AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

AND

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

ON THE PROMOTION AND PROTECTION OF INVESTMENTS

PREAMBLE

The Government of the Republic of Indonesia and the Government of the Republic of Singapore (hereinafter collectively referred to as the "Parties" or individually as a "Party"),

RECOGNISING that the creation of a business-friendly environment will be conducive to the stimulation of business initiative for greater investment between the Parties;

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

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

REAFFIRMING the right of the Parties to regulate and to introduce new measures relating to investments in their territories in order to meet legitimate policy objectives,

HAVE AGREED AS FOLLOWS:

CHAPTER I
DEFINITIONS AND SCOPE

ARTICLE 1
DEFINITIONS

For the purposes of this Agreement:

enterprise means any entity, with or without legal personality, constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the law of a Party, and carrying out business activities there;

freely usable currency means "freely usable currency" as determined by the International Monetary Fund under its *Articles of Agreement of the International Monetary Fund* and any amendments thereto;

ICSID means the International Centre for Settlement of Investment Disputes;

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

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

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

investment means any kind of asset owned or controlled, directly or indirectly, by an investor that has the characteristics of an investment.[1] Forms that an investment may take include, but are not limited to:[2]

(a) shares, stocks and other forms of equity participation in an enterprise, including rights derived therefrom;

[1] Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, the assumption of risk or certain duration.

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

(b) bonds, debentures, loans and other debt instruments[3, 4], including rights derived therefrom;

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

(d) claims to money or to any contractual performance related to a business and under contract having an economic value;[5]

(e) intellectual property rights which are conferred pursuant to the laws and regulations of a Party where the investment is located and goodwill;

(f) licences, authorisations, permits, and similar rights conferred pursuant to applicable domestic law, including any concession to search for, cultivate, extract or exploit natural resources;[6] and

(g) other tangible or intangible, movable or immovable property and related property rights such as mortgages, liens or pledges;

For the purpose of the definition of "investment", returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.

investor means:

(a) an enterprise of a Party; or

(b) a natural person who, under the law of a Party, is a national[7] of that Party or has the right of permanent residence in that Party where both that Party and the other Party in which the person is making or has made an investment

[3] For the purpose of this Agreement, "loans and other debt instruments" described in (b) and "claims to money or to any contractual performance" described in (d) of this Article refer to assets which relate to a business activity and do not refer to assets which are of a personal nature, unrelated to any business activity.

[4] A loan issued by a Party to the other Party is not an investment

[5] For greater certainty, investment does not mean claims to money that arise solely from:

(a) commercial contracts for the sale of goods or services, domestic financing of such contracts; or

(b) the extension of credit in connection with such commercial contracts.

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

[7] For greater certainty, if a natural person possesses dual nationality, she or he shall be deemed to possess exclusively the nationality of the Party of her or his dominant and effective nationality.

recognise permanent residents and accord substantially the same treatment to their respective permanent residents as they accord to their respective nationals in respect of measures affecting investment;

that has made an investment;

locally established enterprise means an enterprise owned or controlled[8] by an investor of a Party, established in the territory of the other Party;

measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, and includes measures taken by:

(a) central, regional or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

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

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

territory means:

(a) in respect of the Republic of Indonesia: the land territories, territorial sea, archipelagic waters, internal waters, including sea-bed and subsoil thereof, and airspace over such territories, as well as continental shelf and exclusive economic zone, over which Indonesia has sovereignty, sovereign rights or jurisdiction, as defined in its laws, and in accordance with the United Nations Convention on the Law of the Sea, done at Montego Bay, 10 December 1982;

(b) in respect of the Republic of Singapore: its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources;

[8] An enterprise is:

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

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

UNCITRAL Arbitration Rules means the *Arbitration Rules of the United Nations Commission on International Trade Law*, as adopted by the United Nations General Assembly on 15 December 1976; and

WTO Agreement means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.

ARTICLE 2
APPLICABILITY OF AGREEMENT

1. This Agreement shall apply, with respect to a Party, to an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Agreement or made, established, acquired or expanded thereafter, and has been admitted according to the laws, regulations, and national policies of the former Party, and where applicable, specifically approved in writing[9] by the competent authority of the former Party.

2. The provisions in this Agreement shall not apply to claims arising out of events which occurred,[10] or claims which had been raised, prior to the entry into force of this Agreement.

3. This Agreement shall not apply to:

(a) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to investors of the Party or investments of investors of the Party;

(b) government procurement;

(c) services supplied in the exercise of governmental authority;

(d) matters of taxation[11] in the territory of a Party, which shall, except as set out in Article 43 (Taxation), be governed by the domestic laws of the Party and by any tax treaty between the Parties.

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[9] Where specific approval in writing is required for investments by a Party's domestic laws, regulations and national policies, that Party shall take all reasonable steps to observe transparency, fairness and efficiency in processing the application. These steps would include:

(a) ensuring that information on that Party's competent authority and its approval processes are promptly published or otherwise made available;

(b) in the case of an application for approval in writing, promptly notifying the applicant in writing of any additional information required and the outcome of the application; and

(c) in the case that an application is denied, promptly notifying the applicant in writing of the reasons for denying the application. If an application is denied, the applicant shall have the opportunity of submitting, at the applicant's discretion, a new application.

