

MODEL GREEN INVESTMENT TREATY

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PREAMBLE

REAFFIRMING sustainable development as the framework for improving the quality of life for present and future generations, and the International community's adoption of the Sustainable Development Goals and Agenda 2030 for Sustainable Development as means of achieving sustainable development,

DEEPLY CONCERNED by the threats posed by climate change to human society, including from rising sea level, increased frequency and intensity of storm and extreme weather events, changes in the ranges of disease vectors, ecosystem collapse, population displacement, and possible tipping points,

AWARE that the threats posed by climate change will affect resources and activities that are essential to human survival, including agriculture, the availability of freshwater and the generation and provision of energy, and that other environmental harms, including those caused by unsustainable economic activity, pose these and other threats, as well, and that States must have the right to regulate to deal with these threats,

COGNIZANT of States' responsibilities to take effective measures to mitigate and adapt to climate change, and affirming our intention to carry out our commitments under the United Nations Framework Convention on Climate Change and the Paris Agreement on Climate Change and related initiatives, including with respect to holding the increase in global average temperature to well below 2 degrees C and if possible to 1.5 degrees C,

RECOGNIZING that efforts to address climate change may involve strengthening the provision of ecosystem services, including with respect to biological diversity, efforts to create a circular economy, and both public-private partnerships and partnerships with local communities,

RECOGNIZING States' obligations to respect, protect and fulfil human rights as provided in the International Bill of Rights and other human rights instruments, including in the context of climate change, and to achieve social development and justice, including with respect to gender equality, Indigenous Peoples, and persons of all ages, and that climate change affects the realization of human rights,

RECOGNIZING States' obligations to respect, protect and fulfil the rights of workers, including to provide a just transition for workers and decent jobs when taking mitigation and adaptation measures, in accordance with International Labour Organization conventions and Guidelines on Just Transition,

RECOGNIZING the important contribution foreign investment can make to achieving sustainable development and to mitigating and adapting to climate change, including through innovation and by facilitating the transfer of appropriate technology, and desiring to increase such investment,

RECOGNIZING that climate change presents threats to all countries regardless of their development level and that all countries are obligated to cooperate internationally, in light of their common but differentiated responsibilities and their own domestic priorities, to address the threats posed by climate change, including through capacity building, technology transfer and financial assistance, as appropriate,

RECOGNIZING that incentives and protective measures may both be essential to addressing climate change, including with respect to agriculture, energy, reforestation, ecosystem restoration and greenhouse gas emission reduction, and including those involved in joint implementation or technology transfer and capacity building projects;

AWARE of the need for international finance from a variety of sources to assist in addressing climate change, including in the context of the Addis Ababa Action Agenda on Financing for Development and the Paris Agreement's commitment to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development,

EMPHASIZING the importance of education to increase awareness about all aspects of climate change, particularly for children and youth, of empowering women through education and in the workplace to better allow them to contribute to addressing climate change, and of investments in innovative training methods regarding addressing climate change,

RECOGNIZING that climate change presents unusually difficult challenges regarding planning and decision making to both investors and governments because the precise effects of climate change are unpredictable at the local level and because the Paris Agreement requires that Parties to that agreement communicate adjustments to nationally determined contributions every five years,

DETERMINED to achieve an appropriate balance between the rights and obligations of the States Parties, the public health and other interests of the public, and the interests of investors and investments, and

DETERMINED to implement this Agreement fully and successfully, and aware of the importance that enforcement of its provisions can play in that regard,

Have agreed as follows:

GENERAL PROVISIONS

ARTICLE 1

OBJECTIVE

To encourage foreign investment that contributes to sustainable development and supports the Parties' efforts to address the threat of climate change through mitigation and adaptation, and to provide for balanced protection of such investment, public interest, and the priorities and policies of the Parties.

ARTICLE 2

DEFINITIONS

activities carried out in the exercise of governmental authority means activities carried out neither on a commercial basis nor in competition with one or more economic operators;

attachment means the seizure of property of a disputing party to secure or ensure the satisfaction of an award;

Basel Accords means the financial supervision and regulation accords – Basel I, Basel II and Basel III issued by the Basel Committee on Banking Supervision in 1988, 2004, and 2010, respectively;

claimant means an investor of a Party that is a party to an investment dispute with another Party;

computer reservation system services means the supply of a service by authorized systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

confidential or protected information means:

