Party shall ensure that its competent authorities, with respect to authorisation fees6 that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.

10. The competent authority should reach its decision in an independent manner and not be accountable to any person supplying the services for which the licence or authorisation is required.

11. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe after the date of submission of a complete application and that the applicant is informed of the decision concerning the application, to the extent possible, in writing.

12. If an application is rejected by the competent authority, the applicant shall be informed, either at its own request or upon the competent authority's initiative, in writing and without undue delay. To the extent practicable, the applicant shall be informed of the reasons for rejection of the application and of the timeframe for an appeal against this decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

13. Where examinations are required for an authorisation, the regulatory authority shall ensure such examinations at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination.

14. Each Party shall ensure that an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

Article 18.14

Financial Services new to the Territory of a Party

1. Each Party shall permit a financial institution of the other Party, other than a branch, to supply any new financial service that the former Party would permit its own financial institutions to supply in accordance with its domestic law, in like situations, provided that the introduction of the new financial services does not require a new law or modification of an existing law.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable period of time and the authorisation may only be refused for prudential reasons.

3. This Article does not prevent a financial institution of a Party from applying to the other Party to consider authorising the supply of a financial service that is not supplied within either Party's territory. That application is subject to the law of the Party receiving the application and is not subject to the obligations of this Article.

Article 18.15

Self-regulatory Organisations

When a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organization in order to provide a financial service in or into the territory of the first Party, it shall ensure that the self-regulatory organization observes the obligations of Articles 10.7 (National Treatment) and 10.9 (Most Favored Nation Treatment) of the Investment Chapter and Article 11.5 (National Treatment) and 11.6 (Most Favored Nation Treatment) of the Cross Border Trade in Services Chapter.

[Drafters note 2: references to articles will be define once the Chapter structure is agreed]

Article 18.16

Payment and clearing systems

Under terms and conditions that accord national treatment, each Party shall grant to financial institutions of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

Article 18.17

Financial Services Committee

1. The Parties hereby establish the Financial Services Committee (the Committee).

The Committee shall be composed of representatives of the Parties as set out in Annex XX (Authorities responsible for Financial Services).

2. The Committee shall:

(a) supervise the implementation of this Chapter;

(b) consider issues regarding financial services that are referred to it by a Party;

(c) carry out a dialogue on the regulation of the financial services sector with a view to improving mutual knowledge of the Parties' respective regulatory systems and to cooperate in the development of international standards; and

(d) participate in the dispute settlement procedures in accordance with Article 18.20 (Investment Disputes in Financial Services).

3. The Committee shall meet as agreed to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Joint Council of the results of any meeting. Meetings may be held by any technological means available to the Parties.

Article 18.18

Consultations

1. A Party may request, in writing, consultations with the other Party regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request to hold consultations. The consulting Parties shall report the results of their consultations to the Committee.

2. Each Party shall ensure that when there are consultations pursuant to paragraph 1, its delegation shall include officials with the relevant expertise in the area covered by this Chapter as set out in Annex XX (Authorities responsible for Financial Services).

3. For greater certainty, nothing in this Article shall be construed to require a Party to derogate from its relevant law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties, or require regulatory authorities to take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

4. Nothing in this Article shall be construed to impede that where a Party requires information for supervisory purposes concerning a financial institution in the other Party's territory or a cross-border financial service supplier in the other Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

Article 18.19

Dispute settlement

1. Chapter 31 (Dispute Settlement), including Annexes X (Rules of Procedure) and XX (Code of Conduct), applies as modified by this Article to the settlement of disputes concerning the application or interpretation of the provisions of this Chapter.

2. In addition to the requirements set out in Article 31.7 (Requirements for Panellists – Dispute Settlement Chapter), panellists shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions, unless the Parties agree otherwise.

3. The Financial Services Committee shall recommend to the Joint Council the adoption of a list of at least 15 individuals, fulfilling the requirements set out in paragraph 2, who are willing and able to serve as panellists. The Joint Council shall adopt such list no later than six months after the date of entry into force of this Agreement. The list shall be composed of three sub-lists:

(a) one sub-list of individuals established on the basis of proposals by the European Union;

(b) one sub-list of individuals established on the basis of proposals by the Republic of Chile; and

(c) one sub-list of individuals that are not nationals of either Party and who shall serve as chairperson to the panel.

4. Each sub-list shall include at least five individuals. The Joint Council shall ensure that the list is always maintained at this minimum number of individuals.

5. For the purposes of this Chapter, the sub-lists referred to in paragraph 3 shall, after adoption, replace the sub-lists set out in paragraph 1 of Article 31.7 (List of Panellists – Dispute Settlement Chapter).

Article 18.20

Resolution of Investment Disputes in Financial Services

1. Section D (Resolution of Investment Disputes and Investment Court System) of Chapter 10 (Investment) applies, as modified by this Article, to:

(a) investment disputes pertaining to measures adopted or maintained by a Party relating to investors and their investments in financial institutions to which this Agreement applies and in which an investor claims that a Party has breached Article 18.3 (National Treatment), Article 18.5 (Most-Favoured-Nation Treatment), Articles 10.15 (Treatment of Investors and of Covered Investments), 10.18 (Transfers), Article 10.16 (Treatment in Case of Strife), or Article 10.17 (Expropriation); or

(b) investment disputes commenced pursuant to Chapter 10 (Investment) of this Agreement, in which Article 18.11 (Prudential Carve-Out) has been invoked.