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

[11] For greater certainty, nothing in this Agreement shall affect the rights and obligations of any Party under any tax treaty. In the event of any inconsistency between this Agreement and any such tax treaty, that treaty shall prevail to the extent of the inconsistency. In the case of a tax treaty between the Parties, the competent authorities under that treaty shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that treaty.

CHAPTER II
PROTECTION

ARTICLE 3
TREATMENT OF INVESTMENT

1. Each Party shall accord to investments fair and equitable treatment and full protection and security.

2. For greater certainty:

   (a) "fair and equitable treatment" requires each Party not to deny justice in any legal or administrative proceedings in accordance with the principle of due process of law;

   (b) "full protection and security" requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the investment;

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

   (d) the concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights.

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

ARTICLE 4
NATIONAL TREATMENT[12, 13]

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

[12] Article 4 (National Treatment) is subject to Annex I (National Treatment).

[13] For greater certainty, whether treatment is accorded in "like circumstances" under Article 4 (National Treatment) or Article 5 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investments on the basis of legitimate public welfare objectives.

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

ARTICLE 5
MOST-FAVOURED-NATION TREATMENT

1. Each Party shall accord to investments of investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the management, conduct, operation, and sale or other disposition of investments.

2. The provisions of this Article shall not be construed so as to oblige a Party to extend to the investors of the other Party and investments of investors of the other Party the benefit of any treatment, preference or privilege resulting from:

(a) any bilateral investment agreements (also commonly referred to as "investment guarantee agreements", "investment promotion and protection agreements", or "international investment agreements") that were initialled, signed or have entered into force prior to the entry into force of this Agreement;[14] or

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

3. For greater certainty, paragraphs 1 and 2 shall not apply to options or procedures for the settlement of disputes that are available in other agreements, and shall not be construed as granting to investors options or procedures for the settlement of disputes other than those set out in Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement).

4. For greater certainty, substantive obligations in other international investment treaties or other trade agreements do not in themselves constitute "treatment", and thus cannot give rise to a breach of this Article, provided that no measures have been adopted or maintained by a Party pursuant to such obligations.

[14] For greater certainty, "bilateral investment agreements" include any subsequent reviews or amendments to those agreements.

ARTICLE 6
EXPROPRIATION[15]

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

(a) for a public purpose;[16]

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2 and 3;[17] and

(d) in accordance with due process of law.

2. Compensation shall:

(a) be paid without undue delay;[18]

(b) be equivalent to the fair market value[19] of the expropriated investment immediately before the expropriation took place ("the date of expropriation") or before the impending expropriation became public knowledge, whichever is earlier;

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

(d) be effectively realisable, freely usable and freely transferable in accordance with Article 8 (Transfers).

3. The compensation shall include interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment. Valuation criteria used to determine fair market value may include going concern value, asset value including

[15] This Article shall be interpreted in accordance with the Annex II (Expropriation).

[16] For greater certainty, for the purposes of this Article, the term "public purpose" refers to a concept in customary international law. Domestic law may express this or a similar concept by using different terms, such as "public necessity", "public interest" or "public use".

[17] For greater certainty, where there is a dispute on whether a Party's conduct amounts to indirect expropriation within the meaning of this Article, the fact that compensation has not been paid while that dispute remains unresolved does not render such conduct inherently unlawful if it is subsequently found to constitute indirect expropriation within the meaning of this Article.

[18] The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

[19] The valuation of fair market value of the expropriated investment shall exclude any speculative or windfall profits claimed by the investor.

the declared tax value of tangible property, replacement value, capital invested, the nature and duration of the investment, and other criteria, as appropriate.

4. Notwithstanding paragraphs 1, 2 and 3, any measure of expropriation relating to land, which shall be defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation in accordance with the aforesaid legislation.

5. Any measure of expropriation or valuation may, at the request of investors, be reviewed by a judicial or other independent authority of the Party taking the measure in the manner prescribed by its laws.

6. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with the *Agreement on Trade-Related Aspects of Intellectual Property Rights* in Annex 1C to the WTO Agreement.[20]

ARTICLE 7
COMPENSATION FOR LOSSES

Investors of a Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, civil disturbances, a state of national emergency, revolt, insurrection, riot or other similar situations in the territory of the latter Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, no less favourable than that which the latter Party accords to investors of any non-Party or to its own investors, whichever is more favourable. Any resulting compensation shall be made in freely usable currency and be freely transferable in accordance with Article 8 (Transfers).

ARTICLE 8
TRANSFERS

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

(a) contributions to capital, including the initial contribution;

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

[20] For greater certainty, the term "revocation" of intellectual property rights includes the cancellation or nullification of such rights, and the term "limitation" of intellectual property rights includes exceptions to such rights.

