

**PACIFIC ISLAND COUNTRIES
TRADE AGREEMENT (PICTA)
TRADE IN SERVICES
PROTOCOL**

Opened for Signature on 28 August 2012,
in Rarotonga, Cook Islands.

**PACIFIC ISLAND COUNTRIES TRADE AGREEMENT (PICTA) TRADE IN
SERVICES PROTOCOL**

The Parties to this Protocol:

HAVING REGARD TO the Pacific Island Countries Trade Agreement signed on 18 August 2001;

DESIRING to strengthen regional cooperation and integration in accordance with the Pacific Plan endorsed by the Leaders of the Pacific Islands Forum in October 2005;

RECOGNIZING the growing importance of trade in services for the growth and development of the Pacific Island Countries;

DESIRING to foster and strengthen trade in services and to encourage investment in the Pacific region, within a transparent and appropriate regulatory framework, in a manner consistent with the obligations of the parties to the Marrakesh Agreement Establishing the World Trade Organization;

RECOGNIZING the right of the Pacific Island Countries to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives;

REAFFIRMING their commitment to trade liberalisation and to facilitating the increasing participation of Pacific Island Countries in trade in services and the expansion of their service exports;

TAKING particular account of the serious difficulty of some countries in view of their special economic situation and their development, trade and financial needs;

HAVE AGREED as follows:

PART I: INTRODUCTION

Article 1

Objectives

The objectives of the Parties to this Protocol are to promote growth and development of the Pacific Island Countries, and the reduction of poverty, in particular through:

- (a) providing a framework for the progressive liberalisation of trade in services between the Parties and strengthening the capacity of the Parties to regulate services, in particular in sectors of special importance to their development, giving effect to the principle of special and differential treatment and respecting national policy objectives;
- (b) furthering economic integration within the Pacific region with a view to the eventual creation of a single regional market among the Pacific Island Countries in accordance with the respective social and economic objectives of the Parties; and
- (c) contributing to the integration of the Pacific Island economies into the global economy.

Article 2

Definitions

In this Protocol, unless the contrary intention appears:

“PICTA” means the Pacific Island Countries Trade Agreement signed on 18 August 2001, including any amendments thereto;

“commercial presence” means any type of business or professional establishment, including one operating through:

- (a) the constitution, acquisition or maintenance of a juridical person; or
- (b) the creation or maintenance of a branch or a representative office;

within the territory of a Party for the purpose of supplying a service.

“direct taxes” comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on

estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

“juridical person” means any legal entity constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

“juridical person of another Party” means a juridical person which is either:

- (a) constituted or otherwise organized under the law of that other Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or
- (b) in the case of the supply of a service through commercial presence, owned or controlled by or affiliated with:
 - (i) natural persons of that Party; or
 - (ii) juridical persons of that other Party as defined in subparagraph (a);

a juridical person is:

- (a) “owned” by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
- (b) “controlled” by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (c) “affiliated” with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

“Least Developed Country” means any Party that is for the time being designated as a Least Developed Country by the United Nations;

“like service” means a service that has characteristics closely resembling those of the service under consideration;

“like service supplier” means a natural or juridical person or other entity that supplies a like service;

“measure” means any measure by a Party, including a law, regulation, rule, procedure, decision, administrative action, or practice;

“measures of a Party” means measures taken by:

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

“measures of a Party affecting trade in services” include measures in respect of:

- (a) the purchase, payment or use of a service;
- (b) the access to and use of, in connection with the supply of a service, services which are required by the Party to be offered to the public generally;
- (c) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;

“natural person” means a person who is not a juridical person;

“natural person of another Party” means a natural person who under the law of that other Party:

- (a) is a national of that other Party; or
- (b) has the right of permanent residence in that other Party in the case of a Party which:
 - (i) does not have nationals; or
 - (ii) accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents.

“Party” means a State, Territory or Self-Governing Entity which has signed and ratified this Protocol pursuant to Article 31 or which has acceded to this Protocol pursuant to Article 32 or Article 33;

“person” means either a natural person or a juridical person;

“Protocol” means the Pacific Island Countries Trade Agreement Trade in Services Protocol and includes any annexes to the Protocol, which shall be an integral part of that Protocol;

“Protocol on Temporary Movement of Natural Persons” refers to any protocol on temporary movement of natural persons that enters into force between the Forum Island Countries;

“public entity” means:

- (a) a government, a central bank or a monetary authority of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
- (b) a private entity which performs functions normally performed by a central bank or monetary authority, when exercising those functions;

“Secretary General” means the Secretary General of the Pacific Islands Forum Secretariat;

“sector” of a service means,

- (a) with reference to a specific commitment, one or more, or all subsectors of that service, as specified in a Party’s Schedule;
- (b) otherwise, the whole of that service sector, including all of its subsectors;

“service consumer” means any person that receives or uses a service;

“service of another Party” means a service which is supplied;

- (a) from or in the territory of that other Party; or
- (b) in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
- (c) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;

“service supplier” means any person that supplies a service;¹

¹ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Protocol. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

“Small Island State” means, on becoming a Party to this Agreement, the Cook Islands, Kiribati, Nauru, Niue, Republic of the Marshall Islands, Palau and Tuvalu, and any other State, Territory or Self-Governing entity that becomes a Party to this Protocol and is designated as a Small Island State by agreement of the Parties in accordance with the criteria to be developed by the Parties;

“supply of a service” includes the production, distribution, marketing, sale and delivery of a service;

“trade in services” means the supply of a service:

- (a) from the territory of a Party into the territory of another Party (mode 1);
- (b) in the territory of a Party to a service consumer from another Party (mode 2);
- (c) by a service supplier of a Party, through commercial presence in the territory of another Party (mode 3); or
- (d) by a service supplier of a Party, through the presence of natural persons in the territory of another Party (mode 4).

