AGREEMENT

BETWEEN

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

AND

THE GOVERNMENT OF CANADA

FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

INDEX

Section A – Definitions

ARTICLE 1: Definitions

Section B – Substantive Obligations

ARTICLE 2: Scope

ARTICLE 3: Promotion of Investment

ARTICLE 4: Non-discriminatory Treatment as Compared with a Party's Own Investors

ARTICLE 5: Non-discriminatory Treatment as Compared with a Non-Party's Investors

ARTICLE 6: Minimum Standard of Treatment

ARTICLE 7: Compensation for Losses

ARTICLE 8: Senior Management, Boards of Directors and Entry of Personnel

ARTICLE 9: Performance Requirements

ARTICLE 10: Expropriation

ARTICLE 11: Transfers

ARTICLE 12: Transparency

ARTICLE 13: Subrogation

ARTICLE 14: Taxation Measures

ARTICLE 15: Health, Safety and Environmental Measures

ARTICLE 16: Reservations and Exceptions

ARTICLE 17: General Exceptions

ARTICLE 18: Denial of Benefits

Section C – Settlement of Disputes between an Investor and the Host Party

ARTICLE 19: Purpose

ARTICLE 20: Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise

ARTICLE 21: Conditions Precedent to Submission of a Claim to Arbitration

ARTICLE 22: Special Rules regarding Financial Services

ARTICLE 23: Submission of a Claim to Arbitration

ARTICLE 24: Consent to Arbitration

ARTICLE 25: Arbitrators

ARTICLE 26: Consolidation

ARTICLE 27: Documents to, and Participation of, the Non-Respondent Party

ARTICLE 28: Place of Arbitration

ARTICLE 29: Transparency of Proceedings

ARTICLE 30: Governing Law

ARTICLE 31: Expert Reports

ARTICLE 32: Interim Measures of Protection and Final Award

ARTICLE 33: Finality and Enforcement of an Award

ARTICLE 34: Receipts under Insurance or Guarantee Contracts

Section D – Settlement of Disputes between the Parties

ARTICLE 35: Settlement of Disputes between the Parties

Section E – Final Provisions

ARTICLE 36: Consultations and other Actions

ARTICLE 37: Exclusions

ARTICLE 38: Application and Entry into Force

ANNEXES

ANNEX I: Expropriation

ANNEX II: Reservations for Future Measures

- Schedule of the Hong Kong Special Administrative Region
- Schedule of Canada

ANNEX III: Exceptions from Non-discriminatory Treatment as Compared with a Non-Party's Investors

ANNEX IV: Exclusions from Dispute Settlement

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

AND

THE GOVERNMENT OF CANADA

FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF CANADA (the "Parties"), the former Party having been duly authorized to conclude this Agreement by the Central People's Government of the People's Republic of China,

RECOGNIZING that the promotion and the protection of investments of investors of one Party in the area of the other Party are conducive to the stimulation of mutually beneficial business activities and to the development of economic cooperation between them,

RECOGNIZING the need to promote investments based on the principles of sustainable development,

HAVE AGREED as follows:

Section A – Definitions

ARTICLE 1

Definitions

For the purpose of this Agreement:

"**area**" means:

(a) in respect of the Hong Kong Special Administrative Region, the Hong Kong Special Administrative Region as delineated by the Order of State Council of the People's Republic of China No. 221, which includes Hong Kong Island, Kowloon and the New Territories;

(b) in respect of Canada:

(i) the land territory, internal waters and territorial sea, including the air space above these areas, over which Canada exercises sovereignty;

(ii) the exclusive economic zone of Canada, as determined by its law, pursuant to Part V of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 (UNCLOS); and

(iii) the continental shelf of Canada, as determined by its law, pursuant to Part VI of UNCLOS;

"**competition authority**" means:

(a) for Canada, the Commissioner of Competition or a successor to be notified to the Hong Kong Special Administrative Region in writing; and

(b) for the Hong Kong Special Administrative Region, the Competition Commission established under the Competition Ordinance (Cap. 619) or a successor to be notified to Canada in writing;

"**confidential information**" means confidential business information or information that is privileged or otherwise protected from disclosure under the law of a Party;

"**covered investment**" means, with respect to a Party, an investment in its area that is owned or controlled, directly or indirectly, by an investor of the other Party, and exists on the date of entry into force of this Agreement or is made or acquired thereafter;

"**disputing party**" means either the respondent Party or the investor that has made a claim under Section C (Settlement of Disputes between an Investor and the Host Party);

"**enterprise**" means an entity constituted or organized under applicable law, whether or not for profit, whether privately owned or governmentally owned, including a corporation, trust, partnership, sole proprietorship, joint venture or other association and a branch of any such entity;

"**existing**" means in effect on the date of entry into force of this Agreement;

"**financial institution**" means a financial intermediary or other enterprise that is authorized to provide financial service and regulated or supervised as a financial institution under the law of the Party in whose area it is located;

"**financial service**" has the same meaning as in subparagraph 5(a) of the Annex on Financial Services of the *General Agreement on Trade in Services*, contained in Annex 1B to the WTO Agreement;

"**freely convertible currency**" means a currency free of all currency exchange controls and widely traded in international foreign exchange markets;

"**Government**" means:

(a) for Canada, the federal government; and

(b) for the Hong Kong Special Administrative Region, the government of the Hong Kong Special Administrative Region;

"**Government enterprise**" means an enterprise that is owned or controlled, directly or indirectly, by a government or, if applicable, a sub-national government;

"**information protected under its competition laws**" means:

(a) for Canada, information within the scope of Section 29 of the Competition Act, R.S.C., 1985, c. C-34, or a successor provision; and

(b) for the Hong Kong Special Administrative Region, information protected under the Competition Ordinance (Cap. 619);

