



Annex I

DRAFT
Investment [Framework] Agreement
For the COMESA Common Investment Areas

INVESTMENT [FRAMEWORK] AGREEMENT FOR THE COMESA INVESTMENT AREA

PREAMBLE

The Governments of **Burundi, Comoros, Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe, Member States of the Common Market for Eastern and Southern Africa (COMESA);**

REAFFIRMING the importance of having sustainable economic growth and development in all Member States and the region through joint efforts in liberalising and promoting intra-**COMESA** trade and investment flows;

RECALLING the decision of the **Third COMESA** Summit of the Authority held on **29 June 1998** in Kinshasa, Democratic Republic of Congo, to establish the COMESA Common Investment Area (hereinafter referred to as "**CCIA**"), in order to enhance **COMESA's** attractiveness and competitiveness for promoting foreign direct and cross border investments;

RECALLING the establishment of the **COMESA** Free Trade Area (**FTA**) on **31st October 2000** and **recognising** that direct investment is an important source of finance for sustaining the pace of economic, industrial, infrastructure and technology development; hence, the need to attract higher and sustainable level of direct investment flows in COMESA;

RECALLING that the Member States have agreed under paragraph 1 of Article 159 of the Treaty Establishing COMESA to encourage and facilitate private investment flows into COMESA;

RECOGNISING that particular pressures on the balance of payments of a Member State in the process of economic development or economic transition 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 or economic transition;

DETERMINED to realise the vision of **COMESA** to establish a competitive **COMESA** Common Investment Area through a more liberal and transparent investment environment by 1st January 2010; and

BEARING IN MIND that the measures agreed upon shall contribute towards **the realisation of the Common Market and the achievement of sustainable development in the region.**

HAVE AGREED AS FOLLOWS:

ARTICLE 1 Definitions

For the purpose of this Agreement:

1. "CCIA" means the area that covers the whole of the territories of Member States of COMESA as defined by their respective legislation.

2. "CCIA Committee" means the Committee established under Article 7 of this Agreement.

3. "COMESA" means the Common Market for Eastern and Southern Africa established under Article 1 of the COMESA Treaty.

4. "COMESA investor" means:

- (i) a natural person of a Member State; or
- (ii) a juridical person of a Member State,

making an investment in another Member State, in accordance with the laws and regulations of the Member State in which the investment is made. For the purposes of this definition:

- (i) "Natural person" means a person having citizenship of a Member State in accordance with its applicable laws and regulations; and
- (ii) "Juridical person" means any legal entity duly constituted or otherwise organised under the applicable laws and regulations of a Member State. Juridical persons of a Member State owned or controlled by foreign nationals in any Member State qualify as COMESA investors upon making an investment in another Member State. However, an investor that is a juridical person shall not qualify as a COMESA investor where:
 - (a) such investor has no substantial business activity in the territory of the Member State in which it is constituted or organised; and
 - (b) persons of a non-Member State, or of another Member State own or control that juridical person.

5. "COMESA Treaty" means the Treaty establishing the Common Market for Eastern and Southern Africa.

6. "Council" means the Council of Ministers of COMESA as established under Article 7 of the COMESA Treaty.

7. “economic activities” means all economic activities of the economy, including services, where investment, as defined in this Article, is taking place.
8. “freely convertible currency” means a convertible currency as classified by the International Monetary Fund or any currency that is widely traded in international foreign exchange market.
9. [“investment” means assets admitted or admissible in accordance with the relevant laws and regulations of the COMESA Member State in whose territory the investment is made, and includes:
- (a) moveable and immovable property and other related property rights such as mortgages, liens and pledges;
 - (b) claims to money, goods, services or other performance having economic value;
 - (c) stocks, shares and debentures of companies and interest in the property of such companies;
 - (d) intellectual property rights, technical processes, know-how, goodwill and other benefits or advantages associated with a business operating in the territory of the COMESA Member States in which the investment is made;
 - (e) business concessions conferred by law or under contract, including:
 - (i) build, operate, own/transfer, rehabilitate, expand, restructure and/or improve infrastructure;
 - (ii) concessions to search for, cultivate, extract or exploit natural resources; and
 - (f) such other activities that may be declared by the Council as investments;

but excludes : goodwill market share, whether or not it is based on foreign-origin trade, or rights to trade; claims to money deriving solely from commercial contracts for the sale of goods and services to or from the territory of a Member State to the territory of another Member State, or a loan to a Member State or to a Member State enterprise; a bank letter of credit; or the extension of credit in connection with a commercial transaction, such as trade financing.]

[This Agreement shall only apply to investments brought into, derived from or directly connected with investments brought into the territory of any Member State by COMESA [and non-COMESA] investors of any other Member State and which are specifically approved in writing and registered by the Member State in which they are made and upon such conditions as it deems for for the purposes of this Agreement.]

10. "measures" [mean] laws, regulations, rules, procedures, decisions, administrative actions, or any other binding actions directly affecting

investments taken by Member States after this Agreement has come into effect.

11. "Member State" means a Member State of COMESA that has ratified or acceded to this Agreement.
12. ["non-COMESA investor" means a natural or juridical person from a non-COMESA country making an investment in a Member State.]
13. 'returns' mean the amount yielded by an investment and in particular, though not exclusively, includes dividends, profit, interest, capital gains or other equivalent charges, royalties and other payments deriving from licenses, franchises, concessions and other similar rights.
14. "Sensitive List" means those:
 - (a) economic activities listed by a Member State that are partially or wholly excluded from foreign investment pursuant to Article 19 of this Agreement; or
 - (b) measures affecting investment listed by Member States pursuant to Article 19 of this Agreement; or
 - (c) a list of the forms of investment that a Member State may wish to exclude from the definition of investment under Article 1 of this Agreement.
15. "Temporary Exclusion List" means those:
 - (a) economic activities listed by a Member State where foreign investment is temporarily excluded for a given period of time pursuant to Article 19 of this Agreement; or
 - (b) measures affecting investment listed by Member States that are temporarily excluded from the scope of all or part of this Agreement for a given period of time pursuant to Article 19 of this Agreement; or
 - (c) a list of the forms of investment that a Member State may wish to exclude temporarily for a given period of time from the definition of investment under Article 1 of this Agreement.