PART II: COMMITMENTS AND RELATED PROVISIONS

Article 3

Coverage

- 1 This Protocol applies to measures of a Party affecting trade in services by service suppliers of a Party.
- 2 In fulfilling its obligations and commitments under this Protocol, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.
- 3 For the purposes of this Protocol, “services” include services in any sector except:
 - (a) services supplied in the exercise of governmental authority including sub-regional, regional and international inter-governmental bodies as defined in paragraph 4; and
 - (b) air traffic services as defined in paragraph 5.

4. "Services supplied in the exercise of government authority" include:
 - (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (b) activities forming part of a system of social security or public retirement plans or the public provision of health, education or water services;
 - (c) activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government;
 - (d) services that are not supplied on a commercial basis nor in competition with one or more service supplier.

5. "Air traffic services" are defined as national and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of air traffic rights, other than:
 - (a) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (b) the selling and marketing of air transport services;
 - (c) computer reservation system services;
 - (d) other ancillary services that facilitate the operation of air carriers, such as ground handling services, rental services of aircraft with crew, and airport management services.

6. The Parties shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Protocol with a view to considering the possible further application of the Protocol in this sector.

Article 4

Most-Favored Nation Treatment

1. Subject to the provisions in Paragraph 2, with respect to any measure covered by this Protocol, each Party shall accord immediately and unconditionally to services and service suppliers of any other Party treatment no less favourable than it accords to like services and service suppliers of any other country.

2. The obligations of Paragraph 1 shall not apply with respect to treatment granted by a Party to any other country (including one or more Parties) in accordance with:
 - (a) another existing international agreement, provided that that agreement is listed in Annex 1 to this Protocol; or
 - (b) any future international agreement between developing countries (including Least Developed Countries) in the Pacific region.

Article 5

Market Access

- 1 With respect to market access through the modes of supply identified in the definition of "trade in services" in Article 2, each Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions specified in its schedule of commitments.
- 2 In the sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional sub-division or on the basis of its entire territory, unless otherwise specified in its schedule of commitments, are defined as:
 - (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test. This subparagraph does not cover measures of a Party which limit inputs for the supply of services;
 - (d) limitations on the total number of natural persons who may be employed in a particular service sector or whom a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service, in the form of numerical quotas or the requirement of an economic needs test;
 - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or of the total value of individual or aggregate foreign investment.
- 3 If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to as Mode 1 in the definition of “trade in services” in Article 2 and if the cross-border movement of capital is an essential part of the service itself, that Party commits to allow such movement of capital.
- 4 If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to as Mode 3 in the definition of “trade in services” in Article 2, that Party commits to allow related transfers of capital into its territory.

Article 6

National Treatment

- 1 In the sectors specified in its schedule of commitments, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that which it accords to its own like services and service suppliers.
- 2 A Party may meet the requirement in Paragraph 1 by according to services and service suppliers of any other Party either formally identical treatment or formally different treatment to that which it accords to its own like services and service suppliers.
- 3 Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of one Party compared to the like service or service suppliers of any other Party.
- 4 Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

Article 7

Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 5 and 6, including those regarding

qualifications, standards, licensing matters, or the entry and temporary residence of natural persons. Such commitments shall be entered in a Party's schedule of commitments.

Article 8

Specific Commitments

- 1 The specific commitments undertaken by each Party under Articles 5 to 7 shall be set out in the schedule included in Annex 1. With respect to sectors where such commitments are undertaken, each schedule shall specify:
 - (a) terms, limits and conditions on market access;
 - (b) conditions and qualifications on national treatment;
 - (c) undertakings related to additional commitments;
 - (d) where appropriate, the time-frame for implementation of such commitments;
and
 - (e) the date of entry into force of such commitments.
- 2 Measures inconsistent with both Articles 5 and 6 are inscribed in the column relating to Article 5. In this case the inscription shall be considered to also provide a condition or qualification to Article 6.
- 3 The schedules of commitments and the MFN exceptions in Annex 1 as well as the provisions of Annexes 2, 3 and 4 shall form an integral part of this Protocol.