"**intellectual property rights**" means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights;

"**investment**" means:

(a) an enterprise;

(b) a share, stock or other form of equity participation in an enterprise;

(c) a bond, debenture or other debt instrument of an enterprise;

(d) a loan to an enterprise;

(e) notwithstanding subparagraphs (c) and (d) above, a loan to or debt security issued by a financial institution is an investment only where the loan or debt security is treated as regulatory capital by the Party in whose area the financial institution is located;

(f) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(g) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;

(h) an interest arising from the commitment of capital or other resources in the area of a Party to economic activity in that area, such as under:

(i) a contract involving the presence of an investor's property in the area of the Party, including a turnkey or construction contract, or a concession, or

(ii) a contract where remuneration depends substantially on the production, revenues or profits of an enterprise;

(i) intellectual property rights; and

(j) any other tangible or intangible, moveable or immovable, property and related property rights acquired in the expectation of or used for the purpose of economic benefit or other business purpose;

but "**investment**" does not mean:

(k) a claim to money that arises solely from:

(i) a commercial contract for the sale of a good or service by a person in the area of a Party to an enterprise in the area of the other Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing; or

(l) any other claim to money,

that does not involve the kinds of interests set out in subparagraphs (a) to (j).

For greater clarity, any alteration of the form in which an asset is invested shall not affect its character as an investment.

"**investor of a Party**" means a Party, or a person or a Government enterprise of such Party, that seeks to make, is making or has made an investment. For greater certainty, it is understood that an investor "seeks to make an investment" only when the investor has taken concrete steps necessary to make the said investment;

"**measure**" includes a law, regulation, procedure, requirement or practice;

"**natural person**" means:

(a) for Canada, a citizen or permanent resident of Canada; and

(b) for the Hong Kong Special Administrative Region, a permanent resident of the Hong Kong Special Administrative Region;

A natural person that is both a permanent resident of the Hong Kong Special Administrative Region and a citizen or permanent resident of Canada shall be deemed to be exclusively a natural person of the Party with which he or she has a predominant link, taking into account factors including, but not limited to, the individual's permanent home, centre of vital interests (i.e. where the individual's personal and economic relations are closer), and habitual abode.

"**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;

"**PCA**" means the Permanent Court of Arbitration established by the *Conventions for the Pacific Settlement of International Disputes*, done at The Hague on 29 July 1899 and 18 October 1907;

"**person**" means a natural person or an enterprise;

"**respondent Party**" means a Party against which a claim is made under Section C (Settlement of Disputes between an Investor and the Host Party);

"**returns-in-kind**" means returns in the form of an article or commodity, for example in goods or in natural produce, as opposed to money;

"**sub-national government**" means, for Canada, a provincial, territorial or local government;

"**tax convention**" means a convention for the avoidance of double taxation or other international taxation agreement or arrangement;

"**Tribunal**" means an arbitration tribunal constituted under Article 23 (Submission of a Claim to Arbitration) or Article 26 (Consolidation);

"**TRIPS Agreement**" means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C of the WTO Agreement;

"**UNCITRAL Arbitration Rules**" means the arbitration rules of the United Nations Commission on International Trade Law; and

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

Section B – Substantive Obligations

ARTICLE 2

Scope

1. This Agreement shall apply to measures adopted or maintained by a Party relating to:

(a) an investor of the other Party; and

(b) a covered investment.

2. The obligations in Section B (Substantive Obligations) apply to a person of a Party when it exercises a regulatory, administrative or other governmental authority delegated to it by that Party.

ARTICLE 3

Promotion of Investment

Each Party shall encourage the creation of favourable conditions for investment in its area by investors of the other Party and shall admit those investments in accordance with its laws, regulations, and rules.

ARTICLE 4

Non-discriminatory Treatment as Compared with a Party's Own Investors

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

2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the expansion, management, conduct, operation and sale or other disposition of an investment in its area.

3. For greater certainty, the treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

4. The concept of "expansion" in this Article applies only with respect to sectors not subject to a prior approval process or admission requirements under the relevant sectorial guidelines and applicable laws, regulations and rules in force at the time of expansion. The expansion may be subject to prescribed formalities and other information requirements.

ARTICLE 5

Non-discriminatory Treatment as Compared with a Non-Party's Investors

1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its area.

2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its area.

3. For greater certainty, the treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

4. For greater certainty, the treatment referred to in paragraphs 1 and 2 does not encompass the dispute resolution mechanisms, such as those in Section C (Settlement of Disputes between an Investor and the Host Party), in other international investment or trade agreements.

ARTICLE 6

Minimum Standard of Treatment

1. Each Party shall accord to a covered investment treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.

2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

3. 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 7

Compensation for Losses

Notwithstanding Article 16(5)(b) (Reservations and Exceptions), each Party shall accord to an investor of the other Party, and to a covered investment, non-discriminatory treatment with respect to measures it adopts or maintains relating to compensation for losses incurred by investments in its area as a result of war or other armed conflict, revolution, revolt, insurrection, riot, civil strife, a state of national emergency or a natural disaster. Any resulting monetary compensation shall be made in a freely convertible currency.

ARTICLE 8

Senior Management, Boards of Directors and Entry of Personnel

1. A Party may not require that an enterprise of that Party that is a covered investment appoint to a senior management position an individual of any particular nationality.

2. A Party may require that a majority of the board of directors, or a committee thereof, of an enterprise of that Party that is a covered investment be of a particular nationality or resident in the area of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

3. Each Party shall, subject to its relevant laws and regulations, grant temporary entry and stay to natural persons employed by an investor of the other Party who seek to render managerial or executive services, or services that require specialized knowledge, to an investment of that investor in the area of the Party.

