**Roll No: ----------**

UNIVERSITY OF PETROLEUM
AND ENERGY STUDIES

End Semester Examination – December 2017

Program/course: BA. LL.B. (Hons.) ENERGY LAWS 2013 Semester: VII
Subject: International Economic Law Max. Marks: 100
Code : LLBL 501 Duration: 3 Hrs
No. of page/s: 2

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Section A
(Limit – ½ Page)

1. What is the difference between the *de facto* discrimination and *de jure* discrimination? (5)
2. How does the principle of MFN in trade, support the theory of comparative advantage? (5)

Section B
(Limit – 2 Pages)

3. GATT art III entertains a *de minimis* exception for all kind of products. Critically evaluate the statement. (10)
4. Recent international investment policymaking aims at reworking definition clause in the Bilateral Investment Treaties. Why and how? Discuss with examples. (10)

Section C
(Limit – 2 Pages)

5. MFN in international investment law has been applied in a way that defeats bilateralism. Critically evaluate the sentence considering the ISDS cases. (10)
6. How do you think is the doctrine of police power is inconsistent with the indirect expropriation clauses generally found in the BITs? (10)

Section D

Lone Pine Resources Inc. (hereinafter the Lone Pine US) is an oil and gas exploration, development, and production company that is organized under the laws of the State of Delaware in the United States of America, which is owned by a Russian national Mikhail Romanov, who has for most part of his life lived in Germany manages and controls business from there. Over past few years international businesses related to oil exploration have started shifting their focus from Russia to other parts of the world owing to growing tensions between Russia and NATO states. Due to these tensions, Canada for now has severed diplomatic ties with Russia. Lone Pine US had operations all over the world including Russia. Lone Pine US also has operations in Alberta, British Columbia, Quebec, and the Northwest Territories. Lone Pine Resources Canada Ltd (hereinafter referred to as 'Lone Pine Canada') is a corporation organized under the laws of the Province of Alberta. Lone Pine Canada was previously called Canadian Forest Oil Ltd. until June 30, 2011 when it changed its name. Lone Pine US and Lone Pine Canada were wholly owned subsidiaries of Forest Oil Corporation ('Forest Oil'), a corporation organized under the laws of the State of New York in the United States of America, with its principal place of business at 707-17th Street, Suite 3600, Denver, Colorado, 80202, United States of America. In June of 2011, Forest Oil caused Lone Pine US and Lone Pine Canada to complete a reorganization, pursuant to which Lone Pine Canada became a wholly owned subsidiary of Lone Pine US and Lone Pine US completed an initial public offering in which it sold 17.7% of its shares of common stock to the public in the United States and in Canada and it listed its shares of common stock on the New York Stock Exchange and Toronto Stock Exchange. The remaining 82.3% of Lone Pine US's shares of common stock were retained by Forest Oil. In September of 2011, Forest Oil distributed its remaining 82.3% interest in Lone Pine US pro rata to all Forest Oil shareholders. As a result, as of September 30, 2011, Lone Pine US became a stand-alone public company whose common stock is listed on the New York Stock Exchange and Toronto Stock Exchange.

*The Utica Shale Gas Basin.*

Shale gas is natural gas that is trapped within fine-grained sedimentary rock called shale. Shale contains tiny pores in which natural gas has become trapped over time. It is accessed and extracted through a process called horizontal drilling and hydraulic fracturing. In this process, a vertical well is drilled to a predetermined depth above a shale gas reservoir, and then drilled at an increasing angle until it meets the reservoir depth. Once it reaches that depth, a wellbore is drilled horizontally, sometimes up to 2500 meters. The shale rock surrounding the wellbore is then fractured to either intersect and open existing natural fractures in the shale, or to create new fractures. This creates pathways by which the natural gas can flow to the wellbore for extraction. Shale rock containing natural gas can be found in most sedimentary basins throughout Canada. The largest concentration lies within the Western Canada Sedimentary Basin, which extends from northeast British Columbia to southwest Manitoba. Other basins are located in the Arctic, the Northwest Territories, the Yukon, Quebec, Ontario, New Brunswick, and Nova Scotia. In Quebec, the largest known concentration of shale gas lies in the Utica shale gas basin. It has been estimated that in this region alone, some 181 trillion cubic feet of natural gas is trapped in the shale beneath the surface. To put these numbers into context, in 2009 and 2010, Canada produced a total of just 5.26 trillion cubic feet and 5.37 trillion cubic feet of natural gas, respectively. Accordingly, any party holding the right to extract shale gas from the Utica shale gas basin would stand to generate considerable revenues.

Lone Pine Canada owns 100% interest in a number of Petroleum and Natural Gas Exploration Permits in the Utica shale gas basin. Among these is a Petroleum and Natural Gas Exploration Permit for approximately 11,600 hectares of land beneath the St. Lawrence River. It has been estimated that there exists between 1,870 billion cubic feet and 3,346 billion cubic feet of undiscovered shale gas in this area.