2. In the case of an investment dispute pursuant to subparagraph 1(a), or if the respondent invokes Article 18.11 (Prudential Carve-Out) pursuant to subparagraph 1(b) within 60 days of the submission of a claim to the Tribunal in accordance with Article xxxx (Submission of a Claim to the Tribunal), the division of the Tribunal hearing the case may appoint, after consulting the disputing parties and pursuant to Article xxxx (Expert Reports), one or more experts from the list in Article 18.19 (SSDS in FS) to report to it on any factual issue concerning financial services matters raised by a disputing party in the proceedings.

3. In view of the importance of the right of a Party to adopt or maintain measures for prudential reasons, where such measures fall within the scope of the Article 18.11 (Prudential Carve-Out) shall apply as a valid defence to a claim based on any of the other provisions of this Agreement, including Article 10.15 (Treatment of Investors and of Covered Investments) of Chapter 10 (Investment). Following a request for consultations pursuant to Article [...], the respondent may request in writing to the [Committee] that it determines whether and, if so, to what extent the measure which is the subject of the request for consultations is justified under Article 18.11 (Prudential Carve-Out). This referral shall be made as soon as possible after the reception of the request for consultations. Upon the referral to the [Committee] the periods of time referred to in Articles xxxx (Consultations), xxxx (Determination of the respondent) and xxxx (Timelines to file a claim)] shall be suspended.

4. In a referral pursuant to paragraph 3, the [Committee] shall attempt in good faith to make a determination. Any such determination shall be transmitted promptly to the disputing parties.

5. To the extent that the Committee determines that the measure is justified under Article 18.11 (Prudential Carve-Out), no claim may be submitted before the investment tribunal pursuant to Article [...].

6. If the [Committee] has not made a determination within three months after the referral of the matter, the suspension of the periods of time referred to in paragraph 3 ceases to apply.

7. Failure of the respondent to make that request is without prejudice to the right of the respondent to assert Article 18.11 (Prudential Carve-Out) as a defence in a later phase of the proceedings. The Tribunal shall draw no adverse inference from the fact that the [Committee] has not agreed on a joint determination.

ANNEX XX

AUTHORITIES RESPONSIBLE FOR FINANCIAL SERVICES

The authorities for each Party responsible for financial services are:

(a) for EU, [...]

(b) for Chile, the Ministry of Finance (Ministerio de Hacienda

Chapter 20. CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS AND TEMPORARY SAFEGUARD MEASURES (1)

(1) For greater certainty, this Chapter is subject to Annex ... (Transfers – Chile)

Article 20.1

Objective and scope

The objective of this Chapter is to enable the free movement of capital and payments related to transactions liberalised under this Agreement.

Article 20.2

Current Account

Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency and in accordance with the provisions of the Articles of the Agreement of the International Monetary Fund, as applicable, any payments and transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

Article 20.3

Capital Movements

Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital, for the purpose of liberalisation of investment and other transactions as provided for in Chapter 10 [Investment], Chapter 11 [Cross-border trade in services], and Chapter 18 [Financial Services].

Article 20.4

Application of laws and regulations relating to capital movements, payments or transfers

The provisions of Article 10.18 [Transfers] of Chapter 10 [Investment], Articles 20.1 and 20.2 of this Chapter shall not be construed as preventing a Party from applying its laws and regulations relating to:

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

(b) issuing, trading or dealing in financial instruments such as securities, futures or derivatives;

(c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses, deceptive or fraudulent practices;

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

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

2. The laws and regulations referred to in paragraph 1 shall be applied in an equitable and non-discriminatory manner, and not in a way that would constitute a disguised restriction on capital movements, payments or transfers.

Article 20.5

Temporary safeguard measures

In exceptional circumstances of serious difficulties for the operation of the European Union's economic and monetary union, or threat thereof, the European Union may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months. Those measures shall be limited to the extent that is strictly necessary.

Article 20.6

Restrictions in case of balance of payments and external financial difficulties

1. Where a Party experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers 2.

2 For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

2. The measures referred to in paragraph 1 shall:

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

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

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

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

(e) be non-discriminatory compared to third countries in like situations.

3. In the case of trade in goods, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. These measures shall be in accordance with the General Agreement on Trade and Tariffs (GATT) and the Understanding on the Balance of Payments provisions of the GATT 1994.

4. In the case of trade in services, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. These measures shall be in accordance with Article XII of the General Agreement on Trade in Services (GATS).

5. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 of this Article shall promptly notify them to the other Party.

6. If restrictions are adopted or maintained under this Article, the Parties shall promptly hold consultations in the [Committee on Trade in Services and Investment – to be adapted] unless consultations are held in other fora, to which both Parties are members. The consultations shall assess the balance-of-payments or external financial difficulty that led to the respective measures, taking into account, inter alia, such factors as:

(a) the nature and extent of the difficulties;

(b) the external economic and trading environment; and

(c) alternative corrective measures which may be available.

7. The consultations pursuant to paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 to 2. All relevant findings of statistical or factual nature presented by the IMF, where available, shall be accepted and conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation of the Party concerned.