The Draft Agreement and the Draft Rules of Procedure

DRAFT "AGREEMENT ON THE ESTABLISHMENT OF THE ASIA-PACIFIC REGIONAL MEDIATION ORGANIZATION"

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PREAMBLE

Members to this Agreement,

Recognizing that the Asia-Pacific Region is geographically large and diverse, comprising the majority of the world's population, serving as the world's economic powerhouse and being particularly notable for its diversity,

Recognizing the numerous significant commonalities of the region and a long history of close and deep-rooted relationships,

Recognizing the inevitability of legal or factual disputes, disagreements or any issues of concern arising from time to time due to the volume and wide range of interactions within the region,

Mindful that maintaining friendly relationships and ensuring swift and peaceful resolution to the disputes between Members should be their top priority,

Considering the desirability of a permanent regional inter-governmental mediation organization to assist in the resolution of disputes in a friendly, swift and peaceful manner,

Noting the importance of this agreement working in conjunction with existing international organizations and agreements that include mediation provisions,

Agree as follows:

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PART I ESTABLISHMENT AND ORGANIZATION

Article 1
Establishment of the ARMO

The Asia-Pacific Regional Mediation Organization (hereinafter referred to as the "ARMO") is hereby established.

Article 2
Purpose, Jurisdiction and Voluntariness

1. The purpose of the ARMO shall be to provide legal facilities for mediation of Member-to-Member disputes in accordance with this Agreement.
2. The jurisdiction of the ARMO shall extend to all kinds of legal and factual disputes, disagreements or any issues of concern (hereinafter together referred to as "disputes") between two or more Members, whether or not arising from or relating to any rule of public international law or any bilateral, regional or multilateral treaty/agreement to which they are parties.
3. Mediation is undertaken only when the parties to a dispute (hereinafter referred to as "parties") so agree. Mediation may be requested at any time by any party to a dispute with the consent from the other party, and may be terminated at any time by any party.

Article 3
Relations with Other Dispute Settlement Mechanisms

1. The Members may agree to the use of ARMO mediation independently of, or based upon, any mediation or conciliation provisions in any international agreement or organization of which they are contracting parties or members.
2. Mediation conducted under the ARMO is without prejudice to the rights of the parties to resolve their dispute under any other dispute settlement mechanism that is available to them.

Article 4
Headquarter and Branches

1. The Headquarter of the ARMO shall be in **[ ]**. It may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of the representatives designated under Article 5 of this Agreement.

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2. The Administrative Council may also decide to establish branch offices in different Members by a majority of two-thirds of the representatives either separately or in cooperation with existing inter-governmental organizations or not-for-profit non-governmental organizations. The Administrative Council shall establish guidelines for the cooperation with other organizations in establishing branch offices so as to make the criteria and selection process fair and transparent.

Article 5
Institutional Arrangement

The ARMO shall have an Administrative Council and a Secretariat and shall maintain the Lists of Mediators, including a List of Mediators Nominated by the Members (hereinafter referred to as "Members' List of Mediators") and a List of Mediators Nominated by the Chairperson of the Administrative Council (hereinafter referred to as "Chairperson's List of Mediators").

PART II THE ADMINISTRATIVE COUNCIL

Article 6
Composition of the Administrative Council and Decision-Making

1. The Administrative Council shall be composed of representatives of all Members.
2. Each Member shall designate one representative and may designate an alternative representative to act when the designed representative is unable to perform his/her duties for any reason. Members shall designate government officials at the deputy ministerial level as representatives and those at the senior government official level as alternative representatives.
3. A failure by any Member to designate a representative shall not affect the functions of the Administrative Council.
4. The Administrative Council shall elect its Chairperson every two years. The Chairperson may not be consecutively reelected.
5. A quorum for any meeting of the Administrative Council shall be a majority of the designated representatives.
6. Each Member has one vote in the Administrative Council, exercised by its representative. The representatives shall make efforts to adopt decisions of the Administrative Council by consensus. However, if consensus cannot be reached, the decisions shall be made by a majority

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of the representatives present and voting, except otherwise provided in this Agreement.

7. The Administrative Council may establish, by a majority of two-thirds of the representatives, a procedure whereby a representative may join the discussion and cast his/her vote through video conference or other electronic means in a meeting of the Administration Council, and additional procedures to facilitate the discussion of matters and adoption of decisions through virtual meeting.