*The Farmout Agreement*

In 2006, a Quebec-based company called Junex Inc. ("Junex") held four Petroleum and Natural Gas Exploration Permits on four blocks of land in the Utica shale gas basin covering a total of some 57,772 hectares: Permit Numbers 1996PG950, 2002PG597, 2002PG596, and 2004PG769 (the "Original Permits"). Forest Oil was interested in the shale gas resources in Quebec and approached Junex in 2006 to secure Junex's interest in the Original Permits. To this end, on June 5, 2006, Forest Oil and Junex entered into a letter agreement (the "Farmout Agreement") by which Forest Oil obtained, among other things, an option to earn 100% of the working interest in the Original Permit areas from the surface to a depth of 743 meters (the "Contract Area"). The salient terms of the Farmount Agreement are as follows:

a. Junex agreed to drill and core a well in the Contract Area, and provide a core analysis to Forest Oil, with the costs to be shared by Junex and Forest Oil;

b. Upon receipt of the core analysis, Forest Oil would have a period of 6 months to elect to exercise an option to earn an interest in the Contract Area (the "Election Period");

c. In the event that Forest Oil elected to exercise its option, it would have a period of 18 months to spend, cause to be spent, or commit to spend a total sum of $ 5 million USD on drilling, completions, re-completions, construction of facilities, pipelines, and gathering lines or on geological and geophysical expenses in order to earn 100% interest in the Contract Area (the "Commitment Period"); and

d. Upon satisfaction of Forest Oil's obligation to spend the foregoing $ 5 million USD during the Commitment Period, Junex was to assign to Forest Oil 100% interest in the Contract Area, and retain an overriding royalty interest of 20 % or to convert that royalty interest into a 10 % working interest after a certain point in time.

*The River Permit Agreement*

The St. Lawrence River intersected the areas covered by the Original Permits, and from the outset of its relationship with Junex, it was the intention of Forest Oil to obtain a Petroleum and Natural Gas Exploration Permit for the portion of the St. Lawrence River that lay between them. This area was particularly attractive to Forest Oil because the fault line along the river constituted a naturally fractured shale formation, thereby providing a likelihood of enhanced gas recovery. On July 28, 2006, shortly after the execution of the Farmout Agreement with Junex, Lone Pine Canada applied to the Quebec Ministry of Natural Resources (the "QMNR") for a Petroleum and Natural Gas Exploration Permit covering approximately 11,600 hectares of land located under the St. Lawrence River (the "River Permit Area"). Lone Pine Canada indicated to the QMNR, among other things, that it planned "to test the shale gas potential of the Utica Formation through horizontal drilling

and completion techniques," and that it would subsequently "apply for an Operating Lease and commence development of the project." Following Lone Pine Canada's application, Forest Oil and Junex entered into negotiations to discuss an agreement under which Forest Oil would withdraw its application and Junex would seek a Petroleum and Natural Gas Exploration Permit for the River Permit Area that would be subject to the same terms and conditions specified in the Farmout Agreement. On December 14, 2006, the parties formally agreed to the foregoing terms in writing (the "River Permit Agreement"), and thereafter informed QMNR of the River Permit Agreement. On January 10, 2007, the QMNR wrote to Lone Pine Canada that "[c]onsidering the agreement signed with Junex Inc., we are sending you back the documents regarding your request for an exploration license in the St. Lawrence River." Junex subsequently applied for a Petroleum and Natural Gas Exploration Permit covering the River Permit Area in accordance with the River Permit Agreement.

*Forest Oil's Satisfaction of its Obligations Under the Farmout Agreement.*

Following the execution of the Farmout Agreement and the River Permit Agreement, Forest Oil expended considerable time, resources, and capital to explore for shale gas in the areas covered by these agreements, and in accordance with the Farmout Agreement obtained 100% of 11 the working interest in the Contract Area, and 100% of Junex's interest in the River Permit Area, which had yet to be obtained but was being processed by the QMNR. In particular, between June and November of 2006, Junex conducted the drilling and core analysis required by the Farmout Agreement, which cost was shared by Junex and Forest Oil. In this process, Forest Oil expended some $ 5 million on coring and related activities. On November 24, 2006, Junex provided a final core analysis to Forest Oil, triggering the Election Period set forth in the Farmout Agreement. On May 10, 2007, and well within the Election Period, Forest Oil elected to exercise its option to earn the interest defined in the Farmout Agreement, triggering the eighteen-month Commitment Period. In 2008, and well within the Commitment Period, Forest Oil notified Junex that it had expended greater than the $ 5 million, required under the Farmout Agreement, entitling Forest Oil to 100% interest in the Original Permits and the River Permit, when acquired, under the River Permit Agreement. Forest Oil has expended approximately $ 15 million (excluding general selling & administrative expenses) on drilling, completions, re-completions, construction of facilities, pipelines, and gathering lines or on geological and geophysical expenses in the Contract Area.