Article 9

Domestic Regulation

- 1 In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
- 2
 - (a) Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an

affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

- (b) The provisions of subparagraph (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
- 3 Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.
- 4 With a view to ensuring that measures relating to qualification requirements and procedures, including technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the Parties may collectively develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:
- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
 - (b) in the case of licensing procedures, not in themselves a restrictions on the supply of the service; and
 - (c) consistent with the objectives of this Protocol.
- 5 In sectors in which a Party has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to Paragraph 4, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:
- (a) does not comply with the criteria outlined in Subparagraphs 4(a), (b) or (c); and
 - (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.
- 6 In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

Article 10

Recognition

- 1 For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of service suppliers, and subject to the requirements of Paragraph 3, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
- 2 A Party that is a party to an agreement or arrangement of the type referred to in Paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Parties to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.
- 3 A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.
- 4 Each Party shall:
 - (a) within 12 months from the date on which this Protocol takes effect for that Party, inform the Parties of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in Paragraph 1;
 - (b) promptly inform the Parties as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in Paragraph 1 in order to provide adequate opportunity to any other Party to indicate its interest in participating in the negotiations before they enter a substantive phase;
 - (c) promptly inform the Parties when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in Paragraph 1.
- 5 Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, the Parties shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and

adoption of common international standards and criteria for recognition and common international standards for the practice of relevant service trades and professions.

Article 11

Payments and Transfers

1. Except under the circumstances envisaged in Articles 12 and 13, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments. However, unusually large transfers and payments may be required to be staggered over a period of time, sufficient to protect the stability of the balance of payments and of foreign reserves.
2. Nothing in this Protocol shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Articles 12 or 13 or at the request of the Fund.

Article 12

Emergency Safeguard Measures

- 1 In response to problematic market conditions in particular service sectors, the correction of structural problems within the market, or the threat of the disappearance of service sectors, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments.
- 2 The restrictions referred to in Paragraph 1:
 - (a) shall not discriminate among Parties;
 - (b) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Parties;
 - (c) shall not exceed those necessary to deal with the circumstances described above;
 - (d) shall be temporary and, where practical, be phased out progressively as the situation improves.

- 3 Restrictions adopted or maintained under Paragraphs 1 or any changes to such restrictions shall be notified promptly to the Parties.
- 4 The Parties shall review periodically, and at least every five years, the operation of this Article with a view to considering its possible modification or elimination.

Article 13

Restrictions to Safeguard the Balance of Payments

- 1 The Parties recognise that balance of payments pressures may adversely affect the economic development programmes of developing countries. Accordingly, in the event of serious balance-of-payments or external financial difficulties or threat thereof, or where necessary to maintain a level of financial resources adequate for the implementation of its program of economic development, a Party may adopt or maintain restrictions on trade in services on which it has undertaken commitments, including on payments or transfers for transactions related to such commitments.
- 2 The restrictions referred in Paragraph 1:
 - (a) shall not discriminate among Parties;
 - (b) shall be consistent with the Party's obligations, if any, under the Articles of Agreement of the International Monetary Fund;
 - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Parties;
 - (d) shall not exceed those necessary to deal with the circumstances described above;
 - (e) shall be temporary and, where practical, be phased out progressively as the situation improves; and
 - (f) shall not be adopted or maintained for the purpose of protecting a particular service sector.
- 3 Restrictions adopted or maintained under Paragraph 1 or any changes therein shall be notified promptly to the Parties, and the Party imposing the restriction shall, upon request, explain to any other Party its reasons for doing so.
- 4 The Parties shall review periodically, and at least every five years, the operation of this Article with a view to considering its possible modification or elimination.

Article 14

General and Security 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 the Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Protocol shall be construed to prevent the adoption or enforcement by any Party of measures:
 - (a) necessary to protect public morals or to maintain public order;
 - (b) necessary to protect human, animal or plant life or health;
 - (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol, including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
 - (d) inconsistent with Article 6, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Parties;
 - (e) inconsistent with Article 4, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.
- 2 The public order exception in Paragraph 1(a) may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.
- 3 For the purposes of Paragraph (1)(d), measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:
 - (a) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or

- (b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
 - (c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
 - (d) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
 - (e) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
 - (f) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.
- 4 Tax terms or concepts in subparagraphs 1 (d) and (e) and in paragraph (3) are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure
- 5 Nothing in this Protocol shall be construed:
- (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
 - (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
- 6 The Parties shall be informed to the fullest extent possible of measures taken under Paragraphs 5(b) and (c) and of their termination.

Article 15

Government Procurement

Nothing in this Protocol shall apply to the procurement of services by the central, regional or local governments or state enterprises of any Party.

Article 16

Subsidies

- 1 Subject to paragraph 2, nothing in this Protocol shall apply to subsidies provided by any Party that affect trade in services.
- 2 The Parties agree to consult where one Party considers that subsidies provided by any other Party affecting trade in services nullify or impair any benefits it expected to receive under this Protocol with a view to reaching a mutually satisfactory solution.
- 3 The Parties shall review the operation of this Article, following the conclusion of the negotiations on the trade distorting effect of subsidies on trade in services under Article XIV of the General Agreement of Trade in Services, with a view to considering the possible modification or elimination of this Article.

Article 17

Regulatory Reform

- 1 The Parties recognise that the establishment of appropriate regulatory regimes for services sectors is a prerequisite for their successful liberalisation.
- 2 Where in the view of a Party it does not have an appropriate regulatory regime in place for any service sector and/or the capacity to effectively implement and enforce that regime at the time this Protocol comes into force, that Party may delay giving effect to any specific commitment it has made in relation to any such sector under this Protocol until such time as an adequate regulatory regime and capacity to implement and enforce that regime is developed, but in no case for more than 24 months from the date of the entry into force of this Protocol.
- 3 Any Party that delays giving effect to any specific commitment under Paragraph 2 shall take all reasonable steps given its economic, social and environmental characteristics and development strategy to establish and implement an appropriate regulatory regime.