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

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

(e) payments made pursuant to Article 6 (Expropriation) and Article 7 (Compensation for Losses); and

(f) payments arising under Chapter III (Dispute Settlement).

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

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

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

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

(c) criminal or penal offences;

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

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

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

(g) severance entitlements of employees; or

(h) the requirement to register and satisfy other formalities imposed by the central bank or other relevant authorities of a Party.

4. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the *Articles of Agreement of the International Monetary Fund* provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Agreement regarding such transactions, except under Article 9 (Restrictions to Safeguard the Balance of Payments) or at the request of the International Monetary Fund.

ARTICLE 9
RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. In the event of serious balance of payments and external financial difficulties or threat thereof, or in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies, a Party may adopt or maintain restrictions on payments, transfers or capital movements, related to investments. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

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

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

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

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

(e) be applied on a non-discriminatory basis such that the other Party is treated no less favourably than any non-Party;

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

4. The Party adopting any restrictions under paragraph 1 shall promptly agree to the other Party's request for consultation to review the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement.

ARTICLE 10
SUBROGATION

1. If either Party (or any agency, institution, statutory body or corporation designated by it), as a result of an indemnity it has given on non-commercial risks in respect of an investment or any part thereof, makes payment to its own investors in respect of any of their claims under this Agreement, the other Party shall recognise that the Party making payment to its own investors (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or

claims of the said investor. This, however, does not necessarily imply recognition by the other Party of the merits of any case or the amount of any claims arising therefrom.

2. Where a Party (or any agency, institution, statutory body or corporation designated by it) has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party (or any agency, institution, statutory body or corporation designated by it) making the payment, pursue those rights and claims against the other Party.

3. In the exercise of subrogated rights or claims, a Party (or any agency, institution, statutory body or corporation designated by it) exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the other Party.

ARTICLE 11
RIGHT TO REGULATE

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

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

ARTICLE 12
CORPORATE SOCIAL RESPONSIBILITY

Each Party affirms the importance of encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party.

ARTICLE 13
MEASURES AGAINST CORRUPTION

1. The Parties reaffirm that bribery and other forms of corruption in any investment activities can undermine democracy and rule of law, discourage foreign investment and adversely affect economic development of the Parties.

2. Nothing in this Agreement shall prevent a Party from undertaking measures to prevent and combat bribery and other forms of corruption in any investment activities within its territory, provided that such measures are not inconsistent with this Agreement.

CHAPTER III
DISPUTE SETTLEMENT

SECTION ONE: SETTLEMENT OF DISPUTES BETWEEN A PARTY AND AN INVESTOR OF THE OTHER PARTY

ARTICLE 14
SCOPE AND BASIC PRINCIPLES

1. This Section shall apply to disputes between a Party (hereinafter referred to as the "disputing Party") and an investor of the other Party (hereinafter referred to as the "disputing investor") concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment (hereinafter referred to as an "investment dispute"). In the event of an investment dispute, the disputing parties should seek to resolve the dispute with a view towards reaching an amicable settlement.

2 For greater certainty, objections that a disputing Party may raise in any proceedings under this Section would include, but not be limited to, objections on the ground that an investment has been made, established, acquired or admitted through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.

ARTICLE 15
CONSULTATIONS

1. The disputing parties shall initially seek to resolve an investment dispute by consultations and negotiations ("consultations"), which may include the use of non-binding, third party procedures, such as good offices, conciliation and mediation. Such consultations shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Party.

2. With the objective of resolving an investment dispute through consultations, the written request for consultations shall contain information regarding the legal and factual basis for the investment dispute, including the name and address of the disputing investor, the provisions of this Agreement alleged to have been breached, the relief sought and the estimated amount of damages claimed.

3. Consultations shall commence within 30 days of receipt by the disputing Party of the written request for consultations, unless the disputing parties otherwise agree, and the place for consultations shall be Jakarta, Indonesia where the disputing Party is Indonesia, or Singapore where the disputing Party is Singapore.

ARTICLE 16
MEDIATION

1. The disputing parties may, at any time, agree to have recourse to mediation. A request to have recourse to mediation shall be addressed by a disputing party to the other disputing party in writing. The party to which the request is addressed shall give sympathetic consideration to the request, and reply by accepting or rejecting it in writing within 10 days of its receipt.

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

3. Recourse to mediation may be governed by the mediation rules of mediation institutions in Indonesia or Singapore, or such other rules as the disputing parties may agree. Mediators shall comply with Annex IV (Code of Conduct of Arbitrators and Mediators).

4. Each disputing party shall bear its own expenses derived from the participation in the mediation process. Expenses incurred in relation to the conduct of the mediation process, including the remuneration and expenses of the mediator, shall be borne equally by the disputing parties.

5. On request of the disputing parties, the mediator shall issue to the disputing parties, in writing, a draft factual report, providing a brief summary of (1) the measure at issue in these procedures; (2) the procedures followed; and (3) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions. The mediator shall provide the disputing parties 15 working days to comment on the draft report. After considering the comments of the disputing parties submitted within the period, the mediator shall submit, in writing, a final factual report to the disputing parties within 15 working days. The factual report shall not include any interpretation of this Agreement.