*The Acquisition of the River Permit*

On March 26, 2009, the QMNR advised Junex that it had approved two Petroleum and Natural Gas Exploration Permits on March 17, 2009: Permit Numbers 2009PG490 and 2009PG492. It is the former of these two permits – 2009PG490 – that was the subject of the River Permit Agreement between Junex and Forest Oil (the "River Permit"). Under the River Permit Agreement, Forest Oil was entitled to 100% of the working interest in the River Permit by virtue of having satisfied its obligations under the Farmout Agreement.

*Assignment of the Original Permits and the River Permit*

On April 8, 2009, Forest Oil and Lone Pine Canada entered into an Assignment of Letter Agreement pursuant to which Forest Oil assigned all of its rights, duties, benefits, and obligations in the Farmout Agreement to Lone Pine Canada, effective on October 1, 2007. On April 23, 2009, Forest Oil advised Junex of this fact. On January 28, 2010, Junex and Lone Pine Canada entered

into an Assignment Agreement under which Junex assigned Lone Pine Canada its working interest in the River Permit, effective as of March 17, 2009, when the River Permit was issued to Junex by the QMNR. On January 28, 2010, Junex and Lone Pine Canada entered into an Assignment Agreement under which Junex assigned Lone Pine Canada its interest in the Original Permits, effective as of August 19, 2009. On April 19, 2010, Junex applied to the QMNR to request that the interest in the Original Permits and River Permit granted to Lone Pine Canada under the Farmout Agreement be transferred to Lone Pine Canada. On April 21, 2010, the QMNR acknowledged receipt of Junex's request, and on May 27, 2010, formally transferred those interests to Lone Pine Canada.

*The Proposed Moratorium on Oil and Gas Development in the St. Lawrence River*

By the Spring of 2010, a number of interest groups began putting pressure on the Quebec Government to limit shale gas exploration and development activities in the Province. In response to these pressures, the Government of Quebec initiated a Bureau d'audiences publiques sur l'environnement ("BAPE") hearing process through which it consulted with members of the public to obtain input on shale gas exploration and development in Quebec. In the late Summer and early Fall of 2010, the BAPE held open houses in three different communities in which shale gas potential was significant: the Chaudiere Appalaches region, the Centre-du-Quebec region, and the Monteregie Est region. The foregoing process resulted in a number of recommendations to the Government of Quebec including, among other things, the strengthening of existing regulatory provisions in relation to shale gas exploration and the undertaking of a strategic environmental assessment on shale gas. The Government of Quebec responded to these recommendations by establishing a strategic environmental assessment committee comprised of experts and representatives from government, municipalities, and industry to evaluate shale gas development in Quebec. Before the strategic environmental assessment was completed, however, and without any consultation with Lone Pine Canada or Junex, the Quebec Minister of Natural Resources, Ms. Natalie Normandeau, announced a proposed moratorium on shale gas exploration and development in the St. Lawrence River on November 9, 2010. Neither Lone Pine Canada nor Junex were notified, much less consulted, prior to Ms. Normandeau's announcement. Indeed, Lone Pine Canada and Junex only learned of the proposed moratorium (for surface access) from an article published in the Montreal Gazette on November 10, 2010. In response to the proposed moratorium, representatives of Lone Pine Canada and Junex met with the Deputy Minister of the QMNR, Mr. Robert Sauvé, and the QMNR's Manager of Exploration, Jean-Yves Laliberte, on January 15, 2011 in Quebec City. At this meeting, Lone Pine Canada and Junex re-iterated that their exploration and development plans for the River Permit areas did not entail any drilling in the St. Lawrence River. Rather, drilling would take place on-shore, and the wellbore would be drilled vertically on-shore then horizontally at depth below the river. These comments made by Lone Pine Canada and Junex appeared to be well received by Sauvé and Laliberte, and Lone Pine Canada and Junex were informed at that meeting that the resources contained in the River Permit would be accessible to them in the future, without any doubt. Additionally, Mr. Sauvé assured Lone Pine Canada and Junex that he would revert to them in short order. However, despite repeated attempts to contact him and messages left for him, Lone Pine Canada was unable to reach Mr. Sauvé and never heard back from him or anyone else at the QMNR regarding the River Permit or any other matter connected with Bill. Rather, without any further consultation or notice to Lone Pine Canada nor any public announcement, the Government of Quebec introduced Bill 18 in the Quebec National Assembly on May 12, 2011. This Bill proposed to revoke all mining rights – including