ARTICLE 9

Performance Requirements

1. A Party may not impose or enforce the following requirements, or enforce a commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of a covered investment in its area:

(a) to export a given level or percentage of a good or service;

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

(c) to purchase, use or accord a preference to a good produced or service provided in its area, or to purchase a good or service from a person in its area;

(d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;

(e) to restrict sales of a good or service in its area that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its area; or

(g) to supply exclusively from the area of the Party a good that the investment produces or a service it provides to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements is not inconsistent with subparagraph 1(f).

3. A Party may not condition the receipt or continued receipt of an advantage, in connection with a covered investment in its area, on compliance with the following requirements:

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

(b) to purchase, use or accord a preference to a good produced in its area, or to purchase a good from a producer in its area;

(c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment; or

(d) to restrict sales of a good or service in its area that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings.

4. (a) Paragraph 3 does not prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with a covered investment, 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 area.

(b) Subparagraph 1(f) does not apply if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of the Party's competition law.

5. Paragraphs 1 and 3 only apply to requirements set out in those paragraphs.

6. The provisions of:

(a) subparagraphs 1(a), (b) and (c), and 3(a) and (b), do not apply to a qualification requirement for a good or service with respect to export promotion and foreign aid programs;

(b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b), do not apply to procurement by a Party or a Government enterprise; and

(c) subparagraphs 3(a) and (b) do not apply to a requirement imposed by an importing Party relating to the content of a good necessary to qualify for a preferential tariff or preferential quota.

ARTICLE 10

Expropriation

1. A Party may not expropriate a covered investment either directly or indirectly through measures having an effect equivalent to expropriation, except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of compensation in accordance with paragraphs 2 and 3. For greater certainty, this paragraph shall be interpreted in accordance with Annex I.

2. The compensation referred to in paragraph 1 must be equivalent to the real value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and must not reflect a change in value occurring because the intended expropriation had become known earlier. Valuation criteria must include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine the real value.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be paid in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment.

4. The affected investor shall have a right under the law of the expropriating Party to prompt review of its case 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.

5. This Article does not apply to the issuance of a compulsory licence granted in relation to intellectual property rights, or to the revocation, limitation or creation of an intellectual property right, to the extent that the issuance, revocation, limitation or creation is consistent with the WTO Agreement.

ARTICLE 11

Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely, and without delay, into and out of its area. Those transfers include:

(a) contributions to capital;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns-in-kind and other amounts derived from the covered investment;

(c) proceeds from the sale of all or part of the covered investment or from the partial or complete liquidation of the covered investment;

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

(e) payments made under Articles 7 (Compensation for Losses) and 10 (Expropriation); and

(f) payments arising under Section C (Settlement of Disputes between an Investor and the Host Party).

2. Each Party shall permit transfers relating to a covered investment to be made in the convertible currency in which the capital was originally invested, or in another freely convertible currency agreed to by the investor and the Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the market rate of exchange in effect on the date of transfer.

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

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

(b) issuing, trading or dealing in securities;

(c) a criminal or penal offence;

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

(e) ensuring compliance with an order or judgment in judicial or administrative proceedings.

4. A Party may not require one of its investors to transfer, or penalize one of its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, an investment in the area of the other Party.

5. Paragraph 4 does not prevent a Party from imposing a measure through the equitable, non-discriminatory and good faith application of its law relating to the matters in subparagraphs 3(a) through 3(e).

6. Notwithstanding paragraphs 1, 2 and 4, and without limiting the applicability of paragraph 5, a Party may prevent or limit transfers by a financial institution to, or for the benefit of, an affiliate of or person related to that institution, through the equitable, non-discriminatory and good faith application of a measure relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions.

7. Notwithstanding paragraph 1, a Party may restrict transfers of returns-in-kind in circumstances where it could otherwise restrict those transfers under the WTO Agreement and as set out in paragraph 3.

ARTICLE 12

Transparency

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting a matter covered by this Agreement are promptly published or otherwise made available to interested persons and the other Party.

2. To the extent possible, each Party shall:

(a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on that proposed measure.

3. Upon request by a Party, the other Party shall provide information on a measure that may have an impact on a covered investment.

ARTICLE 13

Subrogation

1. If a Party or an agency of a Party makes a payment to one of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of the first-mentioned Party or agency to a right or title held by the investor.

2. A Party or an agency of a Party, that is subrogated to a right of an investor in accordance with paragraph 1, is entitled to the same rights as those of the investor regarding the investment. Those rights may be exercised by the Party or an agency of the Party or by the investor if the Party or its agency so authorizes.

ARTICLE 14

Taxation Measures

1. Except as set out in this Article, this Agreement does not apply to a taxation measure.

2. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of inconsistency between this Agreement and a tax convention, that convention prevails to the extent of the inconsistency.

3. This Agreement does not require a Party to furnish or allow access to information, which if disclosed, would be contrary to the Party's law protecting information concerning the taxation affairs of a taxpayer.

4. Provided that the conditions in paragraph 5 are met:

(a) a claim by an investor that a taxation measure of a Party is in breach of an agreement between a Government authority of that Party and the investor concerning an investment shall be considered a claim for breach of this Agreement; and

(b) Article 10 (Expropriation) applies to taxation measures.

5. An investor may not make a claim under paragraph 4 unless:

(a) the investor provides a copy of the notice of claim to the taxation authorities of the Parties; and

(b) six months after receiving notification of the claim by the investor, the taxation authorities of the Parties fail to reach a joint determination that, in the case of subparagraph 4(a), the measure does not contravene that agreement, or in the case of subparagraph 4(b), the measure is not an expropriation.

