Council of the European Union

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**PROPOSAL**

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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 5 July 2023 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2023) 431 final |
| Subject: | ANNEX to the Proposal for a COUNCIL DECISION on the signing, on behalf of the European Union, and provisional application of the Advanced Framework Agreement between the European Union and its Member States, of the one part, and the Republic of Chile, of the other part |

Delegations will find attached document COM(2023) 431 final – ANNEX 1 – PART 3/4.

Encl.: COM(2023) 431 final - ANNEX 1 – PART 3/4

EUROPEAN
COMMISSION

PUBLIC

Brussels, 5.7.2023
COM(2023) 431 final

ANNEX 1 – PART 3/4

**ANNEX**

***to the***

**Proposal for a COUNCIL DECISION**

**on the signing, on behalf of the European Union, and provisional application of the Advanced Framework Agreement between the European Union and its Member States, of the one part, and the Republic of Chile, of the other part**

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# CHAPTER 17

# INVESTMENT

## SECTION A

## GENERAL PROVISIONS

### ARTICLE 17.1

### Scope

This Chapter does not apply to measures adopted or maintained by a Party relating to financial institutions of the other Party, investors of the other Party and to the investments of such investors in financial institutions in the territory of that Party, as defined in Article 25.2.

ARTICLE 17.2

Definitions

1. For purposes of this Chapter and Annexes 17-A, 17-B and 17-C:

(a) "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;

(b) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

(c) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

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

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(e) "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; or

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

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

(g) "enterprise" means a juridical person, branch or representative office set up through establishment;

(h) "establishment" means the setting up, including the acquisition,[1] of an enterprise by an investor of a Party in the territory of the other Party;

(i) "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;

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[1] The term "acquisition" is understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

(j) "ground handling services" means the supply at an airport, on a fee or contract basis, 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; and flight operation, crew administration and flight planning; ground handling services do not include: self-handling; security; line maintenance; 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;

(k) "investment" means any 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:

(i) an enterprise;

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

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

(iv) futures, options and other derivatives;

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(v) concessions, licenses, authorisations, permits, and similar rights conferred pursuant to domestic law[1];

(vi) turnkey, construction, management, production, concession, revenue-sharing contracts, and other similar contracts including those that involve the presence of the property of an investor in the territory of a Party;

(vii) intellectual property rights;

(viii) 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 are treated as investment and any alteration of the form in which assets are invested or reinvested does 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;

PUBLIC

[1] 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.

(l) "investor of a Party" means a natural or juridical person of a Party, that seeks to establish, is establishing or has established an enterprise in accordance with subparagraph (h);

(m) "juridical person of a Party" means[1]:

(i) for the EU Party:

(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, whose vessels are registered in, and fly the flag of, a Member State;

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[1] For greater certainty, the shipping companies referred to 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 EU Party understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 54 of the TFEU is equivalent to the concept of "substantive business operations".

(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;

(n) "operation" means the conduct, management, maintenance, use, enjoyment, sale or other form of disposal of an enterprise by an investor of a Party, in the territory of the other Party;

(o) "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;

(p) "selling and marketing of air transport services" means 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; and

(q) "service" means any service in any sector except for services supplied in the exercise of governmental authority.

(r) "Tribunal" means a tribunal of first instance established pursuant to Article 17.34.

PUBLIC

ARTICLE 17.3

Right to regulate

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

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ARTICLE 17.4

Relation to other chapters

1. In the event of inconsistency between this Chapter and Chapter 25, the latter shall prevail to the extent of the inconsistency.

2. A requirement of a Party that a service supplier of the other Party posts a bond or other form of financial security as a condition for the cross-border supply of a service in its territory, does not in 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, if such bond or financial security constitutes a covered investment.

ARTICLE 17.5

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 were accorded to that investor or covered investment, including if the measures prohibit transactions with a person who owns or controls either of them.

ARTICLE 17.6

Sub-Committee on Services and Investment

The Sub-Committee on Services and Investment ("Sub-Committee") is established pursuant to Article 8.8(1). When addressing matters related to investment, the Sub-Committee shall monitor and ensure proper implementation of this Chapter and of Annexes 17-A, 17-B and 17-C.

SECTION B

LIBERALISATION OF INVESTMENTS AND NON-DISCRIMINATION

PUBLIC

ARTICLE 17.7

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. This Section does not apply to:

(a) audio-visual services;

(b) national maritime cabotage[1]; or

[1] 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 and another port or point located in Chile or that same Member State, 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.

(c) domestic and international air services or related services in support of air services[1], 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) selling and marketing of air transport services;

(iii) computer reservation system (CRS) services; and

(iv) ground handling services.

3. Articles 17.8 , 17.9 , 17.11 , 17.12 and 17.13 not apply with respect to public procurement.

4. Articles 17.8 , 17.9, 17.11 and 17.13 do not apply with respect to subsidies granted by a Party, including government-supported loans, guarantees and insurances.

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[1] For greater certainty, air services or related services in support of air services include 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 17.8

Market access

In the sectors or subsectors where market access commitments are undertaken, a Party shall not adopt or maintain, with respect to market access through establishment or operation by investors of the other Party or by enterprises constituting a covered investment, either on the basis of its entire territory or on the basis of a regional 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 requirement 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 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;[1]

(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; or

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

(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.

PUBLIC

ARTICLE 17.9

National treatment

1. Each Party shall accord to investors of the other Party and to enterprises constituting a covered investment with respect to the establishment, treatment no less favourable than the treatment it accords, in like situations[1], to its own investors and to their enterprises.

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

[1] 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.

[2] 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.

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, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors of that Member State and to their investment in its territory[1].

ARTICLE 17.10

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.

[1] For greater certainty, the treatment accorded by a government of, or in, a Member State includes the regional and local level of government, when applicable.

2. The application of the national treatment obligation provided for in this Article remains subject to security and general exceptions as set out in Article 28.3.

PUBLIC

ARTICLE 17.11

Most-favoured-nation treatment

1. Each Party shall accord to investors of the other Party and to enterprises constituting a covered investment, with respect to the establishment, treatment no less favourable than the treatment it accords, in like situations[1], to investors of a third country and to their enterprises.

2. Each Party shall accord to investors of the other Party and to covered investments, with respect to the operation, treatment no less favourable than the treatment it accords, in like situations[2], to investors of a third country and to their investments.

3. Paragraphs 1 and 2 shall not be construed to oblige a Party to extend to investors of the other Party or to covered investments the benefit of any treatment resulting from measures providing for the recognition of the standards, 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.

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1 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.

2 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.

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 treaties or trade agreements do not in themselves constitute "treatment" 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 of a Party applied pursuant to such substantive provisions may constitute "treatment" under this Article and thus give rise to a breach of this Article.

PUBLIC

ARTICLE 17.12

Performance requirements

1. A Party shall not, in connection with the establishment of any enterprise or the operation of any investment of a Party or of a third country 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 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 enterprise;

(e) restrict sales of goods or services in its territory that such enterprise 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 that 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; or

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(k) with 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[1] 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, to 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.

2. For greater certainty, subparagraph (k) of paragraph 1 does not apply when the licence contract is concluded between the investor and a Party.

3. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or the operation of an enterprise in its territory, of a Party or of a third country, on compliance with any of the following requirements:

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

[1] A licence contract referred to in this paragraph means a contract concerning the licencing of technology, production process, or other proprietary knowledge.



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(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 enterprise;

(d) to restrict sales of goods or services in its territory that such enterprise 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.

4. Paragraph 3 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 an enterprise in its territory by an investor of a Party or a third country, 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.

PUBLIC

5. Subparagraphs (f) and (k) of paragraph 1 do not apply if:

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

(b) the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority in order to remedy a practice determined after judicial or administrative process to be a violation of the Party's competition law.

6. Subparagraphs (a), (b) and (c) of paragraph 1 and subparagraphs (a) and (b) of paragraph 3 do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.

7. Subparagraphs (a) and (b) of paragraph 3 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.

PUBLIC

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 Annexes 17-A, 17-B and 17-C.

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

PUBLIC

ARTICLE 17.13

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 17.14

Non-conforming measures

PUBLIC

1. Articles 17.9 , 17.11, 17.12 and 17.13 do not apply to:

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

(i) for the EU Party:

(A) the European Union, as set out in Appendix 17-A-1;

(B) the central government of a Member State, as set out in Appendix 17-A-1;

(C) a regional level of government of a Member State, as set out in Appendix 17-A-1; or

(D) a local level of government; and

(ii) for Chile:

(A) the central government, as set out in Appendix 17-A-2;

(B) a regional level of government, as set out in Appendix 17-A-2; or

(C) 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) of this paragraph, to the extent that the modification does not decrease the conformity of the measure, as it existed immediately before the modification, with Articles 17.9, 17.11 17.12 or 17.13.

2. Articles 17.9 , 17.11 , 17.12 and 17.13 do not apply to measures of a Party with respect to sectors, sub-sectors or activities, as set out in its schedule to Annex 17-B.

3. A Party shall not, under any measure adopted after the date of entry into force of this Agreement and covered by its reservation listed in Annex 17-B, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of a covered investment existing at the time the measure becomes effective.

4. Article 17.8 does not apply to any measure of a Party which is consistent with commitments set out in Annex 17-C.

PUBLIC

5. Articles 17.9 and 17.11 do not apply to any measure of a Party that constitutes an exception to, or derogation from, Article 3 or 4 of the TRIPS Agreement, as specifically provided for in Articles 3 to 5 of that Agreement.

6. For greater certainty, Articles 17.9 and 17.11 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 investment, provided that it does not constitute a means to circumvent that Party's obligations under those Articles.

PUBLIC

## SECTION C

## INVESTMENT PROTECTION

### Article 17.15

### 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.

PUBLIC

ARTICLE 17.16

Investment and regulatory measures

1. Article 17.3 applies to this Section in accordance with this Article.

2. This Section shall not be interpreted as a commitment of a Party not to change its legal and regulatory framework, including in a manner that can 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 does not constitute a breach of obligations of this Section, even if it results in loss or damage to the covered investment:

(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.

4. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy[1] or requesting its reimbursement, if such action has been ordered by one of its competent authorities[2], or as requiring that Party to compensate the investor therefor.

PUBLIC

ARTICLE 17.17

Treatment of investors and of covered investments

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

[1] In the case of the EU Party, ”subsidy” includes ”state aid” as defined in European Union law.

[2] In the case of the EU Party, the competent authorities entitled to order the actions referred to in this paragraph are the European Commission or a court or tribunal of a Member State, when applying European Union law on State aid.

2. A Party breaches the obligation of fair and equitable treatment referred to in paragraph 1 if a measure or series of measures constitute[1]:

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

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

(c) manifest arbitrariness;

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[1] For greater certainty, in determining whether a measure or series of measures constitute a breach of fair and equitable treatment, the Tribunal shall take into account, *inter alia*, the following:

(i) with regard to subparagraphs (a) and (b), whether the measure or series of measures involve 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 subparagraph (a);

(ii) with regard to subparagraphs (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 referred to in subparagraph (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 or discrimination referred to in subparagraphs (c) and (d);

(iii) with regard to subparagraph (e), whether a Party acted ultra vires, whether the episodes of alleged harassment or coercion were repeated and sustained.

(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 the breach referred to in paragraph 2, the Tribunal may take into account specific and unambiguous representations made to an investor by a Party, which the investor reasonably relied upon 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[1].

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 if a Party has acted inconsistently with paragraphs 1 to 4.

PUBLIC

[1] For greater certainty, full protection and security refers to a Party's obligations to act as may be reasonably necessary to protect physical security of investors and covered investments.

ARTICLE 17.18

Treatment in case of strife

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

2. Without prejudice to paragraph 1, 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 by that Party prompt, adequate and effective restitution or compensation, if such losses result from:

(a) requisitioning of their covered investment or a part thereof by the other Party's armed forces or authorities; or

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

3. The amount of the compensation referred to in paragraph 2 of this Article shall be determined in accordance with Article 17.19(2), from the date of requisitioning or destruction until the date of actual payment.

[1] For greater certainty, the sole declaration of a state of national emergency does not in itself constitute a breach of this provision.

ARTICLE 17.19

Expropriation[1]

1. A Party shall not nationalise or expropriate a covered investment, either directly or indirectly, through measures having an effect equivalent to nationalisation or expropriation ("expropriation"), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate and effective compensation; and

(d) in accordance with due process of law.

2. The compensation referred to in subparagraph (c) of 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;

[1] For greater certainty, this Article shall be interpreted in accordance with Annex 17-D.



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

(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 TRIPS Agreement[1].

ARTICLE 17.20

Transfers[2]

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;

[1] For greater certainty, revocation of intellectual property rights referred to in this paragraph includes the cancellation or nullification of such rights, and limitation of intellectual property rights also includes exceptions to such rights.

[2] For greater certainty, this Article is subject to Annex 17-E.

(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 covered investment;

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

(d) payments made under a contract entered into by the investor of the other Party, or by its covered investment, including payments made pursuant to a loan agreement;

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

(f) payments made pursuant to Article 17.18 and Article 17.19; and

(g) payments arising under the application of Section D.

2. A Party may not 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, covered investments in the territory of the other Party.

PUBLIC

ARTICLE 17.21

Subrogation

If a Party, or any agency designated by that Party, makes a payment to an investor of that 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 17.22

Termination

1. If this Agreement is terminated pursuant to Article 41.14, this Section and Section D shall continue to be effective, for a further period of five years from the date of termination, with respect to investments made before the date of such termination.

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

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

PUBLIC

ARTICLE 17.23

Relationship with other agreements

1. Upon entry into force of this Agreement, the agreements between Member States and Chile listed in Annex 17-F, including the rights and obligations derived therefrom, shall cease to have effect and shall be replaced and superseded by this Part of the Agreement.

2. In case of provisional application of Sections C and D of this Chapter in accordance with Article 41.5(2), the application of the agreements listed in Annex 17-F, including the rights and obligations derived therefrom, shall be suspended as of the date from which the Parties provisionally apply Sections C and D of this Chapter in accordance with Article 41.5. If the provisional application is terminated and this Agreement does not enter into force, the suspension shall cease and the agreements listed in Annex 17-F shall resume their effect.

3. Notwithstanding paragraphs 1 and 2, a claim may be submitted pursuant to an agreement listed in Annex 17-F, 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 Sections C and D of 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 Sections C and D of this Chapter; 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 "entry into force of this Agreement" provided for in Article 41.5 shall not apply.

PUBLIC

ARTICLE 17.24

Responsible business conduct

1. Without prejudice to Chapter 33, each Party shall encourage covered investments to incorporate into their internal policies internationally recognised principles and guidelines of corporate social responsibility or responsible business conduct such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the UN Guiding Principles on Business and Human Rights.

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 their investment.

SECTION D

RESOLUTION OF INVESTMENT DISPUTES AND INVESTMENT COURT SYSTEM

PUBLIC

SUB-SECTION 1

SCOPE AND DEFINITIONS

Article 17.25

Scope and definitions

1. This Section applies 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 17.9(2) or Article 17.11(2) , or Section C, which allegedly causes loss or damage to the claimant or its locally established enterprise.

2. This Section also applies to counterclaims in accordance with Article 17.31.

3. A claim with respect to the restructuring of debt of a Party shall be decided in accordance with Annex 17-G.

4. For the purposes of this Section:

(a) "claimant" means an investor of a Party, that is a party to an investment dispute with the other Party and 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);

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

(c) "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;

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

(e) "locally established enterprise" means a juridical person established in the territory of a Party, and owned or controlled by an investor of the other Party;[1]

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

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

(g) "non-disputing Party" means either Chile, when the respondent is the EU Party; or the EU Party, when Chile is the respondent;

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

(i) "respondent" means either Chile, or in the case of the EU Party, either the European Union or the Member State concerned as determined pursuant to Article 17.28;

(j) "third-party funding" means any funding provided to a disputing party, by a person who is not a disputing party, 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;[1]

(k) "UNCITRAL Arbitration Rules" means the Arbitration Rules of the United Nations Commission on International Trade Law; and

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

[1] For greater certainty, such funding may be provided directly or indirectly, to a disputing party, its affiliate or representative.



PUBLIC

SUB-SECTION 2

ALTERNATIVE DISPUTE RESOLUTION AND CONSULTATIONS

PUBLIC

ARTICLE 17.26

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 17-H and, where available, rules on mediation adopted by the Sub-Committee.[1] The Sub-Committee shall make best efforts to ensure that the rules on mediation are adopted no later than on 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 Sub-Committee shall, upon the date of 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.

[1] Any time limit referred to in Annex 17-H may be modified by agreement between the disputing parties.

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. Mediators shall comply *mutatis mutandis* with Annex 17-I.