- 4 Restrictions adopted or maintained under Paragraph 2 or any changes to such restrictions shall be notified promptly to the Parties.
- 5 The Parties agree to cooperate to establish and strengthen appropriate regulatory regimes for service sectors, including, where appropriate, regional initiatives.

Article 18

Denial of Benefits

A Party may deny the benefits of this Protocol:

- (a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party;
- (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
 - (i) by a vessel registered under the laws of a non-Party, and
 - (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Party;
- (c) to a service supplier that is a juridical person, if it establishes that the service supplier is not a service supplier of another Party.

PART III: TRADE-RELATED COOPERATION

Article 19

General Provisions

The Parties acknowledge the growing importance of new areas related to trade in facilitating progressive regional integration in the Pacific and the integration of the Pacific Islands into the world economy. The Parties therefore agree to strengthen their cooperation in these areas in accordance with the provisions of Part III.

Article 20

Protection of Intellectual Property Rights

- 1 The Parties recognise the need to ensure an adequate and effective level of protection of intellectual, industrial and commercial property rights, other rights covered by the WTO Agreement on Trade-Related Aspects of Intellectual

Property Rights (TRIPS), and traditional knowledge, in line with international standards, with a view to reducing distortions and impediments to trade among the Parties.

- 2 The Parties underline the importance, in this context, of the TRIPS and the Convention on Biological Diversity.
- 3 The Parties also agree on the desirability of acceding to all relevant international conventions on intellectual, industrial and commercial property as referred to in Part I of the TRIPS, as appropriate for their level of development.
- 4 For the purpose of this Protocol, intellectual property includes in particular copyright, including copyright on computer programmes, and neighbouring rights, including artistic designs, and industrial property which includes utility models, patents including patents for bio-technological inventions and plant varieties or other effective sui generis systems, industrial designs, geographical indications including appellations of origin, trademarks for goods or services, topographies of integrated circuits, as well as the legal protection of data bases and the protection against unfair competition as referred to in Article 10a of the Paris Convention for the Protection of Industrial Property and protection of undisclosed confidential information on know how.
- 5 The Parties further agree to strengthen their cooperation in this field. Upon request and on mutually agreed terms and conditions cooperation shall inter alia extend to the following areas: the preparation of laws and regulations for the protection and enforcement of intellectual property rights, the prevention of the abuse of such rights by rightholders and the infringement of such rights by competitors, the establishment and reinforcement of domestic and regional offices and other agencies including support for regional intellectual property organisations involved in enforcement and protection, including the training of personnel.
- 6 The Parties shall periodically review the operation of this Article within 5 years of the date of the entry into force of this Protocol with a view to deciding whether or not to commence negotiations to further elaborate on the agreed levels of protection of intellectual property rights, biological resources, and traditional knowledge.

Article 21

Measures to Facilitate Trade

- 1 The Parties shall endeavour to implement measures which will facilitate trade in services among the Parties and, where appropriate, shall encourage government bodies and other organisations and institutions to work towards the implementation of such measures.

- 2 The Parties shall examine the scope for taking action to facilitate trade in services among the Parties by harmonising their laws, regulations and administrative practices.
- 3 Where possible, initiatives to facilitate trade in services among the Parties shall be co-ordinated with wider regional and international initiatives.
- 4 Where a Party believes harmonisation of measures, or their implementation, will facilitate trade in services or reduce or eliminate distortions of trade in services, it may notify any other Party of its wish to enter into consultations. The Party so requested shall enter into consultations in good faith, and as soon as possible, with a view to seeking a mutually satisfactory solution.

PART IV: INSTITUTIONAL, DISPUTE RESOLUTION AND GENERAL PROVISIONS

Article 22

Transparency and Notification

- 1 Each Party shall publish promptly, or otherwise publicly disseminate, and, except in emergency situations, at the latest by the time of their entry into force, all measures, including judicial decisions and administrative rulings, of general application which pertain to or affect the operation of this Protocol. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.
- 2 Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.
- 3 Each Party shall endeavour to provide as much opportunity as possible for interested parties and persons to comment on proposed measures that may affect trade or employment.
- 4 Each Party shall promptly and at least annually inform the Parties of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services or employment covered by its specific commitments under this Protocol.
- 5 Each Party shall respond promptly to all requests by any other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1.
- 6 Nothing in this Protocol shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to

the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

- 7 Where this Protocol requires a Party to notify or inform the other Parties it shall be sufficient for that Party to notify or inform the Pacific Islands Forum Secretariat. The Secretariat shall immediately disseminate the notice to all other Parties. Notifications which are made directly to other Parties shall also be made to the Secretariat.