Article 7
Functions of the Administrative Council

1. The Administrative Council shall carry out the functions of the ARMO and take actions necessary to this effect. It shall have the authority to adopt decisions on all matters under and related to this Agreement. However, the Administrative Council shall not intervene in any ongoing mediation proceeding conducted under this Agreement and its rules of procedure. Nor shall it intervene in the conclusion of any settlement agreement by the parties.

2. Without prejudice to the authorities and functions vested in it by other provisions of this Agreement, the Administrative Council shall:

   (1) adopt any administrative, financial and auditing regulations of the ARMO;

   (2) adopt rules of procedure for mediation in addition to those provided in this Agreement;

   (3) adopt rules of ethics for mediators in addition to those provided in this Agreement and in the rules of procedure for mediation;

   (4) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;

   (5) adopt the annual budget of revenue and expenditures of the ARMO prepared by the Secretariat;

   (6) approve the annual report on the operation of the ARMO prepared by the Secretariat; and

   (7) decide any other matters related to this Agreement.

3. The Administrative Council may create such committees as it considers necessary.

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4. The Administrative Council shall also exercise other authorities and perform other functions as it determines to be necessary for the implementation of this Agreement.

Article 8
Annual Meeting and Other Meetings

The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Administrative Council, or convened by the Chairperson, or convened by the Secretary-General at the request of not less than five representatives.

Article 9
Without Remuneration

Representatives and the Chairperson of the Administrative Council shall serve without remuneration from the ARMO.

PART III THE SECRETARIAT

Article 10
Composition of the Secretariat

The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

Article 11
Secretary-General and Deputy Secretaries-General

1. The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of representatives upon the nomination of the Chairperson for a four-year term of service and shall not be eligible for re-election. After consulting the representatives, the Chairperson shall propose one or more candidates for each such position.
2. The Secretary-General and Deputy Secretary-General shall not hold any other employment nor engage in any other occupation except as approved by the Administrative Council.
3. During the Secretary-General's absence or inability to act, and during any vacancy of the position of Secretary-General, the Deputy Secretary-General shall act as Secretary-General. If there shall be more than one Deputy Secretary-General, the most senior Deputy Secretary-General in accordance with the date of appointment shall act as Secretary-General. If they are of same seniority, the Administrative

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Council shall determine which Depute Secretary-General shall act as Secretary-General.

Article 12
Functions of the Secretary-General

1. The Secretary-General shall be the legal representative and the principal officer of the ARMO and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Agreement and for the implementation of rules adopted by the Administrative Council.
2. The Secretary-General shall also perform the function of registrar and shall have the power to authenticate settlement agreement concluded by the parties pursuant to this Agreement.

PART IV THE LISTS OF MEDIATORS

Article 13
Maintenance of Lists of Mediators

The Lists of Mediators shall be maintained by the Secretariat. The Lists shall consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

Article 14
Designation of Persons to the Lists

1. Each Member may designate to the Members' List of Mediators up to four persons who may but need not be its nationals.
2. The Chairperson of the Administrative Council may designate up to ten persons to the Chairperson's List of Mediators. The persons so designated to the List shall each have a different nationality/citizenship. When a person may claim more than one nationality, his current active nationality shall be that taken into account for the purpose of this paragraph.
3. Persons designated to any List provided in the preceding two paragraphs need not be nationals or citizens of any Member.

Article 15
Qualification for Persons Designated to a List

1. Persons designated to a List of Mediators shall be of high moral character and recognized competence and experience in the fields of

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public international law, international trade or investment law, international dispute settlement and any other fields that the appointing Member or the Chairperson considers appropriate.

2. The Chairperson of the Administrative Council, in designating persons to the Chairperson's List of Mediators, shall in addition pay due regard to the importance of assuring representation of the principal legal systems among the Members.

3. The Secretariat shall hold workshops for persons in the Lists from time to time to exchange their mediation experiences, to enrich their understanding of the spirit and essence of the ARMO, to be familiar with the rules of procedure of the mediation and the related rules of ethics under the ARMO, to enhance collegiality of the group and to improve their skills in conducting mediation.

Article 16
Term of Service for Persons in a List

1. Persons designated to a List shall serve for renewable periods of six years. However, the term for two of the four persons designated by a Member and for five of the ten persons designated by the Chairperson of the Administrative Council immediately after the entry into force of this Agreement shall serve for a period of three years, to be determined by the designating Member or the Chairperson respectively. If they are re-designated after the expiration of their terms, they shall serve for renewable periods of six years.

2. In case of death or resignation of a person in a List, the authority that designated the person shall have the right to designate another person to serve for the remainder of the term.