6. Once the disputing parties agree to have recourse to mediation, the time limits set out in Articles 17.27 (5), 17.27 (8), 17.54 (10) and 17.55(5) 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 disputing parties, the Tribunal or the Appeal Tribunal shall stay the proceedings.

ARTICLE 17.27

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 have been commenced.

PUBLIC

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 reached in accordance with this Article or with Article 17.26. The Sub-Committee shall keep under surveillance the implementation of such mutually agreed solution and the Party to the mutually agreed solution shall regularly report to the Sub-Committee on the implementation of such solution.

3. If a dispute cannot be resolved as provided for in paragraph 1 of this Article, a claimant of a Party alleging a breach of the provisions referred to in Article 17.25(1) 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, if such request is submitted on behalf of a locally established enterprise, the name, address and place of incorporation of the locally established enterprise;

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

(c) the provisions referred to in Article 17.25(1) alleged to have been breached;

(d) the legal and factual basis for the claim, including the measure alleged to be inconsistent with the provisions referred to in Article 17.25(1);

(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, if it acts on behalf of a locally established enterprise, that it owns or controls that locally established enterprise.

5. Unless the disputing parties agree to a longer period, consultations shall commence within 60 days of the date of submission of the request for consultations.

6. Unless the disputing parties agree otherwise, the place of consultations shall be:

(a) Santiago, if the consultations concern an alleged breach by Chile;

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

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

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

PUBLIC

8. The request for consultations shall 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 17.25(1) 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 domestic tribunal or court under the law of a Party; and, in any event, no later than five 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 17.25(1) and of the loss or damage alleged to have been incurred thereby.

9. In the event that the claimant has not submitted a claim pursuant to Article 17.30 within 18 months of submitting the request for consultations, the claimant shall be deemed to have withdrawn its request for consultations and, if applicable, the notice requesting a determination of the respondent pursuant to Article 17.28 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 disputing parties involved in the consultations.

PUBLIC

10. A continuing breach may not renew or interrupt the periods set out in paragraph 8.

11. If the request for consultations concerns an alleged breach of the Agreement by the EU Party, it shall be sent to the European Union. If an alleged breach of the Agreement by a Member State is identified, the request for consultations shall also be sent to the Member State concerned.

PUBLIC

SUB-SECTION 3

SUBMISSION OF A CLAIM AND CONDITIONS PRECEDENT

Article 17.28

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 EU Party and the claimant intends to initiate proceedings pursuant to Article 17.30, 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. If a measure of a Member State is identified, such notice shall also be sent to the Member State concerned.

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

4. If the claimant has not been informed of the determination within 60 days after delivering the notice referred to in paragraph 3, the respondent shall be:

(a) the Member State, if the measure or measures identified in the notice referred to in paragraph 1 are exclusively measures of a Member State; or

(b) the European Union, if the measure or measures identified in the notice referred to in paragraph 1 include measures of the European Union.

5. If the claimant submits a claim pursuant to Article 17.30, it shall do so on the basis of the determination communicated referred to in paragraph 3 of this Article and, if no such determination has been communicated to the claimant, on the basis of paragraph 4.

PUBLIC

[1] For greater certainty, the EU Party shall make such determination solely based on the application of Regulation (EU) No 912/2014 of the European Parliament and of the Council of 23 July 2014 establishing a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party (OJEU L 257, 28.8.2014, p. 121).

6. If either the European Union or a Member State 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, on the basis 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.

ARTICLE 17.29

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 of the provisions referred to in Article 17.25(1);

PUBLIC

(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 of the provisions referred to in Article 17.25(1);

(c) provide a declaration that it will not enforce any award rendered pursuant to this Section before such award has become final pursuant to Article 17.56, and will not seek to appeal, review, set aside, annul, revise or initiate any other similar procedure before any domestic or international court or tribunal, with respect to an award issued pursuant to this Section.

2. The Tribunal shall dismiss a claim by a claimant who has submitted another 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 17.25(1), unless the claimant withdraws such pending claim. This paragraph shall not apply if the claimant submits a claim to a domestic court or tribunal seeking interim injunctive or declaratory relief.

PUBLIC

3. For the purposes of this Article, a 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 subparagraph (a) of paragraph 1 and paragraph 2 claimant also includes:

(a) if 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 and claim to have suffered the same loss or damage[1] as the investor; or

(b) if 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[2] as the locally established enterprise.

PUBLIC

[1] 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).

[2] 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 17.30

Submission of a claim

1. If the dispute cannot be settled within six months of the submission of the request for consultations and, if applicable, at least three months have elapsed from the submission of the notice requesting a determination of the respondent pursuant to Article 17.28, the claimant, provided that it satisfies the requirements set out in this Article and in Article 17.32, may submit a claim to the Tribunal.

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

(a) the ICSID Convention, 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.

PUBLIC

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

4. All the claims identified by the claimant in the submission of its claim pursuant to this Article shall be based on information identified in its request for consultations pursuant to subparagraphs (c) and (d) of Article 17.27(4).

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 acting 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.

PUBLIC

ARTICLE 17.31

Counterclaims

1. The respondent may submit a counterclaim on the basis of a claimant's failure to comply with an international obligation applicable in the territories of both Parties,[1] arising in connection with the factual basis of the claim.[2]

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, a claimant's consent to the procedures under this Section as referred to in Article 17.32 includes the submission of counterclaims by the respondent.

PUBLIC

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

2 The Joint Council shall, at the request of a Party, issue binding interpretations pursuant to Article 17.38(6) to clarify the scope of international obligations that are referred to in this paragraph.

ARTICLE 17.32

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 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 17.30.

PUBLIC

ARTICLE 17.33

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, if the division of the Tribunal is not established, to the President of the Tribunal, the name and address of the third-party funder, and if applicable, of the ultimate beneficial owner and corporate structure.

2. The 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 proceedings.

PUBLIC

SUB-SECTION 4

INVESTMENT COURT SYSTEM

PUBLIC

ARTICLE 17.34

Tribunal of first instance

1. A Tribunal of first instance ("Tribunal") is hereby established to hear claims submitted pursuant to Article 17.30.

2. The Joint 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, three shall be nationals of Chile and three shall be nationals of third countries. In appointing the Judges, the Joint Committee is encouraged to consider the need to ensure diversity and a fair gender representation.

3. The Joint Committee may decide to increase or to decrease the number of the Judges by multiples of three. Additional appointments shall be made according to the criteria provided for in paragraph 2.

4. The Judges shall possess the qualifications required in the countries they are nationals of 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 shall be appointed for a five-year term. However, the terms of five Judges (two nationals of a Member State, two nationals of Chile and one national of a third country) of the nine Judges appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to eight years. Vacancies shall be filled as they arise. A Judge appointed to replace another Judge, whose term of office has not expired, shall hold office for the remainder of the predecessor's term. A Judge who is serving on a division of the Tribunal when their term expires may, with the authorisation 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 co-Chairs of the Joint Committee. The Vice-President shall act as the President when the President is unavailable.

PUBLIC

7. The Tribunal shall hear cases in divisions consisting of three Judges, of whom one shall be a national of a Member State, 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 Article 17.30, the President of the Tribunal shall establish the composition of the division of the Tribunal hearing the case 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 of this Article, the disputing parties may agree that a case be heard by a sole Judge who is a national of a third country, to be appointed by the President of the Tribunal. The respondent shall give sympathetic consideration to such a request from the claimant, in particular if 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 17.30.

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 Part of the Agreement.

12. In order to ensure their availability, the Judges shall be paid a monthly retainer fee to be fixed by decision of the Joint Committee. The President of the Tribunal and, if applicable, the Vice-President, shall receive a fee equivalent to the fee determined pursuant to Article 17.35(11) for each day worked in fulfilling the functions of President of the Tribunal pursuant to this Section.

PUBLIC

13. The retainer fee shall be paid by the Parties taking into account their respective levels of development into an account managed by the Secretariat of the International Centre for Settlement of Investment Disputes ("ICSID"). If 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 Joint Committee shall regularly review the amount and repartition of those fees and may recommend relevant adjustments.

14. Unless the Joint Committee adopts a decision pursuant to paragraph 15 of this Article, the amount of the other fees and expenses of the Judges on a division of the Tribunal shall be 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 17.54(5), (6) and (7).

15. Upon a decision by the Joint Committee, the retainer fee and other fees and expenses may be permanently transformed into a regular salary. In this case, the Judges shall serve on a full-time basis and the Joint Committee shall fix their remuneration and related organisational matters. The Judges receiving a regular salary shall not be permitted to engage in any occupation, whether gainful or not, unless an 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 17.54(5), (6) and (7).

PUBLIC

ARTICLE 17.35

Appeal Tribunal

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

2. The Joint 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, two shall be nationals of Chile and two shall be nationals of third countries. In appointing the Members of the Appeal Tribunal, the Joint Committee is encouraged to consider the need to ensure diversity and a fair gender representation.

3. The Joint Committee may decide to increase the number of the Members of the Appeal Tribunal by multiples of three. Additional appointments shall be made according to the criteria provided for in paragraph 2.

4. The Members of the Appeal Tribunal shall possess the qualifications required in the countries they are nationals of 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.

PUBLIC

5. Members of the Appeal Tribunal shall be appointed for a five-year term. However, the terms of three of the six Members appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to eight years. Vacancies shall be filled as they arise. A Member appointed to replace another Member whose term of office has not expired, shall hold office for the remainder of the predecessor's term. A Member who is serving on a division of the Appeal Tribunal when their term expires may, with the authorisation 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 period from among the Members who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the co-Chairs of the Joint Committee. The Vice-President shall act as 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, 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 President of the Appeal Tribunal shall establish the composition of the division hearing each appeal on a rotation basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to serve.

PUBLIC

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 Part of the 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 Joint Committee. The President of the Tribunal and, if 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 the Parties taking into account their respective levels of development into an account managed by the Secretariat of ICSID. If 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 Joint Committee shall regularly review the amount and repartition of those fees and may recommend relevant adjustments.

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

PUBLIC

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 17.54(5), (6) and (7).

PUBLIC

ARTICLE 17.36

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.[1] They shall not take instructions from any government or organisation on 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. They shall comply with Annex 17-I. 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 Agreement or any other agreement or national legal system.

[1] 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.

2. If a disputing party considers that a Judge or a Member of the Appeal Tribunal 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, as applicable. 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 of the Appeal Tribunal has elected not to resign from that division, the President of the Tribunal or the President of the Appeal Tribunal, as applicable, shall, after hearing the disputing parties and after providing the Judge or the Member of the Appeal Tribunal an opportunity to submit any observations, issue a decision within 45 days of receipt of the notice of challenge and immediately 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.

PUBLIC

5. Upon a reasoned recommendation from the President of the Appeal Tribunal,[1] the Parties, by decision of the Joint 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 of this Article 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, the President of the Tribunal shall submit the reasoned recommendation. Articles 17.34(2) and 17.35(2) shall apply *mutatis mutandis* for filling vacancies that may arise pursuant to this paragraph.

PUBLIC

ARTICLE 17.37

Multilateral dispute settlement mechanisms

The Parties shall endeavour 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 Part of this Agreement, the relevant parts of this Section shall cease to apply. The Joint Committee may adopt a decision specifying any necessary transitional arrangements.

[1] This recommendation is without prejudice to the ability of the Joint Committee to draw the attention of the President of the Appeal Tribunal to the behaviour of a Judge of the Tribunal or a Member of 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.

SUB-SECTION 5

CONDUCT OF PROCEEDINGS

PUBLIC

Article 17.38

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 17.25(1).

2. In making such determination, the Tribunal shall apply 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 17.25(1), the Tribunal shall consider, when relevant, the law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to such law by the courts or authorities of that Party and any meaning given to such 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 17.25(1) under the 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 17.17, the investor has the burden of proving its claims, consistent with the general principles of international law applicable to the dispute.

6. Where serious concerns arise as regards matters of interpretation relating to Section C[1] or D, the Joint Council may adopt decisions interpreting this Agreement. Any such interpretation shall be binding on the Tribunal and the Appeal Tribunal. The Joint Council may decide that an interpretation shall have binding effect from a specific date.

ARTICLE 17.39

Interpretation of annexes

1. Following a request for consultations pursuant to Article 17.27(3), the respondent may request in writing to the Sub-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 17-A or 17-B.

[1] As referred to in Article 17.25.

2. This request to the Sub-Committee shall be made as soon as possible after the reception of the request for consultations. Upon the request to the Sub-Committee the periods of time referred to in Articles 17.27(5), 17.27(8), 17.54(10) and 17.55(5) shall be suspended.

3. The Sub-Committee shall attempt in good faith to make the requested determination. Any such determination shall be transmitted promptly to the disputing parties.

4. If the Sub-Committee has not made a determination within three months of the request of the matter, the suspension of those periods of time ceases to apply.

PUBLIC

ARTICLE 17.40

Other claims

If claims are brought pursuant to this Section and pursuant to Chapter 38 or another international agreement concerning the same alleged breach of the provisions referred to in Article 17.25(1), 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, if relevant, after hearing the disputing parties, take into account proceedings pursuant to Chapter 38 or another international agreement in its decision, order or award. To this end, it may also stay its proceedings. In acting pursuant to this Article, the Tribunal shall respect Article 17.54(10).

ARTICLE 17.41

Anti-circumvention

For greater certainty, the Tribunal shall decline jurisdiction if 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 restructuring 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 restructuring 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 17.42

Claims manifestly without legal merit

1. The respondent may, no later than 30 days after of the constitution of the division of the Tribunal pursuant to Article 17.34(7), 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.

PUBLIC

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, but no later than 120 days after the objection was filed. In deciding on 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 17.43 or in the course of the proceedings, to the legal merits of a claim and without prejudice to the Tribunal's authority to address other objections as a preliminary question.

ARTICLE 17.43

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 17.54, 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 pursuant to paragraph 1 of this Article shall be submitted to the Tribunal as soon as possible after the division of the Tribunal is constituted, and in any event no later than the date the Tribunal fixes for the respondent to submit its counter-memorial or statement of defence. An objection pursuant to paragraph 1 may not be submitted as long as proceedings under Article 17.42 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 pursuant to 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 17.44

Transparency

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

PUBLIC

2. The following documents shall be included in the list of documents referred to in Article 3, paragraph 1 of the UNCITRAL Transparency Rules: the agreement to mediate referred to in Article 17.26, the request for consultations referred to in Article 17.27, the notice requesting a determination of the respondent and the determination of the respondent referred to in Article 17.28, the notice of challenge and the decision on the challenge referred to in Article 17.36, and the consolidation request referred to in Article 17.53.

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

4. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, the EU Party 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 17.27, the notice requesting a determination of the respondent and the determination of the respondent referred to in Article 17.28, subject to the redaction of confidential or protected information[1]. 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 in a hearing information designated as confidential or protected shall inform the Tribunal.

[1] For greater certainty, confidential or protected information shall be understood as defined in and determined pursuant to Article 7 of the UNCITRAL Transparency Rules.

6. Any disputing party claiming that certain information constitutes confidential or protected 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 any information required to be disclosed by its law.

PUBLIC

ARTICLE 17.45

Interim measures

The Tribunal may order interim measures 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 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 17.46

Discontinuance

If, following the submission of a claim under this Section, the claimant fails to take any steps in the proceedings 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 having given 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 17.47

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 Tribunal's 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 provided in relation to the circumstances in paragraph 1, including the existence of third-party funding.

PUBLIC

ARTICLE 17.48

The non-disputing Party

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

(a) the request for consultations referred to in Article 17.27, the notice requesting a determination referred to in Article 17.28, the claim referred to in Article 17.30 and any other documents that are appended to such documents;

(b) on request of the non-disputing Party:

(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, if available; and

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

(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.

ARTICLE 17.49

Intervention by third parties

1. The Tribunal shall allow any 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.

PUBLIC

2. An application to intervene must be lodged within 90 days of the publication of submission of the claim pursuant to Article 17.30. The Tribunal shall rule 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, except, if 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 Section and to make an oral statement.

4. In the event of an appeal, the intervener 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 person is a creditor of the claimant shall not be considered in itself sufficient to establish that it has a direct and present interest in the specific circumstances of the dispute.

PUBLIC

ARTICLE 17.50

Expert reports

Without prejudice to the appointment of other kinds of experts, when authorised by the applicable rules referred to in Article 17.30(2) , a Tribunal, at the request of a disputing party or on its own initiative after consulting the disputing parties, 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 the proceedings.

PUBLIC

ARTICLE 17.51

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 17.52

Role of the Parties

1. A Party shall not bring an international claim, in respect of a dispute submitted pursuant to Article 17.30, 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 Chapter 38 in respect of a measure of general application, even if that measure is alleged to have violated this Agreement as regards a specific investment in respect of which a dispute has been initiated pursuant to Article 17.30. This is without prejudice to Article 17.48.

