

**PROTOCOL FOR THE ENCOURAGEMENT, PROMOTION, FACILITATION AND  
PROTECTION OF INVESTMENTS IN CLIMATE CHANGE MITIGATION AND  
ADAPTATION**

**(‘GREEN INVESTMENT PROTOCOL’)<sup>1</sup>**

**PREAMBLE**

The parties who have signed and ratified, accepted, approved, or acceded to this Green Investment Protocol, hereinafter referred to as the ‘Contracting Parties’;

DESIRING to strengthen the bonds of friendship and cooperation between the Contracting Parties;

PURSUANT to, and ensuring compatibility with, the objectives and principles of the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement;

PURSUANT to, and ensuring compatibility with, the Sustainable Development Goals, set out in United Nations General Assembly Resolution A/RES/70/1;

SEEKING to promote, encourage, facilitate, and increase public and private investment in climate change mitigation and adaptation within the territories of the Contracting Parties, and opportunities for such investment;

SEEKING to encourage innovation in climate change mitigation and adaptation technologies;

RECOGNIZING the unpredictable and fast-changing nature of such innovations and consequent difficulties in formulating consistent economic policies to promote, encourage, facilitate and increase the flow of investment in climate change mitigation and adaptation;

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<sup>1</sup> The Protocol and Commentary have been submitted in the context of an international competition that asked participants to draft “the most forward-looking, innovative, and workable Model Treaty, with the highest potential to encourage foreign investment in climate change mitigation and adaptation” for the development of future international law policies. As such, the work product does not necessarily reflect the authors’ views on the present state of international law, or the optimal way in which the law should be developed in future. The work product resulted from the collaboration of a large team of practitioners and academics, including: Paula Henin, Jessica Howley, Amelia Keene, Nicola Peart (the Core Team), John Feddersen, Alexander Pfeiffer, Assaad Razzouk, Shane Spelliscy, Jorge E. Viñuales, David Wei and Martijn Wilder (the Advisory Team). Team Innovate would like to additionally thank Kate Cook for helpful comments and discussions, as well as Mathilde Adant, Eleni Serifi and Karen Siwek for editing and discrete research assistance. Team Innovate is also grateful for the comments received from the Competition Jury and the opportunity to address these. Each individual participated in their personal capacity, without input from their respective firms or institutions. Neither the Protocol nor the Commentary reflect the views of their respective employers, companies or affiliated institutions.

AIMING to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development;

RECOGNIZING the important contribution that investment can make to the sustainable development of the Contracting Parties, including the reduction of poverty, increase of productive capacity, economic growth, transfer of technology, and furtherance of human rights and human development;

RECALLING that States have, in accordance with the Charter of the United Nations and principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

REAFFIRMING the right of the Contracting Parties to regulate and to introduce new measures relating to investment in their territories in order to meet their sustainable development objectives;

DETERMINED, in implementing this Green Investment Protocol, to seek to preserve and protect the environment, to promote the optimal use of natural resources in accordance with the objective of sustainable development, and to effectively address the challenges of climate change;

RECOGNIZING that the interpretation and application of this Green Investment Protocol must be guided by the latest advancements in the best available climate science;

RECOGNIZING that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

NOTING the great number of treaties providing for the protection of investments or investors already in force, and the practical importance of providing a specific legal framework for investments in climate change mitigation and adaptation in a manner compatible with and complementary to those treaties;

SEEKING to protect both the rights and obligations of the Contracting Parties and the protections proffered to investors herein;

RECOGNIZING that such protections are essential to increasing the flow of investment in climate change mitigation and adaptation while preserving the ability of the Contracting Parties

to adopt dynamic, flexible, and adaptable incentive schemes for such investments in their domestic laws and regulations;

HAVE AGREED as follows:

## **PART I. DEFINITIONS**

### **For purposes of this Protocol:**

**‘Climate Change’** means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

**‘Contracting Party’** means a State or Regional Economic Integration Organization, which has consented to be bound by this Green Investment Protocol and for which this Protocol is in force;

**‘Covered Investment Treaty’** means any Investment Treaty that is in force between two or more Contracting Parties as of the date on which this Green Investment Protocol enters into force;

**‘Green Investment’** has the meaning set forth in Article 2 herein;

**‘Green Investment Dispute’** means a dispute arising under the Covered Investment Treaty, as amended by this Green Investment Protocol, between a Green Investor of a Contracting Party and another Contracting Party arising out of or relating to a Green Investment of the former in the Territory of the latter;