PART V FINANCING THE ARMO

Article 17
Contribution and Expenditure

1. Each Member shall contribute to the ARMO its share in accordance with the financial regulations adopted by the Administrative Council. Additionally, Members are encouraged to donate in-kind support such as office facilities and to provide other financial support to the ARMO to enable its operation.

2. The expenditure of the ARMO should be kept at a reasonably minimum level so that the Members' contribution would not become an excessive burden to them. When adopting the financial regulations,

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the Administrative Council shall take the respective levels of economic development and the scales of the economies of the Members into consideration.

PART VI STATUS, IMMUNITIES AND PRIVILEGES

Article 18
International Legal Personality

The ARMO shall have full international legal personality and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions, including, but not limited to, the capacity:

(1) to contract;

(2) to acquire and dispose of movable and immovable property; and

(3) to institute legal proceedings.

Article 19
Immunities and Privileges

1. The ARMO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its functions.
2. The ARMO, its property and assets shall enjoy immunity from all legal proceedings, except when the ARMO waives this immunity.
3. The Chairperson, the representatives in the Administrative Council, persons acting as mediators, Secretary-General, any Deputy Secretary-General, and staff of the Secretariat shall similarly be accorded by each Member such privileges and immunities as are necessary for the independent exercise of their functions in connection with the ARMO.
4. The privileges and immunities to be accorded by a Member as provided in the preceding paragraphs in this Article shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

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Article 20
Treatment to Archives and Communications

1. The archives of the ARMO shall be inviolable, wherever they may be.
2. With regard to its official communications, the ARMO shall be accorded by each Member treatment no less favourable than that accorded to other international organizations.

PART VII RULES OF PROCEDURE AND SETTLEMENT AGREEMENT

Article 21
Adoption of the Rules of Procedure of Mediation

1. The ARMO shall adopt Rules of Procedure of Mediation Conducted under the Asia-Pacific Regional Mediation Organization (hereinafter referred to "Rules of Procedure") in accordance with Article 7.2 of this Agreement.
2. The Rules of Procedure shall ensure the impartiality and efficiency of the mediation process. They shall also be flexible enough so as to assist the disputing parties to resolve their disputes in a mutually satisfactory manner. To that end, the Rules of Procedure shall allow the mediators to merely facilitate the negotiation between the parties, to assess the dispute for the parties if the mediators consider appropriate, or to draft settlement proposals of terms and conditions for the parties to consider if they so request.

Article 22
Binding Effect of the Settlement Agreement

Any settlement agreement duly concluded between disputing parties is binding upon them and shall be performed by them in good faith.

PART VIII AMENDMENT

Article 23
Amendment Proposed by a Member

1. Any Member may propose amendment of this Agreement.
2. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days prior to the meeting of the Administrative Council at which such amendment is to be considered and shall forthwith be transmitted by him/her to all the representatives in the Administrative Council.

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Article 24
Amendment Decided by the Council

1. If the Administrative Council shall so decide by a majority of two-thirds of the representatives, the proposed amendment shall be circulated to all Members for ratification, acceptance or approval.

2. Amendments to provisions of this Agreement shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it. The Administrative Council may decide by a three-fourths majority of the Members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Administrative Council in each case shall be free to withdraw from the ARMO or to remain a Member with the consent of the Administrative Council.

PART IX FINAL PROVISIONS

Article 25
Open for Signature

This Agreement shall be open for signature on behalf of the negotiating States or Economies.

Article 26
Preparatory Committee

1. There shall be a Preparatory Committee established by the signatories before the entry into force of this Agreement to seek financial support and other resources for the initial operation of the ARMO, to identify physical location and develop facilities for the ARMO Secretariat, to draft any additional rules or procedures for submission to the Administrative Council; and to undertake any other preparations required for the creation of the ARMO.

2. The Preparatory Committee shall cease operation upon the entry into force of this Agreement.

Article 27
Entry into Force

1. This Agreement shall be subject to ratification, acceptance or approval by the signatory States and Economies in accordance with their respective constitutional and/or legal procedures.

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2. This Agreement shall enter into force 30 days after the date of deposit of the fifth instrument of ratification, acceptance or approval. It shall enter into force for each State or Economy that subsequently deposits its instrument of ratification, acceptance or approval 30 days after the date of such deposit.

3. Once this Agreement enters into force, the ARMO shall continue in operation, unless the number of Members becomes less than three or all Members decide to dissolve the ARMO.

Article 28
Accession

This Agreement is open to accession by any Asia-Pacific State or Economy that is willing to comply with the provisions in this Agreement, following the approval in accordance with the applicable constitutional and/or legal procedures of the acceding State or Economy.

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