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

ARTICLE 17.53

Consolidation

1. If 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 thereof. 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.

2. The respondent shall also deliver the request to each claimant in the claims which the respondent seeks to consolidate.

3. If 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 of receiving such request, constitute a new division (the "consolidating division") of the Tribunal pursuant to Article 17.34 which shall have jurisdiction over some or all of the claims, in whole or in part, which are subject to that request.

4. If the disputing parties referred to in paragraph 3 of this Article have not reached an agreement on consolidation within 30 days of the receipt of the request for consolidation referred to in paragraph 1 of this Article by the last claimant to receive it, the President of the Tribunal shall constitute a consolidating division of the Tribunal pursuant to Article 17.34. 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 17.30 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.

PUBLIC

5. If the claimants have not agreed on the dispute settlement rules from the list set out in Article 17.30(2) within 30 days of the date of receipt of the request for consolidated consideration by the last claimant to receive 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 Section.

6. Divisions of the Tribunal constituted pursuant to Article 17.34 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 on which the award becomes final pursuant to Article 17.56.

7. 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 pursuant to Article 17.30.

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

PUBLIC

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

PUBLIC

ARTICLE 17.54

Provisional award

1. If the Tribunal concludes that the respondent has breached any of the provisions referred to in Article 17.25(1) 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 17.19.

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

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

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

For greater certainty, the Tribunal may not award remedies other than those referred to in the first subparagraph, 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 referred to in Article 17.25(1), 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 to Article 17.30 it may recover only loss or damage that it has incurred in its capacity as an investor of a Party.

4. The Tribunal may not award punitive damages.

PUBLIC

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 Article 17.42 or 17.43. 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 disputing parties.

7. If 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 date of entry into force of this Agreement, the Joint Committee shall adopt supplementary 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.

PUBLIC

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 shall specify to the disputing parties the reasons for such delay and indicate an estimated date for the issuance of the provisional award.

PUBLIC

ARTICLE 17.55

Appeal procedure

1. Either disputing party may appeal a provisional award before the Appeal Tribunal, 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, if relevant, the appreciation of the law of a Party; or

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

2. The Appeal Tribunal shall reject the appeal if it finds that the appeal is unfounded. It may also reject the appeal on an expedited basis if 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. If 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. If 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 disputing party 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 shall issue its decision. The proceedings shall not, in any case, exceed 270 days.

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

7. Articles 17.33, 17.44, 17.45, 17.46, 17.48 and, if relevant, other provisions of this Section, shall apply *mutatis mutandis* in respect of the appeal procedure.

PUBLIC

ARTICLE 17.56

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 17.55.

2. If a provisional award has been appealed and the Appeal Tribunal has rejected the appeal pursuant to Article 17.55, the provisional award shall become final on the date of rejection of the appeal by the Appeal Tribunal.

3. If 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 issuance of the final decision of the Appeal Tribunal.

4. If 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 shall become final 90 days after the date of its issuance.

PUBLIC

5. The final award shall include any final decision of the Appeal Tribunal rendered pursuant to Article 17.55.

PUBLIC

ARTICLE 17.57

Enforcement of awards

1. An award rendered pursuant to this Section shall not be enforceable until it has become final pursuant to Article 17.56. Final awards issued pursuant to this Section shall be binding between the disputing parties and shall not be subject to appeal, review, setting aside, annulment or any other remedy[1].

2. Each Party shall recognise an award rendered pursuant to this Section as binding and enforce the pecuniary obligation within its territory as if it were a final judgement of a domestic tribunal or court of that Party.

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

4. For greater certainty, Article 41.10 shall not prevent the recognition, execution and enforcement of awards rendered pursuant to this Section.

[1] 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.

5. For the purposes of Article 1 of the New York Convention, 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 of this Article, if a claim has been submitted to dispute settlement pursuant to subparagraph (a) of Article 17.30(2), a final award issued pursuant to this Section shall qualify as an award under Section 6 of the ICSID Convention.

PUBLIC

## CHAPTER 18

## CROSS-BORDER TRADE IN SERVICES

### ARTICLE 18.1

### Scope

1. This Chapter applies to measures of a Party affecting cross-border trade in services supplied by service suppliers of the other Party. Such measures include measures that affect:

(a) the production, distribution, marketing, sale and delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of, in connection with the supply of a service, services which are required by a Party to be offered to the public generally, including distribution, transport or telecommunications networks; and

(d) the provision of a bond or other form of financial security, as a condition for the supply of a service.

2. This Chapter does not apply to:

(a) financial services, as defined in Article 25.2;

(b) audio-visual services;

(c) national maritime cabotage[1];

PUBLIC

[1] 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 and another port or point located in Chile or that same Member State, 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.

(d) domestic and international air services or related services in support of air services[1], 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) selling and marketing of air transport services;

(iii) computer reservation system (CRS) services; and

(iv) ground handling services;

(e) public procurement; and

(f) subsidies or grants provided by a Party or a state-owned enterprise including government-supported loans, guarantees and insurance.

PUBLIC

[1] For greater certainty, air services or related services in support of air services include 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 18.2

Definitions

For the purposes of this Chapter and Annexes 17-A, 17-B and 17-C:

(a) "aircraft repair and maintenance services" means 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;

(b) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(c) "cross-border trade in services" or "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; or

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

PUBLIC

(d) "enterprise" means a juridical person, branch or representative office set up through establishment;

(e) "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operation, crew administration and flight planning; ground handling services do not include: self-handling; security; line maintenance; 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;

PUBLIC

(f) "juridical person of a Party" means[1]:

(i) for the EU Party:

(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, whose vessels are registered in, and fly the flag of, a Member State;

(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;

PUBLIC

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1 For greater certainty, the shipping companies referred to 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 EU Party understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 54 of the Treaty on the Functioning of the European Union is equivalent to the concept of "substantive business operations".

(g) "selling and marketing of air transport services" means 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 or the applicable conditions;

(h) "service" means any service in any sector except services supplied in the exercise of governmental authority;

(i) "service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers; and

(j) "service supplier of a Party" means any natural or juridical person of a Party that seeks to supply or supplies a service.

ARTICLE 18.3

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, the environment, including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.

PUBLIC

ARTICLE 18.4

National treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than the treatment it accords, in like situations, to its own services and service suppliers.

2. The treatment accorded by a Party under paragraph 1 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 its own services and service suppliers;

(b) with respect to a government of, or in, a Member State, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to its own services and service suppliers.

3. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own services and service suppliers.

4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to service suppliers of the other Party.

PUBLIC

5. Nothing in this Article shall be construed to require a Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

PUBLIC

ARTICLE 18.5

Most-favoured-nation treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than the treatment it accords, in like situations, to services and service suppliers of a third country.

2. Paragraph 1 shall not be construed to oblige a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from measures providing for the recognition of the standards, 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.

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

ARTICLE 18.6

Local presence

A Party shall not require a service supplier of the other Party to establish or maintain an enterprise or to be resident in its territory as a condition for the cross-border supply of a service.

PUBLIC

ARTICLE 18.7

Market access

In the sectors or subsectors where market access commitments are undertaken, a Party shall not adopt or maintain, either on the basis of its entire territory or on the basis of a regional subdivision, measures that:

(a) impose limitations on:

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

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

(iii) the total number of service operations or the total quantity of services output, expressed in terms of designated numerical units, in the form of quotas or the requirement of an economic needs test[1]; or

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

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

PUBLIC

[1] This subparagraph does not cover the measures of a Party that limit inputs for the supply of services.

ARTICLE 18.8

Non-conforming measures

PUBLIC

1. Articles 18.4, 18.5 and 18.6 do not apply to:

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

(i) for the EU Party:

(A) the European Union, as set out in Appendix 17-A-1;

(B) the central government of a Member State, as set out in Appendix 17-A-1;

(C) a regional level of government of a Member State, as set out in Appendix 17-A-1; or

(D) a local level of government; and

(ii) for Chile:

(A) the central government, as set out in Appendix 17-A-2;

(B) a regional level of government, as set out in Appendix 17-A-2; or

(C) 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) of this paragraph, to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 18.4, 18.5 and 18.6.

2. Articles 18.4, 18.5 and 18.6 do not apply to any measure of a Party with respect to sectors, sub-sectors or activities, as set out in Annex 17-B.

3. Article 18.7 does not apply to any measure of a Party with respect to committed sectors, subsectors or activities, as set out in Annex 17-C.

PUBLIC

ARTICLE 18.9

Denial of benefits

A Party may deny the benefits of this Chapter to a service supplier of the other Party 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 service supplier, or with a person who owns or controls either of them; or

(b) would be violated or circumvented if the benefits of this Chapter were accorded to that service supplier.

ARTICLE 18.10

Sub-Committee on Services and Investment

1. The Sub-Committee on Services and Investment ("Sub-Committee") is established pursuant to Article 8.8(1). When addressing matters related to services, the Sub-Committee shall monitor and ensure proper implementation of Chapters 18, 19, 20, 21, 22, 23, 24 and 26 and Annexes 17-A, 17-B, 17-C, 19-A, 19-B, 19-C, 21-A and 21-B.

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# CHAPTER 19

# TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

## ARTICLE 19.1

### Scope

1. This Chapter applies to measures of a Party concerning the performance of economic activities through the entry and temporary stay in its territory of natural persons of the other Party who are business visitors for establishment purposes, investors, intra-corporate transferees, short-term business visitors, contractual service suppliers and independent professionals.

2. This Chapter does not apply to the sectors referred to in subparagraphs (b), (c) and (d) of Article 18.1(2).

3. This Chapter does not apply to measures of a Party affecting natural persons of the other Party seeking access to its employment market, or to measures regarding citizenship, nationality, residence or employment on a permanent basis.

4. Nothing in this Agreement shall prevent a Party from applying measures regulating the entry of natural persons of the other Party into, or their temporary stay in, its territory, including measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its border, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to the other Party under this Part of this Agreement.

5. The sole fact that a Party requires persons of the other Party to obtain a visa shall not be regarded as nullifying or impairing the benefits accruing to the other Party under this Part of this Agreement.

6. To the extent that commitments are not undertaken in this Chapter, all requirements provided for in the law of a Party regarding the entry and temporary stay of natural persons shall continue to apply, including laws and regulations concerning the period of stay.

7. Notwithstanding this Chapter, all requirements provided for in the law of a Party regarding work and social security measures shall continue to apply, including laws and regulations concerning minimum wages and collective wage agreements.

8. Commitments under this Chapter on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in that dispute.

## ARTICLE 19.2

## Definitions

1. The definitions in Articles 17.2 and 18.2 apply to this Chapter and to Annexes 19-A, 19-B and 19-C, with the exception of the definition of investor in subparagraph (j) of Article 17.2(1).

2. For the purposes of this Chapter and Annexes 19-A, 19-B and 19-C:

(a) "business sellers" means short-term business visitors who:

(i) are representatives of a services or goods supplier of a Party for the purpose of negotiating the sale of services or goods, or entering into agreements to sell services or goods for that supplier, including: attending meetings or conferences; engaging in consultations with business colleagues, taking orders or negotiating contracts with an enterprise located in the territory of the other Party;

(ii) are not engaged in the supply of a service in the framework of a contract concluded between an enterprise that has no commercial presence in the territory of the Party where the short-term business visitors are staying temporarily, and a consumer in that territory; and

(iii) are not commission agents;

(b) "business visitors for establishment purposes" means natural persons working in a senior position within a juridical person of a Party who are responsible for establishing an enterprise of such juridical person in the territory of the other Party, who do not offer or provide services or engage in any other economic activity than required for establishment purposes and who do not receive remuneration from a source located within the other Party;

(c) "contractual services suppliers" means natural persons, employed by a juridical person of a Party which is not itself established in the territory of the other Party and is not an agency for placement and supply services of personnel or acting through such an agency and which has concluded a *bona fide* contract with a final consumer in the other Party to supply services in the other Party, requiring the presence on a temporary basis of its employees in that other Party, in order to fulfil the contract to supply services[1];

(d) "independent professionals" means natural persons engaged in the supply of a service and

[1] The service contract referred to under subparagraphs (b) and (c) shall comply with the requirements of the law of the Party where the contract is executed.

established as self-employed in the territory of a Party, but not in the territory of the other Party, who have concluded a *bona fide* contract, other than through an agency for placement and supply services of personnel, with a final consumer to supply services in the other Party, requiring their presence on a temporary basis in that other Party[1];

(e) "installers and maintainers" means short-term business visitors possessing specialised knowledge essential to a seller's or lessor's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer and related services, purchased or leased from an enterprise located outside the territory of the Party into which entry and temporary stay is sought, throughout the duration of the warranty or service contract;

(f) "intra-corporate transferees" means natural persons who have been employed by, or partners in, a juridical person of a Party for at least one year, who are temporarily transferred to an enterprise of that juridical person in the territory of the other Party, and who belong to one of the following categories:

(i) managers;

(ii) specialists;

(iii) trainee employees;

(g) "investor" means a natural person who establishes in the territory of the other Party an enterprise to which that natural person or the juridical person employing that natural person has committed, or is in the process of committing, a substantial amount of capital, and who develops or administers the operation of that enterprise in a capacity that is supervisory or executive;

(h) "managers" means natural persons working in a senior position within a juridical person of a

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[1] The service contract referred to under subparagraphs (b) and (c) shall comply with the requirements of law of the Party where the contract is executed.



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Party, who primarily direct the management of the enterprise in the territory of the other Party[1], receiving general supervision or direction principally from higher level executives, the board of directors or from stockholders of the business or their equivalent and whose responsibilities include:

(i) directing the enterprise or a department or subdivision thereof;

(ii) supervising and controlling the work of other supervisory, professional or managerial employees; and

(iii) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions;

(i) "short-term business visitors" means natural persons who are seeking entry and temporary stay in the territory of the other Party, who do not engage in making direct sales to the general public, do not receive remuneration from a source located within the other Party, and belong to one of the following categories:

(i) business sellers;

(ii) installers and maintainers;

(j) "specialists" means natural persons working within a juridical person of a Party possessing specialised knowledge essential to the areas of activity, techniques or management of the enterprise; in assessing such knowledge, account shall be taken not only of knowledge specific to the enterprise, but also of whether the person has a high level of qualification, including adequate professional experience, referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession; and

(k) "trainee employees" means natural persons who possess a university degree and are

[1] For greater certainty, this definition does not exclude managers who, while not directly performing tasks concerning the actual supply of the services, perform tasks, in the course of executing their duties as described in this definition, that are necessary for the provision of the services.



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temporarily transferred for career development purposes or to obtain training in business techniques or methods[1].

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ARTICLE 19.3

Intra-corporate transferees, business visitors for establishment purposes and investors

1. Subject to the relevant conditions and qualifications specified in Annex 19-A, each Party:

(a) shall allow the entry and temporary stay of intra-corporate transferees, business visitors for establishment purposes and investors of the other Party;

(b) shall allow the employment in its territory of intra-corporate transferees of the other Party;

[1] The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For AT, CZ, DE, FR, ES, HU and LT, training must be linked to the university degree which has been obtained.

(c) shall not maintain or adopt limitations in the form of numerical quotas or economic needs tests on the total number of natural persons that, in a specific sector, are allowed entry as business visitors for establishment purposes or investors, or that may be employed as intra-corporate transferees, either on the basis of a territorial subdivision or on the basis of its entire territory; and

(d) shall accord to intra-corporate transferees, business visitors for establishment purposes and investors of the other Party, with regard to their temporary stay in its territory, treatment no less favourable than that it accords, in like situations, to its own natural persons.

2. The permissible length of stay shall be:

(a) for Chile, a period of up to two years which may be extended, without a requirement to apply for permanent residence, provided that the conditions on which the stay is based remain present; and

(b) for the EU Party, a period of up to three years for managers and specialists; up to one year for trainee employees and investors; and up to 90 days within any six-month period for business visitors for establishment purposes.

PUBLIC

ARTICLE 19.4

Short-term business visitors

1. Subject to the scope exclusions set out in Article 17.7(2) and subject to the relevant conditions and qualifications specified in Annex 19-A, a Party shall allow entry and temporary stay of short-term business visitors without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent.

2. If short-term business visitors of a Party are engaged in the supply of a service to a consumer in the territory of the Party where they are staying temporarily, that Party shall accord to them, with regard to the supply of that service, treatment no less favourable than that it accords, in like situations, to its own service suppliers.