PART ONE

COMESA COMMON INVESTMENT AREA

ARTICLE 2

Objectives of Part One

The objective of Part One of this Agreement is to establish a competitive COMESA Common Investment Area with a more liberal and transparent investment environment amongst Member States in order to:

- (a) substantially increase the free flow of investments into COMESA from both COMESA and non-COMESA sources;
- (b) jointly promote COMESA as an attractive investment area;
- (c) strengthen and increase the competitiveness of COMESA's economic activities;
- (d) gradually eliminate investment restrictions and conditions which may impede investment flows and the operation of investment projects in COMESA.

ARTICLE 3

Features

The CCIA shall be an area where:

- (a) there is a coordinated COMESA investment co-operation programme that will generate increased investments from COMESA and non-COMESA sources;
- (b) there is freer flow of capital, skilled labour and professionals, and technology amongst Member States. Towards this end, Member States shall make every effort to:
 - (i) extend national treatment to COMESA investors by **2010** [and to non-COMESA investors by **2015**];
 - (ii) ensure all economic activities are opened for investment to COMESA investors by **2010** [and to non-COMESA investors by **2015**]; and
- (c) the private sector is a partner and fully participates in investment and related activities of the Common Market as provided for under Article 151 of the COMESA Treaty.

ARTICLE 4 Transparency

1. Each Member State shall make available to the CCIA Committee before the Agreement comes into effect all relevant measures, which pertain to, or affect, the operation of this Agreement. This shall also apply to international agreements pertaining to or affecting investment to which a Member State is also a signatory.
2. Each Member State shall publish all relevant measures which pertain to, or affect, the operation of this Agreement.
3. Each Member State shall, within 30 days of the enactment or the introduction of any new measure or any changes in existing measures which affect investments or its commitments under this Agreement, inform the CCIA Committee and the general public.
4. Nothing in this Agreement shall require any Member State to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

ARTICLE 5 General Obligations

To realise the objectives referred to in Article 2, the Member States shall:

- (a) undertake appropriate actions to promote transparency and consistency in the application and interpretation of their investment laws, regulations and administrative procedures;
- (b) strengthen the process of facilitation, promotion and liberalisation which would contribute continuously and significantly to achieving the objective of a more liberal and transparent investment environment;
- (c) take appropriate actions to enhance the attractiveness of their investment environment for direct investment flows;
- (d) take such reasonable actions as may be available to them to ensure observance of the provisions of this Agreement by the regional and local government authorities within their territories.
- (e) not waive or otherwise derogate from or offer to waive or otherwise derogate from measures concerning labour, public health, safety or the environment as an encouragement for the establishment, expansion or retention of investments.

ARTICLE 6

International Multilateral Agreements

Member States shall, where they have not done so, endeavour to accede to:

- (a) the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- (b) the International Convention on Settlement of Investment Disputes between States and Nationals of Other States;
- (c) the Convention Establishing the Multilateral Investment Guarantee Agency;
- (d) the Agreement Establishing the African Trade Insurance Agency; and
- (e) any other multilateral agreement designed to promote or protect investment.

ARTICLE 7

Institutional Arrangements

- [1. There shall be established as [organs] of the CCIA:
 - (a) a COMESA Common Investment Area Committee (in this Agreement referred to as “the CCIA Committee”) which shall consist of Ministers responsible for investment of each Member State; and
 - (b) a Co-ordinating Committee on Investment (CCI) which shall consist of senior officials from Ministries responsible for investment and Chief Executives of Investment Promotion Agencies as may be designated by each Member State.
- 2. The CCIA Committee shall be responsible for:
 - (a) overall supervision of the implementation of this Agreement;
 - (b) making decisions or issuing directions that may require to be made under this Agreement;
 - (c) recommending to the Council any review of this Agreement when necessary;
 - (d) making recommendations to the Council on any policy issues that need to be made to enhance the objectives of this Agreement. For example the development of common minimum standards relating to investment in areas such as:
 - (i) environmental impact and social impact assessments
 - (ii) labour standards

- (iii) respect for human rights
 - (iv) conduct in conflict zones
 - (v) corruption
 - (vi) subsidies
 - (e) conducting a review of the effectiveness of this Agreement and its implementation in the light of its objectives 4 years after its entry into force and every 4 years thereafter; and
 - (f) adopting any interpretive statements relating to this Agreement, which shall be binding on any subsequent dispute under this Agreement.
3. The Co-ordinating Committee on Investment (CCI) shall be responsible for:
- (a) monitoring and keeping under constant review the implementation of this Agreement;
 - (b) co-ordinating the implementation of this Agreement;
 - (c) submitting its reports and recommendations to the CCIA Committee, either on its own initiative or upon the request of the CCIA Committee, concerning the implementation of the provisions of this Agreement; and
 - (d) preparation and development of action plans for the implementation of this Agreement
 - (e) carrying out such other functions as are assigned to it by or under this Agreement.
4. The COMESA Secretariat shall provide secretarial services to the organs established under paragraph 1.
5. The Manager of the COMESA Regional Investment Agency or their representative shall participate in all the meetings of the organs established under paragraph 1 as an ex-officio member.
6. Subject to the Rules of Procedure, the key representatives of the private sector and other stakeholders as may be determined by each Member State shall participate in all the meetings of the organs established under paragraph 1 as ex-officio members.
7. Subject to this Agreement and any directions given by Council, the organs shall meet as often as necessary for the proper discharge of their functions and shall determine their own Rules of Procedure.]

