

ANNEX Vc

INVESTOR-TO-STATE DISPUTE SETTLEMENT SPECIAL ARBITRATION PROCEDURE

1. Any request to establish an arbitral tribunal pursuant to this Annex shall identify:

- (a) the name and address of the investor concerned;
- (b) the legal basis of the complaint including the provisions of Chapter 8 alleged to have been breached; and
- (c) the factual basis for the complaint.

2. The investor and the Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator each. If the Party fails to so appoint an arbitrator, the legal expert designated by that Party pursuant to paragraph 4 of Article 140 shall be appointed as an arbitrator. If the investor fails to so appoint an arbitrator, the legal expert designated by the Party of which the investor is a national pursuant to paragraph 4 of Article 140 shall be appointed as an arbitrator.

3. The investor and the Party shall agree on and designate a third arbitrator, who shall chair the arbitral tribunal. If they fail to agree on the third arbitrator, they shall separately prepare and exchange a list of five persons whom they can accept as the third arbitrator. The third arbitrator shall be chosen in the following manner:

- (a) if only one name is common to both lists, that person, if available, will be chosen as the third arbitrator;
- (b) if more than one name appears on both lists, the investor and the Party shall consult for the purpose of agreeing on the third arbitrator from such names;
- (c) if they are not able to reach agreement in accordance with subparagraph (b) above or if there is no name common to both lists, or the arbitrator agreed upon or chosen is not available and the investor and the Party cannot decide on a replacement for the arbitrator that is not available, then the two arbitrators appointed pursuant to paragraph 2 above shall agree on the third arbitrator; and
- (d) if the arbitrators are not able to reach agreement on the third arbitrator, the third arbitrator shall be chosen by random drawing in accordance with the procedure set out in the Appendix to this Annex.

4. The third arbitrator shall be appointed within 40 days after the date of

appointment of the second arbitrator.

5. The third arbitrator shall not, unless the investor and the Party agree otherwise, be of the same nationality as the investor, nor be a national of the Party, nor have his or her usual place of residence in the territory of either of the Parties, nor be employed by either the investor or the Party, nor have dealt with the investment dispute in any capacity.

6. The arbitral tribunal should be composed of arbitrators with relevant technical or legal expertise.

**APPENDIX TO
ANNEX Vc**

**PROCEDURE FOR SELECTION OF THIRD ARBITRATOR
FOR SPECIAL ARBITRATION PROCEDURE FOR
INVESTOR-TO-STATE DISPUTE SETTLEMENT**

The following procedure applies for the random drawing for a third arbitrator, as provided for in Annex Vc pertaining to Investor-to-State Dispute Settlement (hereinafter referred to in this Appendix as "Annex Vc"):

- (a) for the purposes of this Appendix, the investor that is requesting the establishment of the arbitral tribunal pursuant to Article 82 is hereinafter referred to as the "investor" and the Party to the investment dispute is hereinafter referred to as the "Party";
- (b) unless the investor and the Party agree otherwise, the drawing takes place in the territory of the Party, in the presence of representatives of both the investor and the Party;
- (c) the Party prepares a container with ten sealed envelopes, each of which has, inside it, the name of one of the persons listed on the lists of the investor and the Party, prepared pursuant to paragraph 3 of Annex Vc, such that there is exactly one envelope corresponding to each of these persons;
- (d) a representative of the investor shall remove, from the container, one envelope, randomly and without being able to discern the identity of the person to whom the envelope corresponds until after the envelope is unsealed and opened;
- (e) the person to whom that envelope corresponds shall be the third arbitrator for the purposes of Annex Vc; and
- (f) after the drawing, the container, and the envelopes remaining therein, shall be made available for verification by representatives of the investor in the presence of representatives of the Party.