3. The permissible length of stay shall be a period of up to 90 days in any 12-month period.

PUBLIC

ARTICLE 19.5

Contractual services suppliers and independent professionals

1. Each Party shall allow the entry and temporary stay of contractual services suppliers of the other Party in its territory, in the sectors, subsectors and activities specified in Annex 19-B, subject to the relevant conditions and qualifications specified therein, and provided that:

(a) the natural persons are engaged in the supply of a service as employees of a juridical person, which has obtained a service contract not exceeding 12 months;

(b) the natural persons entering the other Party have been engaged as employees of the juridical person referred to in subparagraph (a) for at least one year immediately preceding the date of submission of an application for entry into the other Party and possess, on the date of application for entry, at least three years of professional experience, obtained after having reached the age of majority, in the sector of activity subject of the contract;

(c) the natural persons entering the other Party shall possess:

(i) a university degree or a qualification demonstrating knowledge of an equivalent level[1]; and

(ii) professional qualifications, if required to exercise an activity pursuant to the laws and regulations of the Party where the service is supplied;

[1] If the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

(d) the natural person does not receive remuneration for the provision of services in the territory of the other Party, other than the remuneration paid by the juridical person employing the natural person; and

(e) access accorded pursuant to this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to use the professional title of the Party where the service is provided.

2. Each Party shall allow the entry and temporary stay of independent professionals of the other Party in its territory in the sectors, subsectors and activities specified in Annex 19-B, subject to the relevant conditions and qualifications specified therein, and provided that:

(a) the contract concluded does not exceed a period of 12 months;

(b) the natural persons possess, on the date of application for entry and temporary stay, at least six years of professional experience in the sector of activity which is the subject of the contract.

(c) the natural persons entering into the territory of the other Party possess:

(i) a university degree or a qualification demonstrating knowledge of an equivalent level[1]; and

[1] If the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

(ii) professional qualifications, if these are required to exercise an activity pursuant to the laws and regulations of the Party where the service is supplied;

(d) access accorded pursuant to this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to use the professional title of the Party where the service is provided.

3. A Party shall not adopt or maintain limitations on the total number of contractual services suppliers or independent professionals of the other Party who are allowed for entry and temporary stay, in the form of numerical quotas or an economic needs test.

4. A Party shall accord to contractual services suppliers and independent professionals of the other Party, with regard to the supply of their services in its territory, treatment no less favourable than that it accords, in like situations, to its own service suppliers.

5. The permissible length of stay shall be:

(a) for the EU Party, a cumulative period of not more than six months in any 12-month period or for the duration of the contract, whichever is less; and

(b) for Chile, a period up to one year which may be extended for subsequent periods, provided that the conditions on which the stay is based remain in effect.

PUBLIC

ARTICLE 19.6

Non-conforming measures

PUBLIC

To the extent that the relevant measure affects the entry or temporary stay of natural persons for business purposes, subparagraphs (c) and (d) of Article 19.3 (1) and Article 19.5 (3) and (4) do not apply to:

(a) any existing non-conforming measure of a Party at the level of:

(i) for the EU Party:

(A) the European Union, as specified in Appendix 17-A-1;

(B) the central government of a Member State, as specified in Appendix 17-A-1;

(C) a regional government of a Member State, as specified in Appendix 17-A-1; or

(D) a local government, other than that referred to in subparagraph (C); and

(ii) for Chile:

(A) the central government, as specified in Appendix 17-A-2;

(B) a regional subdivision, as specified in Appendix 17-A-2; or

(C) a local government;

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

(c) a modification of any non-conforming measure referred to in subparagraphs (a) and (b) of this Article to the extent that it does not decrease the conformity of the measure as it existed immediately before the modification, with subparagraphs (c) and (d) of Article 19.3 (1) and Article 19.5 (3) and (4); or

(d) any measure of a Party consistent with a condition or qualification specified in Annex 17-B.

ARTICLE 19.7

Transparency

1. A Party shall make publicly available information relating to the entry and temporary stay of natural persons of the other Party, referred to in Article 19.1(1).

PUBLIC

2. The information referred to in paragraph 1 of this Article shall include, if applicable, the following information:

(a) categories of visa, permits or any similar type of authorisation regarding the entry and temporary stay;

(b) documentation required and conditions to be met;

(c) method of filing an application and options on where to file, such as consular offices or online;

(d) application fees and an indicative timeframe of the processing of an application;

(e) the maximum length of stay under each type of authorisation referred to in subparagraph (a) of this paragraph;

(f) conditions for any available extension or renewal;

(g) rules regarding accompanying dependents;

(h) available review or appeal procedures; and

(i) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

PUBLIC

3. With respect to the information referred to in paragraphs 1 and 2 of this Article, a Party shall endeavour to promptly inform the other Party of the introduction of any new requirements or procedures, or of any changes in requirements or procedures, which affect the effective application for the grant of entry into, temporary stay in and, if applicable, permission to work in the former Party.

PUBLIC

ARTICLE 19.8

Non-application of dispute settlement

Chapter 38 does not apply regarding a refusal to grant entry and temporary stay unless the matter involves a pattern of practice.

CHAPTER 20

DOMESTIC REGULATION

PUBLIC

ARTICLE 20.1

Scope and definitions

1. This Chapter applies to measures by the Parties relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards[1] that affect:

(a) cross-border supply of services;

(b) the supply of a service or pursuit of any other economic activity through the establishment of an enterprise or operation of a covered investment; or

(c) the supply of a service through the temporary stay of categories of natural persons of a Party in the territory of the other Party, as defined in Article 19.1.

2. This Chapter only applies to sectors for which a Party has undertaken specific commitments under Chapters 17, 18 and 19 and to the extent that these specific commitments apply.

[1] For greater certainty, as far as measures relating to technical standards are concerned, this Chapter applies only to those measures affecting trade in services.

3. Notwithstanding paragraph 2, this Chapter does not apply to licensing requirements and procedures, qualification requirements and procedures, and technical standards relating to:

(a) manufacturing of basic chemicals and other chemical products;

(b) manufacturing of rubber products;

(c) manufacturing of plastics products;

(d) manufacturing of electric motors, generators and transformers;

(e) manufacturing of accumulators, primary cells and primary batteries; and

(f) recycling of metal and non-metal waste and scrap.

4. Notwithstanding paragraph 1, this Chapter does not apply to measures of a Party to the extent that they constitute limitations subject to scheduling pursuant to Articles 17.5, 17.6, 17.11 (1), 17.11 (2), 18.4, 18.6, 18.7, 18.8 (1), 18.8 (2), 19.3 (1), 19.4 (2), 19.5 (1) and 19.6.

5. For the purposes of this Chapter:

(a) "authorisation" means a permission to carry out any of the activities referred to in subparagraphs (a), (b) and (c) of paragraph 1 resulting from a procedure to which an applicant must adhere in order to demonstrate compliance with licencing requirements, qualification requirements or technical standards;

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(b) "competent authority" means a central, regional or local government or authority, or a non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is empowered to take a decision concerning the authorisation to supply a service, including through establishment of an enterprise, or concerning the authorisation to pursue any other economic activity;

(c) "licensing procedures" means administrative or procedural rules to which a natural or a juridical person seeking an authorisation, including an amendment or renewal of an authorisation, must adhere in order to demonstrate compliance with licencing requirements;

(d) "licensing requirements" means substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew an authorisation;

(e) "qualification procedures" means administrative or procedural rules to which a natural person must adhere in order to demonstrate compliance with qualification requirements, for the purposes of obtaining an authorisation; and

(f) "qualification requirements" means substantive requirements relating to the competence of a natural person to supply a service, and with which a natural person is required to comply in order to obtain, amend or renew an authorisation.

6. For the purposes of this Chapter, the definitions set out in Articles 17.2 and 18.2 also apply.

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ARTICLE 20.2

Conditions for licensing and qualification

1. Each Party shall ensure that measures relating to licencing requirements, licencing procedures, and qualification requirements and qualification procedures are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

(a) clear;

(b) objective and transparent[1]; and

(c) accessible to the public and interested persons in advance.

3. When adopting technical standards, each Party shall encourage its competent authorities to adopt technical standards developed through open and transparent processes, and shall encourage bodies, including relevant international organisations[2], designated to develop technical standards to use open and transparent processes.

[1] For greater certainty, these criteria may include, *inter alia*, competence and the ability to supply a service or pursuit any other economic activity, including to do so in a manner consistent with a Party's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

[2] The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of both Parties.

4. An authorisation shall, subject to availability, be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation have been met.

5. Where the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, each Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

6. Subject to paragraph 5, in establishing the rules for the selection procedure, each Party may take into account legitimate policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

ARTICLE 20.3

Licensing and qualification procedures

1. Licensing and qualification procedures and formalities shall be clear, made public in advance, and shall not in themselves constitute a restriction on the supply of a service or the pursuit of any other economic activity. Each Party shall endeavour to make such procedures and formalities as simple as possible and shall not unduly complicate or delay the supply of the service or the pursuit of any other economic activity.

PUBLIC

2. If authorisation 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 at least the following, to the extent it exists:

(a) the requirements and procedures;

(b) contact information of relevant competent authorities;

(c) fees;

(d) technical standards;

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

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

(g) opportunities for public involvement, such as through hearings or comments; and

(h) indicative timeframes for processing an application.

PUBLIC

3. Any authorisation fee[1] which the applicants may incur shall be reasonable, transparent, and not, in itself, restrict the supply of the relevant service or the pursuit of the relevant economic activity.

4. Each Party shall ensure that the procedures used by, and the decisions of, the competent authority in the authorisation process are impartial with respect to all applicants. The competent authority shall reach its decision in an independent manner and not be accountable to any person supplying the services or carrying out the economic activities for which the authorisation is required.

5. If specific time limits for applications apply, an applicant shall be allowed a reasonable period for the submission of an application. If possible, the competent authority should accept applications in electronic format under the same conditions of authenticity as paper submissions.

6. The competent authority shall start processing an application without undue delay after submission. Each Party shall endeavour to establish the indicative timeframe for the processing of an application and shall, at the request of the applicant and without undue delay, ensure that the competent authority provides information concerning the status of the application. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable period of time after the date of submission of a complete application.

[1] 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.

7. The competent authority shall, within a reasonable period of time after the receipt of an application which it considers incomplete, inform the applicant, identify, to the extent feasible, the additional information required to complete the application, and provide the applicant with the opportunity to correct deficiencies.

8. The competent authority shall accept copies of documents that are authenticated in accordance with the Party's law, instead of original documents, unless the competent authority requires original documents to protect the integrity of the authorisation process.

9. 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. In principle, the applicant shall be informed of the reasons for rejection of the application and of the timeframe for an appeal against this decision must be submitted. An applicant shall be permitted, within reasonable time limits, to resubmit an application.

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

11. Where examinations are required for an authorisation, the competent 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.

PUBLIC

ARTICLE 20.4

Review

If the results of the negotiations related to paragraph 4 of Article V of GATS enter into force, the Parties shall jointly review such results. Where the joint review assesses that the incorporation of such results into this Part of this Agreement would improve the disciplines contained herein, the Parties shall jointly determine whether to incorporate such results into this Part of this Agreement.

PUBLIC

ARTICLE 20.5

Administration of measures of general application

Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

ARTICLE 20.6

Appeal of administrative decisions

Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, a prompt review of, and where justified, appropriate remedies for administrative decisions affecting establishment, cross-border supply of services or temporary presence of natural persons for business purposes. If such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures provide for an objective and impartial review.

PUBLIC

CHAPTER 21

MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

ARTICLE 21.1

Mutual recognition of professional qualifications

1. Nothing in this Chapter shall prevent a Party from requiring that natural persons possess the necessary qualifications and professional experience specified in the territory where the activity is performed, for the sector of activity concerned.

2. Each Party shall encourage relevant professional bodies or authorities for the sector of activity concerned, in its territory, to develop and provide joint recommendations on mutual recognition of professional qualifications to the Sub-Committee on Services and Investment referred to in Article 18.10. Such joint recommendations shall be supported by an evidence-based assessment of:

(a) the economic value of an envisaged arrangement on mutual recognition of professional qualifications ("mutual recognition arrangement"); and

(b) the compatibility of the respective regimes, that is, the extent to which the requirements applied by each Party for the authorisation, licensing, operation and certification are compatible.

3. Upon receipt of a joint recommendation, the Sub-Committee on Services and Investment shall review its consistency with this Part of this Agreement within a reasonable period of time. The Sub-Committee may, following such review, develop and recommend to the Joint Council to adopt, pursuant to subparagraph (a) of Article 8.5(1), a decision on mutual recognition arrangement in order to determine or amend mutual recognition arrangements set out in Annex 21-B[1].

4. An arrangement as referred to in paragraph 3 of this Article shall provide for the conditions for recognition of professional qualifications acquired in the EU Party and professional qualifications acquired in Chile relating to an activity covered by Chapters 17, 18, 19 and 26.

[1] For greater certainty, mutual recognition arrangements shall not lead to the automatic recognition of professional qualifications but shall set, in the mutual interest of the Parties, the conditions for the competent authorities granting recognition of such qualifications.

5. The guidelines for arrangements on the recognition of professional qualifications set out in Annex 21-A shall be taken into account in the development of the joint recommendations referred to in paragraph 2 of this Article and by the Joint Council when assessing whether to adopt the arrangement referred to in paragraph 3 of this Article.

PUBLIC

## CHAPTER 22

## DELIVERY SERVICES

### ARTICLE 22.1

### Scope and definitions

1. This Chapter sets out the principles of the regulatory framework for all delivery services.

2. For the purposes of this Chapter:

(a) "delivery services" means postal and courier or express services, including activities of the collection, sorting, transport, and delivery of postal items;

(b) "express delivery services" means the collection, sorting, transport and delivery of postal items at accelerated speed and reliability, and may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit or confirmation of receipt;

(c) "express mail services" means international express delivery services supplied through the Express Mail Service Cooperative (EMS Cooperative), which is the voluntary association of designated postal operators under the Universal Postal Union (UPU);

(d) "licence" means an authorisation, granted to an individual supplier of delivery services by a competent regulatory authority, setting out procedures, obligations and requirements specific to the delivery services sector;

(e) "postal item" means an item up to 31,5 kg addressed in the final form in which it is to be carried by any type of supplier of delivery services, whether public or private, and may include items such as a letter, parcel, newspaper or catalogue;

(f) "postal monopoly" means the exclusive right to supply specified delivery services in the territory of a Party pursuant to pursuant to laws of that Party; and

(g) "universal service" means the permanent supply of a delivery service of a specified quality at all points in the territory of a Party at affordable prices for all users.

PUBLIC

ARTICLE 22.2

Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party that maintains a universal service obligation shall administer it in a transparent, non-discriminatory and neutral manner with regard to all suppliers of delivery services subject to the obligation.

2. If a Party requires inbound express mail services to be supplied on a universal service basis, it shall not accord preferential treatment to those services over other international express delivery services.

ARTICLE 22.3

Prevention of market distortive practices

Each Party shall ensure that a supplier of delivery services that is subject to a universal service obligation or a postal monopoly does not engage in market distortive practices such as:

(a) using revenues derived from the supply of a service subject to a universal service obligation or a postal monopoly to cross-subsidise the supply of an express delivery service or any non-universal delivery service; or

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(b) unjustifiably differentiating among customers such as businesses, large volume mailers or consolidators with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service obligation or a postal monopoly.

PUBLIC

ARTICLE 22.4

Licences

1. If a Party requires a licence for the provision of delivery services, it shall make publicly available:

(a) all licensing requirements and the period of time normally required to reach a decision concerning an application for a licence; and

(b) the terms and conditions of the licence.

2. The procedures, obligations and requirements of a license shall be transparent, non-discriminatory and based on objective criteria.

3. If an application for a licence is rejected by the competent regulatory authority, it shall inform the applicant of the reasons for the rejection in writing. Each Party shall establish or maintain an appeal procedure through a body that is independent from the parties involved in the licence application procedure. This body may be a tribunal or court.

PUBLIC

ARTICLE 22.5

Independence of the regulatory authorities

1. Each Party shall ensure that any authority responsible for regulating delivery services is not accountable to any supplier of delivery services, and that the decisions and procedures that the regulatory authority adopts are impartial, non-discriminatory and transparent with respect to all market participants in its territory.

2. Each Party shall ensure that the authority responsible for regulating delivery services performs its tasks in a timely manner and has adequate financial and human resources.

CHAPTER 23

TELECOMMUNICATIONS SERVICES

PUBLIC

ARTICLE 23.1

Scope

1. This Chapter sets out principles of the regulatory framework for the provision of telecommunications networks and services, liberalised pursuant to Chapters 17 and 18.

2. This Chapter does not apply to services providing, or exercising editorial control over, content transmitted using telecommunications networks and services.