**[ARTICLE 8
Legal Assistance Centre**

- (1) A Legal Assistance Centre to assist Member States, and especially least-developed states, in responding to claims by an investor under this Agreement shall be established.
- (2) This Centre shall be independent of the COMESA Secretariat and function as a self-directed body. Its legal advice shall be confidential and subject to the same standards of lawyer-client protection and service as a private law firm.
- (3) The Centre may also assist in capacity building on legal issues raised in this Agreement, or for the implementation of the Agreement under domestic law and policy.
- (4) The Legal Assistance Centre shall report to the CCIA Committee on a yearly basis concerning its financing and a summary of its activities.
- (5) The Legal Assistance Centre shall disclose all sources of funds. It may receive funds from Member States, other States, international organizations and non-governmental organizations as long as the receipt of such funds is public and does not compromise the integrity of the Centre.]

**[ARTICLE 9
Implementing Programmes and Action Plans**

1. Member States shall, for the implementation of the obligations under this Agreement, undertake the joint development and implementation of the following programmes:
 - (a) co-operation and facilitation programme as specified in Schedule I annexed hereto;
 - (b) promotion and awareness programme as specified in Schedule II annexed hereto; and
 - (c) liberalisation programme as specified in Schedule III annexed hereto.
2. Member States shall submit action plans for the implementation of programmes mentioned in paragraph 1 to the CCIA Committee within a year of ratifying or acceding to this Agreement.
3. The Action Plans shall be reviewed by the Committee every 2 years to ensure that the objectives of this Agreement are achieved.]

**[ARTICLE 10
Modification of Schedules, Annexes and Action Plans**

1. Any modification to Schedules I and II, and Action Plans thereof shall be subject to the consideration of the Co-ordinating Committee on Investments (CCI) established under Article 7(1)(b) of this Agreement.
2. Any modification to or withdrawal of any commitments in Schedule III and Action Plans thereof and the Annexes shall be subject to the consideration of the **CCIA Committee**.
3. Any modification to Schedules I, II, III and Action Plans thereof, and the Annexes submitted under Article 19(1) shall be included in any revised Schedules, Action Plans or Annexes published later than such modification. The COMESA Secretariat shall notify the Member States of such modification within 1 month.]

**ARTICLE 11
Relation to Dispute Settlement**

No investor shall have recourse to dispute settlement for any matter relating to Part One of this Agreement.

PART TWO
RIGHTS AND OBLIGATIONS

ARTICLE 12

Objectives of Part Two

The objectives of Part Two of this Agreement are to provide COMESA [and non-COMESA] investors with certain rights in the conduct of their business within an overall balance of rights and obligations between investors and Member States.

ARTICLE 13
Coverage

1. This Agreement shall cover investments of COMESA [and non-COMESA] investors made in the territory of Member States in accordance with their laws and regulations prior to or after entry into force of this Agreement.

2. This Agreement shall not be applicable to claims arising out of disputes which occurred prior to entry into force of the Agreement.

ARTICLE 14
Investor Obligation

Any COMESA [and non-COMESA] investor and their investments shall comply with all applicable domestic measures.

ARTICLE 15
Fair and Equitable Treatment

1. Member States shall accord fair and equitable treatment to COMESA [and non-COMESA] investors and their investments, in accordance with customary international law. Fair and equitable treatment includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world.

[2. Paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments and does not require treatment in addition to or beyond what is required by that standard.

3. For greater certainty, Member States understand that different Member States have different forms of administrative, legislative and judicial systems and that Member States at different levels of development may not achieve the same standards at the same time. Paragraphs 1 and 2 of this Article do not establish a single international standard in this context.]

ARTICLE 16

Transfer of Assets

1. Taking account of the need to facilitate, promote and enhance the movement of capital in the CCIA, and according to their laws and regulations, Member States shall accord to COMESA [and non-COMESA] investors the right to:
 - (a) repatriate investment returns;
 - (b) repatriate funds for repayment of loans;
 - (b) repatriate proceeds from compensation upon expropriation, the liquidation or sale of the whole or part of the investment including an appreciation or increase of the value of the investment capital;
 - (c) transfer payments for maintaining or developing the investment project, such as funds for acquiring raw or auxiliary materials, semi-finished products as well as replacing capital assets; and
 - (d) remit the unspent earnings of expatriate staff of the investment project.

ARTICLE 17

Movement of Labour

3. Taking account of the need to facilitate the movement of labour resources in the CCIA, Member States shall accord to investors the right to hire technically qualified persons from any country. Such persons shall have full rights to enter and receive the necessary authorisations to reside in the Member State subject to the laws in force in that Member State promptly and without burdensome requirements. However, investors shall accord a priority to workers who possess the same qualifications and are available in the Member State or any other Member State.

ARTICLE 18
Opening up of Economic Activities and National Treatment

[1. Subject to Article 19 [and as set forth in Article 3 (b) and (c)], each Member State shall open all its economic activities for investments.]

2. Subject to Article 19, [and as set forth in Article 3(b) and (c)], each Member State shall accord to COMESA and non-COMESA investors and their investments treatment no less favourable than the treatment it accords, in like circumstance, to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, operation and disposition of investments in its territory.

3. For greater certainty, references to 'like circumstances' in paragraph 2 of this Article requires an overall examination on a case by case basis of all the circumstances of an investment including, inter alia:

- (a) its effects of third persons and the local community;
- (b) its effects on the local regional or national environment or the global commons, including the cumulative effects of all investments within a jurisdiction on the environment.
- (c) the sector the investor is in;
- (d) the aim of the measure concerned;
- (e) the regulatory process generally applied in relation to the measure concerned; and
- (f) other factors directly relating to the investment or investor in relation to the measure concerned;

and the examination shall not be limited to or be biased toward any one factor.