- (a) confidential business information; or
- (b) information which is protected against disclosure to the public:
 - (i) in the case of information of the respondent, under the law of the respondent;
 - (ii) in the case of other information, under any law or rules that the Tribunal determines to be applicable to the disclosure of such information;
- (c) Information the disclosure of which would impede law enforcement.

covered investment means, with respect to a Party, an investment:

- (a) in its territory;
- (b) made in accordance with the applicable law at the time the investment is made;
- (c) directly or indirectly owned or controlled by an investor of the other Party; and
- (d) existing on the date of entry into force of this Agreement, or made or acquired thereafter;

days means calendar days, including weekends and holidays;

disputing party means the investor that initiates proceedings against a host country or the respondent.

disputing parties means both the investor and the respondent;

enjoin means an order to prohibit or restrain an action;

enterprise means an entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or other association;

existing means in effect on the date of entry into force of this Agreement

goods of a Party means domestic products as these are understood in the GATT 1994 or such goods as the Parties may decide, and includes originating goods of that Party;

ICSID means the International Centre for Settlement of Investment Disputes;

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*, done at Washington on 18 March 1965;

intellectual property rights means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights; and, if such rights are provided by a Party's law, utility model rights. The Joint Committee may, by decision, add other categories of intellectual property to this definition;

investment means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, which includes a certain duration and other characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

(a) an enterprise;

(b) shares, stocks and other forms of equity participation in an enterprise;

- (c) bonds, debentures and other debt instruments of an enterprise;
- (d) a loan to an enterprise;
- (e) any other kind of interest in an enterprise;
- (f) an interest arising from:
 - (i) a concession conferred pursuant to the law of a Party or under a contract, including to search for, cultivate, extract or exploit natural resources,
 - (ii) a turnkey, construction, production or revenue sharing contract; or
 - (iii) other similar contracts;
- (g) intellectual property rights;
- (h) other moveable property, tangible or intangible, or immovable property and related rights;
- (i) claims to money or claims to performance under a contract.

For greater certainty, **claims to money** does not include:

- (i) claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to a natural person or enterprise in the territory of the other Party.
- (ii) the domestic financing of such contracts; or
- (iii) any order, judgment, or arbitral award related to sub-subparagraph (i) or (ii).

Returns that are invested shall be treated as investments. Any alteration of the form in which assets are invested or reinvested does not affect their qualification as investment;

investment agreement means a written agreement that is concluded and takes effect after the date of entry into force of this Agreement between an authority at the central level of government of a Party and a covered investment or an investor of another Party and that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 9.24(2) (Governing Law), on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, and that grants rights to the covered investment or investor:

(a) with respect to natural resources that a national authority controls, such as oil, natural gas, rare earth minerals, timber, gold, iron ore and other similar resources, including for their exploration, extraction, refining, transportation, distribution or sale;

(b) to supply services on behalf of the Party for consumption by the general public for: power generation or distribution, water treatment or distribution, telecommunications, or other similar services supplied on behalf of the Party for consumption by the general public; or

(c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams or pipelines or other similar projects; provided, however, that the infrastructure is not for the exclusive or predominant use and benefit of the government;

investor means a Party, a natural person or an enterprise of a Party, other than a branch or a representative office, that seeks to make, is making or has made an investment in the territory of the other Party;

For the purposes of this definition, an **enterprise of a Party** is:

(a) an enterprise that is constituted or authorized under the laws of that Party and has substantial business activities in the territory of that Party; or

(b) an enterprise that is constituted or authorized under the laws of that Party and is directly or indirectly owned or controlled by a natural person of that Party or by an enterprise mentioned under paragraph (a);

(c) but does not include a State-owned enterprise;

locally established enterprise means a juridical person that is constituted or authorized under the laws of the respondent and that an investor of the other Party owns or controls directly or indirectly;

Mauritius Convention means the United Nations *Convention on Transparency in Treaty-based Investor-State Arbitration*, done at New York on 14 December 2014;

measure includes a law, regulation, rule, procedure, decision, administrative action, requirement, practice or any other form of measure by a Party;

natural person means a natural person who is a national or citizen of one of the Parties:

New York Convention means the United Nations *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958;

national means a natural person who is a citizen or is a permanent resident of a Party;

nondisputing Party means a treaty party not party to the dispute in question;

Paris Agreement means the Paris Agreement on Climate Change, done at Paris on 12 December 2015;

person means a natural person or an enterprise;

person of a Party means a national or an enterprise of a Party;

respondent means the State party named in the dispute;

returns means all amounts yielded by an investment or reinvestment, including profits, royalties and interest or other fees and payments in kind;