ARTICLE 23.2

Definitions

PUBLIC

For the purposes of this Chapter:

(a) "associated facilities" means services, physical infrastructures and other facilities associated with a telecommunications network or service, which enable or support the provision of services through that network or service or have the potential to do so, and may include buildings or entries to buildings, building wiring, antennas, towers and other supporting constructions, ducts, conduits, masts, manholes and cabinets;

(b) "essential facilities" means facilities of a public telecommunications network or service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(c) "interconnection" means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another suppliers, irrespective of whether those services are provided by the suppliers involved or by any other supplier who has access to the network;

(d) "internet access services" means public telecommunications services that provide access to the internet in the territory of a Party, and thereby provide connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.

(e) "leased circuits" mean telecommunications services or facilities between two or more designated points, including those of a virtual nature, that set aside capacity for the dedicated use of, or availability to, a user;

(f) "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for telecommunications networks or services as a result of its control over essential facilities or the use of its position in that market;

(g) "network elements" means facilities or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of those facilities or equipment;

(h) "number portability" means:

(i) for the EU Party, the ability of a subscriber who so requests to retain the existing telephone number, at the same location in the case of fixed line subscribers, when switching between the same category of suppliers of public telecommunications services, without impairment of quality, reliability or convenience; and

PUBLIC

(ii) for Chile, the ability of an end-user to retain, upon request, the existing telephone number when switching between suppliers of public telecommunications services, without impairment of quality, reliability or convenience;

(i) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services between network termination points;

(j) "public telecommunications service" means any telecommunications service that is offered to the public generally;

(k) "subscriber" means any natural or juridical person that is party to a contract with a supplier of public telecommunications services for the supply of such services;

(l) "telecommunications" means the transmission and reception of signals by any electromagnetic means;

(m) "telecommunications network" means transmission systems and, if applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical or other electromagnetic means;

(n) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and services covered by this Chapter[1];

[1] For greater certainty, telecommunications regulatory authority includes any authority charged by a Party with the enforcement of the obligations set out in this Chapter.

(o) "telecommunications service" means a service which consists wholly or mainly in the transmission and reception of signals, including of broadcasting signals, via telecommunications networks, including via networks used for broadcasting;

(p) "universal service" means the minimum set of services of specified quality that must be made available to all users in the territory of a Party, regardless of their geographical location and at an affordable price; and

(q) "user" means any natural or juridical person using a public telecommunications network or service.

PUBLIC

ARTICLE 23.3

Telecommunications regulatory authority

1. Each Party shall ensure that its telecommunications regulatory authority is legally distinct and functionally independent from any supplier of telecommunications networks, services or equipment, and that the decisions adopted by, and the procedures used by, its telecommunications regulatory authority are impartial with respect to all market participants.

2. A Party that retains ownership or control of suppliers of telecommunications networks, services or equipment shall ensure the effective structural separation of the telecommunications regulatory function from activities associated with that ownership or control.

3. With a view to ensuring the independence and impartiality of telecommunications regulatory authorities, each Party shall ensure that its telecommunications regulatory authority does not hold a financial interest or maintain an operating or management role in any supplier of telecommunications networks, services or equipment.

4. Each Party shall ensure that suppliers of telecommunications networks, services or equipment do not influence the decisions and procedures of the telecommunications regulatory authority.

5. Each Party shall provide its telecommunications regulatory authority with the regulatory and supervisory power, as well as adequate financial and human resources, to carry out the tasks assigned to it in order to enforce the obligations set out in this Chapter. Such power shall be exercised transparently and in a timely manner. Those tasks shall be made public in an easily accessible and clear form, in particular when those tasks are assigned to more than one body.

6. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon request, with all the information, including financial information, which is necessary to enable the telecommunications regulatory authority to carry out its tasks in accordance with this Chapter. Any Information provided shall be treated in accordance with the requirements of confidentiality.

PUBLIC

7. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision issued by its telecommunications regulatory authority has a right to appeal against that decision to an appeal body that is independent of the telecommunications regulatory authority and of other parties affected by the decision. Pending the outcome of the appeal, the decision issued by the telecommunications regulatory authority shall stand, unless interim measures are granted in accordance with the law of the Party.

PUBLIC

ARTICLE 23.4

Authorisation to provide telecommunications networks or services

1. If a Party requires an authorisation for the provision of telecommunications networks or services, it shall state a reasonable period of time normally required for the telecommunications regulatory authority to decide on the authorisation request, communicate that period of time to the applicant in a transparent manner and shall endeavour to decide on the request within the communicated period of time[1].

2. Any authorisation criteria and applicable procedures shall be as simple as possible, objective, transparent, non-discriminatory and proportionate. Any obligations and conditions imposed on or associated with an authorisation shall be non-discriminatory, transparent, proportionate and related to the services provided.

[1] For greater certainty, this Article does not preclude a Party from authorising the provision of telecommunications networks or services upon simple notification without having to wait for a decision by the telecommunications regulatory authority.

3. Each Party shall ensure that an applicant receives in writing the reasons for the denial or the revocation of an authorisation, or for the imposition of supplier-specific conditions. In case of such denial, revocation or imposition, an applicant shall be able to seek recourse before an appeal body.

4. Administrative fees imposed on suppliers, if any, shall be objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Chapter[1].

PUBLIC

ARTICLE 23.5

Interconnection

Without prejudice to Article 23.9, each Party shall ensure that a supplier of public telecommunications networks or services in its territory has the right and, on request of another supplier of public telecommunications networks or services in its territory, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services within its territory.

1 Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

ARTICLE 23.6

Access and use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of any public telecommunications networks or services on reasonable and non-discriminatory[1] terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 through 5.

2. Each Party shall ensure that any service supplier of the other Party has access to and use of any public telecommunications service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to paragraph 5, that such supplier is permitted to:

(a) purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to provide its services;

(b) interconnect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another supplier of telecommunications services; and

(c) use operating protocols of its choice in the supply of any service, other than as necessary to ensure the availability of telecommunications services to the public generally.

[1] For the purposes of this Article, "non-discriminatory" means most-favoured-nation and national treatment as defined in Articles 17.9, 17.11, 18.4 and 18.5, as well as under terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or services in like situations.

3. Each Party shall ensure that a service supplier of the other Party may use public telecommunications networks or services for the movement of information within and across the border of that Party, including for intra-corporate communications of such service supplier, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services in its territory other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available to the public generally; or

(b) protect the technical integrity of public telecommunications networks or services.

PUBLIC

ARTICLE 23.7

Resolution of telecommunications disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights or obligations that arise from this Chapter, and on request of either disputing party, the telecommunications regulatory authority issues a binding decision within a reasonable period of time to resolve the dispute.

2. Each Party shall ensure that the decision issued by the telecommunications regulatory authority is made available to the public, subject to the requirements of business confidentiality under its laws and regulations. The telecommunications regulatory authority shall provide the disputing parties with a full statement of the reasons on which the decision is based. The disputing parties shall have the right to appeal that decision, in accordance with Article 23.3(7).

3. Each Party shall ensure that the procedure referred to in paragraphs 1 and 2 does not preclude either disputing party from bringing an action before a judicial authority, in accordance with the laws and regulations of the Party.

PUBLIC

ARTICLE 23.8

Competitive safeguards on major suppliers

Each Party shall adopt or maintain appropriate measures for the purpose of preventing suppliers of telecommunications networks or services who, alone or together, are a major supplier, from engaging in or continuing anti competitive practices, including:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

PUBLIC

ARTICLE 23.9

Interconnection with major suppliers

1. Each Party shall ensure that major suppliers of public telecommunications networks or services provide interconnection at any technically feasible point in the network. Major suppliers shall provide such interconnection:

(a) under non-discriminatory terms and conditions, including in regard to rates, technical standards, specifications, quality and maintenance, and of a quality no less favourable than that provided for their own like services, or for like services of their subsidiaries or other affiliates;

(b) in a timely fashion, on terms and conditions, including in relation to rates, technical standards, specifications, quality and maintenance, that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall make publicly available the procedures applicable for interconnection with a major supplier.

PUBLIC

3. Each Party shall ensure that major suppliers make publicly available either their interconnection agreements or their reference interconnection offers, as appropriate.

PUBLIC

ARTICLE 23.10

Access to the essential facilities of major suppliers

Each Party shall provide its telecommunications regulatory authority with the power to require that a major supplier in its territory makes its essential facilities available to suppliers of telecommunications networks or services on reasonable and non-discriminatory terms and conditions for the purpose of providing telecommunications network or services, except if this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority. The essential facilities of a major supplier may include network elements, leased circuits services and associated facilities.

ARTICLE 23.11

Scarce resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and in pursuit of general interest objectives. Procedures, conditions and obligations attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.

2. Each Party shall make the current use of allocated frequency bands publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.

3. The measures of a Party allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Articles 17.8 and 18.7. Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with this Part. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

PUBLIC

ARTICLE 23.12

Number portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability, on a timely basis, and on reasonable terms and conditions.

PUBLIC

ARTICLE 23.13

Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain, and to decide on their scope and implementation.

2. Universal service obligations will not be regarded as anti-competitive *per se*, provided that they are administered in a proportionate, transparent, objective and non-discriminatory manner. The administration of such obligations shall be neutral with respect to competition and not be more burdensome than necessary for the kind of universal service defined by the Party.

3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services and shall designate universal service suppliers through an efficient, transparent and non-discriminatory mechanism.

4. If a Party decides to fund the provision of universal service by a supplier, it shall ensure that such funding does not exceed the net cost caused by the universal service obligation.

PUBLIC

ARTICLE 23.14

Confidentiality of information

1. Each Party shall ensure that suppliers of telecommunications networks or services that acquire confidential information from another supplier of telecommunications networks or services in the process of negotiating arrangements pursuant to Articles 23.5, 23.6, 23.9 and 23.10, use that information solely for the purposes for which it was supplied and respect at all times the confidentiality of such information.

2. Each Party shall ensure the confidentiality of telecommunications and related traffic data transmitted in the use of public telecommunications networks or services, provided that any measures it takes to that end are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

ARTICLE 23.15

Foreign shareholding

With regard to the provision of telecommunications networks or services, other than public radio broadcasting, through commercial presence, a Party shall not impose joint venture requirements or limit the participation of foreign capital in terms of maximum percentage limits on foreign shareholding or the total value of individual or aggregate foreign investment.

PUBLIC

ARTICLE 23.16

Open and non-discriminatory internet access

1. Each Party shall adopt or maintain measures to ensure that suppliers of internet access services enable users of those services to access and distribute information, content and services of their choice.

2. Paragraph 1 is without prejudice to the laws and regulations of a Party related to the lawfulness of the information, content or services referred to in that paragraph.

3. Notwithstanding paragraph 1, suppliers of internet access services may implement non-discriminatory[1], reasonable, transparent and proportionate network management measures which are consistent with the laws and regulations of a Party.

[1] Subject to the exceptions provided in the laws and regulations of a Party.

4. Each Party shall adopt or maintain measures to ensure that suppliers of internet access services enable users of those services to use devices of their choice, provided that such devices do not harm the security of other devices, the network or services provided over the network.

PUBLIC

ARTICLE 23.17

International mobile roaming

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services in ways that can help promote the growth of trade among the Parties and enhance consumer welfare.

2. Each Party may take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:

(a) ensuring that information regarding retail rates is easily accessible to the public; and

(b) minimising impediments to the use of technological alternatives to roaming, whereby users visiting the territory of a Party from the territory of the other Party can access telecommunications services using the device of their choice.

CHAPTER 24

# INTERNATIONAL MARITIME TRANSPORT SERVICES

PUBLIC

## ARTICLE 24.1

### Scope, definitions and principles

1. This Chapter sets out the principles regarding the liberalisation of international maritime transport services pursuant to Chapters 17, 18 and 19.

2. For the purpose of this Chapter, and Chapters 17, 18 and 19 and of Annexes 17-A, 17-B and 17-C:

(a) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;

(b) "customs clearance services" or "customs house brokers' services" means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;

(c) "door-to-door or multimodal transport operations" means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;

(d) "feeder services" means the pre- and on-ward transportation by sea, between ports located in a Party, of international cargo, notably containerised, en route to a destination outside the territory of that Party;

(e) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

(f) "international cargo" means cargo transported between a port of one Party and a port of the other Party or of a third country, or between a port of one Member State and a port of another Member State;

(g) "international maritime transport services" means the transport of passengers or cargo by sea-going vessels between a port of one Party and a port of the other Party or of a third country, including the direct contracting with providers of other transport services, with a view to cover door-to-door or multimodal transport operations under a single transport document, but not the right to provide such other transport services;

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(h) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

(i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; or

(ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;

(i) "maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services; and

(j) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies; the activities covered include the organisation and supervision of:

(i) the loading or discharging of cargo to or from a ship;

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(ii) the lashing or unlashing of cargo; and

(iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge.

3. In view of the existing levels of liberalisation between the Parties in international maritime transport, the following principles apply:

(a) the Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis; and

(b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships, including with regard to access to ports, use of infrastructure and services of ports, and use of maritime auxiliary services, as well as related fees and charges, customs facilities and assignment of berths and facilities for loading and unloading.

4. In applying the principles referred to in paragraph 3, each Party shall:

(a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and

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(b) as from the date of entry into force of this Agreement, abolish and abstain from introducing any unilateral measures or administrative, technical or other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

5. Each Party shall permit international maritime transport service suppliers of the other Party to have an enterprise established and operating in its territory in accordance with the conditions provided for in its schedule of specific commitments in Annexes 17-A, 17-B and 17-C, respectively.

6. Each Party shall make available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

7. Each Party shall permit the international maritime transport service suppliers of the other Party to re-position owned or leased empty containers which are not being carried as cargo against payment, between ports of Chile or between ports of a Member State.

PUBLIC

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# CHAPTER 25

# FINANCIAL SERVICES

## ARTICLE 25.1

### 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 territory of the Party; or

(c) cross-border trade in financial services.

2. For greater certainty, Chapter 17 applies to a measure:

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

(b) 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 the territory of the other Party in a financial institution.

3. The provisions of Chapters 17 and 18 apply to measures within the scope of this Chapter only to the extent that those provisions are incorporated into and made part of this Chapter.

4. Articles 17.5, 17.16 to 17.23 and 18.10 are hereby incorporated into and made a part of this Chapter.

5. Section D of Chapter 17 is hereby incorporated into and made a part of this Chapter solely for claims that a Party has breached Article 17.5, 17.16, 17.17, 17.18, 17.19, 17.20, 17.21, Article 25.3(2), or Article 25.5(2).

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

(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.

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7. Notwithstanding paragraph 6, this Chapter applies to the extent that a Party allows any of the activities or services referred to in subparagraph (b) or (c) of paragraph 6 to be conducted by its financial institutions in competition with a public entity or a financial institution.

8. Articles 25.3 and 25.5 to 25.9 do not apply with respect to public procurement.

9. Articles 25.3 and 25.5 to 25.8 do not apply with respect to subsidies granted by a Party, including government-supported loans, guarantees and insurances.

PUBLIC

ARTICLE 25.2

Definitions

For the purposes of this Chapter and Annex 25:

(a) "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;

(b) "cross-border supply of financial services" or "cross-border trade in financial services" means the supply of a financial service:

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

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

(c) "financial institution" means a supplier of one or more financial services which 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;

(d) "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):

(1) life; and

(2) non-life;

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(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; and

(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 transactions;

(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;

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

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

(2) foreign exchange;

(3) derivative products including futures and options;

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

(5) transferable securities; or

(6) 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;

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

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

(e) "financial service supplier of a Party" means a natural or juridical person of a Party that seeks to supply, or supplies, a financial service, but does not include a public entity;

(f) "investment" means investment as defined in Article 17.2, except that for the purposes of this Chapter and Annex 25 with respect to "loans" and "debt instruments":

(i) 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

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(ii) 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 (i), 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 17, if such loan or debt instrument meets the criteria of the definition of "investment" set out in subparagraph (k) of Article 17.2;

(g) "investor of a Party" means a natural or juridical person of a Party that seeks to make, is making or has made an investment in financial institutions in the territory of the other Party;

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

(i) for the EU Party: 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[1] in the territory of the European Union; and

(ii) for Chile: a juridical person constituted or organised under the law of Chile and engaged in substantive business operations in the territory of Chile;

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



PUBLIC

(i) "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;

(j) "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; and

(k) "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.

PUBLIC

ARTICLE 25.3

National treatment

1. Each Party shall accord to investors in financial institutions of the other Party and to enterprises constituting investments in financial institutions, with respect to the establishment, treatment no less favourable than the treatment it accords, in like situations[1], to its own investors in financial institutions and to their enterprises that are financial institutions.

2. Each Party shall accord to investors in financial institutions of the other Party and to their investments in financial institutions, with respect to the operation, treatment no less favourable than the treatment it accords, in like situations[2], to its own investors in financial institutions and to their investments in financial institutions.