Article 23

Right to Regulate

- 1 This Protocol shall not be construed as in any way requiring the privatisation of public undertakings nor prevent any of the Parties from supplying public services, including law enforcement, correctional services, pension or unemployment insurance or social security services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child protection.
- 2 The Parties recognise the right of all Parties to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives. This Protocol shall not be construed as in any way preventing any of the Parties from regulating public and private services in order to meet national policy objectives, provided that such regulation is not applied in a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.

Article 24

Evolving Relationship

- 1 Where a Party considers that it is desirable to extend the matters covered by this Protocol, or to extend the territorial scope of this Protocol, or otherwise to develop or deepen the relationship established by this Protocol, it may notify the other Parties of its wish to enter into consultations with a view to negotiating the terms and conditions of the extension.
- 2 The Parties undertake to periodically review the status of the relationship established by this Protocol, in accordance with Article 27.

Article 25

Consultations

- 1 If a Party considers that:
 - (a) an obligation under this Protocol has not been, or is not being, fulfilled;
 - (b) any benefit conferred upon it by this Protocol is being, or may be, denied;
 - (c) the achievement of any objective of this Protocol is being, or may be, frustrated;
 - (d) a case of difficulty has arisen or may arise; or
 - (e) a change in circumstances necessitates, or might necessitate, an amendment of this Protocol;

it may notify any other Party of its wish to enter into consultations. The Party so requested shall enter into consultations in good faith and as soon as possible, with a view to seeking a mutually satisfactory solution.

- 2 For the purposes of this Protocol, consultations between the Parties shall be considered to have commenced on the day on which notice requesting the consultations is received.

Article 26

Dispute Resolution

- 1 The Parties shall endeavour, as far as is possible, to settle any differences concerning the interpretation, implementation or operation of this Protocol through amicable consultations in accordance with Article 25. Such consultations shall be undertaken with appropriate regard to relevant cultural values and customary procedures for resolving differences in the Pacific region.
- 2 Where the consultations referred to in Paragraph 1 have failed within 60 days to resolve the dispute between the Parties, any Party to the dispute may notify the Secretary General and the other Parties to the dispute of its wish to resolve the dispute by mediation. The Parties may agree on a mediator or request the Secretary General of the Pacific Islands Forum Secretariat to appoint a mediator. Any costs relating to such mediation shall be borne by the Parties to the dispute in equal shares.

- 3 Where the mediation process referred to in Paragraph 2 has failed within 60 days, or such time period as agreed to by the Parties to the dispute, to resolve the dispute between the Parties, any Party to the dispute may notify the Secretary General of the Pacific Islands Forum Secretariat and the other Parties to the dispute of its decision to submit the dispute to arbitration, pursuant to the provisions of Annex 4 to this Protocol.
- 4 The Secretary General in consultation with the Parties, shall develop, maintain and, from time to time, amend a list of individuals who may be designated as Arbitrators for the purpose of this Article and Annex 4. The Parties, in consultation with the Secretary General, shall establish the criteria for individuals to be included in the list of potential arbitrators.
- 5 The list described in the preceding Paragraph shall identify each individual, including that individual's nationality, and briefly describe the individual's experience with respect to international trade and international arbitration, the individual's training or qualifications for services as an arbitrator, and any areas of special expertise which the individual possesses
- 6 Where a Party fails to comply with the arbitrator's award, any Party affected by this failure may enter into consultations with the other Parties with a view to persuading the defaulting Party to comply. Where such consultations are unsuccessful within 60 days, any affected Party may suspend the application to the defaulting Party of concessions or the performance of any other obligations under this Protocol or the PICTA, until such time as the defaulting Party complies with the arbitrator's award. The level of the suspension of concessions or performance of other obligations by the affected Party shall be equivalent to the level of nullification or impairment of benefits under this Protocol to that Party caused by the defaulting Party.
- 7 Once the defaulting Party complies with the decision of the Arbitrator, all action taken under the preceding Paragraph shall be terminated.

Article 27

Review

- 1 The Parties shall meet at the time of the Forum Trade Ministers' Meeting or otherwise as appropriate to review relevant aspects of the implementation and operation of this Protocol.
- 2 The Parties undertake to conduct a general review of the operation of this Protocol no later than five years after it enters into force, and thereafter at no later than five-yearly intervals. Under the general review, the Parties shall:
 - (a) monitor progress made in implementing this Protocol;

- (b) assess whether the Protocol is operating effectively;
 - (c) evaluate the need for additional measures or modifications to increase its effectiveness;
 - (d) consider the progress in liberalisation and the desirability of further negotiations to broaden or deepen regional economic integration; and
 - (e) consider any other matter relating to the content of or implementation of this Protocol or economic integration in the Pacific region.
- 3 At the time of the first general review of this Protocol undertaken pursuant to Paragraph 2, or at any time after the first general review, a Party shall have the option to withdraw or modify any of its commitments entered under this Protocol where compliance with such commitment has given rise to an unexpected difficulty or level of difficulty.
- 4 Prior to taking action under Paragraph 3, the Party shall notify the other parties who shall have the right to consult. A Party that exercises this option after the first general review shall, upon request by a Party whose benefits are affected by such withdrawal or modification, offer compensatory adjustments to that Party in the form of commitments on additional sectors or subsectors or modes of supply that are equivalent to the commitments that have been withdrawn or modified. If it fails to do so, or if the affected Party refuses to accept such compensatory adjustments, the affected Party may suspend the application of concessions or the performance of any other obligations under this Protocol or the PICTA with respect to the Party that withdrew or modified commitments. The level of the suspension of concessions or performance of other obligations by the affected Party shall be equivalent to the level of nullification or impairment of benefits under this Protocol caused by the withdrawal or modification of commitments.
- 5 Prior to the first general review of this Protocol referred to in Paragraph 1, a Party may give notice of its intention to amend its commitments under Part II of this Protocol. The Parties shall decide whether or not to approve any such proposed amendments. Such agreement shall not be withheld where withholding agreement may hinder the development of a Party, provided that the proposed amendments do not reduce the overall level of commitments undertaken by that Party under this Protocol.