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution, but does not include the pricing of air transport services or the applicable conditions;

service supplier means a person that supplies or seeks to supply a service;

State-owned enterprise means any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership, including joint stock companies, limited liability companies and partnerships limited by shares, as well as statutory corporations whose legal personality is established through specific legislation and whose purpose, should be considered as SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature;

SCC means the Stockholm Chamber of Commerce;

territory means the territory where this Agreement applies as set out under Article 3.7;

third country means a country or territory outside the geographic scope of application of this Agreement;

third party funding means any funding provided by a natural or legal person who is not a disputing party but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings either through a donation or grant, or in return for remuneration dependent on the outcome of the dispute;

Tribunal means the tribunal established under Article 38;

TRIPS Agreement means the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights;

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

UNCITRAL Transparency Rules means the *UNCITRAL Rules on Transparency in Treaty based Investor-State Arbitration*;

Vienna Convention on the Law of Treaties means the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969;

WTO means the World Trade Organization;

WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

ARTICLE 3

SCOPE

1. This Agreement applies to a measure adopted or maintained by a Party in its territory relating to:
 - (a) an investor of the other Party; and
 - (b) a covered investment.
2. With respect to the establishment or acquisition of a covered investment, Articles 18, 19 and 20 do not apply to a measure relating to activities carried out in the exercise of governmental authority.
3. [Exclusions for specific Parties and with respect to agreements between the Parties.]
4. Claims may be submitted by an investor under this Agreement only in accordance with Article 38[A, B or C], and in compliance with the procedures therein. Claims under Articles 19 and 20 with respect to the establishment or acquisition of a covered investment are excluded from the scope of Article 38[A, B or C].
5. For greater certainty, this Agreement does not apply to investors who are nationals of both of the Parties, citizens of both of the Parties, or a national of one Party and a citizen of the other Party, nor does it apply to State-owned enterprises.
6. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for supplying a service in its territory does not of itself make this Agreement applicable to measures adopted or maintained by the Party

relating to the supply of that cross border service. This Agreement applies to measures adopted or maintained by the Party relating to the posted bond or financial security to the extent that such bond or financial security is a covered investment.

7. For [country] the territory to which this Agreement applies is [_____]. For [country] the territory to which this Agreement applies is [_____].

ARTICLE 4

EXTENT OF OBLIGATIONS

1. Each Party is fully responsible for the observance of all provisions of this Agreement.
2. Each Party shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance at all levels of government.

ARTICLE 5

CLIMATE CHANGE

1. Nothing in this Agreement affects the rights and obligations of any Party under any climate change treaty, including the Paris Agreement. In the event of any inconsistency between this Agreement and any such treaty, that treaty shall prevail to the extent of the inconsistency. For greater certainty, nothing in this Agreement shall be interpreted so as to conflict with a Party's legal obligations or Nationally Determined Contributions under the Paris Agreement.
2. Nothing in this Agreement shall be construed to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests relating to climate change. For greater certainty, such actions may include emergency measures to respond to extreme weather events, severe food shortages, coastal flooding, outbreaks of disease, and population movements.
3. Parties are encouraged to cooperate to deal with any climate change-related emergency or natural disaster affecting either of the Parties.
4. For purposes of measuring and accounting for greenhouse emissions and sinks, the Intergovernmental Panel on Climate Change Guidelines for National Greenhouse Gas Inventories shall be used.

**PARTIES' RIGHT TO REGULATE AREAS AND ACTIVITIES OF PARTICULAR IMPORTANCE WITH
RESPECT TO CLIMATE CHANGE**

ARTICLE 6

PROTECTION OF THE PARTIES' RIGHT TO REGULATE

1. For the purpose of this Agreement, the Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment, climate change mitigation or adaptation, social or consumer protection, the promotion and protection of cultural diversity, the protection of cultural and natural heritage, and public morals. This includes the right to regulate regarding subsidies and other incentives.
2. For greater certainty, the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under this Agreement. Investors may not have a legitimate expectation that a Party's legal regime applicable to matters relating to climate change (e.g. taxes, fees, regulations) will remain static, even if specific promises are made.