6. Where a mutually agreed solution has been reached as a result of the mediation process, the disputing parties shall enter into a written settlement agreement to take the measures necessary to implement the mutually agreed solution within the agreed timeframe.

7. Nothing in this Article shall preclude the disputing parties from having recourse to other forms of alternative dispute resolution.

ARTICLE 17
SUBMISSION OF A CLAIM

1. If an investment dispute cannot be resolved within 1 year from the date of delivery of the written request for consultations pursuant to Article 15 (Consultations) then, unless the disputing parties agree otherwise, the disputing investor may submit the dispute to:

   (a) the courts or tribunals of the disputing Party, provided that such court or tribunal have jurisdiction over such claim;

(b) arbitration under the ICSID Convention and the ICSID Arbitration Rules, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;

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

(d) arbitration under the UNCITRAL Arbitration Rules; or

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

provided that resort to any arbitration rules or *fora* under sub-paragraphs (b) to (e) shall exclude resort to the others.

For the avoidance of doubt, the disputing investor may submit a claim on its own behalf in respect of loss or damage that has been incurred by the disputing investor, or on behalf of an enterprise of the disputing Party that the disputing investor owns or controls, either directly or indirectly, in respect of loss or damage that has been incurred by the enterprise.

2. Each Party hereby consents to the submission of an investment dispute to arbitration under paragraph 1 in accordance with the provisions of this Section, conditional upon:

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

(b) the disputing investor providing written consent to arbitration in accordance with the provisions set out in this Section;

(c) the legal and factual basis for the dispute was subject to prior consultation or mediation pursuant to Article 15 (Consultations) or Article 16 (Mediation) respectively;

(d) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Party of its intent to submit the dispute to such arbitration and which:

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

(ii) nominates one of the *fora* referred to in paragraph 1 as the forum for dispute settlement;

(iii) waives the disputing investor's right to initiate or continue any proceedings before any of the other dispute settlement *fora* referred to in paragraph 1 in relation to the matter under dispute;

(iv) provides, where a dispute is submitted on behalf of a locally established enterprise, the enterprise's written waiver of its right to initiate or continue any proceedings before any of the other dispute settlement fora referred to in paragraph 1 in relation to the matter under dispute;

(v) briefly summarises the alleged breach of the disputing Party under this Agreement (including the provisions alleged to have been breached), the legal and factual basis for the dispute, and the loss or damage allegedly caused to the disputing investor or its investment by reason of that breach; and

(e) no final award concerning the same treatment as alleged to breach the provisions of Chapter II (Protection) having been rendered in a claim submitted by the disputing investor to another international tribunal established pursuant to this Section, or any other treaty.

3. Notwithstanding sub-paragraph 2(d)(iii), the disputing investor shall not be prevented from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving the disputing investor's rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Party.

4. For the purposes of sub-paragraph 2(e), the term "disputing investor" refers to the investor and, where applicable, to the locally established enterprise, and includes all persons who directly or indirectly have an ownership interest in, or who are controlled by the investor or, where applicable, the locally established enterprise.

5. Upon request of the disputing Party, the tribunal shall decline jurisdiction where the disputing investor fails to respect any of the requirements referred to in paragraph 2.

6. The consent under paragraph 2 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

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

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

7. A claim that is submitted for arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

ARTICLE 18
THIRD PARTY FUNDING

1. Any disputing party benefiting from third party funding shall notify the other disputing party and the Tribunal of the name and address of the third party funder.

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

ARTICLE 19
CONSTITUTION OF THE ARBITRAL TRIBUNAL

1. Unless the disputing parties otherwise agree, the arbitral tribunal shall be composed of three arbitrators, who shall not be nationals or permanent residents of either Party. Each disputing party shall appoint one arbitrator and the disputing parties shall agree upon a third arbitrator, who shall be the chairman of the arbitral tribunal. The chairman of the arbitral tribunal shall be a national of a non-Party which has diplomatic relations with the disputing Party and the non-disputing Party. If an arbitral tribunal has not been established within 90 days from the date on which the claim was submitted to arbitration, either because a disputing party failed to appoint an arbitrator or because the disputing parties failed to agree upon the chairman, the Secretary-General of ICSID, upon request of either disputing party, shall appoint, at his own discretion, the arbitrator or arbitrators not yet appointed. If the Secretary-General is a national or permanent resident of either Party, or he or she is otherwise unable to act, the Deputy Secretary-General of ICSID, who is not a national or permanent resident of either Party, may be invited to make the necessary appointments.

2. The arbitrators shall have experience or expertise in public international law. It is desirable that they have expertise, in particular, in international investment law, international trade law, or the resolution of disputes arising under international investment or international trade agreements. The arbitrators shall be independent from the Parties and the disputing investor, and not be affiliated to or receive instructions from any of them.