Article 28

Progressive Liberalisation

In pursuance of the objectives of this Protocol, the Parties shall enter into successive rounds of negotiations, beginning not later than 5 years from the date of entry into force

of this Protocol, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of measures that restrict trade in services.

PART V: FINAL PROVISIONS

Article 29

Effect on other Agreements

- 1 This Protocol shall not exempt any Party from its obligations, or abrogate the rights of any Party, under any existing international agreements to which it is Party.
- 2 Notwithstanding that a State, Territory or Self-Governing Entity is not a Party to the PICTA, that State, Territory or Self-Governing Entity may become a Party to this Protocol pursuant to Article 31 or 32 or 33. Without prejudice to the rights of those Forum Island Countries that are not parties to PICTA, this Protocol and the PICTA shall be implemented in a complementary and mutually reinforcing manner.
- 3 Without prejudice to commitments that may be undertaken under the Protocol on Temporary Movement of Natural Persons, the Parties shall permit natural persons of another Party to supply services to the Parties in accordance with the provisions of this Protocol, provided that where a commitment made by a Party undertaken under the Protocol on Temporary Movement of Natural Persons and a commitment made by that Party under this Protocol differ as to the level of benefits they provide with respect to a particular sector or subsector and mode of supply, that commitment which provides the greater benefits shall prevail.
- 4 Nothing in this Protocol shall prevent Parties from entering into any other agreements relating to the maintenance or establishment of customs unions or free trade areas, or economic integration, to the extent that those agreements are not inconsistent with the terms and objectives of this Protocol.

Article 30

Amendments

- 1 This Protocol may be amended at any time by the unanimous agreement of the Parties.
- 2 Unless a contrary intention is expressed, amendments shall enter into force, as between Parties accepting such amendments, 30 days after the sixth acceptance of a Party has been notified to the Secretary General.

Article 31

Signature and Ratification

- 1 This Protocol shall be open for signature, subject to ratification, by the Governments of the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Republic of the Marshall Islands, Nauru, Niue, Republic of Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.
- 2 This Protocol shall remain open for signature for one year from 28 August 2012 to 27 August 2013.
- 3 Instruments of ratification shall be deposited with the Secretary General.
- 4 The Parties shall accept this Protocol in its entirety and no reservations shall be permitted.

Article 32

Accession by Forum Island Countries

- 1 The Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Republic of the Marshall Islands, Nauru, Niue, Republic of Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu shall be entitled to accede to this Protocol at any time following the closure of the signature period.
- 2 The terms of accession shall be negotiated between the Parties and any State, Territory or Self-Governing Entity acceding under this Article.

Article 33

Accession by Other States, Territories or Self-Governing Entities

- 1 By unanimous agreement the Parties may permit any State, Territory or Self-Governing Entity not listed in Paragraph 1 of Article 31 to accede to this Protocol.
- 2 The terms of such accession shall be negotiated between the Parties and the State, Territory or Self-Governing Entity desiring to accede to this Protocol.

Article 34

Withdrawal and Termination

- 1 Any Party wishing to withdraw from this Protocol shall give notice of its intention to do so to the Secretary General, who shall notify the other Parties accordingly. The Party giving notice shall cease to be a Party to this Protocol 180 days from the date on which notice is given to the Secretary General, unless the Party has withdrawn its notice in the meantime, in which case it shall continue to be a Party to this Protocol.
- 2 This Protocol shall terminate 180 days after all the Parties have given notice to the Secretary General of their intention to withdraw from this Protocol.

Article 35

Entry into Force

- 1 This Protocol shall enter into force 30 days after the date of deposit of the sixth instrument of ratification or accession, and thereafter for each Party 30 days after the date of deposit of its instrument of ratification or accession.
- 2 Subject to the terms of accession, a State, Territory or Self-Governing Entity acceding pursuant to Article 32 or Article 33 shall become a Party to this Protocol 30 days after the date of the deposit of an instrument of accession.