6. If, in connection with a claim by an investor of a Party or a dispute between the Parties, an issue arises as to whether a measure of a Party is a taxation measure, a Party may refer the issue to the taxation authorities of the Parties. A joint determination of the taxation authorities shall bind a Tribunal formed pursuant to Section C (Settlement of Disputes between an Investor and the Host Party) or an arbitral panel formed pursuant to Section D (Settlement of Disputes between the Parties). A Tribunal or arbitral panel seized of a claim or a dispute in which the issue arises may not proceed until it receives the joint determination of the taxation authorities. If the taxation authorities have not determined the issue within six months from the date of the referral, the Tribunal or arbitral panel shall decide the issue.

7. Each Party shall notify the other Party in writing of the identity and contact information of the taxation authorities referred to in this Article.

ARTICLE 15

Health, Safety and Environmental Measures

The Parties recognize that it is inappropriate to encourage investment by relaxing their health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, those measures to encourage the establishment, acquisition, expansion or retention in its area of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding the encouragement.

ARTICLE 16

Reservations and Exceptions

1. Articles 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors), 8 (Senior Management, Boards of Directors and Entry of Personnel) and 9 (Performance Requirements) shall not apply to:

(a) (i) any existing non-conforming measure maintained in the area of a Party;

(ii) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition of a government's equity interests in, or the assets of, an existing Government enterprise or an existing governmental entity:

- prohibits or imposes limitations on the ownership or control of equity interests or assets, or

- imposes nationality requirements relating to senior management or members of the board of directors;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors), 8 (Senior Management, Boards of Directors and Entry of Personnel) and 9 (Performance Requirements).

2. Articles 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors), 8 (Senior Management, Board of Directors and Entry of Personnel) and 9 (Performance Requirements) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its schedule to Annex II.

3. Article 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors) shall not apply to treatment accorded by a Party pursuant to agreements or arrangements set out in Annex III.

4. In respect of intellectual property rights, a Party may derogate from Articles 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors) and 9(1)(f) (Performance Requirements) in a manner that is consistent with:

(a) the TRIPS Agreement;

(b) an amendment to the TRIPS Agreement in force for both Parties; and

(c) a waiver to the TRIPS Agreement granted pursuant to Article IX of the WTO Agreement.

5. Articles 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors) and 8 (Senior Management, Boards of Directors and Entry of Personnel) shall not apply to:

(a) procurement by a Party or a Government enterprise; or

(b) a subsidy or grant provided by a Party or a Government enterprise, including a government-supported loan, a guarantee or insurance.

ARTICLE 17

General Exceptions

1. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

(a) necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

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

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

2. This Agreement does not prevent a Party from adopting or maintaining measures for prudential reasons, such as:

(a) protecting investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;

(b) maintaining the safety, soundness, integrity or financial responsibility of financial institutions; and

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

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

3. This Agreement does not apply to non-discriminatory measures of general application taken by a central bank or monetary authority in pursuit of monetary and related credit or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 9 (Performance Requirements) or Article 11 (Transfers).

4. This Agreement does not:

(a) require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests;

(b) prevent a Party from taking an action that it considers necessary to protect its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations,

(iii) relating to the implementation of policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) prevent a Party from taking any action pursuant to the obligations applicable to it under the *United Nations Charter* for the maintenance of international peace and security.

5. This Agreement does not require a Party to furnish or allow access to information which if disclosed would impede law enforcement or would be contrary to any of its laws, including the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet or executive council level, personal privacy, the confidentiality of the financial affairs and accounts of individual customers of financial institutions or confidential information concerning particular investors or investments, the disclosure of which would prejudice legitimate commercial interests of particular investors.

6. In the course of a dispute settlement procedure under this Agreement:

(a) a Party is not required to furnish or allow access to information protected under its competition law;

(b) a competition authority of a Party is not required to furnish or allow access to information that is privileged or otherwise protected from disclosure.

7. This Agreement does not apply to a measure adopted or maintained by a Party with respect to a person engaged in a cultural industry. "Person engaged in a cultural industry" means a person engaged in the following activities:

(a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form, except when printing or typesetting any of the foregoing is the only activity;

(b) the production, distribution, sale or exhibition of film or video recordings;

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution or sale of music in print or machine-readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services.

8. If a right or obligation in this Agreement duplicates one under the WTO Agreement, the Parties agree that a measure adopted by a Party in conformity with a waiver decision granted by the WTO pursuant to Article IX of the WTO Agreement is deemed to be also in conformity with this Agreement. Such conforming measure of either Party may not give rise to a claim by an investor of one Party against the other under Section C (Settlement of Disputes between an Investor and the Host Party).

ARTICLE 18

Denial of Benefits

A Party may, at any time including after the institution of arbitration proceedings in accordance with Section C (Settlement of Disputes between an Investor and the Host Party), deny the benefits of this Agreement to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:

(a) investors of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party:

(i) that prohibit transactions with the enterprise, or

(ii) that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its covered investments; or

(b) investors of a non-Party or of the denying Party own or control the enterprise and the enterprise has no substantial business activities in the area of the Party under whose law it is constituted or organized.

Section C – Settlement of Disputes between an Investor and the Host Party

ARTICLE 19

Purpose

Without prejudice to the rights and obligations of the Parties under Section D (Settlement of Disputes between the Parties), this Section establishes a mechanism for the settlement of disputes between an investor and the host Party.