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 in financial institutions of Chile and to their investments in financial institutions in its territory;

[1] 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.

[2] 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.

(b) with respect to a government of, or in, a Member State, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors in financial institutions of that Member State and to their investments in financial institutions in its territory[1].

PUBLIC

ARTICLE 25.4

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 security and general exceptions as set out in Article 28.3.

[1] For greater certainty, the treatment accorded by a government of, or in, a Member State includes the regional and local level of government, when applicable.

ARTICLE 25.5

Most-favoured-nation treatment

1. Each Party shall accord to investors in financial institutions of the other Party and to their enterprises constituting investments in financial institutions, with respect to the establishment, treatment no less favourable than the treatment it accords, in like situations[1], to investors in financial institutions of a third country and to their enterprises that are financial institutions.

2. Each Party shall accord to investors in financial institutions of the other Party and to their investments in financial institutions with respect to the operation, treatment no less favourable than the treatment it accords, in like situations[2], to investors in financial institutions of a third country and to their investments in financial institutions.

3. Paragraphs 1 and 2 shall not be construed to oblige a Party to extend to investors in financial institutions of the other Party or their investments in financial institutions the benefit of any treatment resulting from measures providing for the recognition of the standards, 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.

[1] 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.

[2] 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.

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 treaties or trade agreements do not in themselves constitute "treatment" 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 of a Party applied pursuant to such substantive provisions may constitute "treatment" under this Article and thus give rise to a breach of this Article.

PUBLIC

ARTICLE 25.6

Market access

1. In the sectors or subsectors listed in Sections B of Appendices 25-1 and 25-2 where market access commitments are undertaken, a Party shall not adopt or maintain, with respect to market access through establishment or operation of financial institutions by investors of the other Party, either on the basis of its entire territory or on the basis of a regional subdivision, a measure that:

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

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

(c) limits 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;

(d) limits 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

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

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 that Party, the range of financial services supplied by the financial institution may not be supplied through a single entity.

ARTICLE 25.7

Cross-border supply of financial services

1. Articles 18.4, 18.5, 18.6 and 18.7 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 Sections A of Appendices 25-1 and 25-2.

PUBLIC

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

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 the other Party and of financial instruments.

ARTICLE 25.8

Senior management and boards of directors

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

PUBLIC

ARTICLE 25.9

Performance requirements

PUBLIC

1. A Party shall not, in connection with the establishment or operation of any financial institution of a Party or of a third country 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 the world market in its territory;

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

(j) restrict the exportation or sale for export.

2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or the operation of any financial institution of a Party or of a third country in its territory, 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;

PUBLIC

(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 third country, 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. Subparagraph (f) of paragraph 1 does not apply if:

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

(b) the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority in order to remedy a practice determined after judicial or administrative process to be a violation of the competition laws of the Party.

PUBLIC

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

6. Subparagraphs (a) and (b) of paragraph 2 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 25.

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

PUBLIC

ARTICLE 25.10

Non-conforming measures

PUBLIC

1. Articles 25.3, 25.5, 25.7, 25.8 and 25.9 do not apply to:

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

(i) for the EU Party:

(A) the European Union, as set out in Section C of Appendix 25-1;

(B) the central government of a Member State, as set out in Section C of Appendix 25-1;

(C) a regional level of government of a Member State, as set out in Section C of Appendix 25-1; or

(D) a local level of government; and

(ii) for Chile:

(A) the central government, as set out in Section C of Appendix 25-2;

(B) a regional level of government, as set out in Section C of Appendix 25-2; or

(C) 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) of this paragraph to the extent that the modification does not decrease the conformity of the measure as it existed immediately before the modification, with Article 25.3, 25.5, 25.7, 25.8 or 25.9.

2. Articles 25.3, 25.5, 25.7, 25.8 and 25.9 do not apply to any measure of a Party with respect to sectors, subsectors or activities, as set out by that Party in Section D of Appendices 25-1 and 25-2, respectively.

3. A Party shall not, under any measure adopted after the date of entry into force of this Agreement and covered by Section D of Appendices 25-1 and 25-2, respectively, 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 25.6 does not apply to any measure of a Party with respect to sectors, subsectors or activities as set out by that Party in Section B of Appendices 25-1 and 25-2, respectively.

PUBLIC

5. Where a Party has set out a reservation to Article 17.9, 17.11, 17.12, 17.13, 18.4 or 18.5 in Annex 17-A or 17-B, the reservation also constitutes a reservation to Article 25.3, 25.5, 25.7, 25.8 or 25.9, 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.

PUBLIC

ARTICLE 25.11

Prudential carve-out

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

(a) for 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 the financial system of a Party.

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

ARTICLE 25.12

Treatment of information

Nothing in this Part 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.

PUBLIC

ARTICLE 25.13

Domestic regulation and transparency

1. Chapter 20, with the exception of subparagraphs (c) to (f) of Article 20.1(5), and Chapter 36 do not apply to measures of a Party within the scope of this Chapter.

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

(a) publish in advance:

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

(ii) documents that provide sufficient details about such possible new laws and regulations 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 submit comments on any proposed laws and regulations or documents published pursuant to subparagraph (a);

(c) consider any comments submitted in accordance with subparagraph (b); and

(d) allow a reasonable time between the publication of any laws and regulations pursuant to subparagraph (a)(i) and the date on which financial service suppliers must comply with them.

3. This Article applies to measures of a Party relating to licensing requirements and procedures, and qualification requirements and procedures, and it applies only in sectors for which the Party has undertaken specific commitments under this Chapter, and to the extent that those specific commitments apply.

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

(a) those measures are based on objective and transparent criteria[1];

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

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



PUBLIC

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

5. If a Party requires authorisation[1] for the supply of a financial service it 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 available:

(a) the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation;

(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; and

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

PUBLIC

[1] 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.

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

(a) to the extent practicable, permit an applicant to submit an application at any time throughout the year[1];

(b) allow a reasonable period of time 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 law of the Party, 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 financial service.

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

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

9. If a competent authority considers an application incomplete for processing under the laws and regulations of the Party, it shall, within a reasonable period of time, and to the extent practicable:

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

(b) 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

(c) provide the applicant with the opportunity[1] to submit the additional information required to complete the application;

10. If none of the actions set out in subparagraphs (a), (b) or (c) of paragraph 9 is practicable, the competent authorities shall nevertheless, if the application is rejected due to incompleteness, ensure that they inform the applicant thereof within a reasonable period of time.

11. Each Party shall ensure that its competent authorities, with respect to authorisation fees[2] 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 commitments or obligations of the Party.

PUBLIC

[1] Such opportunity does not require a competent authority to provide extensions of deadlines.

[2] 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.

12. A competent authority shall take its decision in an independent manner and not be accountable to any person supplying the services for which the licence or authorisation is required.

13. 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 initiative of the competent authority, in writing and without undue delay. To the extent practicable, the applicant shall be informed of the reasons for the decision to reject the application and of the timeframe for an appeal against that decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

15. If examinations are required for an authorisation, the competent authority shall ensure that such examinations are organised at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination.

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

PUBLIC

ARTICLE 25.14

Financial services new to the territory of a Party

1. A 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 law, in like situations, provided that the introduction of the new financial services does not require new laws or regulations or the modification of existing laws or regulations.

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. If 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 the territory of either Party. Such application is subject to the law of the Party receiving the application and is not subject to the obligations of this Article.

PUBLIC

ARTICLE 25.15

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 organisation in order to provide a financial service in or into the territory of the former Party, it shall ensure that the self-regulatory organisation observes the obligations set out in Articles 17.9, 17.11, 18.4 and 18.5.

ARTICLE 25.16

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 lender of last resort facilities of the Party.

PUBLIC

ARTICLE 25.17

Sub-Committee on Financial Services

1. The Sub-Committee on Financial Services ("Sub-Committee"), established pursuant to Article 8.8(1), shall be composed of representatives of the Parties responsible for financial services.

2. The Sub-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 respective regulatory systems of the Parties and to cooperate in the development of international standards; and

(d) participate in the dispute settlement procedures in accordance with Article 25.20.

PUBLIC

ARTICLE 25.18

Technical discussions and consultations

1. A Party may request technical discussions and consultations with the other Party regarding any matter arising under this Part that affects financial services. The other Party shall give sympathetic consideration to that request. The Parties shall report the results of their discussions and consultations to the Sub-Committee.

2. Each Party shall ensure that in those technical discussions and consultations, its delegation includes officials with the relevant expertise in financial services.

3. For greater certainty, nothing in this Article shall be construed as requiring a Party to:

(a) derogate from its relevant laws and regulations regarding the sharing of information among financial regulators or from the requirements of an agreement or arrangement between financial authorities of the Parties; or

(b) require regulatory authorities to take any action that would interfere with specific regulatory, supervisory, administrative, or enforcement matters.

PUBLIC

4. Nothing in this Article shall be construed as impeding a Party that requires information for supervisory purposes concerning a financial institution located in the territory of the other Party or a cross-border financial service supplier of the other Party, from approaching the competent regulatory authority of the other Party to seek the information.

5. For greater certainty, this Article is without prejudice to either Party's rights and obligations under Chapter 38.

PUBLIC

ARTICLE 25.19

Dispute settlement

1. Chapter 38, including Annexes 38-A and 38-B, applies as modified by this Article to the settlement of disputes concerning the application or interpretation of this Chapter.

2. In addition to the requirements set out in Article 38.9, 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 Sub-Committee shall recommend the Joint Committee the establishment of a list of at least 15 individuals, fulfilling the requirements referred to in paragraph 2, who are willing and able to serve as panellists. The Joint Committee shall establish such list no later than one year 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 EU Party;

(b) one sub-list of individuals established on the basis of proposals by 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 Committee shall ensure that the list is always maintained at this minimum number of individuals.

5. For the purposes of this Chapter, the list referred to in paragraph 3 of this Article shall, after establishment, replace the list established pursuant to Article 38.8(1).

PUBLIC

ARTICLE 25.20

Resolution of investment disputes concerning financial services

1. Section D of Chapter 17 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 Part of this Agreement applies and in which an investor claims that a Party has breached Article 25.3(2), 25.5(2), 17.17, 17.18, 17.19 or 17.20; or

(b) investment disputes commenced pursuant to Chapter 17, in which Article 25.11 has been invoked.

2. In the case of an investment dispute pursuant to subparagraph (a) of paragraph 1 of this Article, or if the respondent invokes Article 25.11 pursuant to subparagraph (b) of paragraph 1 of this Article within 60 days of the submission of a claim to the Tribunal in accordance with Article 17.30, the division of the Tribunal hearing the case may appoint, after consulting the disputing parties and pursuant to Article 17.50, one or more experts from the list adopted pursuant to Article 25.19 to report to it on any factual issue concerning financial services matters raised by a disputing party in the proceedings.

PUBLIC

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 Article 25.11, that Article shall apply as a valid defence to a claim based on any of the other provisions of this Part of this Agreement, including Article 17.17. Following a request for consultations pursuant to Article 17.27, the respondent may refer, in writing, to the Sub-Committee that it determines whether and, if so, to what extent, the measure which is the subject of that request for consultations is justified under Article 25.11. Such referral shall be made as soon as possible after the reception of the request for consultations. Upon such referral, the time periods referred to in Articles 17.27, 17.28 and 17.30 shall be suspended.

4. Following a referral pursuant to paragraph 3, the Sub-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 Sub-Committee determines that the measure is justified under Article 25.11, no claim may be submitted before the Tribunal pursuant to Article 17.30.

6. If the Sub-Committee has not made a determination within three months of the referral pursuant to paragraph 3of this Article, the suspension of time periods referred to in that paragraph shall cease to apply.

7. Failure of the respondent to make a referral pursuant to paragraph 3 of this Article does not affect the right of the respondent to invoke Article 25.11 as a defence at a later stage of the proceedings. The Tribunal shall draw no adverse inference from the fact that the Sub-Committee has not agreed on a determination.

PUBLIC

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# CHAPTER 26

# DIGITAL TRADE

## SECTION A

## GENERAL PROVISIONS

### ARTICLE 26.1

### Scope

1. This Chapter applies to trade enabled by electronic means.

2. This Chapter does not apply to audio-visual services.

### ARTICLE 26.2

### Definitions

1. The definitions in Articles 17.2 and 18.2 apply to this Chapter.

2. For the purposes of this Chapter:

(a) "consumer" means any natural person, or juridical person if provided for in the laws and regulations of a Party, using or requesting a public telecommunications service for purposes outside its trade, business or profession;

(b) "direct marketing communication" means any form of commercial advertising by which a natural or juridical person communicates marketing messages directly to end-users via a public telecommunications service and covers at least electronic mail and text and multimedia messages;

(c) "electronic authentication" means a process that enables to confirm:

(i) the electronic identification of a natural or juridical person; or

(ii) the origin and integrity of data in electronic form;

(d) "electronic seal" means data in electronic form used by a juridical person which is attached to, or logically associated with, other data in electronic form to ensure the origin and integrity of that other data;

PUBLIC

(e) "electronic signature" means data in electronic form which is attached to, or logically associated with, other data in electronic form, and fulfils the following requirements:

(i) it is used by a natural person to agree on the data in electronic form to which it relates; and

(ii) it is linked to the data in electronic form to which it relates in such a way that any subsequent alteration in the data in electronic form is detectable;

(f) "electronic trust services" means an electronic service consisting of the creation, verification, and validation of electronic signatures, electronic seals, electronic time stamps, electronic registered delivery, website authentication and certificates related to that service;

(g) "end-user" means any natural or juridical person using or requesting a public telecommunications service, either as a consumer or, if provided for in the laws and regulations of a Party, for trade, business or professional purposes;

(h) "personal data" means personal data as defined in subparagraph (r) of Article 8.3; and

(i) "public telecommunications service" means public telecommunications service as defined in subparagraph (j) of Article 23.2.

PUBLIC

ARTICLE 26.3

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, the environment, including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.

PUBLIC

ARTICLE 26.4

Exceptions

Nothing in this Chapter prevents the Parties from adopting or maintaining measures in accordance with Articles 25.11, 39.1 and 39.2 for the public interest reasons set out therein.

SECTION B

DATA FLOWS AND PERSONAL DATA PROTECTION

PUBLIC

ARTICLE 26.5

Cross-border data flows

The Parties are committed to ensuring cross-border data flows to facilitate digital trade. To that end, a Party shall not restrict cross-border data flows between the Parties by:

(a) requiring the use of computing facilities or network elements in the territory of that Party for processing, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of that Party;

(b) requiring the localisation of data in the territory of that Party for storage or processing;

(c) prohibiting storage or processing in the territory of the other Party; or

(d) making the cross-border transfer of data contingent upon the use of computing facilities or network elements in the territory of that Party or upon localisation requirements in the territory of that Party.

ARTICLE 26.6

Protection of personal data and privacy

1. Each Party recognises that the protection of personal data and privacy is a fundamental right and that high standards in this regard contribute to trust in the digital economy and to the development of trade.

2. Each Party may adopt and maintain the measures it deems appropriate to ensure the protection of personal data and privacy, including the adoption and application of rules for the cross-border transfer of personal data. Nothing in this part of this Agreement shall affect the protection of personal data and privacy afforded by the measures of a Party.

SECTION C

SPECIFIC PROVISIONS

ARTICLE 26.7

Customs duties on electronic transmissions

A Party shall not impose customs duties on electronic transmissions between a person of that Party and a person of the other Party.

PUBLIC

ARTICLE 26.8

No prior authorisation

1. A Party shall not require prior authorisation solely on the ground that a service is provided online[1], or adopt or maintain any other requirement having equivalent effect.

2. Paragraph 1 does not apply to telecommunications services, broadcasting services, gambling services, legal representation services, or to services of notaries or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority.

ARTICLE 26.9

Conclusion of contracts by electronic means

1. Each Party shall ensure that its laws and regulations allow contracts to be concluded by electronic means and that the legal requirements for contractual processes do not create obstacles for the use of contracts concluded by electronic means or result in such contracts being deprived of legal effect and validity for having been concluded by electronic means.

[1] A service is provided online when it is provided by electronic means and without the persons being simultaneously present.



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2. Paragraph 1 does not apply to:

(a) broadcasting services, gambling services and legal representation services;

(b) services of notaries or equivalent professions involving a direct and specific connection with the exercise of public authority; and

(c) contracts that establish or transfer rights in real estate, contracts requiring by law the involvement of courts, public authorities or professions exercising public authority, contracts of suretyship granted and or collateral securities furnished by persons acting for purposes outside their trade, business or profession and contracts governed by family law or by the law of succession.

ARTICLE 26.10

Electronic trust services and electronic authentication

1. A Party shall not deny the legal effect and admissibility as evidence in judicial or administrative proceedings of an electronic trust service and an electronic authentication on the basis that it is in electronic form.