3. The disputing parties may establish rules relating to expenses incurred by the tribunal, including remuneration of the arbitrators.

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

5. Arbitrators appointed under this Section shall comply with Annex IV (Code of Conduct of Arbitrators and Mediators).

ARTICLE 20
GOVERNING LAW

1. Subject to paragraphs 2 and 3, when a claim is submitted under Article 17 (Submission of a Claim), the tribunal shall decide the issues in dispute in accordance with this Agreement, any other applicable agreements between the Parties, and the applicable rules of international law and where applicable, any relevant domestic law of the disputing Party.

2. The tribunal may, on its own account or at the request of a disputing Party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of the delivery of the request. For the avoidance of doubt, the Parties may also adopt, on their own account, joint interpretations of provisions of this Agreement.

3. A joint decision of the Parties on the interpretation of a provision of this Agreement shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that joint decision.

ARTICLE 21
PLACE OF ARBITRATION

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

ARTICLE 22
ARBITRAL PROCEEDINGS

1. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, a tribunal shall, before proceeding to the merits, address and decide as a preliminary question any objection by the disputing Party that, as a matter of law, a claim submitted is not a claim for which an award in favour of the disputing investor may be made under Article 24 (Awards), or that a claim is frivolous or manifestly without merit, even if the facts alleged[21] were assumed to be true. The tribunal may also consider any relevant facts not in dispute. The disputing Party shall specify as precisely as possible the basis for the objection.

(a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the disputing Party to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the disputing Party to submit its response to the amendment).

[21] For the purposes of this paragraph, the facts alleged refer to those made in support of the claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules.

(b) On receipt of an objection under this paragraph, 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 award on the objection, stating the grounds therefor. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal.

(c) The disputing Party does not waive any objection as to competence or any argument on the merits merely because the disputing Party did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 2. For greater certainty, such objections or arguments may be raised at another stage of the proceedings.

2. In the event that the disputing Party so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis any preliminary objection under paragraph 1 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

3. The tribunal may, if warranted, award to the prevailing disputing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manfestly without merit, and shall provide the disputing parties a reasonable opportunity to comment.

ARTICLE 23
DIPLOMATIC PROTECTION

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

ARTICLE 24
AWARDS

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

(a) monetary damages and any applicable interest; and

(b) restitution of property, provided that the disputing Party may pay monetary damages and any applicable interest, as determined by the tribunal in accordance with Chapter II (Protection), in lieu of restitution.

2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

3. A tribunal may not award punitive damages.

4. In any arbitration conducted under this Section, at the request of a disputing investor, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of the proposed decision or award. The tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.

5. Where a claim is submitted on behalf of an enterprise of the disputing Party, the arbitral award shall be made to the enterprise.

6. Any arbitral award shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.

7. Subject to paragraph 8 of this Article and the applicable review procedure for an interim award, the disputing parties shall abide by and comply with an award without delay.

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

(a) in the case of a final award under the ICSID Convention:

(i) 120 days has elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed;

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to paragraph 1(e) of Article 17 (Submission of a Claim):

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

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

9. Each Party shall provide for the enforcement of an award in its territory. Each Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

ARTICLE 25
COSTS

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

2. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the tribunal determines that such apportionment is unreasonable in the circumstances of the claim.

3. If only parts of the claims have been successful, the costs awarded shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

ARTICLE 26
SECURITY FOR COSTS

1. Upon request by the disputing Party, the tribunal may order the disputing investor to post security for all or a part of the costs, if there are reasonable grounds to believe that the disputing investor risks not being able to honour a possible decision on costs issued against it.

2. If the security for costs is not posted 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.

ARTICLE 27
CONSOLIDATION

Where two or more claims have been submitted separately to arbitration under Article 17 (Submission of a Claim) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

ARTICLE 28
DISCONTINUANCE

If, following the submission of a claim under this Section, the disputing investor fails to take any steps in the proceedings within 180 days or such periods as the disputing parties may agree, the disputing investor shall be deemed to have withdrawn its claim and to have discontinued the proceedings. The tribunal shall, at the request of the disputing Party, and after giving notice to the disputing parties, issue an order taking note of the discontinuance of the proceedings. After such an order has been rendered, the authority of the tribunal shall lapse. Unless the disputing investor's failure to take steps in the proceedings was reasonable in the circumstances, the disputing investor may not subsequently submit a claim on the same matter.

ARTICLE 29
SERVICE OF DOCUMENTS

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

Director General for Legal Affairs and International Treaties
Ministry of Foreign Affairs
Jalan Taman Pejambon No.6
Jakarta 10110
Indonesia

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

Permanent Secretary
Ministry of Trade & Industry
100 High Street #09-01
Singapore 179434
Singapore

SECTION TWO: SETTLEMENT OF DISPUTES BETWEEN THE PARTIES

ARTICLE 30
SCOPE

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

ARTICLE 31
CONSULTATIONS

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

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

ARTICLE 32
CONSTITUTION OF THE ARBITRAL TRIBUNAL

1. Arbitration proceedings shall initiate upon written notice delivered by a Party (hereinafter referred to as "requesting Party") to the other Party (hereinafter referred to as "respondent Party") through diplomatic channels. Such notice shall contain a statement setting forth the provisions of Chapter II (Protection) alleged to have been breached, the legal and factual grounds of the claim, a summary of the development and results of the consultations pursuant to Article 31 (Consultations), the requesting Party's intention to initiate proceedings under this Section and the name of the arbitrator appointed by such requesting Party.