ARTICLE 19:
Exceptions to National and Other Treatment

1. This Agreement shall not apply to the Temporary Exclusion List and/or Sensitive List which a Member State may submit provided the Temporary Exclusion List and/or Sensitive List is submitted to [the CCIA Committee] within 6 months after the date of ratification and accession to this Agreement.

2. Any Temporary Exclusion List and/or Sensitive List submitted by a Member State shall form an annex to this Agreement.

3. In the event that a Member State, for justifiable reasons, is unable to provide any list within the stipulated period, it may seek an extension from

[the CCIA Committee]. [The CCIA Committee] shall determine the length of the extension which shall not be longer than one year.

4. The Sensitive and Temporary Exclusion Lists shall be reviewed every 2 years and at such subsequent periodic intervals as may be decided by the [CCIA Committee].

ARTICLE 20

Most Favoured Nation Treatment

1. [Subject to the exceptions provided for under paragraph 3 of this Article, each Member State shall accord to COMESA [and non-COMESA] investors and their investments treatment no less favorable than that it accords, in like circumstances, to investors and their investments from any third country with respect to the establishment, acquisition, expansion, management, operation and disposition of investments in its territory. This paragraph shall not apply to investment agreements entered into by Member States with non-Member States prior to the entry into force of this Agreement.]

2. The provisions of Article 18(3) shall apply with the necessary modification to this Article.

3. Nothing in paragraph 1 shall oblige a Member State to extend to [investors of third countries] the benefits of any treatment, preference or privilege resulting from:

- (a) any customs union, free trade area, common market or monetary union, or any similar international convention or other forms of regional preferential arrangements, present or future, of which any of the Member States is or may become a party; or
- (b) any matter, including international agreements, pertaining wholly or mainly to taxation.

ARTICLE 21

Expropriation

[1. Member States shall not nationalize or expropriate investments in their territory or adopt any other measures tantamount to expropriation of investments except:

- (a) for the public interest;
- (a) on a non-discriminatory basis;
- (b) in accordance with due process of law; and
- (c) on payment of prompt adequate compensation.

2. Appropriate compensation shall normally be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. [Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value. Compensation may be adjusted to reflect aggravating conduct by an investor or conduct that does not seek to mitigate damages.]

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a currency of the host or home state, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Member State elects to pay in a currency other than a host or home state currency, the amount paid on the date of payment, if converted into a host or home state currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that host or home state currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that host or home state currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable. Awards that are significantly burdensome on a host state may be paid yearly over a period of three years or such other period as agreed by the Parties, subject to interest at the rate established by agreement of the disputants or by a tribunal.]

7. This Article shall not apply to the issuance of compulsory licences 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 applicable international agreements on intellectual property.

8. A non-discriminatory measure of general application shall not be considered an expropriation of a debt security or loan covered by this Agreement solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

[9. Consistent with the right of states to regulate and the customary international law principles on police powers, bona fide, non-discriminatory regulatory measures taken by a Member State that are designed and applied to protect or enhance legitimate public welfare objectives, such as public health, safety and the environment, shall not constitute an indirect expropriation under this Article.]

10. The investor affected by the expropriation shall have a right under the law of the Member State making the expropriation, to a review by a juridical or other independent authority of that Member State, of his/its case and the valuation of his/its investment in accordance with the principles set out in paragraphs (1) to (9) of this Article. The Member State making the expropriation shall ensure that such a review is carried out promptly.]

ARTICLE 22

Compensation for Losses

1 COMESA [and non-COMESA] investors whose investments in the territory of the Member States suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which Member States accord to its own investors or to investors of any third State. Resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

2. Without derogating from the provisions of paragraph (1) of this Article, any investor who, in any of the situations referred to in that paragraph, suffers losses in a Member State resulting from:

- (a) requisitioning of their property by the forces or authorities of the Member States, acting under and within the scope of the legal provisions relating to their competences, duties and command structures; or
- (b) destruction of their property by the forces or authorities of the Member States, which was not caused in combat action or was not required by the necessity of the situation or observance of any legal requirement;

shall be accorded restitution, or adequate compensation not less favourable than that which the Member States accord to its own investors or to investors of any third State.

3. For the purposes of this Article, state of emergency excludes natural disaster.

ARTICLE 23

General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment flows, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member State of measures:

- (a) necessary to protect national security and public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect the environment;
- (d) any other measures as may from time to time be determined by a Member State, subject to approval by the [CCIA Committee].

2. Nothing in this Agreement shall be construed to prevent a Member State from adopting, maintaining or enforcing any measure that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to the principles outlined in sub-paragraphs 1(a) to (c) above.

3. Nothing in this Agreement shall be construed to:

- (a) preclude a Member State from applying measures that it considers necessary for the fulfillment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests; or
- (b) require a Member State to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests.

ARTICLE 24

Rules for Taxation Measures

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.

[2. Member State are encouraged to enter into Avoidance of Double Taxation Agreements to achieve the objectives of this Agreement. Nothing in this Agreement shall affect the rights and obligations of Member States under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Member States, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this Agreement and that convention.

3. National treatment and most-favoured-nation treatment shall apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations, taxes on estates, inheritances, gifts, and generation-skipping transfers, except that nothing in those Articles shall apply:

- a) in the case of a most-favoured-nation obligation, with respect to an advantage accorded by a Member State pursuant to a tax convention;
- b) to a non-conforming provision of any existing taxation measure;
- c) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;
- d) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;
- e) to the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes (as permitted by Article XIV(d) of GATS); or
- f) to a provision that conditions the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan.