Petroleum and Natural Gas Exploratory Permits – for a stretch of the St. Lawrence River including the area covered by the River Permit. Moreover, the Government of Quebec, through Bill 18, proposed to revoke these rights without offering any compensation whatsoever. On May 20, 2011, the Quebec Oil & Gas Association ("QOGA") requested that members of the QOGA submit their positions on Bill 18 so the QOGA's position could be presented to the Government of Quebec and, on May 24, 2011, Lone Pine Canada submitted its position to the QOGA to the effect that Bill 18 amounted to an expropriation without justification or compensation. On May 31, 2011, representatives of the QOGA attended special consultations on Bill 18 conducted by the Committee on Agriculture, Fisheries, Energy and Natural Resources of the Quebec National Assembly. The representatives of the QOGA were told that nothing could be done to change Bill 18, and that "a political decision" had already been made to push it through. On June 10, 2011, less than a month after it had been introduced into the National Assembly without warning, without consultation, and without notice, Bill 18 was quietly and quickly passed in the National Assembly with little ceremony and became law as An Act to limit oil and gas activities (the "Act"). The Act received Royal Assent on June 13, 2011. It should be noted that on May 15, 2013, the Quebec government introduced Bill 37, An Act to prohibit certain shale natural gas exploration and production activities. Bill 37 proposes a moratorium on all shale gas exploration in the lowlands of Quebec's St. Lawrence eco-region and if passed, will revoke all drilling licences without compensation.

Based on the fact situation and the investment agreement provided in the annexure give answer the following:

7. Is there any foreign investment in the present dispute? (10)
8. Argue the case –
   (a) For the 'foreign investor'. (10)
   (b) For the 'Host State'. (10)

Clean Water Corp is a water, sewage and waste management company incorporated and having its registered office in Hydrolia. In March 1996, it entered into a long-term water purification and management concession agreement with a group of municipalities in Poorstan for provision and supply of clean water and sewage and waste management for a period of 25 years with an optional renewal on demand by the investor for another 10 years. The concession agreement contains an express choice-of-forum clause providing:

> "The Parties agree to submit any dispute arising under this agreement to
> (i) ICSID arbitration;
> (ii) ICSID Additional Facility arbitration;
> (iii) Ad hoc arbitration according to the UNCITRAL Arbitration Rules upon a request by either Party."
>
> In addition, a 1979 Bilateral Investment Treaty between Hydrolia and Poorstan, which entered into force in July 1981, provides:
>
> *The Contracting Parties are willing to submit any dispute arising from an investment made within their territories by a national of the other Contracting Party to the International Centre for Settlement of Investment Disputes.*"

The investment was initiated in February 1997 and already by October 1999 80% of the total network envisaged under the agreement was provided for by Clean Water Corp. In July 2000, a dispute arose over the rates charged by Clean Water Corp to the municipal distributor undertakings. In October 2000 Poorstan decided to step in and enacted a decree fixing the rates at a level "required to maintain this service of a general economic importance."

Clean Water Corp claims that this regulatory action constitutes a de facto expropriation. Hydrolia is a Contracting Party to the ICSID Convention since 1973. Poorstan signed in 1989 but, due to constitutional difficulties, has never ratified it.

9. Clean Water Corp seeks your advice in respect of the following:
   (a) Can Clean Water Corp force Hydrolia to take diplomatic steps on its behalf? (10)
   (b) Does Clean Water Corp have a possibility of bringing its claim before an ICSID panel? (10)

## Annexure

### Chapter Eleven: Investment

### Section A - Investment

**Article 1101: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:

   (a) investors of another Party;

   (b) investments of investors of another Party in the territory of the Party; and

   (c) with respect to Articles 1106 and 1114, all investments in the territory of the Party.

2. A Party has the right to perform exclusively the economic activities set out in Annex III and to refuse to permit the establishment of investment in such activities.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Fourteen (Financial Services).

4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

**Article 1102: National Treatment**

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

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.

4. For greater certainty, no Party may:

> (a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or
>
> (b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

**Article 1103: Most-Favored-Nation Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

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

**Article 1104: Standard of Treatment**

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.

**Article 1105: Minimum Standard of Treatment**

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

**Article 1110: Expropriation and Compensation**

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

> (a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 1105(1); and

(d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall 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.

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

4. If payment is made in a G7 currency, 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 Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 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 G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 1109.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).

8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

**Article 1111: Special Formalities and Information Requirements**

1. Nothing in Article 1102 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of another Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and investments of investors of another Party pursuant to this Chapter.

2. Notwithstanding Articles 1102 or 1103, a Party may require an investor of another Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

**Article 1113: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investor if investors of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

**Article 1114: Environmental Measures**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another 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 any such encouragement.

**Section C Definitions**

**Article 1139: Definitions**

For purposes of this Chapter:

**disputing investor** means an investor that makes a claim under Section B;

**disputing parties** means the disputing investor and the disputing Party;

**disputing party** means the disputing investor or the disputing Party;

**disputing Party** means a Party against which a claim is made under Section B;

**enterprise** means an "enterprise" as defined in Article 201 (Definitions of General Application), and a branch of an enterprise;

**enterprise of a Party** means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there.

**equity or debt securities** includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

**G7 Currency** means the currency of Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland or the United States;

**ICSID** means the International Centre for Settlement of Investment Disputes;

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

**InterAmerican Convention** means the *InterAmerican Convention on International Commercial Arbitration*, done at Panama, January 30, 1975;

**investment** means:

(a) an enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

(d) a loan to an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

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

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

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

but investment does not mean,

(i) claims to money that arise solely from

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or

(j) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h);