**‘Green Investment Protocol’** means this Protocol for the Encouragement, Promotion, Facilitation and Protection of Investments in Climate Change Mitigation and Adaptation;

**‘Green Investor’** has the meaning set forth in Article 2 herein;

**‘Greenhouse Gas’** means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;

**‘Investment’** has the same meaning as in the Covered Investment Treaty, except that, for the purposes of this Protocol, it shall also include any investment that is not pursued for profit;

**‘Investment Treaty’** means any bilateral or multilateral treaty, including any treaty commonly referred to as a bilateral investment treaty, free trade agreement, economic integration agreement, trade and investment framework, or trade and investment cooperation agreement

which contains provisions on the encouragement, promotion, protection and/or facilitation of investments and/or investors;

**‘Investor’** has the same meaning as in the Covered Investment Treaty, except that, for the purposes of this Protocol, it shall also include:

- (a) an investor that is not organised for pecuniary gain; and/or
- (b) an investor that is publicly owned or controlled;

**‘ICSID Additional Facility Rules’** means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

**‘ICSID Convention’** means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, adopted in Washington on 18 March 1965;

**‘Kyoto Protocol’** means the *Kyoto Protocol*, adopted in Kyoto on 11 December 1997, and includes the Doha Amendment to the Kyoto Protocol, adopted in Doha on 8 December 2012;

**‘Measure’** includes any law, regulation, rule, procedure, decision, requirement, administrative action, or practice;

**‘National Climate Change Strategy’** shall include the Nationally Determined Contribution within the meaning of Article 4 of the Paris Agreement;

**‘Paris Agreement’** means the *Paris Agreement*, adopted in Paris on 12 December 2015, at the twenty-first session of the Conference of the Parties to the UNFCCC;

**‘Regional Economic Integration Organization’** means an organization constituted by States to which they have transferred competence over matters governed by this Protocol, including the authority to take decisions binding on them in respect of those matters;

**‘Territory’** means, with respect to a Contracting Party that is a State: (a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea and its airspace above that territory; and (b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction. With respect to a Regional Economic Integration Organization which is a Contracting Party, ‘Territory’ means the territories of the member States of such Organization;

**‘TRIPS Agreement’** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights* in Annex IC to the WTO Agreement;

**‘SCC Arbitration Rules’** means the arbitration rules of the Arbitration Institute of the Stockholm Chamber of Commerce Court;

**‘Subsidy’** has the same meaning as in Article 1, subparagraph 1.1 of the *Agreement on Subsidies and Countervailing Measures* in Annex 1 of the WTO Agreement;

**‘Sustainable Development’** means development that meets the needs of the present without compromising the ability of future generations to meet their own needs;

**‘Sustainable Development Goals’** means the goals adopted by United Nations General Assembly Resolution A/RES/70/1 of 25 September 2015;

**‘UNCITRAL Arbitration Rules’** means the arbitration rules of the United Nations Commission on International Trade Law;

**‘UNFCCC’** means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992;

**‘WTO Agreement’** means the *Marrakesh Agreement Establishing the World Trade Organization*, adopted in Marrakesh on 15 April 1994.

## **PART II. PURPOSE AND INTERPRETATION**

### **ARTICLE 1: Purpose and interpretation of the Green Investment Protocol**

1. The purpose of this Green Investment Protocol is to encourage, promote, and facilitate investments consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, in furtherance of Articles 2 and 9 of the Paris Agreement, including by providing protections to Green Investments, in a manner that builds on existing Investment Treaties and is compatible with the objectives and consistent with the principles of the Paris Agreement and the Sustainable Development Goals.
2. The Green Investment Protocol shall be interpreted in the light of all relevant international environmental laws and principles in existence at the time of interpretation.

3. Reference to the Paris Agreement in this Green Investment Protocol shall be supplemented by reference to any future relevant protocol adopted under the UNFCCC framework.

## **ARTICLE 2: Definition of Green Investment and Green Investor**

### *International standard for Green Investment*

1. A Green Investment means an Investment that contributes to achieving the aims set out in Article 2.1 of the Paris Agreement, taking into account the Contracting Parties' international obligations, including their human rights obligations.
2. A Green Investment shall include any Investment that:
  - (a) qualifies as eligible to participate in the mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development, in accordance with Article 6(4) of the Paris Agreement; or
  - (b) has been made in pursuit of Article 6(1) of the Kyoto Protocol and has received the necessary approvals or qualifies as eligible to participate in the clean development mechanism as defined in Article 12 of the Kyoto Protocol; or
  - (c) constitutes any future mechanism or technology created to achieve the aims of the Paris Agreement.