ARTICLE 20

Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise

1. An investor of a Party may submit to arbitration under this Section a claim that:

   (a) the respondent Party has breached an obligation under Section B (Substantive Obligations), other than an obligation under Articles 8(3) (Senior Management, Boards of Directors and Entry of Personnel), 12 (Transparency), 15 (Health, Safety and Environmental Measures); and

   (b) the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor of a Party, on behalf of an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that:

   (a) the respondent Party has breached an obligation under Section B (Substantive Obligations), other than an obligation under Articles 8(3) (Senior Management, Boards of Directors and Entry of Personnel), 12 (Transparency), 15 (Health, Safety and Environmental Measures); and

   (b) the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

ARTICLE 21

Conditions Precedent to Submission of a Claim to Arbitration

1. The disputing parties shall hold consultations and attempt to settle a claim amicably before an investor may submit a claim to arbitration. Unless the disputing parties agree to a longer period, consultations shall be held within 60 days of the submission of the notice of intent to submit a claim to arbitration under subparagraph 2(c). The place of consultation would be Hong Kong, if the Hong Kong Special Administrative Region is the respondent Party, and Ottawa, if Canada is the respondent Party, unless the disputing parties otherwise agree.

2. An investor may submit a claim to arbitration under Article 20 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) only if:

(a) the investor and, where a claim is made under Article 20(2) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the enterprise, consent to arbitration in accordance with the procedures set out in this Agreement;

(b) at least six months have elapsed since the events giving rise to the claim;

(c) the investor has delivered to the respondent Party a written notice of its intent to submit a claim to arbitration at least 90 days prior to submitting the claim, which notice shall specify:

(i) the name and address of the investor and, where a claim is made under Article 20(2) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the name and address of the enterprise,

(ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,

(iii) the legal and the factual basis for the claim, including the measures at issue, and

(iv) the relief sought and the approximate amount of damages claimed;

(d) the investor has delivered evidence establishing that it is an investor of the other Party with its notice of intent to submit a claim to arbitration under subparagraph 2(c);

(e) in the case of a claim submitted under Article 20(1) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise):

(i) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby,

(ii) the investor waives its right to initiate or continue before an administrative tribunal or court under the law of a Party, or other dispute settlement procedures, including those under any agreement between a non-Party and the disputing Party, proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article 20 (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise), and

(iii) if the claim is for loss or damage to an interest in an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise waives the right referred to under subparagraph (ii);

(f) in the case of a claim submitted under Article 20(2) (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise):

(i) not more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and

(ii) both the investor and the enterprise waive their right to initiate or continue before an administrative tribunal or court under the law of a Party, or other dispute settlement procedures, including those under any agreement between a non-Party and the disputing Party, proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article 20 (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise).

3. Subparagraphs 2(e)(ii), (iii) and 2(f)(ii) do not apply to proceedings before a judicial or administrative tribunal or court under the law of the respondent Party for injunctive, declaratory or other extraordinary relief, not involving the payment of damages.

4. The disputing investor or the enterprise shall deliver the consent and waiver required under paragraph 2 to the respondent Party and the investor shall include them in the submission of a claim to arbitration. A waiver from the enterprise under subparagraphs 2(e)(iii) or 2(f)(ii) is not required if the respondent Party has deprived the investor of control of the enterprise.

ARTICLE 22

Special Rules Regarding Financial Services

1. With respect to:

(a) financial institutions of a Party; and

(b) investors of a Party, and investments of those investors, in financial institutions in the respondent Party's area,

this Section applies only in respect of claims that the respondent Party has breached an obligation under Article 10 (Expropriation), 11 (Transfers) or 18 (Denial of Benefits).

2. Where an investor or respondent Party claims that a dispute involves measures adopted or maintained by the respondent Party relating to financial institutions of the other Party or investors of the other Party and their investments in financial institutions in the respondent Party's area, or where the respondent Party invokes Articles 11(6) (Transfers), 17(2) or 17(3) (General Exceptions), the arbitrators shall, in addition to the criteria set out in Article 25(2) (Arbitrators), have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

3. Where an investor submits a claim to arbitration under this Section, and the respondent Party invokes Article 11(6) (Transfers), 17(2) or 17(3) (General Exceptions), at the request of that Party, the Tribunal shall request a report in writing from the Parties on the issue of whether and to what extent the invoked paragraph is a valid defence to the claim of the investor. The Tribunal may not proceed pending receipt of a report under this Article.

4. Where the Tribunal requests a report under paragraph 3, the Parties shall prepare a written report. If the Parties cannot agree, they shall submit the issue to an arbitral panel constituted in accordance with Section D (Settlement of Disputes between the Parties) that shall prepare the written report. The report shall be transmitted to the Tribunal and be binding on it.

5. The Tribunal may decide the matter where, within 70 days of the referral by the Tribunal, no request for the constitution of an arbitral panel pursuant to paragraph 4 has been made and no report has been received by the Tribunal.

ARTICLE 23

Submission of a Claim to Arbitration

1. An investor that meets the conditions precedent in Article 21 (Conditions Precedent to Submission of a Claim to Arbitration) may submit a claim to arbitration under the UNCITRAL Arbitration Rules.

2. Except to the extent modified by this Agreement, the arbitration is governed by the arbitration rules applicable under paragraph 1 that are in effect on the date that the claim is submitted to arbitration under this Section.

3. The Parties may adopt supplemental rules of procedure that complement the arbitration rules applicable under paragraph 1 and these rules apply to the arbitration. The Parties shall promptly publish the supplemental rules of procedure that they adopt or otherwise make them available to interested persons.

4. A claim is submitted to arbitration under this Section when the notice of arbitration under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent Party.

5. Each Party shall notify the other Party in writing of the place of delivery of notices and other documents.

6. If, following the submission of a claim to arbitration under this Section, the investor fails to take any steps in the proceeding during six consecutive months, and subject to both disputing parties agreeing otherwise, the investor shall be deemed to have withdrawn its claim and to have discontinued the proceedings. Thereupon, the claim of the investor shall be deemed not to have been filed under this Section and the authority of any tribunal constituted to hear that claim to have lapsed.