ARTICLE 7

SUBSIDIES, INCENTIVES AND TAXES

1. Subsidies or other incentives relating to climate change mitigation or adaptation granted by a Party are not subject to the provisions of this Agreement relating to Article 21 (Fair and Equitable Treatment). Similarly, taxes (including for greater certainty beneficial tax treatment) relating to climate change mitigation or adaptation granted by a Party are not subject to the provisions of this Agreement relating to Article 21 (Fair and Equitable Treatment).
2. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy or other incentive, including beneficial tax treatment:
 - (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy or other incentive; or
 - (b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy or other incentive,

does not constitute a breach of this Agreement.

3. For greater certainty, nothing in this Agreement shall be construed as preventing a Party from discontinuing the granting of a subsidy or other incentive, including beneficial tax treatment, or requesting its reimbursement where such measure is necessary in order to comply with international obligations between the Parties or a change in national law or has been ordered by a competent court, administrative tribunal or other competent authority, or requiring that Party to compensate the investor therefor.

ARTICLE 8

WATER

1. Except as set out in this Article, nothing in this Agreement applies to water.
2. Nothing in this Agreement affects the rights and obligations of any Party under any water treaty. In the event of any inconsistency between this Agreement and any such treaty, that treaty shall prevail to the extent of the inconsistency.
3. The Parties recognise that water in its natural state, including water in lakes, rivers, wetlands, reservoirs, aquifers and water basins, is not a good or a product. Therefore, this Agreement does not apply to water in its natural state.
4. The Parties recognize that the availability of water is essential for sustainable development, including the realization of the Sustainable Development Goals, and for the realization of the human right to water, and that climate change may place unpredictable and unprecedented pressures on water. The Parties further recognize that investors may not have a legitimate expectation that the legal regime applicable to water (e.g. taxes, fees, regulations) will remain static, even if specific promises are made.
5. Each Party has the right to protect and preserve its natural water resources. Nothing in this Agreement obliges a Party to permit the commercial use of water for any purpose, including its withdrawal for use in agriculture or industry, its extraction for use in bottled water, or its withdrawal or diversion for export in bulk. Each Party has the right to regulate water in the context of investments covered by this Agreement, including based on the water used in producing, processing, transporting or consuming a product or service or disposing of a product.
6. If a Party permits the commercial use of a specific water source or of an amount of water, it shall do so in a manner consistent with the Articles regarding National

Treatment and Most Favoured Nation Treatment of this Agreement, bearing in mind the critical importance of water, the stresses that may be placed upon it by climate change and the Party's need to regulate in the face of changing circumstances and scientific knowledge.

7. Article 22 (Expropriation and Compensation) shall apply to measures relating to water except that no investor may invoke that Article as the basis for a claim, where it has been determined pursuant to this paragraph that the measure is not an expropriation. The investor shall refer the issue of whether the measure is not an expropriation for a determination to the Committee on Investment established pursuant to Article 40 at the time that it gives Notice of Intent to Submit a Claim to Arbitration. If the Committee on Investment fails to agree that the measure is not an expropriation within a period of six months of such referral, the investor may submit its claim to arbitration. For greater certainty, challenges to a measure relating to water must be proven by clear and convincing evidence.
8. Notwithstanding paragraphs 6 and 7 of this Article, nothing in this Agreement shall be construed to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests relating to water.

ARTICLE 9

AGRICULTURE AND RELATED LAND USE

The Parties recognize that climate change is likely to pose severe threats to agriculture, including crops, livestock, forestry, peat harvesting, fishing and other forms of food, fuel and fibre production, storage, transport and consumption. The Parties also recognize that agriculture is a significant driver of climate change, and that changes to agriculture can lead to deforestation and further exacerbate climate change. The Parties recognize that a variety of regulatory approaches and other government actions will be necessary to deal with the threats to agriculture and to mitigate the negative impacts of agriculture on the climate and that these approaches, including their detailed provisions, are likely to change over time, sometimes quickly. This includes government action with respect to land use relating to agriculture. Given the critical importance of nutrition and other aspects of agriculture to human well-being and the importance of land use to agriculture and other issues likely to be affected by climate change, this Agreement shall be interpreted in a manner consistent with the Parties' need to regulate these activities. For greater certainty, a requirement that investments comply with the Principles on Responsible Investment in Agriculture and Food systems does not violate this Agreement. For greater certainty, adoption by a Party of a High Carbon Stock Approach to ensure investments does not lead to deforestation that undermines efforts to address climate change does not violate this Agreement. For greater certainty, challenges to a measure relating to agriculture and land use must be proven by clear and convincing evidence.