### *International standard for Green Investor*

3. A Green Investor means an Investor who has made a Green Investment in the Territory of a Contracting Party.

### *Domestic certification of a Green Investment*

4. The Contracting Parties may develop and establish a Framework for the Certification of Green Investments within their own jurisdiction which shall include a mechanism by which Investments are certified as Green Investments for the purposes of assuming the rights and obligations set out in this Green Investment Protocol. Any such Framework for the Certification of Green Investments shall include the criteria set out in subparagraphs 1 and 2 of this Article.

5. Domestic certification of a Green Investment shall not be a pre-requisite to the assumption of rights and obligations set out in this Green Investment Protocol where an Investment otherwise qualifies under subparagraph 1 or 2 of this Article.

### **PART III. OBLIGATIONS OF CONTRACTING PARTIES**

#### **ARTICLE 3: Admission of Green Investments**

Green Investments shall be admitted in accordance with the laws and regulations of the Contracting Party in force. For the avoidance of doubt, such laws and regulations include all relevant norms of international law that are binding on the Contracting Party in the Territory of which the Investment is located at the time the Investment is made.

#### **ARTICLE 4: Encouragement, Promotion, and Facilitation of Green Investments**

1. Each Contracting Party shall encourage, promote and facilitate Green Investments in its Territory and in the Territory of other Contracting Parties through the mechanisms it considers appropriate and consistent with its international obligations, including obligations in the fields of investment, trade, environmental protection and relating to the avoidance of corruption.
2. Each Contracting Party undertakes to provide assistance to other Contracting Parties in the encouragement, promotion and facilitation of Green Investments in the Territories of the Contracting Parties, to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. Such assistance may include Measures to encourage, promote and facilitate technology development and transfer.

#### **ARTICLE 5: Environmental Standards**

1. Recognizing the right of each Contracting Party to set its own environmental laws and policies, each Contracting Party shall ensure that its environmental laws are effective and shall uphold relevant international standards of environmental protection.
2. The Contracting Parties recognize that it is inappropriate for any Contracting Party to encourage Investments, including but not limited to Green Investments, by breaching, relaxing or not enforcing their own environmental Measures and standards, including by derogating from related commitments made under international agreements. Accordingly, the Contracting Parties shall not waive, be in breach of, or otherwise derogate from, such

Measures and standards to encourage Investors of other Contracting Parties with respect to the establishment, acquisition, expansion or retention of Investments in their Territories.

#### **ARTICLE 6: Consideration of and Reporting on Climate Change Risks**

1. Each Contracting Party shall adopt such Measures as may be necessary to ensure that investors, whether Investors or domestic investors within their jurisdiction:
  - (a) include, as part of any reporting requirements, including public financial reporting obligations, information relating to material Climate Change risks, including loss and damage; and
  - (b) evaluate any material risks posed by Climate Change when deciding whether to make or terminate an investment, including whether to purchase or sell shares in a given entity.

#### **ARTICLE 7: Corporate Social Responsibility**

1. Each Contracting Party shall take Measures to ensure that investors, whether Investors or domestic investors operating within its Territory, incorporate internationally recognized standards of corporate social responsibility in their internal policies. These standards shall address labour rights, the environment, human rights including the rights of indigenous peoples, community relations and anti-corruption.
2. Any expectation relied upon by an Investor pursuant to a provision modified by Article 10 of this Protocol that is inconsistent with such standards shall be presumed not to be legitimate, unless the Investor establishes otherwise.

#### **ARTICLE 8: Performance Requirements**

1. Provided that it is not applied in an arbitrary or unjustifiable manner or as a disguised restriction on international trade or investment, a Measure that reasonably and proportionately requires an Investor making an Investment to transfer technology, a production process, or other proprietary knowledge to a natural person or enterprise in its territory, for the aim of ensuring the compatibility of the Investment with the relevant Contracting Party's National Climate Change Strategy, shall not be inconsistent with any restriction the Covered Investment Treaty places on the Contracting Parties' ability to impose performance requirements in connection with the establishment, acquisition, expansion, conduct, operation or management of any Investment.
2. Article 12 shall not apply to this Article.