ARTICLE 24

Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement. Failure to meet a condition precedent listed in Article 21 (Conditions Precedent to Submission of a Claim to Arbitration) nullifies that consent.

2. The consent given in paragraph 1 and the submission by an investor of a claim to arbitration satisfies the requirement of Article II of the New York Convention for an agreement in writing.

ARTICLE 25

Arbitrators

1. Except in respect of a Tribunal constituted under Article 26 (Consolidation), and unless the disputing parties agree otherwise, the Tribunal shall be composed of three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who will be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

2. Arbitrators shall have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international investment or international trade agreements. Arbitrators shall be independent of, and not be affiliated with or take instructions from, either Party and the disputing investor.

3. If the disputing parties do not agree on the remuneration of the arbitrators before the Tribunal is constituted, reference should be made to the prevailing rate for arbitrators published by the International Centre for Settlement of Investment Disputes.

4. If a Tribunal, other than a Tribunal constituted under Article 26 (Consolidation), has not been constituted within 90 days from the date that a claim is submitted to arbitration, a disputing party may ask the Secretary-General of the PCA to appoint the arbitrator or arbitrators not yet appointed. The Secretary-General of the PCA shall make the appointment at his or her own discretion and, to the extent practicable, this appointment shall be made in consultation with the disputing parties. The Secretary-General of the PCA may not appoint as presiding arbitrator a natural person of a Party.

ARTICLE 26

Consolidation

1. A disputing party that seeks a consolidation order under this Article shall request that the Secretary-General of the PCA establish a Tribunal and shall specify in the request:

   (a) the name of the respondent Party or investors against which the order is sought;

   (b) the nature of the order sought; and

(c) the grounds for the order sought.

2. The disputing party shall deliver a copy of the request to the respondent Party or investors against which the order is sought.

3. Within 60 days of receiving the request, the Secretary-General of the PCA shall establish a Tribunal composed of three arbitrators. The Secretary-General of the PCA shall appoint one member who is a natural person of the respondent Party, one member who is a natural person of the Party of the investors that submitted the claims, and a presiding arbitrator who is not a natural person of a Party.

4. A Tribunal constituted under this Article shall be constituted under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Agreement.

5. If a Tribunal constituted under this Article is satisfied that claims submitted to arbitration under Article 23 (Submission of a Claim to Arbitration) have a question of law or fact in common, the Tribunal may, in the interest of fair and efficient resolution of the claims and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims; or

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in resolving the other claims.

6. Where a Tribunal has been constituted under this Article, an investor that has submitted a claim to arbitration under Article 23 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 1 may make a written request to the Tribunal that it be included in an order made under paragraph 5, and shall specify in the request:

(a) the name and address of the investor;

(b) the nature of the order sought; and

(c) the grounds for the order is sought.

7. An investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request under paragraph 1.

8. A Tribunal constituted under Article 23 (Submission of a Claim to Arbitration) does not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal constituted under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal constituted under this Article, pending its decision under paragraph 5, may order that the proceedings of a Tribunal constituted under Article 23 (Submission of a Claim to Arbitration) be stayed unless the latter Tribunal has already adjourned its proceedings.

ARTICLE 27

Documents to, and Participation of, the Non-Respondent Party

1. The UNCITRAL Transparency Rules shall apply with respect to the participation of the non-respondent Party in arbitration proceedings under this Section except as modified by this Agreement.

2. The respondent Party shall deliver to the non-respondent Party a copy of the notice of intent to submit a claim to arbitration and other documents submitted along with such notice within 30 days of the date those documents have been delivered to the respondent Party. The non-respondent Party is entitled, upon request and at its cost, to receive from the respondent Party a copy of the evidence that has been tendered to the Tribunal, copies of pleadings filed in the arbitration, and the written argument of the disputing parties. The non-respondent Party receiving such information shall treat the information as if it were the respondent Party.

3. The non-respondent Party may make oral and written submissions to a Tribunal only on questions of interpretation of this Agreement and has the right to attend hearings held under this Section.

ARTICLE 28

Place of Arbitration

The disputing parties may agree on the place of arbitration under the arbitration rules applicable under Article 23(1) (Submission of a Claim to Arbitration) or 26(4) (Consolidation). If the disputing parties fail to agree, the Tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall be in the area of a Party or in the area of a non-Party that is a party to the New York Convention.

ARTICLE 29

Transparency of Proceedings

1. The UNCTIRAL Transparency Rules shall apply in connection with proceedings under this Section except as modified by this Agreement.

2. Subject to Article 7 of the UNCITRAL Transparency Rules:

   (a) the notice of intent and the decision on arbitrator challenge shall be included in the list of documents referred to in Article 3(1) of the UNCITRAL Transparency Rules; and

   (b) exhibits shall be included in the list of documents referred to in Article 3(2) of the UNCITRAL Transparency Rules.

3. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, prior to the constitution of the Tribunal, the respondent Party shall make publicly available in a timely manner relevant documents pursuant to paragraph 2, subject to the redaction of confidential information. Such documentation may be made publicly available by communication to the repository referred to in Article 8 of the UNCITRAL Transparency Rules.

4. A disputing party may disclose to other persons in connection with the arbitral proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, the disputing party shall ensure that those persons protect the confidential information in those documents as directed by the Tribunal.

5. A Party may share with government officials and sub-national government officials, if applicable, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, such Party shall ensure that those persons protect the confidential information in those documents as directed by the Tribunal.

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

ARTICLE 30

Governing Law

1. A Tribunal constituted under this Section shall decide the issues in dispute consistently with this Agreement and applicable rules of international law. A joint interpretation by the Parties of a provision of this Agreement shall bind a Tribunal constituted under this Section, and an award under this Section must be consistent with that interpretation.