PUBLIC

2. A Party shall not adopt or maintain measures that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate method of electronic authentication for their transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to prove to judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic trust services and electronic authentication.

3. Notwithstanding paragraph 2, a Party may require that for a particular category of electronic transactions, the method of electronic authentication or electronic trust service:

(a) is certified by an authority accredited in accordance with its law; or

(b) meets certain performance standards which shall be objective, transparent and non-discriminatory and only relate to the specific characteristics of the category of electronic transactions concerned.

PUBLIC

ARTICLE 26.11

Online consumer trust

1. The Parties recognise the importance of enhancing consumer trust in digital trade. Each Party shall adopt or maintain measures to ensure the effective protection of consumers engaging in electronic commerce transactions, including measures that:

(a) proscribe fraudulent and deceptive commercial practices;

(b) require suppliers of goods and services to act in good faith and abide by fair commercial practices, including through the prohibition of charging consumers for unsolicited goods and services;

(c) require suppliers of goods or services to provide consumers with clear and thorough information regarding their identity and contact details[1], as well as regarding the goods or services, the transaction and the applicable consumer rights; and

(d) grant consumers access to redress to claim their rights, including a right to remedies in cases where goods or services are paid and not delivered or provided as agreed.

[1] In the case of intermediary service suppliers, this also includes the identity and contact details of the actual supplier of the good or the service.

2. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to electronic commerce in order to enhance consumer trust.

PUBLIC

ARTICLE 26.12

Unsolicited direct marketing communications

1. Each Party shall ensure that end-users are effectively protected against unsolicited direct marketing communications.

2. Each Party shall adopt or maintain effective measures regarding unsolicited direct marketing communications that:

(a) require suppliers of unsolicited direct marketing communications to ensure that recipients are able to prevent ongoing reception of those communications; or

(b) require the consent, as specified according to its laws and regulations, of recipients to receive direct marketing communications.

3. Each Party shall ensure that direct marketing communications are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable end-users to request cessation free of charge and at any moment.

ARTICLE 26.13

Prohibition of mandatory transfer of or access to source code

1. A Party shall not require the transfer of, or access to, source code of software owned by a natural or juridical person of the other Party. This paragraph does not apply to the voluntary transfer of, or granting of access to, source code on a commercial basis by a person of the other Party, for instance in the context of a public procurement transaction or a freely negotiated contract. Nothing in this paragraph prevents a person of a Party from licencing its software on a free and open-source basis.

2. For greater certainty, Articles 25.11, 39.1 and 39.2 can apply to measures of a Party adopted or maintained in the context of a certification procedure.

3. Nothing in this Article shall affect:

(a) requirements by a court, administrative tribunal or competition authority to remedy a violation of competition law;

(b) protection and enforcement of intellectual property rights; or

(c) the right of a Party to take measures in accordance with Article 28.3.

PUBLIC

ARTICLE 26.14

Cooperation on regulatory issues with regard to digital trade

1. The Parties shall cooperate by exchanging information on their respective law, as well as on the implementation of that law, related to regulatory issues arising from digital trade, including:

(a) the recognition and facilitation of interoperable cross-border electronic trust and electronic authentication;

(b) the treatment of direct marketing communications;

(c) the protection of consumers online; and

(d) any other regulatory issue relevant for the development of digital trade.

2. The Parties shall maintain a dialogue based on the exchange of information referred to in paragraph 1.

3. This Article does not apply to the rules and measures of a Party for the protection of personal data and privacy, including on cross-border transfer of personal data.

PUBLIC

ARTICLE 26.15

Review

Upon request of either Party, the Sub-Committee on Services and Investment referred to in Article 18.10 shall review the implementation of this Chapter, particularly in light of relevant changes affecting digital trade that might arise from new business models or technologies. The Sub-Committee on Services and Investment shall report its findings and may make any necessary recommendations to the Joint Committee.

PUBLIC

CHAPTER 27

CAPITAL MOVEMENTS, PAYMENTS AND TRANSFERS AND TEMPORARY SAFEGUARD MEASURES

ARTICLE 27.1

Objective and scope

The objective of this Chapter is to enable the free movement of capital and payments related to transactions liberalised under this Part.[1]

[1] For greater certainty, this Chapter is subject to Annex 17-E.

ARTICLE 27.2

Current account

Without prejudice to other provisions of this Part of this Agreement, each Party shall allow, in freely convertible currency and in accordance with the Articles of the Agreement of the International Monetary Fund, adopted in Bretton Woods, New Hampshire on 22 July 1944, any payments and transfers with regard to transactions on the current account of the balance of payments that fall within the scope of this Part of this Agreement.

ARTICLE 27.3

Capital movements

Without prejudice to other provisions of this Part, 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 Chapters 17, 18 and 25.

PUBLIC

ARTICLE 27.4

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

1. Articles 17.20, 27.2 and 27.3 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 if 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 of this Article 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.

PUBLIC

ARTICLE 27.5

Temporary safeguard measures

In exceptional circumstances of serious difficulties for the operation of the economic and monetary union of the EU Party, or threat thereof, the EU Party 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.

PUBLIC

ARTICLE 27.6

Restrictions in case of balance of payments and external financial difficulties

1. If 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[1].

2. The measures referred to in paragraph 1 of this Article shall:

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

[1] 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.

(b) not exceed those necessary to deal with the situation specified in paragraph 1 of this Article;

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

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

(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 GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994.

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

5. A Party that adopts or maintains measures referred to in paragraphs 1 and 2 of this Article shall promptly notify them to the other Party.

PUBLIC

6. If restrictions are adopted or maintained under this Article, the Parties shall promptly hold consultations in the Sub-Committee on Services and Investment, unless consultations are held in other fora to which both Parties are members. The consultations shall assess the balance of payments or external financial difficulties 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 the restrictive measures with paragraphs 1 and 2 of this Article. Those consultations shall be based on all relevant findings of statistical or factual nature presented by the International Monetary Fund ("IMF"), where available, and their conclusions shall take into account the assessment by the IMF of the balance of payments and the external financial situation of the Party concerned.

PUBLIC

CHAPTER 28

PUBLIC PROCUREMENT

PUBLIC

ARTICLE 28.1

Definitions

For the purposes of this Chapter and Annexes 28-A and 28-B:

(a) "commercial goods or services" means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;

(b) "construction service" means a service that has as its objective the realisation by whatever means of civil or building works, based on Division 51 of the CPC;

(c) "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;

(d) "in writing" or "written" means any worded or numbered expression that can be read, reproduced and later communicated; it may include electronically transmitted and stored information;

(e) "limited tendering" means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;

(f) "measure" means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;

(g) "multi-use list" means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;

(h) "notice of intended procurement" means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

(i) "offset" means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;

(j) "open tendering" means a procurement method whereby all interested suppliers may submit a tender;

PUBLIC

(k) "procuring entity" means an entity covered under Section A, B or C of Annex 28-A or 28-B;

(l) "qualified supplier" means a supplier that a procuring entity recognises as having satisfied the conditions for participation;

(m) "selective tendering" means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;

(n) "services" includes construction services, unless otherwise specified;

(o) "standard" means a document approved by a recognised body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory; it may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;

(p) "supplier" means a person or group of persons that provides or could provide goods or services; and

PUBLIC

(q) "technical specification" means a tendering requirement that:

(i) sets out the characteristics of:

(A) goods to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production; or

(B) services to be procured, including quality, performance, safety or the processes or methods for their provision; or

(ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

PUBLIC

ARTICLE 28.2

Scope and coverage

1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

2. For the purposes of this Chapter, "covered procurement" means procurement for governmental purposes:

(a) of a good, a service, or any combination thereof:

(i) as specified in Annex 28-A or 28-B; and

(ii) not procured with a view to commercial sale or resale, or for use in the production or supply of a good or a service for commercial sale or resale;

(b) by any contractual means, including purchase, lease and rental or hire purchase, with or without an option to buy;

(c) for which the value, as estimated in accordance with paragraphs 6 to 8, equals or exceeds the relevant threshold specified in Annex 28-A or 28-B, at the time of publication of a notice in accordance with Article 28.6;

(d) by a procuring entity; and

(e) that is not otherwise excluded from coverage pursuant to paragraph 3 of this Article or in Annex 28-A or 28-B.

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3. Except where provided otherwise in Annex 28-A or 28-B, this Chapter does not apply to:

(a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;

(b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, subsidies, equity infusions, guarantees and fiscal incentives;

(c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;

(d) public employment contracts;

(e) procurement conducted:

(i) for the specific purpose of providing international assistance, including development aid;

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(ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or

(iii) under the particular procedure or condition of an international organisation, or funded by international grants, loans or other assistance if the applicable procedure or condition would be inconsistent with this Chapter; or

(f) financial services.

4. A procurement subject to this Chapter shall be all procurement covered by Annex 28-A or 28-B, in which each Party's commitments are set out as follows:

(a) in Section A of Annexes 28-A and 28-B, the central government entities whose procurement is covered by this Chapter;

(b) in Section B of Annexes 28-A and 28-B, the sub-central government entities whose procurement is covered by this Chapter;

(c) in Section C of Annexes 28-A and 28-B, all other entities whose procurement is covered by this Chapter;

(d) in Section D of Annexes 28-A and 28-B, the goods covered by this Chapter;

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(e) in Section E of Annexes 28-A and 28-B, the services, other than construction services, covered by this Chapter;

(f) in Section F of Annexes 28-A and 28-B, the construction services covered by this Chapter;

(g) in Section G of Annexes 28-A and 28-B, public works concessions covered by this Chapter;

(h) in Section H of Annexes 28-A and 28-B, any General Notes;

(i) in Section I of Annexes 28-A and 28-B, the media in which the Party publishes its procurement notices, award notices, and other information related to its public procurement system as set out in this Chapter;

(j) in Section J of Annex 28-B, the conversion rate to be used for the threshold values.

5. If a procuring entity, in the context of covered procurement, requires persons not covered under Annex 28-A or 28-B to procure in accordance with particular requirements, Article 28.4 shall apply *mutatis mutandis* to such requirements.

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity:

(a) shall not divide a procurement into separate procurements or select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and

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(b) shall include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:

(i) premiums, fees, commissions and interest; and

(ii) if the procurement provides for the possibility of options, the total value of such options.

7. If an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts ("recurring contracts") the calculation of the estimated maximum total value shall be based on:

(a) the value of recurring contracts of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, if possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or

(b) the estimated value of recurring contracts of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

PUBLIC

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

(a) in case of a fixed-term contract:

(i) if the term of the contract is 12 months or less, the total estimated maximum value for its duration;

(ii) if the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;

(b) if the contract is for an indefinite period, the estimated monthly instalment multiplied by 48;

(c) if it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall apply.

ARTICLE 28.3

Security and general exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

PUBLIC

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent a Party from imposing or enforcing measures:

(a) necessary to protect public morals, order or safety;

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

(c) necessary to protect intellectual property; or

(d) relating to goods or services of persons with disabilities, of philanthropic institutions or of prison labour.

3. The Parties understand that subparagraph (b) of paragraph 2 includes environmental measures necessary to protect human, animal or plant life or health.

PUBLIC

ARTICLE 28.4

General principles

Non-discrimination

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering goods or services of either Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to its own goods, services and suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

(a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or

(b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

PUBLIC

Use of electronic means

3. The Parties shall ensure that all communication and information exchange for covered procurement are performed using electronic means, including for the publication of procurement information, notices and tender documentation, and for the receipt of tenders. When conducting covered procurement by electronic means, a procuring entity shall:

(a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software;

(b) establish and maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access; and

(c) use electronic means of information and communication for the publication of notices and tender documentation in procurement procedures and to the widest extent practicable for the submission of tenders.

PUBLIC

Conduct of procurement

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:

(a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering; and

(b) prevents conflicts of interest and corrupt practices, in accordance with relevant laws.

Rules of origin

5. For the purposes of public procurement covered by this Chapter, a Party shall not apply rules of origin to goods imported from the other Party that are different from the rules of origin which that Party applies in the normal course of trade to imports of the same goods.

Offsets

6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset at any stage of a procurement.

PUBLIC

Measures not specific to procurement

7. Paragraphs 1 and 2 shall not apply to customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

Anti-corruption measures

8. Each Party shall ensure that it has appropriate measures in place to address and prevent corruption in their public procurement. Such measures may include procedures to render ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the judicial authorities of the Party have determined by final decision to have engaged in bribery, fraud or other illegal actions in relation to public procurement in the territory of that Party. Each Party shall also ensure that it has in place policies and procedures to eliminate to the extent possible or manage any potential conflict of interest on the part of those engaged in or having influence over procurement.

PUBLIC

ARTICLE 28.5

Information on the procurement system

1. Each Party shall:

(a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in the relevant electronic or paper media officially designated at national level, which shall be widely disseminated and remain readily accessible to the public; and

(b) provide an explanation thereof to the other Party, upon request.

2. Each Party shall list, in Section I of Annex 28-A or 28- B, respectively:

(a) the electronic or paper media in which the Party publishes the information set out in paragraph 1;

(b) the electronic or paper media in which the Party publishes the notices required by Articles 28.6, 28.8(9) and 28.17(2); and

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(c) the website address or addresses where the Party publishes:

(i) its procurement statistics pursuant to Article 28.17(4); or

(ii) its notices concerning awarded contracts pursuant to Article 28.17(5).

3. Each Party shall promptly notify the Sub-Committee referred to in Article 28.21 of any modification to the Party's information listed in Section I of Annex 28-A or 28-B, respectively.

PUBLIC

ARTICLE 28.6

Notices

Notice of intended procurement

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement, except in the circumstances described in Article 28.14.

2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

(a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;

(b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;

(c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;

(d) a description of any options;

(e) the time-frame for delivery of goods or services or the duration of the contract;

(f) the procurement method that will be used and whether it will involve negotiation or electronic auction mechanism;

(g) where applicable, the address and any final date for the submission of requests for participation in the procurement;

(h) the address and the final date for the submission of tenders;

(i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;

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(j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;

(k) where, pursuant to Article 28.8, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and

(l) an indication that the procurement is covered by this Chapter.

Summary notice

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in one of the WTO official languages[1]. The summary notice shall contain at least the following information:

(a) the subject-matter of the procurement;

[1] For greater certainty, WTO official languages are English, Spanish and French.

(b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and

(c) the address from which documents relating to the procurement may be requested.

Notice of planned procurement

4. Procuring entities are encouraged to publish as early as possible in each fiscal year a notice regarding their future procurement plans ("notice of planned procurement"). The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Section B or C of Annex 28-A or 28-B may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 of this Article as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

PUBLIC

Rules common to notices

6. The notice of intended procurement, summary notice and notice of planned procurement, shall be directly accessible by electronic means, free of charge, through a single point of access on the internet. In addition, the notices may also be published in an appropriate paper medium, which shall be widely disseminated and shall remain readily accessible to the public, at least until expiration of the time period indicated in the notice.

The appropriate paper and electronic medium is listed by each Party in Section I of Annex 28-A or 28-B respectively.

7. Notwithstanding the requirements set out in paragraph 6 regarding the accessibility of the notices of intended procurement, summary notices and notices of planned procurement, by electronic means free of charge through a single point of access, Chile shall, from the date of entry into force of this Agreement and for the transition period of three years until the single point of access is fully operational, establish a gateway site, as a temporary alternative to a single point of access, which should be accessible free of charge and should provide links to the platforms or websites on which the notices are published. The gateway shall contain links to a maximum of four websites, that are:

(a) "*Mercado público*";

(b) *Ministerio de Obras Públicas*;

(c) *Dirección General de Concesiones*; and

(d) *Diario Oficial*.

8. The Parties shall foresee a periodical review of paragraph 7 of this Article, including a discussion within the Sub-Committee referred to in Article 28.21, in particular on the status of implementation of the single point of access.

PUBLIC

ARTICLE 28.7

Conditions for participation

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

(a) shall not impose the condition that, in order for a supplier to participate in a procurement, that supplier has previously been awarded one or more contracts by a procuring entity of a Party;

(b) may require relevant prior experience, where essential to meet the requirements of the procurement; and

(c) shall not require prior experience in the territory of the Party to be a condition of the procurement.

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

(a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and

(b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, and provided that this is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties, a Party, including its procuring entities, may exclude a supplier on grounds such as:

(a) bankruptcy;

(b) false declarations;

(c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;

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(d) final judgments in respect of serious crimes or other serious offences;

(e) grave professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or

(f) failure to pay taxes.