2. Within 30 days after delivery of such notice, the respondent Party shall notify the requesting Party the name of its appointed arbitrator.

3. Within 30 days following the date on which the second arbitrator was appointed, the Parties shall appoint, by mutual agreement, a third arbitrator, who shall be the chairman of the arbitral tribunal. In the event that the Parties fail to mutually agree on the appointment of the third arbitrator, the arbitrators appointed by the Parties shall, within 30 days, appoint the third arbitrator, who shall be the chairman of the arbitral tribunal.

4. The arbitrators shall have experience or expertise in public international law. It is desirable that they have expertise, in particular, in international investment law, international

trade law, or the resolution of disputes arising under international investment or international trade agreements. The arbitrators shall be independent from the Parties, and not be affiliated to or receive instructions from either of them.

5. With regard to the selection of arbitrators under paragraphs 1, 2 and 3 of this Article, both Parties and, where relevant, the arbitrators appointed by them, shall not select arbitrators that are nationals or permanent residents of either Party. In addition, the third arbitrator shall be a national of a non-Party which has diplomatic relations with the Parties.

6. If the required appointments have not been made within the time limits set forth in paragraphs 2 and 3 above, either Party may invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national or a permanent resident of either Party, or he or she is otherwise unable to act, the Vice-President of the International Court of Justice shall be invited to make the said appointments. If the Vice-President of the International Court of Justice is a national or a permanent resident of either Party, or he or she is otherwise unable to act, the Member of the International Court of Justice next in seniority who is neither a national nor a permanent resident of either Party shall be invited to make the necessary appointments.

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

8. Each Party shall bear the costs of its appointed arbitrator and of any legal representation in the proceedings. The costs of the chairman of the arbitral tribunal and of other expenses associated with the conduct of the arbitration shall be borne equally by the Parties, unless the arbitral tribunal decides that a higher proportion of costs be borne by one of the Parties.

ARTICLE 33
PLACE OF ARBITRATION

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

ARTICLE 34
ARBITRAL PROCEEDINGS

1. A tribunal established under this Section shall decide all questions relating to its competence and, subject to any agreement between the Parties, determine its own procedure. At any stage of the proceedings, the arbitral tribunal may propose to the Parties that the dispute be settled amicably. At all times, the arbitral tribunal shall afford a fair hearing to the Parties.

2. The arbitral tribunal shall decide the issues in dispute in accordance with this Agreement and the applicable rules and principles of international law.

3. The arbitral tribunal shall reach its decision by majority vote. The award shall be issued in writing and shall contain the applicable factual and legal findings. A signed award shall be delivered to each Party. The award shall be final and binding on the Parties.

CHAPTER IV
FINAL PROVISIONS

ARTICLE 35
OTHER OBLIGATIONS

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

ARTICLE 36
DENIAL OF BENEFITS

1. A Party may deny the benefits of this Agreement to:

   (a) an investor of the other Party that is an enterprise of such other Party and to investments of such investor if an investor of a non-Party owns or controls the enterprise and the denying Party does not maintain diplomatic relations with the non-Party;

   (b) an investor of the other Party that is an enterprise of such other Party and to investments of such investor if an investor of a non-Party or the denying Party owns or controls the enterprise and the enterprise has no substantive business operations in the territory of such other Party;

   (c) an investor that is a natural person of the other Party and to investments of that investor if that natural person is also a national of the denying Party; or

   (d) an investor of the other Party that is an enterprise of that other Party and to investments of that investor if a natural person or an enterprise of a non-Party owns or controls the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a natural person or an enterprise of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

2. For the purposes of this Article, an enterprise is:

   (a) "owned" by an investor if more than fifty (50) percent of the equity interest in it is beneficially owned by the investor; and

   (b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

ARTICLE 37
TRANSPARENCY

1. Each Party shall ensure that its laws, regulations and administrative rulings of general application pertaining to or affecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons or the other Party to become acquainted with them. International agreements pertaining to or affecting investors or investment activities, to which a Party is a signatory, shall also be published.

2. To the extent feasible, each Party shall make the measures and international agreements of the kind referred to in paragraph 1 available on the internet. Each Party shall, upon request by the other Party, respond within a reasonable period of time to specific questions from and provide information to the other Party with respect to matters referred to in paragraph 1.

