

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

A tribunal may also award costs in accordance with the applicable arbitration rules.

Where an investor brings a claim under this Article regarding loss or damage suffered by an enterprise the investor directly or indirectly owns or controls any award shall be made to the affected enterprise.

- 10. An award of arbitration shall be final and binding. Each Contracting Party shall provide for the enforcement of an award in its territory.
- 11. Nothing in this Article shall deprive a Contracting Party of its right to seek compliance by the other Contracting Party with its obligations under this Agreement, including through use of the procedures set forth in Articles XIII and XIV.
- 12. (a) Where an investor brings a claim under this Article regarding loss or damage suffered by an enterprise the investor directly or indirectly owns or controls, the following provisions shall apply:
 - (i) both the investor and the enterprise shall be required to give the consent referred to in subparagraph (3)(a);
 - (ii) both the investor and the enterprise must give the waiver referred to in subparagraph (3)(b); and
 - (iii) the investor may not make a claim if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that it has incurred loss or damage.
- (b) Notwithstanding subparagraph 12(a), where a disputing Contracting Party has deprived a disputing investor of control of an enterprise, the following shall not be required of the enterprise:
 - (i) the consent referred to in subparagraph (3)(a); and
 - (ii) the waiver referred to in subparagraph (3)(b).
- 13. Where an investor submits a claim to arbitration and the disputing Contracting Party alleges as a defense that the measure in question is
 - (a) a reasonable measure for prudential reasons of the kind referred to in Article X, or
 - (b) a measure to limit or prevent transfers by a financial institution under paragraph 6 of Article VIII,

the tribunal, at the request of such Contracting Party, shall request both Contracting Parties to submit a joint report in writing as to whether the defence is a valid one in that particular case. The Contracting Parties shall consult through their financial services authorities on the matter.

The tribunal may proceed to decide the matter if it does not receive, within 70 days of its referral, either

- (a) the joint report requested, or