PUBLIC

ARTICLE 28.8

Qualification of suppliers

Registration systems and qualification procedures

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information. In this case, the Party shall ensure that interested suppliers have access to information on the registration system through electronic means and that they may request registration at any time. The competent authority shall inform them within a reasonable period of time of the decision to grant or reject this request. If the request is rejected, the decision must be duly motivated.

2. Each Party shall ensure that:

(a) its procuring entities make efforts to minimise differences in their qualification procedures; and

(b) if its procuring entities maintain registration systems, the entities make efforts to minimise differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply a registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

Selective tendering

4. If a procuring entity intends to use selective tendering, it shall:

(a) include in the notice of intended procurement at least the information specified in subparagraphs (a), (b), (f), (g), (j), (k) and (l) of Article 28.6(2) and invite suppliers to submit a request for participation; and

(b) provide, by the commencement of the time period for tendering, at least the information in subparagraphs (c), (d), (e), (h) and (i) of Article 28.6(2) to the qualified suppliers that it notifies as specified in subparagraph (b) of Article 28.12(3).

PUBLIC

5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any limitation on the number of suppliers that will be permitted to tender and the criteria or justification for selecting the limited number of suppliers. An invitation to submit a tender shall be addressed to a number of suppliers that is necessary to ensure competition.

6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

Multi-use lists

7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

(a) published annually; and

(b) if published by electronic means, made available continuously, in the appropriate medium listed in Section I of Annexes 28-A and 28-B.

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8. The notice provided for in paragraph 7 shall include:

(a) a description of the goods or services, or categories thereof, for which the list may be used;

(b) the conditions for participation that the suppliers shall satisfy to be included in the list, and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;

(c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;

(d) the period of validity of the list and the means for its renewal or termination or, if the period of validity is not provided, an indication of the method by which notice of the termination of use of the list will be given; and

(e) an indication that the list may be used for procurement covered by this Chapter.

9. Notwithstanding paragraph 7, if a multi-use list is valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

(a) states the period of validity and that further notices will not be published; and

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(b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time period provided for in Article 28.10(2), a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time period allowed for the submission of tenders.

PUBLIC

Entities in Sections B and C of Annex 28-A or 28-B

12. A procuring entity covered under Section B or C of Annex 28-A or 28-B may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

(a) the notice is published in accordance with paragraph 7 of this Article and includes the information required under paragraph 8 of this Article, as much of the information required under Article 28.6.2(2) as is available, and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and

(b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article 28.6.2(2), to the extent such information is available.

13. A procuring entity covered under Section B or C of Annex 28-A or 28-B may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 of this Article to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

PUBLIC

Information on procuring entity decisions

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

15. If a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognise a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

ARTICLE 28.9

Technical specifications

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.

PUBLIC

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, if appropriate:

(a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and

(b) base the technical specification on international standards, if such exist; otherwise, on national technical regulations, recognised national standards or building codes.

3. If design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, if appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

PUBLIC

5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

PUBLIC

ARTICLE 28.10

Tender Documentation

1. A procuring entity shall make available to suppliers tender documentation that include all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

(a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

(b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;

(c) all evaluation criteria the entity will apply in the awarding of the contract and, unless price is the sole criterion, the relative importance of that criteria;

(d) if the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;

(e) if the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;

(f) if there will be a public opening of tenders, the date, time and place for the opening and, if appropriate, the persons authorised to be present;

(g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and

(h) any dates for the delivery of goods or the supply of services.

PUBLIC

2. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated, and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

3. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

4. A procuring entity shall promptly:

(a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;

(b) provide, on request, the tender documentation to any interested supplier; and

(c) reply to any reasonable request for relevant information by any interested or participating supplier within the time period established in each Party's legislation, provided that such information does not give that supplier an advantage over other suppliers.

PUBLIC

Modifications

5. If a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or the amended or re-issued notice or tender documentation:

(a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, if such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and

(b) in adequate time, considering the nature and complexity of the procurement, to allow such suppliers to modify and re-submit modified tenders, as appropriate.

ARTICLE 28.11

Environmental and social considerations

1. A Party may allow its procuring entities to use environmental and social considerations throughout the procurement procedure provided that they are not discriminatory, they are consistent with the prohibition of offsets in Article 28.4(6), and they are linked to the subject matter of the contract.

PUBLIC

2. For greater certainty, environmental and social considerations shall not be prepared, adopted or applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction of trade between the Parties.

PUBLIC

ARTICLE 28.12

Time periods

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account factors such as:

(a) the nature and complexity of the procurement;

(b) the extent of subcontracting anticipated; and

(c) the necessary time for transmitting tenders by non-electronic means from foreign, as well as domestic points where electronic means are not used.

Such time periods, including any extensions thereof, shall be the same for all interested or participating suppliers.

2. A procuring entity which uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be earlier than 25 days from the date of publication of the notice of intended procurement. If a state of urgency duly substantiated by the procuring entity renders such time period impracticable, the time period may be reduced to no less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8, a procuring entity shall establish that the final date for the submission of tenders is not earlier than 40 days from the date on which:

(a) in the case of open tendering, the notice of intended procurement is published; or

(b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list, in the case of selective tendering.

4. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 to no less than 10 days if:

(a) the procuring entity has published a notice of planned procurement as described in Article 28.6(4) at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:

(i) a description of the procurement;

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(ii) the approximate final dates for the submission of tenders or requests for participation;

(iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;

(iv) the address from which documents relating to the procurement may be obtained; and

(v) as much of the information that is required for the notice of intended procurement under Article 28.6(2), as is available;

(b) the procuring entity, for contracts of a recurring nature, indicates in an initial notice of intended procurement that subsequent notices will establish time periods for tendering based on this paragraph; or

(c) a state of urgency duly substantiated by the procuring entity renders the time period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time period for tendering established in accordance with paragraph 3 by five days for each of the following circumstances:

(a) the notice of intended procurement is published by electronic means;

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(b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and

(c) the entity accepts tenders by electronic means.

6. The application of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time period for tendering established in accordance with paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, if a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time period for tendering established in accordance with paragraph 3 to no less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, i the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time period established in accordance with paragraph 3 to no less than 10 days.

8. If a procuring entity covered under Section B or C of Annex 28-A or 28-B has selected all or a limited number of qualified suppliers, the time period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

PUBLIC

ARTICLE 28.13

Negotiation

PUBLIC

1. A Party may provide for its procuring entities to conduct negotiations with suppliers in the context of covered procurement:

(a) if the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article 28.6(2); or

(b) if it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.

2. A procuring entity shall:

(a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and

(b) if negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

ARTICLE 28.14

Limited tendering

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Article 28.6, Article 28.7, Article 28.8, Article 28.10, and Articles 28.12, 28.13, 28.15 and 28.16 under any of the following circumstances:

(a) if:

(i) tenders were not submitted or suppliers did not request participation;

(ii) none of the submitted tenders conform to the essential requirements of the tender documentation;

(iii) none of the suppliers satisfied the conditions for participation; or

(iv) the tenders submitted have been declared collusive by the competent authority provided that the requirements of the tender documentation are not substantially modified;

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(b) if the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

(i) the requirement is for a work of art;

(ii) the protection granted by patents, copyrights or other exclusive rights; or

(iii) an absence of competition for technical reasons;

(c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement if a change of supplier for such additional goods or services:

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and

(ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;

(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;

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(e) for goods purchased on a commodity market;

(f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development; original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;

(g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or

(h) where a contract is awarded to a winner of a design contest, provided that:

(i) the contest has been organised in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and

(ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

PUBLIC

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions set out in paragraph 1 that justified the use of limited tendering.

PUBLIC

ARTICLE 28.15

Electronic auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

(a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;

(b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and

(c) any other relevant information relating to the conduct of the auction.

ARTICLE 28.16

Treatment of tenders and awarding of contracts

PUBLIC

Treatment of Tenders

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.

2. A procuring entity shall not penalise any supplier whose tender is received after the deadline specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.

3. If a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

Awarding of Contracts

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation, and be from a supplier that satisfies the conditions for participation.

5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

(a) the most advantageous tender; or

(b) the lowest price, if price is the sole criterion.

6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.

7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

8. Each Party shall make its best efforts to provide, as a general rule, a standstill period between the award and the conclusion of a contract, in order to give sufficient time to unsuccessful bidders to review and challenge the award decision.

PUBLIC

ARTICLE 28.17

Transparency of procurement information

Information provided to suppliers

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on request of a supplier, shall do so in writing. Subject to Article 28.18(2) and (3) a procuring entity shall, upon request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender, and the relative advantages of the successful supplier's tender.

Publication of Award Information

2. Not later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in Section I of Annex 28-A and 28-B. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

(a) a description of the goods or services procured;

(b) the name and address of the procuring entity;

PUBLIC

(c) the name of the successful supplier;

(d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;

(e) the date of award; and

(f) the type of procurement method used, and, in cases where limited tendering was used in accordance with Article 28.14, a description of the circumstances justifying the use of limited tendering.

Maintenance of Documentation, Reports and Electronic Traceability

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

(a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article 28.14; and

(b) data that ensures the appropriate traceability of the conduct of covered procurement by electronic means.

PUBLIC

Exchange of Statistics

4. On request of the other Party, and with a view to the discussions in the Sub-Committee referred to in Article 28.21, each Party shall make available to the other Party statistics on covered procurement of goods, services and construction services, including, to the maximum extent possible, statistics on works concessions. In accordance with Article 28.23, the Parties shall cooperate to achieve a better understanding of each other's public procurement statistics.

5. If a Party requires notices concerning awarded contracts, pursuant to paragraph 2, to be published electronically and if such notices are accessible to the public through a single database in a form permitting analysis of the covered contracts, the Party may, instead of reporting to the Sub-Committee referred to in Article 28.21, provide a link to the website, together with any instructions necessary to access and use such data.

PUBLIC

ARTICLE 28.18

Disclosure of information

Provision of information to Parties

1. On request of the other Party, a Party shall promptly provide any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the consent of, the Party that provided the information.

Non-disclosure of information

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not, except to the extent required by law or with the written authorisation of the supplier that provided the information, disclose information that would prejudice legitimate commercial interests of a particular supplier or that might prejudice fair competition between suppliers.

PUBLIC

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information if disclosure:

(a) would impede law enforcement;

(b) might prejudice fair competition between suppliers;

(c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or

(d) would otherwise be contrary to the public interest.

ARTICLE 28.19

Domestic review procedures

1. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge the following, arising in the context of a covered procurement in which the supplier has, or has had, an interest:

(a) a breach of this Chapter; or

PUBLIC

(b) a failure to comply with a Party's measures implementing this Chapter, where the supplier does not have the right to challenge directly a breach of this Chapter under the laws of a Party.

The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or should have reasonably become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

PUBLIC

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier has the right to appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

(a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;

(b) the participants to the proceedings (hereinafter, the "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;

(c) the participants shall have the right to be represented and accompanied;

(d) the participants shall have access to all proceedings;

(e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and

(f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

PUBLIC

7. Each Party shall adopt or maintain procedures that provide for:

(a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement; such interim measures may result in suspension of the procurement process; the procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied; just cause for not acting shall be provided in writing; and

(b) when a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or damages suffered which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

ARTICLE 28.20

Modifications and rectifications to coverage

1. The EU Party may modify or rectify Annex 28-A and Chile may modify or rectify Annex 28-B.

PUBLIC

Modifications

2. If a Party intends to modify its Annex as referred to in paragraph 1, that Party shall:

(a) notify the other Party in writing; and

(b) include in the notification a proposal for appropriate compensatory adjustments to the other Party to maintain a level of coverage comparable to that existing prior to the modification.

3. Notwithstanding subparagraph (b) of paragraph 2 of this Article, a Party does not need to provide compensatory adjustments if the modification covers an entity over which the Party has effectively eliminated its control or influence. Government control or influence over the covered procurement of entities listed in Section A, B or C of Annex 28-A or 28-B is presumed to be effectively eliminated, insofar as the entity's procurement is concerned, where the entity is exposed to competition on markets to which access is not restricted.

4. If a Party notifies the other Party under paragraph 2 of an intended modification of its Annex, the other Party shall object in writing if it disputes that:

(a) an adjustment proposed under subparagraph (b) of paragraph 2 is adequate to maintain a comparable level of mutually agreed coverage; or

(b) the modification covers an entity over which the Party's control or influence has effectively ended in accordance with paragraph 3.

PUBLIC

The other Party shall submit any written objection under this paragraph within 45 days of receipt of the notification referred to in subparagraph (a) of paragraph 2 of this Article, or be deemed to have accepted the adjustment or modification, including for the purposes of Chapter 38.

Rectifications

5. The Parties shall consider the following changes to Annex 28-A or 28-B, respectively, as a rectification of a purely formal nature, provided that they do not affect the mutually agreed coverage provided for in this Chapter:

(a) a change in the name of an entity;

(b) a merger of two or more entities listed within Sections A, B and C of Annex 28-A or 28-B;

(c) the separation of an entity listed in Sections A, B and C of Annex 28-A or 28-B into two or more entities that are all added to the entities listed in the same Section of Annex 28-A or 28-B.

6. If a Party proposes a rectification of Annex 28-A or 28-B respectively, that Party shall notify the other Party every two years following the date of entry into force of this Agreement.

PUBLIC

7. A Party may notify the other Party of an objection to a proposed rectification within 45 days after having received the notification. If a Party submits an objection, it shall set out the reasons why it believes the proposed rectification is not a change provided for in paragraph 5, and describe the effect of the proposed rectification on the mutually agreed coverage provided for in this Chapter. If no such objection is submitted in writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

Consultations and dispute resolution

8. If the other Party objects to the proposed modification or rectification within 45 days, the Parties shall seek to resolve the issue through consultations after having received the notification. If the Parties do not reach an agreement within 60 days of receipt of the objection, the Party seeking to modify or rectify its Annex may refer the matter to dispute settlement procedure under this Part. The proposed modification or rectification will take effect only when both Parties have agreed or on the basis of a final decision pursuant to the procedure provided for in Chapter 38.

9. Failure to reach an agreement in the consultation procedure under paragraph 8 of this Article does not exempt the Parties from the obligation to carry out consultations under Chapter 38.

PUBLIC

ARTICLE 28.21

Sub-Committee on Public Procurement

On request of a Party, the Sub-Committee on Public Procurement ("Sub-Committee") established pursuant to Article 8.8(1), shall meet to address matters related to the implementation and operation of this Chapter, including the following:

(a) issues regarding public procurement that are referred to it by a Party;

(b) monitoring the cooperation activities undertaken by the Parties as provided by Article 28.23;

(c) facilitation of participation of small and medium-sized enterprises in covered procurement as provided in Article 28.22; and

(d) discussion on status of implementation of the single point of access under Article 28.6(7).

PUBLIC

ARTICLE 28.22

Facilitation of participation by small and medium-sized enterprises

1. The Parties recognise the important contribution that small and medium-sized enterprises (hereinafter, "SMEs") can make to economic growth and employment, and the importance of facilitating the participation of SMEs in public procurement.

2. The Parties recognise the importance of electronic procurement in facilitating the participation of SMEs in procurement procedures by ensuring transparency.

3. The Parties also recognise the importance of business alliances between suppliers of each Party, and in particular between SMEs, including the joint participation in tendering procedures.

4. The Parties may:

(a) provide information related to their measures used in order to contribute, promote, encourage or facilitate SMEs' participation in public procurement;

(b) cooperate in the elaboration of mechanisms to provide information to SMEs of the means for participating in covered procurement under this Chapter.

PUBLIC

5. To facilitate participation of SMEs in covered procurement, each Party shall, to the extent possible:

(a) provide a definition of SMEs in an electronic portal;

(b) endeavour to make all tender documentation available free of charge;

(c) take any other measure designed to facilitate the participation of SMEs in public procurement covered by this Chapter, provided that such measures are not discriminatory against the other Party's enterprises.

PUBLIC

ARTICLE 28.23

Cooperation

1. The Parties shall make their best efforts to develop cooperation activities with a view to achieving a better understanding of their respective public procurement systems, as well as better access to their respective markets, in matters such as:

(a) exchanging experiences and information, such as regulatory frameworks, best practices and statistics;

(b) facilitating participation by suppliers in covered procurement, in particular with respect to SMEs;

(c) developing and expanding the use of electronic means in public procurement systems;

(d) building capability by fostering mutual learning of government officials and staff of procuring entities with a view to fulfilling the provisions of this Chapter.

2. The Parties shall inform the Sub-Committee referred to in Article 28.21 of any of such activities.

PUBLIC

ARTICLE 28.24

Further negotiations

The Sub-Committee on Public Procurement referred to in Article 28.21 shall review the operation of this Chapter and, no later than four years after the date of entry into force of this Agreement, may propose to the Joint Committee to recommend the Parties to hold further negotiations with a view to achieving additional market access opening.