**investment of an investor of a Party** means an investment owned or controlled directly or indirectly by an investor of such Party;

**investor of a Party** means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;

**investor of a non-Party** means an investor other than an investor of a Party, that seeks to make, is making or has made an investment;

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

**Secretary-General** means the Secretary-General of ICSID;

**transfers** means transfers and international payments;

**Tribunal** means an arbitration tribunal established under Article 1120 or 1126; and

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

**Roll No: ----------**

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AND ENERGY STUDIES

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Section D

Lone Pine Resources Inc. (hereinafter the Lone Pine US) is an oil and gas exploration, development, and production company that is organized under the laws of the State of Delaware in the United States of America, which is owned by a Russian national Mikhail Romanov, who

has for most part of his life lived in Germany manages and controls business from there. Over past few years international businesses related to oil exploration have started shifting their focus from Russia to other parts of the world owing to growing tensions between Russia and NATO states. Due to these tensions, Canada for now has severed diplomatic ties with Russia. Lone Pine US had operations all over the world including Russia. Lone Pine US also has operations in Alberta, British Columbia, Quebec, and the Northwest Territories. Lone Pine Resources Canada Ltd (hereinafter referred to as 'Lone Pine Canada') is a corporation organized under the laws of the Province of Alberta. Lone Pine Canada was previously called Canadian Forest Oil Ltd. until June 30, 2011 when it changed its name. Lone Pine US and Lone Pine Canada were wholly owned subsidiaries of Forest Oil Corporation ('Forest Oil'), a corporation organized under the laws of the State of New York in the United States of America, with its principal place of business at 707-17th Street, Suite 3600, Denver, Colorado, 80202, United States of America. In June of 2011, Forest Oil caused Lone Pine US and Lone Pine Canada to complete a reorganization, pursuant to which Lone Pine Canada became a wholly owned subsidiary of Lone Pine US and Lone Pine US completed an initial public offering in which it sold 17.7% of its shares of common stock to the public in the United States and in Canada and it listed its shares of common stock on the New York Stock Exchange and Toronto Stock Exchange. The remaining 82.3% of Lone Pine US's shares of common stock were retained by Forest Oil. In September of 2011, Forest Oil distributed its remaining 82.3% interest in Lone Pine US pro rata to all Forest Oil shareholders. As a result, as of September 30, 2011, Lone Pine US became a stand-alone public company whose common stock is listed on the New York Stock Exchange and Toronto Stock Exchange.

*The Utica Shale Gas Basin.*

Shale gas is natural gas that is trapped within fine-grained sedimentary rock called shale. Shale contains tiny pores in which natural gas has become trapped over time. It is accessed and extracted through a process called horizontal drilling and hydraulic fracturing. In this process, a vertical well is drilled to a predetermined depth above a shale gas reservoir, and then drilled at an increasing angle until it meets the reservoir depth. Once it reaches that depth, a wellbore is drilled horizontally, sometimes up to 2500 meters. The shale rock surrounding the wellbore is then fractured to either intersect and open existing natural fractures in the shale, or to create new fractures. This creates pathways by which the natural gas can flow to the wellbore for extraction. Shale rock containing natural gas can be found in most sedimentary basins throughout Canada. The largest concentration lies within the Western Canada Sedimentary Basin, which extends from northeast British Columbia to southwest Manitoba. Other basins are located in the Arctic, the Northwest Territories, the Yukon, Quebec, Ontario, New Brunswick, and Nova Scotia. In Quebec, the largest known concentration of shale gas lies in the Utica shale gas basin. It has been estimated that in this region alone, some 181 trillion cubic feet of natural gas is trapped in the shale beneath the surface. To put these numbers into context, in 2009 and 2010, Canada produced a total of just 5.26 trillion cubic feet and 5.37 trillion cubic feet of natural gas, respectively. Accordingly, any party holding the right to extract shale gas from the Utica shale gas basin would stand to generate considerable revenues.

Lone Pine Canada owns 100% interest in a number of Petroleum and Natural Gas Exploration Permits in the Utica shale gas basin. Among these is a Petroleum and Natural Gas Exploration Permit for approximately 11,600 hectares of land beneath the St. Lawrence River. It has been

estimated that there exists between 1,870 billion cubic feet and 3,346 billion cubic feet of undiscovered shale gas in this area.

