

The text below shows an example of a selected Article that imaginary negotiating partners have put forward as part of their opening texts in a negotiation. It is presented to illustrate how a comparison of two proposed provisions might be laid out using colours, in preparation for a negotiation, and their particularities are not necessarily endorsed by the PCT, the four partner organizations, their respective managements, or the organizations' member countries.

Preparation for negotiation:

Example of a compared Blue-Red opening text of Country X and Country Y on Article 5

Blue = Country X opening text

Red = Country Y opening text

Black = commonality

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

3. The term "permanent establishment" shall also include:

- a) a building site or construction or installation project and the supervisory activities in connection therewith, but only if such building site, construction or activities last more than six months;
- b) the operation of substantial equipment in a Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve month period,
- c) the furnishing of services, including consultancy services, by an enterprise through employees or other individuals engaged by the enterprise for such purpose where such activities continue within the country for a period or periods aggregating more than 183 days within any twelve months period.

The duration of activities under this paragraph shall be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises, provided that the activities of the enterprise in that State are substantially the same as the activities carried on in that State by its associate. The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities. An enterprise shall be [deemed to be] [regarded as] associated with another enterprise if one [enterprise holds directly or indirectly at least one third of the capital] [participates directly or indirectly in the management, control or capital of the other, or the same person or persons participate directly or indirectly in the management, control or capital] of both enterprises.

4 Notwithstanding the provisions of paragraphs 1 and 2, an enterprise of a Contracting State which carries on activities in the territorial sea, and any area beyond the territorial sea within which the other Contracting State, in accordance with international law, exercises jurisdiction or sovereign rights (offshore activities), shall be deemed to carry on, in respect of those activities except as regards paragraph 2 of Article 14, business in that other State through a permanent establishment situated therein, unless the activities in question are carried on in the other State for a period or periods of less than in the aggregate 30 days in any twelve month period.

5. For the purposes of paragraph 4 of this Article, offshore activities shall be deemed not to include:

- a) one or any combination of the activities mentioned in paragraph 7;
- b) towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
- c) the transport of supplies or personnel by ships or aircraft in international traffic.

6. For the purposes of determining the duration of the offshore activities under paragraph 4 in connection with paragraph 5, where an enterprise carrying on offshore activities in the other Contracting State is associated with another enterprise and that other enterprise continues, as part of the same project, the same offshore activities that are or were being carried on by the first-mentioned enterprise,

and the aforementioned activities carried on by both enterprises - when added together - constitute a period of at least 30 days, each enterprise shall be deemed to carry on its activities for a period of at least 30 days in any twelve month period. An enterprise shall [be regarded as] [deemed to be] associated with another enterprise if one enterprise [holds directly or indirectly at least one third of the capital] [participates directly or indirectly in the management, control or capital of the other, or the same person or persons participate directly or indirectly in the management, control or capital] of both enterprises.

7. 4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information or carrying on, out scientific research for the enterprise, any other activity if such activity is of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

8. 5. Notwithstanding the provisions of paragraphs 1, 2 and 4, 1 and 2 where a person – (other than an agent of an independent status to whom paragraph 9 7 of this Article applies)- is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 7 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding Article 7 and the provisions of this Article, premiums in respect of insurance policies issued by an enterprise of a Contracting State may be taxed in the other State in accordance with its domestic law. However, except where the premium is attributable to a permanent establishment of the enterprise situated in that other State, the tax so charged shall not exceed:

- a) ... per cent of the gross amount of the premiums in the case of policies of reinsurance; and
- b) ... per cent of the gross amount of the premiums in the case of all other policies of insurance.

9. 7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business, and that the conditions that are made or imposed in their commercial or financial relations with such enterprises do not differ from those which would be generally made by independent agents.

10. 8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Protocol X. Ad Articles 5, 6, 7 and 13

It is understood that rights to the exploration and exploitation of natural resources shall be regarded as immovable property located in the Contracting State to whose territorial sea, and any area beyond the territorial sea within which that State, in accordance with international law, exercises jurisdiction or sovereign rights, including the seabed - and subsoil thereof, these rights apply, and that these rights are regarded as assets of a permanent establishment in that State. Furthermore, it is understood that the aforementioned rights include rights to interests in, or benefits from assets that arise from, that exploration or exploitation.