4. Article 21 shall apply to a taxation measure alleged to be an expropriation. However, no investor may invoke Article 21 as the basis of a claim where it has been determined pursuant to this Paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 21 with respect to a taxation measure must refer to the Secretary General of the COMESA at the time that it gives its notice of intention to arbitrate under Article 28 the issue of whether that taxation measure involves an expropriation. The Secretary General shall ask the competent authorities of the host state and home state whether they do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of such referral, in which case the investor may submit its claim to arbitration, if the other conditions of Article 28 have been fulfilled as well.]

ARTICLE 25

Emergency Safeguard Measures

1. If, as a result of opening up of economic activities in accordance with this Agreement, a Member State suffers or is threatened with any serious injury, the Member State may take emergency safeguard measures to the extent and for such period as may be necessary to prevent or to remedy such injury. The measures taken shall be provisional and without discrimination.

2. Where emergency safeguard measures are taken pursuant to this Article, notice of such measures shall be given to the [CCIA Committee] within 14 days from the date they are taken. The notice shall include justification of such action supported by evidence gathered from an investigation.

3. [The [CCIA Committee] shall determine what constitutes serious injury and threat of serious injury and the procedures of instituting emergency safeguard measures pursuant to this Article.]

[ARTICLE 26 Measures to Safeguard Balance of Payments

1. In the event of serious balance of payment and external financial difficulties or threat thereof, a Member State may adopt or maintain restrictions on investments on which it has undertaken commitments provided for in Articles 16, 18, 20 and 21, including on payments or transfers for transactions related to such commitments.

2. Where measures to safeguard balance of payments are taken pursuant to this Article, notice of such measures shall be given to the CCIA Committee within 14 days from the date such measures are taken.

3. The measures referred to in paragraph (1):

- (a) shall not discriminate among Member States;
- (b) shall be consistent with Article VIII of the Agreement of the International Monetary Fund;
- (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member State;
- (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and
- (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

4. A Member State adopting the balance of payment measures shall commence consultations with Member States through the [CCIA Committee] within 90 days from the date of notification in order to review the balance of payment measures adopted by it.

5. The [CCIA Committee] shall determine the rules applicable to the procedures under this Article.]

PART THREE

DISPUTE SETTLEMENT

[ARTICLE 27

Dispute Prevention and Mediation

1. In the event that a dispute arises from the interpretation and application of this Agreement between Member States, or between a Member State and a COMESA [/non-COMESA] investor, the party wishing to raise the dispute shall issue a notice of intention to initiate a claim under the dispute resolution process provided for under Articles 28 or 29 under this Agreement to the other potential disputing party ("notice of intention")
2. For the purposes of this Agreement, there shall be the minimum of a six-month cooling-off period between the date of a notice of intention under this Agreement, and the date a party, may formally initiate a dispute under Articles 28 or 29.
3. The parties shall seek to resolve potential disputes through amicable means, both prior to and during the cooling-off period.
4. Where no alternative means of dispute settlement are agreed upon, a parties, shall seek the assistance of a mediator to resolve disputes during the cooling-off period required under this Agreement between the notice of intention and the initiation of dispute settlement proceedings under Articles 28 or 29. [The potential disputants shall use a mediator from the list established by the Secretariat for this purpose, or another one of their joint choosing. Recourse to mediation does not alter the minimum cooling-off period.
5. If no mediator is chosen by the disputing parties prior to three months before the expiration of the cooling-off period, or the President of the COMESA Court of Justice or his designate shall appoint a mediator from the Secretariat list who is not a national of a State Party or the investor. The appointment shall be binding on the disputing parties.
6. If the parties accept a mediation ruling, the ruling shall immediately be implemented thereafter.]

[ARTICLE 28

Settlement of Disputes between Member States

1. Any dispute between Member States as to the interpretation or application of this Agreement not satisfactorily settled through negotiation within 6 months, may be referred for decision to either

- (i) an arbitral tribunal constituted under the COMESA Court of Justice in accordance with Article 28(b) of the COMESA Treaty; or
 - (ii) an independent arbitral tribunal
 - (iii) the COMESA Court of Justice sitting as a court ;
2. The arbitral tribunal shall be formed in accordance with the provisions on arbitration set out in [Annex A, applying them mutatis mutandis to a State-State dispute].
3. The forum that a Member State first uses to bring its claim under this Article shall be determinative and it shall not subsequently have the right to bring a claim before any other fora.
4. The decision of the COMESA Court of Justice or the arbitral tribunal shall be binding provided that the COMESA Court of Justice shall have appellate jurisdiction in relation to a decision by an arbitral tribunal constituted under the COMESA Court of Justice in accordance with Article 28(b) of the COMESA Treaty] .

[ARTICLE 29 Investor-State Disputes

1. In the event that a dispute between a COMESA [and non COMESA] investor and a Member State has not been resolved pursuant to good faith efforts in accordance with Article 27, a COMESA [and non-COMESA] investor may submit to arbitration under this Agreement a claim that the Member State in whose territory it has made an investment has breached an obligation under Part Two of this Agreement and that the investment has incurred loss or damage by reason of, or arising out of, that breach by following the process set out in Annex A.
2. No claim may be submitted to arbitration if more than three (3) years have elapsed from the date on which the COMESA [and non-COMESA] investor first acquired, or should have first acquired, knowledge of the breach and knowledge that the COMESA [and non-COMESA] investor has incurred loss or damage.]

ARTICLE 30 Exhaustion of Local Remedies

1. A dispute between a COMESA [or non-COMESA] investor and a Member State may not be commenced until domestic remedies are exhausted in relation to the underlying issues pleaded in relation to a breach of the Agreement.