ARTICLE 38
INFORMATION REQUIREMENTS AND DISCLOSURE OF INFORMATION

1. Notwithstanding Article 4 (National Treatment) and Article 5 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party, or its investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or its investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

2. Nothing in this Agreement shall require either Party to provide confidential information the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

ARTICLE 39
GENERAL EXCEPTIONS[22]

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

(a) necessary to protect public morals or to maintain public order;[23]

[22] For greater certainty, the application of the general exceptions to these provisions shall not be interpreted so as to diminish the ability of governments to take measures where investors are not in like circumstances due to the existence of legitimate regulatory objectives.

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

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

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

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

(iii) safety;

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

(e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.[24]

ARTICLE 40
SECURITY EXCEPTIONS[25]

Nothing in this Agreement shall be construed to:

(a) require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

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

[24] For greater certainty, this provision also applies to measures relating to the conservation of living and non-living exhaustible natural resources.

[25] For greater certainty, nothing in this Agreement shall prevent a Party from taking any action which it considers necessary for the protection of critical public infrastructure, such as the communications, power, water and transportation infrastructure, including but not limited to imposing restrictions on operators of such infrastructure and preventing deliberate attempts intended to disable or degrade such infrastructure.

ARTICLE 41
PRUDENTIAL MEASURES

1. Notwithstanding any other provisions in this Agreement, a Party shall not be prevented from taking measures in a non-discriminatory manner relating to financial services for prudential reasons,[26] including measures for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity and stability of its financial system.

2. Where the measures taken by a Party pursuant to paragraph 1 do not conform with this Agreement, they shall not be used as a means of avoiding the commitments or obligations of the Party under this Agreement.

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

ARTICLE 42
PROMOTION AND FACILITATION OF INVESTMENT

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

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

(b) simplifying procedures for investment applications and approvals;

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

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

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

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

[26] The Parties understand that the term ‘prudential reasons’ includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers as well as the safety, and financial and operational integrity of payment and clearing systems.

ARTICLE 43
TAXATION

1. Article 6 (Expropriation) and Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement) shall apply to taxation measures to the extent that such taxation measures constitute expropriation as provided for in Article 6 (Expropriation).[27] An investor that seeks to invoke Article 6 (Expropriation) with respect to a taxation measure must first refer to the competent taxation authorities of both Parties as described in paragraph 2, at the time that it gives notice under Section One (Settlement of Disputes between a Party and an Investor of the other Party) of Chapter III (Dispute Settlement), the issue of whether that taxation measure involves an expropriation as provided for under Article 6 (Expropriation). If the competent taxation authorities of both Parties do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation as provided for under Article 6 (Expropriation) within a period of six (6) months of the receipt of such referral, the investor may submit its claim to arbitration under Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement).

2. For the purposes of this Article, "competent taxation authorities" means:

(a) in the case of the Republic of Indonesia, Minister of Finance or his or her authorised representative;

(b) in the case of the Republic of Singapore, the Chief Tax Policy Officer, Ministry of Finance, or his successor or such other public officer as may be designated by Singapore;

or their successors.

[27] With reference to Article 6 (Expropriation), in assessing whether a taxation measure constitutes expropriation, the following considerations are relevant:

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

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

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

ARTICLE 44
ENTRY INTO FORCE, DURATION AND TERMINATION

1. This Agreement shall enter into force on the date of exchange of Instruments of Ratification by the Parties.

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

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

4. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force for a further period of 10 years from that date.

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

DONE in duplicate at _____ on _____ in the Indonesian and English languages, both texts being equally authentic. In the event of any divergence concerning interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE	**FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA**
CHAN CHUN SING **Minister for Trade and Industry**	**RETNO L. P. MARSUDI** **Minister for Foreign Affairs**

ANNEX I
NATIONAL TREATMENT

Article 4 (National Treatment) shall not apply to any measure relating to:

(a) the collection, purification, treatment, disposal and distribution of water, including waste water;

(b) real estate, including but not limited to the ownership, purchase, development, management, maintenance, use, enjoyment, sale or other disposal of real estate; or

(c) a national public health service scheme.

ANNEX II
EXPROPRIATION

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest[28] in an investment.

2. Paragraph 1 of Article 6 (Expropriation) addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by paragraph 1 of Article 6 (Expropriation) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

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

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;[29] and

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

(b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations.

[28] For greater certainty, property interest refers to such property interest as applicable under the law of that Party.

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

ANNEX III
PUBLIC DEBT

1. The Parties recognise that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award shall be made in favour of a disputing investor for a claim under Article 17 (Submission of a Claim) with respect to default or non-payment of debt issued by a Party unless the disputing investor meets its burden of proving that such default or non-payment constitutes a breach of an obligation under Chapter II (Protection), including an uncompensated expropriation pursuant to Article 6 (Expropriation).

2. No claim that a restructuring of debt issued by a Party breaches an obligation under Chapter II (Protection) shall be submitted to, or if already submitted continued in, arbitration under Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after that submission, except for a claim that the restructuring violates Article 4 (National Treatment) or Article 5 (Most-Favoured-Nation Treatment).[30]

3. Notwithstanding Article 17 (Submission of a Claim), and subject to paragraph 2, an investor of the other Party shall not submit a claim under Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement) that a restructuring of debt issued by a Party breaches an obligation under Chapter II (Protection), other than Article 4 (National Treatment) or Article 5 (Most-Favoured-Nation Treatment), unless 450 days have elapsed from the date of receipt by the disputing Party of the written request for consultations pursuant to Article 15 (Consultations).