## **ARTICLE 9: Expropriation**

To the extent that the Covered Investment Treaty contains provision(s) limiting the ability of a Contracting Party to expropriate Investments, the following shall apply in relation to all Investments:

1. Such provision(s) shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such Measures are consistent with the TRIPS Agreement. A determination that a given Measure is inconsistent with the TRIPS Agreement shall not, of itself, establish that an expropriation has occurred.
2. For the purpose of such provision(s), ‘indirect expropriation’ means a Measure or a series of Measures of a Contracting Party that has an effect equivalent to direct expropriation, in that it substantially deprives the Investor of the fundamental attributes of property in the Investment, including the right to use, enjoy and dispose of its Investment, without formal transfer of title or outright seizure.
3. The determination of whether a Measure or series of Measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that takes into consideration, among other factors:
  - (a) the extent of the economic impact of the Measure or series of Measures, although the sole fact that a Measure or series of Measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;
  - (b) the duration of the Measure or series of Measures of a Party;
  - (c) the extent to which the Measure or series of Measures interferes with distinct, reasonable investment-backed expectations; and
  - (d) the character of the Measure or series of Measures, notably their object, context and intent.

## **ARTICLE 10: Treatment of Investors and Investments**

### *Fair and equitable treatment*

1. To the extent that the Covered Investment Treaty has a provision requiring the Contracting Parties to provide Investors of other Contracting Parties and/or Investments with fair and equitable treatment or the minimum standard of treatment in accordance with customary international law, the following shall apply:
  - (a) Such provision is not breached by the mere fact that a Contracting Party has taken action, or not taken action, inconsistent with the expectations of an Investor of another Contracting Party that has made an Investment in the Territory of the former Contracting Party.
  - (b) However, each Contracting Party accepts that any specific commitments or representations it makes in relation to the provision of benefits for a Green Investment of a Green Investor may found a claim for breach of fair and equitable treatment or the minimum standard of treatment where the Green Investor establishes that:
    - (i) it had a legitimate expectation that the relevant commitment or representation would be fulfilled in the manner alleged, taking into account any timetable for alteration contained in the relevant commitment or representation; and
    - (ii) the relevant commitment or representation was relied upon by it in making the relevant Green Investment; and
    - (iii) the Contracting Party has breached such commitment or representation, and such breach is of sufficient gravity, having regard to its nature, degree and duration, to justify a finding that the relevant Contracting Party did not afford the relevant Green Investment and/or Green Investor fair and equitable treatment or the minimum standard of treatment, as applicable.

### *Full protection and security*

2. To the extent that the Covered Investment Treaty has a provision requiring the Contracting Parties to provide Investors of other Contracting Parties and/or

Investments with full protection and security, this obligation shall refer to the Contracting Parties' obligations relating to the physical security of Investors and Investments, including Green Investors and Green Investments.

#### **ARTICLE 11: Non-discrimination**

1. Protections against discriminatory treatment in the Covered Investment Treaty shall extend to the expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of a Green Investment.
2. When determining a breach of a national treatment or most-favoured-nation ('MFN') clause, a Tribunal shall take account of all of the circumstances of the relevant Investment and/or Investor, and those of the other investment(s) and/or other enterprise(s) to which they are being compared, including:
  - (a) their respective effects on the environment, including expected greenhouse gas emissions and/or emissions reductions;
  - (b) the sector(s) in which they operate;
  - (c) the aim of the Measure at issue; and
  - (d) the regulations applicable to that Measure.
3. No MFN clause in the Covered Investment Treaty may be relied upon by an Investor to avoid the application of any provision of this Green Investment Protocol.
4. To the extent that an investor, within the meaning of an Investment Treaty, may invoke an MFN clause under an Investment Treaty to claim the benefit of any Article in this Green Investment Protocol as against a Contracting Party, the Article invoked shall be interpreted in the context of the entirety of this Green Investment Protocol.

#### **ARTICLE 12: Right to Regulate**

1. Provided that such Measures do not constitute a means of arbitrary or unjustified discrimination, nothing in the Covered Investment Treaty, as amended by this Green Investment Protocol, shall be construed to prevent a Contracting Party from adopting or maintaining regulatory Measures that are designed and reasonably applied, including in light of technological developments, to protect legitimate public welfare objectives, such as protection of the environment and of human rights, and the safeguarding of life and

health. Such Measures include those taken to further the aims set out in Article 2.1 of the Paris Agreement.