[2. Where such remedies are unavailable due to the subject of the dispute or a demonstrable lack of independence or timeliness of the judicial or administrative processes¹ implicated in the matter in the host state, an investor may plead this in an application before an arbitral panel as a preliminary matter. The decision of a panel on this issue shall be final. This panel shall be chosen in accordance with Article XXX. The CCIA Committee shall establish procedures for such a pleading at its first meeting.²]

[ARTICLE 31 Transparency of Proceedings

1. All documents relating to a notice of intention to arbitrate, the settlement of any dispute pursuant to Article 29, the initiation of a panel or appeal, or the pleadings, evidence and decisions in them, shall be available to the public through an Internet site.
2. Procedural and substantive oral hearings shall be open to the public.
3. A panel tribunal may take such steps as are necessary, by exception, to protect confidential business information in written form or at oral hearings.
4. A panel tribunal shall be open to the receipt of amicus curiae submissions in accordance with the process set out in Annex A.]

ARTICLE 32 Enforceability of Final Awards

Parties shall adopt such domestic rules as are required to make final awards enforceable in domestic legal proceedings in their states.

[ARTICLE 33 Roster of Arbitrators

The COMESA Secretariat shall maintain a roster of 35 qualified arbitrators from which all arbitrators selected under this Agreement shall be chosen, in accordance with Annex A.]

¹ The Parties recognize that different processes do take different amounts of time. Thus, the key determinant should be that the procedures are moving forward in a time that is consistent with good practice and the normally anticipated timeframe for that type of procedure in the host state, and that no undue burdens or impediments are being placed on the proceedings.

² Panels shall establish their own ad hoc procedure, in keeping with good international practice, in the event of an action under this Paragraph prior to the CCIA Committee adopting a procedure.

ARTICLE 34
Governing Law in Disputes

1. When a claim is submitted to a panel [or an appeal] tribunal, it shall be decided in accordance with this Agreement, national law of the host state, and the general principles of international law.

[2. The Interpretive Notes of the Parties attached to this Agreement shall be binding upon any tribunal established under this Agreement, and any award must be consistent with such Notes.

3. An Interpretive Statement adopted by the CCIA Committee declaring its interpretation of a provision of this Agreement shall be binding upon any tribunal established under this Agreement, and any award must be consistent with such a Statement.]

ARTICLE 35
Counterclaims and Defences

A respondent may assert as a defence, counterclaim, right of set-off or other similar claim, that a claimant has not fulfilled its obligations under this Agreement, including the obligations to comply with all applicable domestic measures, or that the claimant has not taken all reasonable steps to mitigate possible damages.

PART FOUR

FINAL PROVISIONS

[ARTICLE 36 A Other Agreements

1. This Agreement or any action taken under it shall not affect the rights and obligations of the Member States under existing agreements to which they are parties.
2. Nothing in this Agreement shall affect the rights of the Member States to enter into other agreements not contrary to the principles, objectives and terms of this Agreement.
3. In the event of inconsistency between this Agreement and such other agreements mentioned in this Article, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.
4. This Agreement shall not cover matters relating to investments covered by non-COMESA Agreements.

OR

ARTICLE 36 B Other Agreements

1. Where Member States have a pre-existing bilateral investment treaty between them, such treaty shall be deemed terminated upon the entry into force of this Agreement, except that any disputes already initiated under such bilateral agreements shall be resolved according to their terms.
2. Where Member States have an international investment agreement with a third party, they shall strive to renegotiate those agreements to make them consistent with the present Agreement.
3. Member States shall ensure that all future investment agreements to which they may become Party are fully consistent with the present Agreement, particularly with the balance of rights and obligations it establishes, and the principal features of the dispute settlement system.
4. Member States agree that the provisions of other international trade agreements to which they are a Party are consistent with the provisions of this Agreement. Member States shall seek to interpret such agreements in a mutually supportive manner. In the event of any dispute arising on this issue, the Member States shall seek to resolve such dispute within the mechanisms of this agreement as a first step.

5. In the event of inconsistency between this Agreement and such other agreements mentioned in this Article, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.]

ARTICLE 37 **Amendments**

Any amendments to this Agreement shall be adopted by the Council and shall enter into force when ratified by fifty per cent of the Member States that have ratified or acceded to the Agreement.

ARTICLE 38 **Supplementary Agreements or Arrangements**

The Schedules, Action Plans, Annexes, and any other arrangements or agreements arising under this Agreement shall form an integral part of this Agreement.

ARTICLE 39 **Adoption of Protocols**

The Council may on the recommendation of the CCIA Committee adopt additional protocols to this Agreement which shall come into force in accordance with the provisions of Article 42 of this Agreement.

ARTICLE 40 **Accession of New Members**

New members of COMESA shall accede to this Agreement on terms and conditions agreed between them and signatories to this Agreement.

ARTICLE 41 **Entry into Force**

1. This Agreement shall enter into force when signed and ratified by at least six Member States.
2. Any Member State that has not ratified the agreement on the date of its entry into force may accede to this Agreement.
3. This Agreement shall enter into force in relation to an acceding Member State on the date its instrument of accession shall be deposited.

ARTICLE 42 **Depositary**

This Agreement and all Instruments of Ratification or Accession shall be deposited with the Secretary General who shall transmit certified true copies of this Agreement to all the Member States.

ARTICLE 43
Renewal

This Agreement shall remain in force for a period of ten years and shall continue in force for the same period unless terminated by consensus of Member States.

For ten years from the date of termination, the Agreement shall continue to apply to covered investments established and acquired prior to the date of termination.

IN WITNESS WHEREOF, the undersigned being duly authorised by their respective Governments, have signed this Investment Framework Agreement on the COMESA Investment Area.