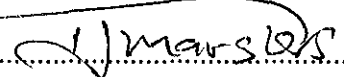
Article 36

Functions of the Pacific Islands Forum Secretariat

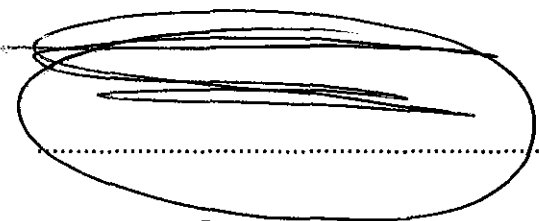
- 1 The Parties agree that the Pacific Islands Forum Secretariat shall provide secretariat services for this Protocol.
- 2 Subject to the direction of the Parties, the functions of the Forum Secretariat in respect of this Protocol shall include:
 - (a) the preparation and transmission of documentation, including annual reports, required under this Protocol, including the transmission of communications between the Parties to this Protocol;
 - (b) the provision of administrative support for meetings convened to review this Protocol or conduct negotiations or consultations under this Protocol;

- (c) the provision of administrative support for the operation of financial and technical assistance;
- (d) liaising, as appropriate, between the Parties or with any other organisation;
- (e) the provision of technical support to the Parties in the gathering and dissemination of information relevant to this Protocol;
- (f) the provision of technical support to the Parties in the implementation of their obligations under this Protocol; and
- (g) the provision of other administrative or technical support as determined by the Parties in respect of matters that relate to trade facilitation.

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

For the Government of the Cook Islands: 

this 28th day of August, 2012.

For the Government of the Federated States of Micronesia: 

this 28th day of August 2012

For the Government of the Republic of Fiji:

this.....day of

For the Government of Kiribati:

.....
Ande Tang

this *29th* day of *August, 2012*

For the Government of the Republic of
Nauru:

.....

this.....day of

For the Government of Niue:

.....

this.....day of

For the Government of the Republic of
Palau:

.....

this.....day of

For the Government of Independent State of
Papua New Guinea:

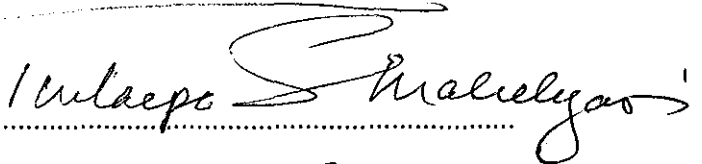
this.....day of

For the Government of the Republic of the
Marshall Islands:



this..28th..day of ..August 2012

For the Independent State of Samoa:



this..28th..day of ..August 2012.

For the Government of the Solomon
Islands:

.....

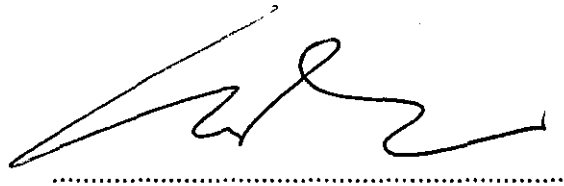
this.....day of

For the Government of the Kingdom of
Tonga:

Tuivallalo
.....

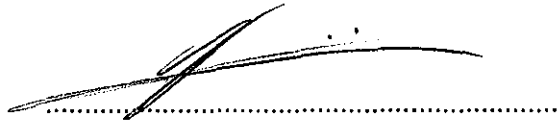
this *28th* day of *August, 2012*
.....

For the Government of Tuvalu:


.....

this *28th* day of *August 2012*
.....

For the Government of Vanuatu:


.....

this *28th* day of *August 2012*
.....

Cook Islands *August 2012*
DONE at *.....* this *28th* day of *.....* in a single original in the English language.

ANNEX 1 : INDIVIDUAL COUNTRY SCHEDULES OF COMMITMENTS AND MOST FAVORED NATION EXCEPTIONS

ANNEX 2 : TELECOMMUNICATIONS

1. Objectives

Recognizing the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Parties have agreed to this Annex with the objective of elaborating upon the provisions of this Protocol with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to this Protocol.

2. Scope

(a) This Annex shall apply to all measures of a Party that affect access to and use of public telecommunications transport networks and services, except to the extent that this Annex is stated not to apply to such measures in the Schedule of a Party.²

(b) This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming.

(c) Nothing in this Annex shall be construed:

(i) to require a Party to authorize a service supplier of any other Party to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its Schedule; or

(ii) to require a Party (or to require a Party to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

3. Definitions

For the purposes of this Annex:

(a) "Telecommunications" means the transmission and reception of signals by any electromagnetic means.

(b) "Public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include, *inter alia*, telegraph,

² This paragraph is understood to mean that each Party shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.

telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

(c) "Public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

(d) "Intra-corporate communications" means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Party. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers.

(e) Any reference to a paragraph or subparagraph of this Annex includes all subdivisions thereof.

4. *Transparency*

In the application of Article 22 (Transparency and Notification) of this Protocol, each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, registration or licensing requirements, if any.

5. *Access to and use of Public Telecommunications Transport Networks and Services*

(a) Each Party shall ensure that any service supplier of any other Party is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. This obligation shall be applied, *inter alia*, to paragraphs (b) through (f).³

(b) Each Party shall ensure that service suppliers of any other Party have access to and use of any public telecommunications transport network or service offered

³ The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".

within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to paragraphs (e) and (f), that such suppliers are permitted:

- (i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;
- (ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and
- (iii) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

(c) Each Party shall ensure that service suppliers of any other Party may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party. Any new or amended measures of a Party significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of this Protocol.

(d) Notwithstanding the preceding paragraph, a Party may take such measures as are necessary to ensure the security and confidentiality of messages, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

(e) Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

- (i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;
- (ii) to protect the technical integrity of public telecommunications transport networks or services; or
- (iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Party's Schedule.