2. For the purposes of this Article, a Measure shall include a Subsidy.

#### **ARTICLE 13: Subsidies**

1. Insofar as doing so is consistent with its other international obligations, a Contracting Party may, in fulfilling its obligations under Article 4, provide Subsidies to Green Investors or Green Investments, including Subsidies for the development of technology to further the aims set out in Article 2.1 of the Paris Agreement.
2. Details of any scheme for the provision of Subsidies under subparagraph 1 shall be published. Those details shall include, but are not limited to, criteria outlining the requirements for eligibility for the relevant Subsidy, the duration of the Subsidy, and any provisions for the future modification of that Subsidy.
3. Each Contracting Party shall give due consideration to phasing out Subsidies for foreign and domestic investments that are inconsistent with the achieving the aims set out in Article 2.1 of the Paris Agreement.

### **PART IV. OBLIGATIONS OF INVESTORS**

#### **ARTICLE 14: Obligation to Comply with Domestic Laws and Regulations**

Any Investor seeking to rely on the protections provided for by the Covered Investment Treaty or this Green Investment Protocol shall at all times comply with the laws, regulations and standards in force in the Contracting Party in whose Territory it has made an Investment (whether or not such Investment also qualifies as a Green Investment), including in particular those pertaining to the protection of the environment and human rights. For the avoidance of doubt, the laws, regulations and standards referred to in this Article include all relevant norms of international law that have the force of law in the Territory of the Contracting Party where the Investment is made.

### **PART V. DISPUTE SETTLEMENT**

#### **ARTICLE 15: Disputes between Contracting Parties**

To the extent that the Covered Investment Treaty contains provisions for the settlement of disputes between or among the Contracting Parties, such provisions shall apply *mutatis*

*mutandis* for the settlement of any disputes concerning the interpretation or application of the Covered Investment Treaty as amended by this Green Investment Protocol.

**ARTICLE 16: Consent to Arbitration of Disputes between Green Investors and Contracting Parties**

1. If the Covered Investment Treaty contains the consent of the relevant Contracting Parties to arbitrate disputes between an Investor of a Contracting Party and another Contracting Party arising out of or relating to an Investment of the former in the Territory of the latter, such consent also covers the arbitration of Green Investment Disputes in accordance with Part V of the Protocol.
2. If the Covered Investment Treaty does not provide for the arbitration of disputes between an Investor of a Contracting Party and another Contracting Party arising out of or relating to an Investment of the former in the Territory of the latter, the Contracting Parties hereby provide their consent to arbitrate any Green Investment Disputes in accordance with the provisions of this Part V.
3. For the avoidance of any doubt, no Investor may submit a claim to arbitration under Article 17, subparagraph 4 of this Protocol if the relevant investment has been made through fraudulent misrepresentation, concealment or corruption.
4. The Contracting Parties' consent to arbitrate Green Investment Disputes is subject to, and limited by, all of the provisions contained in this Part V.
5. The Contracting Parties' consent to arbitration under this Article and the submission, by a Green Investor, of a claim to arbitration under Article 17, subparagraph 4 of this Green Investment Protocol shall satisfy the requirements of:
  - (a) Article 25 of the ICSID Convention and Chapter II of the ICSID Additional Facility Rules regarding written consent of the disputing parties; and,
  - (b) Article II of the New York Convention for an agreement in writing.

**ARTICLE 17: Settlement of Disputes between Green Investors and Contracting Parties**

Regardless of whether the Covered Investment Treaty contains provisions for the settlement of disputes between an Investor of a Contracting Party and another Contracting Party, the following provisions shall apply to any Green Investment Disputes:

1. The Green Investor shall bring the Green Investment Dispute to the attention of the relevant Contracting Party by issuing a notice of dispute to that Contracting Party.
2. The disputing parties shall seek to resolve the Green Investment Dispute in an amicable manner for a minimum of six months starting from the date of receipt by the Contracting Party of the notice of dispute.
3. If, three months from receipt of the notice of dispute, the disputing parties have not succeeded in resolving the dispute, the disputing parties shall seek the assistance of a mediator of their joint choosing. If the disputing parties are unable to jointly appoint a mediator within two weeks, the Chairperson of the Board of the Arbitration Institute of the Stockholm Chamber of Commerce shall, taking into consideration the size of the claim and the disputing Parties, appoint a mediator, provided, however, that the mediator shall not share the nationality of any of the disputing parties. The appointment shall be binding on the disputing parties.
4. If a Green Investment Dispute has not been settled pursuant to good faith efforts within the six-month period referred to in subparagraph 2 of this Article, the Green Investor may submit the Green Investment Dispute to arbitration under:
  - (a) the ICSID Convention, provided that both Contracting Parties are parties to the ICSID Convention; or
  - (b) the ICSID Additional Facility Rules, provided that either Contracting Party, but not both, is a party to the ICSID Convention; or
  - (c) the UNCITRAL Arbitration Rules; or
  - (d) the SCC Arbitration Rules; or
  - (e) if the disputing parties agree, any other arbitral institution or arbitration rules.
5. Any of the procedural rules elected under subparagraph 4 of this Article shall be modified in accordance with the following:
  - (a) The UNCITRAL Rules on Transparency shall apply to any arbitration commenced pursuant to subparagraph 4 of this Article, whether or not initiated under the UNCITRAL Arbitration Rules.

- (b) The disputing parties and, where relevant, the arbitral tribunal, shall refer to the International Bar Association's *Guidelines on Conflicts of Interests in Arbitration* when appointing and deciding challenges to arbitrators.
  - (c) The disputing parties and, where relevant, the appointing authority, may, when appointing arbitrators, refer to the Specialised Panel of Arbitrators established pursuant to the Permanent Court of Arbitration's Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment.
  - (d) The disputing parties and, where relevant, the arbitral tribunal, may, when appointing experts, refer to the Specialised Panel of Scientific Experts established pursuant to the Permanent Court of Arbitration's Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment.
  - (e) The disputing parties may jointly agree to submit the Green Investment Dispute to a sole arbitrator. Such sole arbitrator shall be jointly appointed by the disputing parties or, failing agreement of the parties within 15 days of the submission of the Green Investment Dispute to arbitration, by the relevant appointing authority. If no appointing authority is stipulated in the Covered Investment Treaty or the applicable arbitration rules, it shall be the Board of the Arbitration Institute of the Stockholm Chamber of Commerce.
6. No claim may be submitted to arbitration under subparagraph 4 of this Article if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged causing loss or damage to the claimant or its Green Investment.

#### **ARTICLE 18: Counterclaims by Contracting Parties**

By initiating arbitration proceedings pursuant to Article 17, subparagraph 4, a Green Investor shall be deemed to have consented to the jurisdiction of the arbitral tribunal to decide counterclaims brought by the respondent Contracting Party for any alleged breach of Article 14 of this Green Investment Protocol, providing such alleged breach relates to the Green Investment that is the subject of the Green Investment Dispute submitted to arbitration pursuant to Article 17, subparagraph 4.

#### **ARTICLE 19: Consolidation of Claims**

1. For the purposes of this Article, '**Related Claims**' shall mean claims having a question of law or fact in common or arising from the same Measure(s) or circumstance(s).

2. When two or more Related Claims have been submitted separately pursuant to Article 17, a disputing party, or the disputing parties jointly, may request a consolidation order from the tribunal first constituted.
3. The disputing party or parties seeking such a consolidation order shall deliver a notice to all the disputing parties it seeks to be covered by this order.
4. Where the tribunal first constituted orders consolidation, any other tribunal shall be deemed dissolved and the cases shall all be decided by the tribunal first constituted.
5. A consolidation order may be made where:
  - (a) The claims are Related Claims; and
  - (b) The Covered Investment Treaty or Covered Investment Treaties does not expressly exclude the possibility of consolidation.
6. A consolidation order must be made where all disputing parties, including the Respondent Contracting Party, consent.
7. In any case where claims are consolidated, the Tribunal shall adopt such procedures as are necessary to ensure that the claims can be resolved in the most efficient manner.