*The Farmout Agreement*

In 2006, a Quebec-based company called Junex Inc. ("Junex") held four Petroleum and Natural Gas Exploration Permits on four blocks of land in the Utica shale gas basin covering a total of some 57,772 hectares: Permit Numbers 1996PG950, 2002PG597, 2002PG596, and 2004PG769 (the "Original Permits"). Forest Oil was interested in the shale gas resources in Quebec and approached Junex in 2006 to secure Junex's interest in the Original Permits. To this end, on June 5, 2006, Forest Oil and Junex entered into a letter agreement (the "Farmout Agreement") by which Forest Oil obtained, among other things, an option to earn 100% of the working interest in the Original Permit areas from the surface to a depth of 743 meters (the "Contract Area"). The salient terms of the Farmount Agreement are as follows:

a. Junex agreed to drill and core a well in the Contract Area, and provide a core analysis to Forest Oil, with the costs to be shared by Junex and Forest Oil;

b. Upon receipt of the core analysis, Forest Oil would have a period of 6 months to elect to exercise an option to earn an interest in the Contract Area (the "Election Period");

c. In the event that Forest Oil elected to exercise its option, it would have a period of 18 months to spend, cause to be spent, or commit to spend a total sum of $ 5 million USD on drilling, completions, re-completions, construction of facilities, pipelines, and gathering lines or on geological and geophysical expenses in order to earn 100% interest in the Contract Area (the "Commitment Period"); and

d. Upon satisfaction of Forest Oil's obligation to spend the foregoing $ 5 million USD during the Commitment Period, Junex was to assign to Forest Oil 100% interest in the Contract Area, and retain an overriding royalty interest of 20 % or to convert that royalty interest into a 10 % working interest after a certain point in time.

*The River Permit Agreement*

The St. Lawrence River intersected the areas covered by the Original Permits, and from the outset of its relationship with Junex, it was the intention of Forest Oil to obtain a Petroleum and Natural Gas Exploration Permit for the portion of the St. Lawrence River that lay between them. This area was particularly attractive to Forest Oil because the fault line along the river constituted a naturally fractured shale formation, thereby providing a likelihood of enhanced gas recovery. On July 28, 2006, shortly after the execution of the Farmout Agreement with Junex, Lone Pine Canada applied to the Quebec Ministry of Natural Resources (the "QMNR") for a Petroleum and Natural Gas Exploration Permit covering approximately 11,600 hectares of land located under the St. Lawrence River (the "River Permit Area"). Lone Pine Canada indicated to the QMNR, among other things, that it planned "to test the shale gas potential of the Utica Formation through horizontal drilling and completion techniques," and that it would subsequently "apply for an Operating Lease and commence development of the project." Following Lone Pine Canada's application, Forest Oil and Junex entered into negotiations to discuss an agreement under which Forest Oil would

withdraw its application and Junex would seek a Petroleum and Natural Gas Exploration Permit for the River Permit Area that would be subject to the same terms and conditions specified in the Farmout Agreement. On December 14, 2006, the parties formally agreed to the foregoing terms in writing (the "River Permit Agreement"), and thereafter informed QMNR of the River Permit Agreement. On January 10, 2007, the QMNR wrote to Lone Pine Canada that "[c]onsidering the agreement signed with Junex Inc., we are sending you back the documents regarding your request for an exploration license in the St. Lawrence River." Junex subsequently applied for a Petroleum and Natural Gas Exploration Permit covering the River Permit Area in accordance with the River Permit Agreement.

*Forest Oil's Satisfaction of its Obligations Under the Farmout Agreement.*

Following the execution of the Farmout Agreement and the River Permit Agreement, Forest Oil expended considerable time, resources, and capital to explore for shale gas in the areas covered by these agreements, and in accordance with the Farmout Agreement obtained 100% of 11 the working interest in the Contract Area, and 100% of Junex's interest in the River Permit Area, which had yet to be obtained but was being processed by the QMNR. In particular, between June and November of 2006, Junex conducted the drilling and core analysis required by the Farmout Agreement, which cost was shared by Junex and Forest Oil. In this process, Forest Oil expended some $ 5 million on coring and related activities. On November 24, 2006, Junex provided a final core analysis to Forest Oil, triggering the Election Period set forth in the Farmout Agreement. On May 10, 2007, and well within the Election Period, Forest Oil elected to exercise its option to earn the interest defined in the Farmout Agreement, triggering the eighteen-month Commitment Period. In 2008, and well within the Commitment Period, Forest Oil notified Junex that it had expended greater than the $ 5 million, required under the Farmout Agreement, entitling Forest Oil to 100% interest in the Original Permits and the River Permit, when acquired, under the River Permit Agreement. Forest Oil has expended approximately $ 15 million (excluding general selling & administrative expenses) on drilling, completions, re-completions, construction of facilities, pipelines, and gathering lines or on geological and geophysical expenses in the Contract Area.

*The Acquisition of the River Permit*

On March 26, 2009, the QMNR advised Junex that it had approved two Petroleum and Natural Gas Exploration Permits on March 17, 2009: Permit Numbers 2009PG490 and 2009PG492. It is the former of these two permits – 2009PG490 – that was the subject of the River Permit Agreement between Junex and Forest Oil (the "River Permit"). Under the River Permit Agreement, Forest Oil was entitled to 100% of the working interest in the River Permit by virtue of having satisfied its obligations under the Farmout Agreement.