2. On the request of a respondent Party that asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Article 16(1) (Reservations and Exceptions), or Annex II or Annex III, the Tribunal shall request the joint interpretation of the Parties on the issue. Within 60 days of the delivery of the request, the Parties shall submit in writing their joint interpretation to the Tribunal. The joint interpretation is binding on the Tribunal. If the Parties fail to submit their joint interpretation within 60 days of the Tribunal's request, the Tribunal shall decide the issue.

ARTICLE 31

Expert Reports

1. Subject to paragraph 2, a Tribunal may appoint an expert to report to it in writing on a factual issue concerning environmental, health, safety or other scientific matter raised by a disputing party, subject to such terms and conditions as the disputing parties may decide.

2. The Tribunal may not appoint an expert under paragraph 1 if the disputing parties agree that the Tribunal may not do so.

3. Paragraph 1 does not affect the appointment of other kinds of experts where the appointment is authorized by the applicable arbitration rules.

ARTICLE 32

Interim Measures of Protection and Final Award

1. A Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 20 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise). For the purposes of this paragraph, an order includes a recommendation.

2. Where a Tribunal makes a final award against the respondent Party, the Tribunal may award, separately or in combination, only:

   (a) monetary damages and any applicable interest; and

   (b) restitution of property, in which case the award shall provide that the respondent Party may pay monetary damages and any applicable interest in lieu of restitution.

The Tribunal may also award costs in accordance with the applicable arbitration rules.

3. Subject to paragraph 2, where a claim is made under Article 20(2) (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise):

(a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise;

(b) an award of restitution of property shall provide that restitution be made to the enterprise; and

(c) the award shall provide that it is made without prejudice to a right that a person may have in monetary damages or property awarded under paragraphs (a) or (b) under a Party's law.

4. A Tribunal may not order the respondent Party to pay punitive damages.

ARTICLE 33

Finality and Enforcement of an Award

1. An award made by a Tribunal has no binding force except between the disputing parties and in respect of that particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

(a) 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

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

4. Each Party shall provide for the enforcement of an award in its area.

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

ARTICLE 34

Receipts under Insurance or Guarantee Contracts

In an arbitration under this Section, a respondent Party may not assert as a defence, counterclaim, right of setoff, or otherwise that the investor has received or will receive, under an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Section D – Settlement of Disputes between the Parties

ARTICLE 35

Settlement of Disputes between the Parties

1. A Party may request consultations on the interpretation or application of this Agreement. The other Party shall give sympathetic consideration to the request. A dispute between the Parties concerning the interpretation or application of this Agreement shall, whenever possible, be settled amicably through consultations.

2. If a dispute cannot be settled through consultations, it shall, at the request of a Party, be submitted to an arbitral panel for decision.

3. An arbitral panel shall be constituted for each dispute. Within two months after receipt through formal channels of the request for arbitration, each Party shall appoint one member to the arbitral panel. The two members shall then select a national of a State which can be regarded as neutral in relation to the dispute who, upon approval by the two Parties, shall be appointed Chair of the arbitral panel. The Chair shall be appointed within two months from the date of appointment of the other two members of the arbitral panel.

4. If within the periods specified in paragraph 3 the necessary appointments have not been made, a Party may invite the President of the International Court of Justice, in a personal and individual capacity, to make the necessary appointments. If the President is a national of a State which cannot be regarded as neutral in relation to the dispute, or is otherwise prevented from discharging the said function, the Vice-President or the next most senior Member who is not disqualified on that ground or otherwise prevented from discharging the said function, shall make the appointment.

5. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, or the resolution of disputes arising under international trade or international investment agreements. They shall be independent of, and not be affiliated with or take instructions from, a Party.

6. Where a Party determines that the dispute involves measures relating to financial institutions, or to investors or investments of such investors in financial institutions, or where a Party invokes Article 11(6) (Transfers), 17(2) or 17(3) (General Exceptions), the arbitrators shall, in addition to the criteria set out in paragraph 5, have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

7. The arbitral panel shall determine its own procedure. The arbitral panel shall reach its decision by a majority of votes. The decision is binding on both Parties. Unless otherwise agreed, the decision of the arbitral panel shall be rendered within six months of the appointment of the Chair.

8. Each Party shall bear the costs of its own member of the arbitral panel and of its representation in the arbitral proceedings. The costs related to the Chair and any remaining costs shall be borne equally by the Parties. The arbitral panel may, however, award that a higher proportion of costs be borne by one of the two Parties, and this award shall be binding on both Parties.

9. The Parties may submit requests for clarification of the decision within thirty days after it is received and the arbitral panel shall endeavour to issue such clarification within thirty days of such request.

10. Within 60 days of the decision of an arbitral panel or the issuance of a clarification of such decision, the Parties shall jointly decide on the manner in which to resolve their dispute. That decision must normally implement the decision of the arbitral panel. If the Parties fail to reach a decision, the Party bringing the dispute shall be entitled to compensation or to suspend benefits of equivalent value to those awarded by the arbitral panel.

Section E – Final Provisions

ARTICLE 36

Consultations and other Actions

1. A Party may request in writing consultations with the other Party regarding an actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The consultations under paragraph 1 may address, *inter alia,* matters relating to:

   (a) the implementation of this Agreement; or

   (b) the interpretation or application of this Agreement.

3. Further to consultations under this Article, the Parties may take an action as they may jointly decide, including making and adopting rules supplementing the applicable arbitration rules under Section C (Settlement of Disputes between an Investor and the Host Party).

ARTICLE 37

Exclusions

Sections C (Settlement of Disputes between an Investor and the Host Party) and D (Settlement of Disputes between the Parties) shall not apply to the matters set out in Annex IV.