## **PART VI: GOVERNANCE**

### **ARTICLE 20: Meeting of the Contracting Parties**

1. The Contracting Parties shall, in conjunction with the meetings held for the Conference of the Parties to the UNFCCC, meet in 2025 and every five (5) years thereafter or as may be required, to discuss any matters arising under this Protocol, including issues such as:
  - (a) Actions taken by each Contracting Party to best achieve the objective of this Green Investment Protocol, and thus to further the aims set out in Article 2.1 of the Paris Agreement;
  - (b) Capacity-building in the use of investment flows to achieve Sustainable Development;
  - (c) Promoting the development and transfer of technology relating to Sustainable Development and Climate Change adaptation and mitigation;
  - (d) Promoting corporate social responsibility and appropriate reporting of Climate Change risk;

- (e) The impact of dispute settlement procedures arising under this Protocol on the ability of Contracting Parties to fulfil their obligations under the UNFCCC and Paris Agreement; and
  - (f) Any other investment-related issues identified as priorities by the Contracting Parties.
2. To the extent that the Covered Investment Treaty contains provisions for the administration thereof, including but not limited to provisions on institutional governance and the exchange of information, the Contracting Parties undertake to use the mechanisms created in accordance therewith to further the objectives and provisions of this Green Investment Protocol.

## **PART VII: FINAL PROVISIONS**

### **ARTICLE 21: Application of this Protocol**

1. This Green Investment Protocol shall apply with respect to a Covered Investment Treaty that is in force as of the date on which the Green Investment Protocol enters into force. In accordance with the principle reflected in Article 30, subparagraph 3 of the Vienna Convention on the Law of Treaties, the provisions of the applicable Covered Investment Treaty shall continue to apply only to the extent that its provisions are compatible with the provisions of this Green Investment Protocol.
2. This Green Investment Protocol shall apply to any subsequent Investment Treaty that incorporates it by reference.

### **ARTICLE 22: Entry into Force of the Green Investment Protocol**

1. The present Green Investment Protocol shall enter into force as between any two or more Contracting Parties to the extent that:
- (a) those Contracting Parties are parties to a Covered Investment Treaty in force at the time this Green Investment Protocol enters into force for those Contracting Parties; and
  - (b) all parties to that Covered Investment Treaty are also Contracting Parties to this Green Investment Protocol.
2. Parties to any future Investment Treaty may agree to incorporate the terms of this Green Investment Protocol therein.

### **ARTICLE 23: Amendment of Sunset Clauses and Compatibility Clauses**

To the extent that the applicable Covered Investment Treaty contains a sunset clause or compatibility clause that would operate to prohibit or limit the Contracting Parties' ability to amend or derogate from that Investment Treaty through the adoption of this Green Investment Protocol, whether absolutely, or for a specified time period, the Contracting Parties that are parties to that Covered Investment Treaty hereby expressly agree to amend such a clause to enable the immediate application of this Green Investment Protocol to the Covered Investment Treaty at the time this Green Investment Protocol enters into force for all of the parties to that Covered Investment Treaty.

### **ARTICLE 24: Temporal Application**

1. This Green Investment Protocol shall apply to:
  - (a) any Investor, Green Investor, Investment or Green Investment that exists as of the date this Green Investment Protocol enters into force as between the parties to the Covered Investment Treaty; and
  - (b) any Investor, Green Investor, Investment or Green Investment that comes into existence on or after the entry into force of this Green Investment Protocol as between the parties to the Covered Investment Treaty.
2. Notwithstanding subparagraph 1 of this Article, this Green Investment Protocol shall not apply to any dispute between an Investor and a Contracting Party, or between Contracting Parties, that exists prior to the coming into force of the Green Investment Protocol between the Contracting Parties.

### **ARTICLE 25: Depositary**

The Secretary-General of the United Nations is hereby designated as the Depositary of all declarations made to adhere to this Green Investment Protocol, and for any new Investment Treaty entered into after the coming into force of the Green Investment Protocol that incorporates the terms of this Protocol.

### **ARTICLE 26: Signature, Ratification, Acceptance, Approval, and Accession**

1. Any State party to a Covered Investment Treaty, and any Regional Economic Integration Organization that is constituted by States and is a party to a Covered Investment Treaty, may sign this Green Investment Protocol at any time from 20 June 2018.

2. The Green Investment Protocol does not amend the Covered Investment Treaty until such time as the necessary instruments of ratification, acceptance, approval or accession are deposited with the Depositary.

**ARTICLE 27: Reservations and Declarations**

No reservations or declarations to this Green Investment Protocol are permitted.

**ARTICLE 28: Denunciation**

A Contracting Party may denounce this Green Investment Protocol by giving notice of one year to the other Contracting Parties. However, the protections afforded under the Green Investment Protocol to Green Investors and Green Investments in existence on the date on which denunciation is notified to the other Contracting Parties shall continue in force for a period of ten years from that date.

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