*Assignment of the Original Permits and the River Permit*

On April 8, 2009, Forest Oil and Lone Pine Canada entered into an Assignment of Letter Agreement pursuant to which Forest Oil assigned all of its rights, duties, benefits, and obligations in the Farmout Agreement to Lone Pine Canada, effective on October 1, 2007. On April 23, 2009, Forest Oil advised Junex of this fact. On January 28, 2010, Junex and Lone Pine Canada entered into an Assignment Agreement under which Junex assigned Lone Pine Canada its working interest in the River Permit, effective as of March 17, 2009, when the River Permit was issued to Junex by the QMNR. On January 28, 2010, Junex and Lone Pine Canada entered into an Assignment

Agreement under which Junex assigned Lone Pine Canada its interest in the Original Permits, effective as of August 19, 2009. On April 19, 2010, Junex applied to the QMNR to request that the interest in the Original Permits and River Permit granted to Lone Pine Canada under the Farmout Agreement be transferred to Lone Pine Canada. On April 21, 2010, the QMNR acknowledged receipt of Junex's request, and on May 27, 2010, formally transferred those interests to Lone Pine Canada.

*The Proposed Moratorium on Oil and Gas Development in the St. Lawrence River*

By the Spring of 2010, a number of interest groups began putting pressure on the Quebec Government to limit shale gas exploration and development activities in the Province. In response to these pressures, the Government of Quebec initiated a Bureau d'audiences publiques sur l'environnement ("BAPE") hearing process through which it consulted with members of the public to obtain input on shale gas exploration and development in Quebec. In the late Summer and early Fall of 2010, the BAPE held open houses in three different communities in which shale gas potential was significant: the Chaudiere Appalaches region, the Centre-du-Quebec region, and the Monteregie Est region. The foregoing process resulted in a number of recommendations to the Government of Quebec including, among other things, the strengthening of existing regulatory provisions in relation to shale gas exploration and the undertaking of a strategic environmental assessment on shale gas. The Government of Quebec responded to these recommendations by establishing a strategic environmental assessment committee comprised of experts and representatives from government, municipalities, and industry to evaluate shale gas development in Quebec. Before the strategic environmental assessment was completed, however, and without any consultation with Lone Pine Canada or Junex, the Quebec Minister of Natural Resources, Ms. Natalie Normandeau, announced a proposed moratorium on shale gas exploration and development in the St. Lawrence River on November 9, 2010. Neither Lone Pine Canada nor Junex were notified, much less consulted, prior to Ms. Normandeau's announcement. Indeed, Lone Pine Canada and Junex only learned of the proposed moratorium (for surface access) from an article published in the Montreal Gazette on November 10, 2010. In response to the proposed moratorium, representatives of Lone Pine Canada and Junex met with the Deputy Minister of the QMNR, Mr. Robert Sauvé, and the QMNR's Manager of Exploration, Jean-Yves Laliberte, on January 15, 2011 in Quebec City. At this meeting, Lone Pine Canada and Junex re-iterated that their exploration and development plans for the River Permit areas did not entail any drilling in the St. Lawrence River. Rather, drilling would take place on-shore, and the wellbore would be drilled vertically on-shore then horizontally at depth below the river. These comments made by Lone Pine Canada and Junex appeared to be well received by Sauvé and Laliberte, and Lone Pine Canada and Junex were informed at that meeting that the resources contained in the River Permit would be accessible to them in the future, without any doubt. Additionally, Mr. Sauvé assured Lone Pine Canada and Junex that he would revert to them in short order. However, despite repeated attempts to contact him and messages left for him, Lone Pine Canada was unable to reach Mr. Sauvé and never heard back from him or anyone else at the QMNR regarding the River Permit or any other matter connected with Bill. Rather, without any further consultation or notice to Lone Pine Canada nor any public announcement, the Government of Quebec introduced Bill 18 in the Quebec National Assembly on May 12, 2011. This Bill proposed to revoke all mining rights – including Petroleum and Natural Gas Exploratory Permits – for a stretch of the St. Lawrence River including the area covered by the River Permit. Moreover, the Government of Quebec, through Bill 18, proposed to revoke these rights without offering any compensation whatsoever. On May 20, 2011,

the Quebec Oil & Gas Association ("QOGA") requested that members of the QOGA submit their positions on Bill 18 so the QOGA's position could be presented to the Government of Quebec and, on May 24, 2011, Lone Pine Canada submitted its position to the QOGA to the effect that Bill 18 amounted to an expropriation without justification or compensation. On May 31, 2011, representatives of the QOGA attended special consultations on Bill 18 conducted by the Committee on Agriculture, Fisheries, Energy and Natural Resources of the Quebec National Assembly. The representatives of the QOGA were told that nothing could be done to change Bill 18, and that "a political decision" had already been made to push it through. On June 10, 2011, less than a month after it had been introduced into the National Assembly without warning, without consultation, and without notice, Bill 18 was quietly and quickly passed in the National Assembly with little ceremony and became law as An Act to limit oil and gas activities (the "Act"). The Act received Royal Assent on June 13, 2011. It should be noted that on May 15, 2013, the Quebec government introduced Bill 37, An Act to prohibit certain shale natural gas exploration and production activities. Bill 37 proposes a moratorium on all shale gas exploration in the lowlands of Quebec's St. Lawrence eco-region and if passed, will revoke all drilling licences without compensation.