DONE at this day of
2006, in the English and French languages both texts being authentic.

[ANNEX A

INVESTOR-STATE DISPUTE SETTLEMENT

Article 1: Consultation and Negotiation

In the event of a dispute under this Agreement, the claimant (investor/investment/State Party) and the respondent (investor/investment/State Party) shall seek to resolve the dispute in accordance with Article 29. The claimant and respondent constitute the disputing parties.

Article 2: Submission of a Claim to Arbitration

(1) In the event that a disputing party considers that a dispute cannot be settled by alternative means, and all other pre-conditions for such a dispute as required by the Agreement have been fulfilled:

- a) the investment, on its own behalf, may submit to arbitration under this Agreement a claim that the respondent host State has breached an obligation under this Agreement and that the investment has incurred loss or damage by reason of, or arising out of, that breach;
- b) the investor, on its own or on behalf of the investment if it is the controlling investor, may submit to arbitration under this Agreement a claim that the respondent has breached an obligation under this Agreement, and that the claimant has incurred loss or damage by reason of, or arising out of, that breach;
- c) a State Party may submit a claim to arbitration as claimant against an investor or investment.

(2) For greater certainty, an investor or investment claimant may submit to arbitration a claim referred to in Paragraph (1) that the respondent has breached an obligation through the actions of a designated government monopoly or a state enterprise exercising delegated government authority.

(3) At least 180 days before submitting any claim to arbitration, a potential claimant shall deliver to the potential respondent a written notice of its intention to submit the claim to arbitration ("notice of intention"). The notice shall specify:

- a) the name and address of the claimant and its legal representative and, where a claim is submitted on behalf of an

investment, the name, address and place of incorporation of the investment;

- b) for each claim, the provision(s) of this Agreement alleged to have been breached and any other relevant provisions;
- c) the legal and factual basis for each claim; and
- d) the relief sought and, where appropriate, the approximate amount of damages claimed.

The CCIA Committee may establish a specific form for this purpose and make it available through the Internet and other means [and through the National Authorities].

(4) Provided that at least six months have elapsed since the events giving rise to the claim, and all other pre-conditions for such a dispute as required by the Agreement have been fulfilled, a claimant may formally submit a Notice of Arbitration to the [National Authority of the respondent State][and to the COMESA Secretariat].

(5) A claim shall be deemed submitted to arbitration when the claimant's Notice of Arbitration is submitted to the respondents [National Authority] [and to the COMESA Secretariat]. The CCIA Committee may establish a specific form for this purpose and make it available through the internet and other means, [and through the National Authorities]. The Notice of Arbitration shall include, at a minimum, the information required in Paragraph (3).

Article 3: Rules of Arbitration

The CCIA Committee shall establish Rules of Arbitration consistent with the provisions of this Agreement. Until the adoption of such Rules, the Rules of Arbitration of the Centre in effect on the date the claim or claims were submitted to arbitration under this Agreement, shall govern the arbitration except to the extent modified by this Agreement, irrespective of whether the host and home states are parties to the ICSID Convention.

Article 4: Consent of Each Party to Arbitration

Each Member State consents to the submission of a claim to arbitration under this Agreement in accordance with its provisions. Each investor and investment, by virtue of establishing or continuing to operate or own an investment subject to this Agreement, consents to the submission of a claim to arbitration under this Agreement.

Article 5: Conditions and Limitations on Consent of Each Party

(1) No claim may be submitted to arbitration if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged in the Notice of Arbitration.

[(2) No claim may be submitted to arbitration by an investor or investment unless the claimant has demonstrated that the requirement for the exhaustion of local remedies has been complied with or the claimant has been granted a request to a panel for a finding that it is not in a viable position to exhaust local remedies. In the event of the latter case, the Notice of Arbitration shall be accompanied by an express written waiver of any such rights conditional on the initiation of an arbitration.]

Article 6: Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

2. The President of the COMESA Court of Justice, [the President of the International Court of Justice or the Secretary General of ICSID] shall serve as appointing authority for State-State arbitration under this section. The [President of the COMESA Court of Justice, the President of the International Court of Justice or the Secretary General of ICSID] shall serve as appointing authority for an investor-State arbitration under this section.

3. If a tribunal has not been constituted within two months from the date that a claim is submitted to arbitration under this Section, the appointing authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

or

(1) The Secretary General of the COMESA Secretariat shall, within 30 days of the filing of a notice of arbitration, appoint the panel members from the standing roster of panelists. No panel member shall be from the host or home state.

(2) A panel shall be composed of three members, with one designated as President of the panel.

(3) A disputing party may contest the nomination of an arbitrator for good cause, including real or apparent conflict of interest. Any challenges shall be decided by the remaining two designated arbitrators. Such a challenge must be brought as soon as practicable after information leading to the challenge is made known to the challenging party.

Article 7: Conduct of the Arbitration

(1) Unless otherwise agreed by the disputing parties, the place of arbitration shall be [at the Secretariat][at a place designated by the tribunal].

[(2) Any non-disputing Member State may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.]

(3) 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 a tribunal's competence, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made.

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 respondent to submit its first countermemorial (written argument).

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 thereof.

c) In deciding an objection under this Paragraph, the tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration. The tribunal may also consider any relevant facts not in dispute.

d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this Paragraph or make use of the expedited procedure set out in the following Paragraph.

(4) In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under Paragraph (3) or 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 thereof, 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 of time, which may not exceed 30 days.

(5) When it decides a respondent's objection under Paragraph (3), the tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider inter alia whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

(6) A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

(7) 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 a measure alleged to constitute a breach of the relevant parts of this Agreement. The protection of the public welfare and public interests shall be considered when any interim measures are requested.

Article 8: Amicus Curiae

(1) The tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party (the "submitter").