(f) Provided that they satisfy the criteria set out in paragraph (e), conditions for access to and use of public telecommunications transport networks and services may include:

- (i) restrictions on resale or shared use of such services;
- (ii) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;
- (iii) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in paragraph 6(a);
- (iv) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (v) restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or
- (vi) notification, registration and licensing.

(g) Notwithstanding the preceding paragraphs of this section, a developing country Party may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Party's Schedule.

6. *Relation to International Organizations and Agreements*

- (a) The Parties recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.
- (b) The Parties recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union. The Parties shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.

ANNEX 3 : FINANCIAL SERVICES

1. *Scope and Definition*

This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in Article 2 of this Protocol.

2. *Domestic Regulation*

(a) Notwithstanding any other provisions of this Protocol, a Party shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Protocol, they shall not be used as a means of avoiding the Party's commitments or obligations under this Protocol.

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

3. *Recognition*

(a) A Party may recognize prudential measures of any other country in determining how the Party's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

(b) A Party that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Parties to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that such circumstances exist.

(c) Where a Party is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article 10 (Recognition) shall not apply.

4. *Dispute Settlement*

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

5. *Definitions*

For the purposes of this Annex:

(a) A financial service is any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

- (i) Direct insurance (including co-insurance):
 - (A) life
 - (B) non-life
- (ii) Reinsurance and retrocession;
- (iii) Insurance intermediation, such as brokerage and agency;
- (iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

- (v) Acceptance of deposits and other repayable funds from the public;
- (vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) Financial leasing;
- (viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (ix) Guarantees and commitments;
- (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

- (A) money market instruments (including cheques, bills, certificates of deposits);
 - (B) foreign exchange;
 - (C) derivative products including, but not limited to, futures and options;
 - (D) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;
 - (E) transferable securities;
 - (F) other negotiable instruments and financial assets, including bullion.
- (xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 - (xii) Money broking;
 - (xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
 - (xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) A financial service supplier means any natural or juridical person of a Party wishing to supply or supplying financial services but the term “financial service supplier” does not include a public entity.

ANNEX 4 : ARBITRATION PROCEDURE

- 1 Unless the Parties to the dispute referred to arbitration in accordance with Article 26 of this Protocol otherwise agree, the arbitration procedure shall be conducted in accordance with the provisions of this Annex.
- 2 The claimant Party shall notify the Secretary General and the other Parties to the dispute of its decision to submit the dispute to arbitration and shall include in its notice a brief statement of claim setting out the subject matter and issues in dispute. The Secretary General shall forward this notice to the other Parties to the Protocol.
- 3 The relevant Parties shall agree upon and name an individual to serve as arbitrator to their dispute. If the relevant Parties cannot agree on an individual to serve as an arbitrator, the Secretary General shall select an arbitrator from the list of potential arbitrators maintained pursuant to Paragraph 4 of Article 26 of this Protocol. In selecting an arbitrator, the Secretary General shall give due consideration to the special expertise any potential arbitrator may have regarding the subject matter of the dispute and any possible conflicts of interest which the potential arbitrator may have.
- 4 Not later than the first meeting of the Parties under Paragraph 1 of Article 27 of this Protocol, the Parties shall adopt governing principles for the rules of procedure to be applied to any arbitration under this Annex and Article 26 of this Protocol. Such principles shall be consistent with relevant international law, due process, and the objectives of this Protocol.
- 5 After consultation with the Parties to the dispute, the Secretary General shall appoint an appropriate arbitrator within 30 days of receiving the claimant Party's notice. The arbitrator shall not be a citizen of, or be ordinarily resident in, any of the Parties to the dispute, nor be employed by any of them, nor have dealt with the dispute in any other capacity.
- 6 Upon being appointed, and before undertaking substantive consideration of the dispute, the arbitrator shall adopt and inform the relevant Parties of rules of procedure to be followed over the course of arbitration. The rules so adopted shall be consistent with the principles adopted by the Parties to this Protocol pursuant to Paragraph 4 of this Annex.
- 7 The arbitrator may take all appropriate measures in order to establish the facts. The arbitrator may, at the request of one of the Parties to the dispute, recommend essential interim measures of protection. The Parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings. The absence or default of a Party to the dispute shall not constitute an impediment to the proceedings.

- 8 The arbitrator may hear and determine counter-claims arising directly out of the subject matter of the dispute.
- 9 The arbitrator shall keep a record of all costs and shall furnish a final statement thereof to the Parties.
- 10 Any Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the arbitrator's decision may intervene in the proceedings with the arbitrator's consent.
- 11 The arbitrator shall render his or her award within 180 days from the date of his or her appointment, unless it is necessary to extend this time limit for a further period which shall not exceed 180 days.
- 12 The arbitrator's award shall be accompanied by a statement of reasons, and shall be final and binding on the Parties to the dispute.
- 13 Any dispute which may arise between the Parties concerning the interpretation or execution of the award may be submitted by any Party to the dispute to the arbitrator who made the award or, if the arbitrator cannot be seized thereof, to another arbitrator appointed for this purpose in the same manner as the first.