Based on the fact situation and the investment agreement provided in the annexure give answer the following:

7. Is there any foreign investment in the present dispute? (10)
8. Argue the case –
   (c) For the 'foreign investor'. (10)
   (d) For the 'Host State'. (10)

Clean Water Corp is a water, sewage and waste management company incorporated and having its registered office in Hydrolia. In March 1996, it entered into a long-term water purification and management concession agreement with a group of municipalities in Poorstan for provision and supply of clean water and sewage and waste management for a period of 25 years with an optional renewal on demand by the investor for another 10 years. The concession agreement contains an express choice-of-forum clause providing:

> "The Parties agree to submit any dispute arising under this agreement to
> (iv) ICSID arbitration;
> (v) ICSID Additional Facility arbitration;
> (vi) Ad hoc arbitration according to the UNCITRAL Arbitration Rules upon a request by either Party."
>
> In addition, a 1979 Bilateral Investment Treaty between Hydrolia and Poorstan, which entered into force in July 1981, provides:
>
> *The Contracting Parties are willing to submit any dispute arising from an investment made within their territories by a national of the other Contracting Party to the International Centre for Settlement of Investment Disputes.*"

The investment was initiated in February 1997 and already by October 1999 80% of the total network envisaged under the agreement was provided for by Clean Water Corp. In July 2000, a

dispute arose over the rates charged by Clean Water Corp to the municipal distributor undertakings. In October 2000 Poorstan decided to step in and enacted a decree fixing the rates at a level "required to maintain this service of a general economic importance."

Clean Water Corp claims that this regulatory action constitutes a de facto expropriation. Hydrolia is a Contracting Party to the ICSID Convention since 1973. Poorstan signed in 1989 but, due to constitutional difficulties, has never ratified it.

9. Clean Water Corp seeks your advice in respect of the following:
   (c) Can Clean Water Corp force Hydrolia to take diplomatic steps on its behalf? (10)
   (d) Does Clean Water Corp have a possibility of bringing its claim before an ICSID panel? (10)

## Annexure

### Chapter Eleven: Investment

### Section A - Investment

**Article 1101: Scope and Coverage**

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) investors of another Party;

(b) investments of investors of another Party in the territory of the Party; and

(c) with respect to Articles 1106 and 1114, all investments in the territory of the Party.

2. A Party has the right to perform exclusively the economic activities set out in Annex III and to refuse to permit the establishment of investment in such activities.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Fourteen (Financial Services).

4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

**Article 1102: National Treatment**

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

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.

4. For greater certainty, no Party may:

(a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

(b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

**Article 1103: Most-Favored-Nation Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

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

**Article 1104: Standard of Treatment**

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.

**Article 1105: Minimum Standard of Treatment**

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

**Article 1110: Expropriation and Compensation**

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 1105(1); and

(d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall 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.

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

4. If payment is made in a G7 currency, 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 Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 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 G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 1109.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).

8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

**Article 1111: Special Formalities and Information Requirements**

1. Nothing in Article 1102 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of another Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and investments of investors of another Party pursuant to this Chapter.

2. Notwithstanding Articles 1102 or 1103, a Party may require an investor of another Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

**Article 1113: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investor if investors of a non-Party own or control the enterprise and the denying Party:

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

**Article 1114: Environmental Measures**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that another 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 any such encouragement.

**Section C Definitions**

**Article 1139: Definitions**

For purposes of this Chapter:

**disputing investor** means an investor that makes a claim under Section B;

**disputing parties** means the disputing investor and the disputing Party;

**disputing party** means the disputing investor or the disputing Party;

**disputing Party** means a Party against which a claim is made under Section B;

**enterprise** means an "enterprise" as defined in Article 201 (Definitions of General Application), and a branch of an enterprise;

**enterprise of a Party** means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there.

**equity or debt securities** includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

**G7 Currency** means the currency of Canada, France, Germany, Italy, Japan, the United Kingdom of Great Britain and Northern Ireland or the United States;

**ICSID** means the International Centre for Settlement of Investment Disputes;

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

**InterAmerican Convention** means the *InterAmerican Convention on International Commercial Arbitration*, done at Panama, January 30, 1975;

**investment** means:

(a) an enterprise;

(b) an equity security of an enterprise;

(c) a debt security of an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

(d) a loan to an enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

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

(f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);

(g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under

(i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or

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

but investment does not mean,

(i) claims to money that arise solely from

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or

(j) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h);

**investment of an investor of a Party** means an investment owned or controlled directly or indirectly by an investor of such Party;

**investor of a Party** means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;

**investor of a non-Party** means an investor other than an investor of a Party, that seeks to make, is making or has made an investment;

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

**Secretary-General** means the Secretary-General of ICSID;

**transfers** means transfers and international payments;

**Tribunal** means an arbitration tribunal established under Article 1120 or 1126; and

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.