

**ANNEX II****Specific Rules re Article XII****Settlement of Disputes between an Investor  
and the Host Contracting Party****I. Prudential Measures**

1. Where an investor submits a claim to arbitration under Article XII, and the disputing Contracting Party invokes Article III(3) or V(4) of Annex I, the tribunal established pursuant to Article XII shall, at the request of that Contracting Party, seek a report in writing from the Contracting Parties on the issue of whether and to what extent the said paragraphs are a valid defence to the claim of the investor. The tribunal may not proceed pending receipt of a report under this Article.
2. Pursuant to a request received in accordance with paragraph (1), the Contracting Parties shall proceed in accordance with Article XIII to prepare a written report, either on the basis of agreement following consultations, or by means of an arbitral panel. The consultations shall be between the financial services authorities of the Contracting Parties. The report shall be transmitted to the tribunal, and shall be binding on the tribunal.
3. Where, within seventy (70) days of the referral by the tribunal to the Contracting Parties, no request for the establishment of a panel pursuant to paragraph (2) has been made and no report has been received by the tribunal, the tribunal may proceed to decide the matter.
4. Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service in dispute.

**II. Damage Incurred by a Controlled Enterprise**

1. A claim that a Contracting Party is in breach of this Agreement, and that an enterprise that is a juridical person incorporated or duly constituted in accordance with applicable laws of that Contracting Party has incurred loss or damage by reason of, or arising out of, that breach, may be brought by an investor of the other Contracting Party acting on behalf of an enterprise which the investor owns or controls directly or indirectly. In such a case:
  - (a) any award shall be made to the affected enterprise;
  - (b) the consent to arbitration of both the investor and the enterprise shall be required;
  - (c) both the investor and enterprise must waive any right to initiate or continue any other proceedings in relation to the measure that is alleged to be in breach of this Agreement before the courts or tribunals of the Contracting Party concerned or in a dispute settlement procedure of any kind; and