4. For the purposes of this Annex, "**negotiated restructuring**" means the restructuring or rescheduling of a debt instrument that has been effected through (a) a modification or amendment of that debt instrument, as provided for under its terms, or (b) a comprehensive debt exchange or other similar process in which the holders of no less than 75 per cent of the aggregate principal amount of the outstanding debt under that debt instrument have consented to the debt exchange or other process.

[30] For the purpose of this Annex, the mere fact that the relevant treatment distinguishes between investors or investments on the basis of legitimate public policy objectives in the context of a debt crisis or a threat thereof does not amount to a breach of Article 4 (National Treatment) or Article 5 (Most-Favoured-Nation Treatment).

ANNEX IV
CODE OF CONDUCT FOR ARBITRATORS AND MEDIATORS

Definitions

1. In this Code of Conduct:

arbitrator means a member of an arbitral tribunal established pursuant to Article 19 (Constitution of the Arbitral Tribunal);

mediator means a person who conducts mediation in accordance with Article 16 (Mediation);

candidate means an individual who is under consideration for selection as an arbitrator;

assistant means a person who, under the terms of appointment of an arbitrator, conducts research or provides assistance to the arbitrator;

staff, in respect of an arbitrator, means any person under the direction and control of the arbitrator, other than an assistant; and

proceedings, unless otherwise specified, means arbitral proceedings under Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement).

Responsibilities to the Process

2. Throughout the proceedings, every candidate and arbitrator shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved.

3. Arbitrators shall not take instructions from any organisation or government with regard to matters before the arbitral tribunal.

Disclosure Obligations

4. Prior to his or her appointment as an arbitrator, a candidate shall disclose to the disputing parties any past or present interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceedings. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.

5. Once appointed, an arbitrator shall at all times continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 4 and shall disclose them. The disclosure obligation is a continuing duty, which requires an arbitrator to disclose any such interests, relationships or matters that may arise during any stage of the

proceedings at the earliest time the arbitrator becomes aware of it. The arbitrator shall disclose such interests, relationships or matters by informing the disputing parties, in writing, for their consideration.

6. Disclosure of an interest, relationship or matter is without prejudice as to whether that interest, relationship or matter is indeed covered by paragraphs 4 or 5, or whether it warrants recusal or disqualification. In the event of uncertainty regarding whether an interest, relationship or matter must be disclosed, a candidate or arbitrator should err in favour of disclosure.

7. An arbitrator shall communicate matters concerning actual or potential violations of this Code of Conduct to the disputing parties.

Duties of Arbitrators

8. An arbitrator shall comply with the provisions of Section One (Settlement of Disputes between a Party and an Investor of the Other Party) of Chapter III (Dispute Settlement) and the applicable rules of procedure.

9. An arbitrator shall perform his or her duties thoroughly and expeditiously throughout the course of the proceedings, and with fairness and diligence.

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

11. An arbitrator shall consider only those issues raised in the proceedings and necessary for a decision or award and shall not delegate this duty to any other person.

12. An arbitrator shall take all appropriate steps to ensure that his or her assistants and staff are aware of, and comply with, paragraphs 2 to 6 and 21 to 24 of this Code of Conduct.

13. An arbitrator shall not engage in any ex parte contacts concerning the proceedings.

Independence and Impartiality of Arbitrators

14. An arbitrator shall be independent and impartial and avoid creating an appearance of bias or impropriety and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a disputing party or a non-disputing Party, or fear of criticism.

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

16. An arbitrator shall not use his or her position on the arbitral tribunal to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence him or her.

17. An arbitrator shall not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgement.

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

Obligations of Former Arbitrators

19. A former arbitrator shall avoid actions that may create the appearance that he or she was biased in carrying out his or her duties or derived any advantage from the decisions or awards of the arbitral tribunal.

Confidentiality

20. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding, except for the purposes of that proceedings, and shall not, in particular, disclose or use any such information to gain a personal advantage or an advantage for others or to adversely affect the interests of others.

21. An arbitrator shall not make any public statement regarding the merits of a pending proceedings.

22. An arbitrator shall not disclose a decision or award or parts thereof prior to its publication.

23. An arbitrator or former arbitrator shall not at any time disclose the deliberations of the arbitral tribunal, or any arbitrator's view regarding the deliberations, except as required by law.

Expenses

24. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of his or her expenses, as well as the time and expenses of his or her assistants.

Responsibilities of Assistants and Staff

25. Paragraphs 2 to 6, 8, 13, and 19 to 23 of this Code of Conduct shall also apply to assistants and staff.

Mediators

26. The rules set out in this Code of Conduct as applying to arbitrators or former arbitrators shall apply, *mutatis mutandis*, to mediators.