

ANNEX B

Settlement of Disputes between an Investor and the Host Contracting Party

I. Public Access to Hearings and Documents

1. Hearings held under Article X (Settlement of Disputes between an Investor and the Host Contracting Party) shall be open to the public. To the extent necessary to ensure the protection of confidential information, the Tribunal may hold portions of hearings in camera.
2. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties.
3. All documents submitted to, or issued by, the Tribunal shall be publicly available, unless the disputing parties otherwise agree, subject to the redaction of confidential information.
4. Notwithstanding paragraph 3, any Tribunal award under this Agreement shall be publicly available, subject to the redaction of confidential information.
5. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.
6. The Contracting Parties may share with officials of their respective sub-national governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but they shall ensure that those persons protect any confidential information in such documents.

7. The Tribunal shall not require a Contracting Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Contracting Party's law protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

8. To the extent that a Tribunal's confidentiality order designates information as confidential and a Contracting Party's law on access to information requires public access to that information, the Contracting Party's law on access to information shall prevail. However, a Contracting Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

II. Participation by the Non-Disputing Contracting Party

1. The non-disputing Contracting Party shall be entitled, at its cost, to receive from the disputing Contracting Party a copy of:

- (a) the evidence that has been tendered to the Tribunal;
- (b) copies of all pleadings filed in the arbitration; and
- (c) the written argument of the disputing parties.

2. The non-disputing Contracting Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Contracting Party.

3. On written notice to the disputing parties, the non-disputing Contracting Party may make written submissions to a Tribunal on a question of interpretation of this Agreement.

4. The non-disputing Contracting Party shall have the right to attend any hearings held under this Agreement, whether or not it makes submissions to the Tribunal.

III. Submissions by a Non-Disputing Party

1. Any non-disputing party that is a person of a Contracting Party, or has a significant presence in the territory of a Contracting Party, that wishes to file a written submission with the Tribunal (the “applicant”) shall apply for leave from the Tribunal to file such a submission, in accordance with the applicable Guidelines set out in Part IV of this Annex. The applicant shall attach the submission to the application.
2. The applicant shall serve the application for leave to file a non-disputing party submission and the submission on all disputing parties and the Tribunal.
3. The Tribunal shall set an appropriate date for the disputing parties to comment on the application for leave to file a non-disputing party submission.
4. In determining whether to grant leave to file a non-disputing party submission, the Tribunal shall consider, among other things, the extent to which:
 - (a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
 - (b) the non-disputing party submission would address a matter within the scope of the dispute;
 - (c) the non-disputing party has a significant interest in the arbitration; and
 - (d) there is a public interest in the subject-matter of the arbitration.
5. The Tribunal shall ensure that:
 - (a) any non-disputing party submission avoids disrupting the proceedings; and
 - (b) neither disputing party is unduly burdened or unfairly prejudiced by such submissions.

6. The Tribunal shall decide whether to grant leave to file a non-disputing party submission. If leave to file a non-disputing party submission is granted, the Tribunal shall set an appropriate date for the disputing parties to respond in writing to the non-disputing party submission. By that date, the non-disputing Contracting Party may, pursuant to the provisions of Part II of this Annex (*Participation by the Non-Disputing Contracting Party*), address any issues of interpretation of this Agreement presented in the non-disputing party submission.

7. A Tribunal that grants leave to file a non-disputing party submission is not required to address the submission at any point in the arbitration, nor is the non-disputing party that files the submission entitled to make further submissions in the arbitration.

8. Access to hearings and documents by non-disputing parties that file applications under these procedures shall be governed by the provisions of Part I of this Annex (*Public Access to Hearings and Documents*).

IV. Guidelines for Submissions by a Non-Disputing Party

1. The application for leave to file a non-disputing party submission shall:
 - (a) be made in writing, dated and signed by the person filing the application, and include the address and other contact details of the applicant;
 - (b) be no longer than five typed pages;
 - (c) describe the applicant, including, where relevant, its membership and legal status (e.g., company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);
 - (d) disclose whether or not the applicant has any affiliation, direct or indirect, with any disputing party;

- (e) identify any government, person or organization that has provided any financial or other assistance in preparing the submission;
- (f) specify the nature of the interest that the applicant has in the arbitration;
- (g) identify the specific issues of fact or law in the arbitration that the applicant has addressed in its written submission;
- (h) explain, by reference to the factors specified in paragraph 4 of Part III of this Annex (*Submissions by a Non-Disputing Party*), why the Tribunal should accept the submission; and
- (i) be made in a language of the arbitration.

2. The submission filed by a non-disputing party shall:

- (a) be dated and signed by the person filing the submission;
- (b) be concise, and in no case longer than twenty typed pages, including any appendices;
- (c) set out a precise statement supporting the applicant's position on the issues; and
- (d) only address matters within the scope of the dispute.