ARTICLE 38

Application and Entry into Force

1. All Annexes are an integral part of this Agreement.

2. Each Party shall notify the other Party in writing of the completion of the procedures required in its area for the entry into force of this Agreement. This Agreement enters into force on the date of the later of these notifications.

3. This Agreement may be amended by mutual written consent of the Parties. All amendments enter into force in the same manner as stated in paragraph 2.

4. This Agreement shall remain in force unless a Party notifies the other Party in writing of its intention to terminate it. The termination of this Agreement will be effective one year after notice of termination has been received by the other Party. In respect of investments or commitments to invest made prior to the date when the termination of this Agreement becomes effective, Articles 1 to 37 inclusive, as well as paragraphs 1 and 2 of this Article, shall remain in force for a period of 15 years.

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

DONE in two originals at Toronto on this 10th day of February 2016, in the English, French and Chinese languages, each version being equally authentic.

_____	_____
FOR THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA	**FOR THE GOVERNMENT OF CANADA**

ANNEX I

Expropriation

The Parties confirm their shared understanding that:

(a) indirect expropriation results from a measure or a series of measures of a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure;

(b) the determination of whether a measure or a series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

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

(ii) the extent to which the measure or the series of measures interferes with distinct, reasonable investment-backed expectations, and

(iii) the character of the measure or the series of measures;

(c) except in rare circumstances, such as when a measure or a series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith, a non-discriminatory measure of a Party that is designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute indirect expropriation.

ANNEX II

Reservations for Future Measures

Schedule of the Hong Kong Special Administrative Region

In accordance with Article 16(2) (Reservations and Exceptions), the Hong Kong Special Administrative Region reserves the right to adopt or maintain any measure that does not conform to the obligations set out below with respect to the following sectors or matters:

(a) the acquisition or ownership of land and properties in the Hong Kong Special Administrative Region, where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors);

(b) (i) public law enforcement, ambulance services, correctional services, and fire-fighting and rescue services, and

(ii) health, education, housing, training, transport, public utilities (i.e. supply of water, electricity and gas), social security and social welfare, to the extent that they are social services established for a public purpose,

where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), Article 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements);

(c) the acquisition, sale or other disposition by natural persons of the other Party of bonds, treasury bills or other kinds of debt securities issued by the Government of the Hong Kong Special Administrative Region, where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors); and

(d) the establishment or acquisition in the Hong Kong Special Administrative Region of an investment in services sectors, where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements), provided that the measure is consistent with the Hong Kong Special Administrative Region's obligations under Articles II, XVI, XVII and XVIII of the *General Agreement on Trade in Services*, contained in Annex 1B to the WTO Agreement.

Schedule of Canada

In accordance with Article 16(2) (Reservations and Exceptions), Canada reserves the right to adopt or maintain any measure that does not conform to the obligations set out below with respect to the following sectors or matters:

(a) social services (i.e. public law enforcement; correctional services; income security or insurance; social security or insurance; social welfare; public education; public training; health and child care), where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors) or Article 8 (Senior Management, Boards of Directors and Entry of Personnel);

(b) the rights or preferences provided to aboriginal peoples, where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), Article 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements);

(c) the rights or preferences provided to socially or economically disadvantaged minorities, where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements);

(d) residency requirements for ownership of oceanfront land, where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors);

(e) government securities (i.e. acquisition, sale or other disposition by natural persons of the other Party of bonds, treasury bills or other kinds of debt securities issued by the Government of Canada, a province or local government), where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors);

(f) maritime cabotage, which means (a) the transportation of either goods or passengers by ship between points in the area of Canada or above the continental shelf of Canada, either directly or by way of a place outside Canada; but with respect to waters above the continental shelf of Canada, the transportation of either goods or passengers only in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of Canada; and (b) the engaging by ship in any other marine activity of a commercial nature in the area of Canada and, with respect to waters above the continental shelf, in such other marine activities of a commercial nature that are in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of Canada; where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), Article 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements);

(g) licensing fishing or fishing related activities, including entry of foreign fishing vessels to Canada's exclusive economic zone, territorial sea, internal waters or ports and use of any services therein, where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors) or Article 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors);

(h) telecommunications services, where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors) or Article 8 (Senior Management, Boards of Directors and Entry of Personnel) by limiting foreign investment in facilities-based telecommunications service suppliers, requiring that such service suppliers be controlled in fact by a Canadian, requiring that at least 80 percent of the members of the board of directors of such suppliers be Canadian, and imposing cumulative foreign investment level restrictions*;* and

(i) the establishment or acquisition in Canada of an investment in the services sector, where the measure does not conform with the obligations imposed by Article 4 (Non-discriminatory Treatment as Compared with a Party's Own Investors), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements), provided that the measure is consistent with Canada's obligations under Articles II, XVI, XVII and XVIII of the *General Agreement on Trade in Services*, contained in Annex 1B to the WTO Agreement.

ANNEX III

Exceptions from Non-discriminatory Treatment as Compared with a Non-Party's Investors

1. Article 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors) shall not apply to treatment accorded by a Party under a bilateral or multilateral international agreement in force or signed prior to 1 January 1994.

2. Article 5 (Non-discriminatory Treatment as Compared with a Non-Party's Investors) shall not apply to treatment accorded by a Party under an existing or future bilateral or multilateral agreement or arrangement:

(a) establishing, strengthening or expanding a free trade area, a customs union, a common market, an economic union or a similar institution; or

(b) relating to:

(i) aviation;

(ii) fisheries; or

(iii) maritime matters, including salvage.

ANNEX IV

Exclusions from Dispute Settlement

A decision by Canada following a review under the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), with respect to whether or not to permit an investment that is subject to review, is not subject to the dispute settlement provisions under Sections C (Settlement of Disputes between an Investor and the Host Party) or D (Settlement of Disputes between the Parties).