(2) The submissions shall be provided in English[, French or Portuguese] or in the principal language of the host state, and shall identify the submitter and any Party, other government, person, or organization, other than the submitter, that has provided, or will provide, any financial or other assistance in preparing the submission.

(3) The CCIA Committee may establish and make available to the public a standard form for applying for status as *amicus curiae*. This may include specific criteria which will help guide a tribunal in determining whether to accept a submission in any given instance.

(4) *Amicus curiae* submissions may relate to any matter covered by this Agreement that is relevant to the claim before the tribunal.

Article 9: Transparency of Arbitral Proceedings

(1) Subject to Paragraphs (2) and (4), the claimant and respondent shall, after sending the following documents to the other disputing party, promptly transmit them to the Secretariat which shall make them available to the public [including by Internet]:

- a) the notice of intention;
- b) any settlement agreement resulting from alternative dispute resolution processes;
- c) the notice of arbitration;
- d) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to this Annex or the Rules of Arbitration;
- e) minutes or transcripts of hearings of the tribunal, where available; and
- f) all orders, awards, and decisions of the tribunal.

(2) The tribunal shall conduct all hearings open to the public and shall determine, in consultation with the disputing parties and the Secretariat the appropriate logistical arrangements. However, any disputing party that intends to use information designated as confidential business information or information that is privileged or otherwise protected from disclosure under a party's law in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

(3) Nothing in this section requires a respondent to disclose confidential business information or information that is privileged or otherwise protected from disclosure under a Member State's law or to furnish or allow access to information that it may withhold in accordance with this Agreement.

(4) Confidential business information or information that is privileged or otherwise protected from disclosure under a Member State's law shall, if such information is submitted to the tribunal, be protected from disclosure in accordance with the following procedures:

- a) subject to Sub-paragraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing party or to the public any confidential business information or information that is privileged or otherwise protected from disclosure under a Member State's law where the disputing party that provided the information clearly designates it in accordance with Sub-paragraph (b);
- b) any disputing party claiming that certain information constitutes confidential business information or information that is privileged or otherwise protected from disclosure under a Member State's law shall clearly designate the information at the time it is submitted to the tribunal;
- c) a disputing party shall, at the same time that it submits a document containing information claimed to be confidential business information or information that is privileged or otherwise protected from

disclosure under a Member State's law, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing party and made public in accordance with Paragraph (1); and

d) the tribunal shall decide any objection regarding the designation of information claimed to be confidential business information or information that is privileged or otherwise protected from disclosure under a Member State's law. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may:

- i) withdraw all or part of its submission containing such information; or
- ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and Sub-paragraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under Sub-paragraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under Sub-paragraph (d)(ii) of the disputing party that first submitted the information.

(5) Nothing in this Agreement authorizes a respondent to withhold from the public information required to be disclosed by its laws.

Article 10: Expert Reports

A tribunal, at the request of a disputing party or on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other matters raised in a proceeding. The tribunal shall consider any terms or conditions relating to such appointments that the disputing parties may suggest.

Article 11: Consolidation

(1) Where two or more claims have been submitted separately to arbitration under this Agreement and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order.

(2) A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary General of the COMESA Secretariat and to all the disputing parties sought to be covered by the order and shall specify in the request:

- a) the names and addresses of all the disputing parties sought to be covered by the order;
- b) the nature of the order sought; and
- c) the grounds on which the order is sought.

(3) Unless the Secretary General of the COMESA Secretariat finds within 30 days after receiving a request under Paragraph (2) that the request is manifestly unfounded, a separate tribunal shall be established under this Article by the Secretary General solely to consider the issue of consolidation.

(4) Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration have a question of law or fact in common, and arise out of the same events or circumstances, 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;
- b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
- c) instruct a tribunal previously established to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that that tribunal shall decide whether any prior hearing shall be repeated.

(5) Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration and that has not been named in a request made under Paragraph (2) may make a written request to the tribunal that it be included in any order made under Paragraph (4), and shall specify in the request:

- a) the name and address of the claimant;
- b) the nature of the order sought; and
- c) the grounds on which the order is sought.

(6) On application of a disputing party, a tribunal established under this Article, pending its decision under Paragraph (4), may order that the proceedings of another tribunal be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 13: Awards

(1) Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only:

- a) monetary damages and any applicable interest against a Member State; and
- c) restitution of property from a Member State, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorneys' fees in accordance with the applicable arbitration rules.

(2) Subject to Paragraph (1), where a claim is submitted to arbitration on behalf of an investment:

- a) an award of restitution of property shall provide that restitution be made to the investment; and
- b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the investment.

(3) A tribunal may not award punitive damages.

(4) An award made by a panel tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

(5) Subject to Paragraph (6) [and the applicable appeal procedure,] a disputing party shall comply with an award without delay.]

[(6) 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 appeal the award; or
- b) the appellate division has rejected an appeal.]

(7) Each Party shall provide for the enforcement of an award in its territory and make the appropriate legal proceedings available for this purpose.

[Article 14: Appellate process

(1) A disputing investor or investment or Member State may appeal, within 60 days, a panel decision on the basis of an error of law or a material and manifest error of fact. Such appeals shall proceed in accordance with Annex A. No other appeal or arbitration review process shall be applicable to arbitrations under this Agreement.

(2) The appellate process shall apply, mutatis mutandis, the rules of procedure for the arbitration tribunals, subject to such modifications as required by this Agreement.

(3) The appeal must be filed within 60 days of the decision being appealed.

(4) The CCIA Committee shall establish, at its first meeting, the timelines for the appellate process.

(5) The decision on appeal shall be final and binding and not subject to further appeal or judicial review.

A tribunal decision not taken to appeal shall have the same final and binding status.]