ARTICLE 10

ENERGY

The Parties recognize that addressing climate change may require changes to regulations regarding the energy sector, including with respect to macro-level decisions to alter the mix of energy sources, such as decreasing coal-fired generation in favour of wind power, solar, hydroelectric, nuclear or other renewable energy or de-emphasizing hydroelectric or nuclear generation for environmental or other reasons. Similarly, Parties recognize that addressing climate change may lead Parties to initiate or modify policies regarding the energy efficiency of agricultural inputs and machinery, consumer goods, industrial machinery, and other goods, including through taxes, mandatory regulations, incentives and voluntary systems. In addition, Parties' efforts regarding climate change mitigation and adaptation may involve international cooperation, e.g., in terms of research & development, power generation, and sale and purchase of electricity. This Agreement shall be interpreted in a manner consistent with the Parties' need to regulate these activities. For greater certainty, challenges to a measure relating to the energy sector must be proven by clear and convincing evidence.

ARTICLE 11

PUBLIC HEALTH

1. Because of the threats to public health and the environment posed by certain products whose sales are associated with foreign investment, this Agreement shall not apply to: tobacco and tobacco-related products; alcoholic beverages; sugar-sweetened beverages; food and beverages with excessive packaging; and ultra-processed foods.
2. The treaty shall be interpreted in a manner that ensures Party's access to exclusive rights in pharmaceutical and biologic drug test data during public health emergencies such as disease outbreaks or severe drug shortages. Furthermore, nothing in this agreement shall be interpreted to conflict with the rights of Parties to facilitate access to essential medicines, as outlined in the Doha Declaration on the TRIPS Agreement and Public Health.
3. Nothing in this Agreement shall be interpreted to conflict with the rights and obligations of Parties to report public health events and updated global health security, as defined in the World Health Organization's International Health Regulations. For greater certainty, challenges to a measure regarding public health must be proven by clear and convincing evidence.

ARTICLE 12

LAND USE

The Parties recognize the importance of sustainable and climate-friendly use of soils and are aware that addressing climate change may involve many aspects of land use and regulation, including through the use of zoning laws, requirements or restrictions aimed at designing cities that can withstand extreme weather events, keeping land fallow, safely disposing of waste, protecting soil, dealing with coastal erosion or flooding, and designating protected areas or modifying the boundaries of obsolete protected areas. The Parties are also aware of the need to protect private property and the existence of local and national laws to protect property, including that owned or being used by foreign investors. In this context, compliance by investors with the obligations in this Agreement is essential in order to provide the foundation for sound land use management, which will become even more important with climate change. This Agreement shall be interpreted in a manner consistent with the Parties' need to regulate land use to cope with the threats posed by climate change. For greater certainty, challenges to a measure relating to land use must be proven by clear and convincing evidence.

ARTICLE 13

HUMAN RIGHTS

Party actions to address climate change are subject to the obligation to respect, protect and fulfill universal legal guarantees protecting individuals and groups of people. Climate change may affect the realization of human rights, interfering with fundamental freedoms, entitlements, and dignity, requiring action from a Party. For example, climate change disproportionately impacts women and thus implicates women's human rights. Further, Parties must respect, protect and fulfill the human rights of people displaced by climate change and of the people through whose territory these migrants pass and in which they ultimately settle. This Agreement shall be interpreted in a manner consistent with the Parties' human rights obligations. For greater certainty, challenges to a measure taken to respect, protect or fulfill human rights must be proven by clear and convincing evidence.

ARTICLE 14

LABOUR

The Parties affirm, as recognized in the Paris Agreement, the imperative of providing a just transition to workers affected by mitigation and adaptation measures, as well as of the creation

of decent work and quality jobs. Parties also retain the right to protect workers, both female and male, from threats arising from climate change, e.g. from increased heat or aridity. Claims that a Party's measures to achieve a just transition are in breach of this Agreement must be proven by clear and convincing evidence. Party measures to improve the quality or safety of work do not constitute a breach of this Agreement.

ARTICLE 15

INDIGENOUS PEOPLES

The Parties are aware that much land relevant to addressing climate change is occupied and owned by Indigenous Peoples and that their rights, which differ in some respects from those of non-Indigenous Peoples, may be violated. This Agreement shall be interpreted in a manner consistent with the Parties' need to protect the rights of Indigenous Peoples, including as expressed in the United Declaration on the Rights of Indigenous Peoples. For greater certainty, challenges to regulations relating to Indigenous Peoples must be proven by clear and convincing evidence.

ARTICLE 16

CORRUPTION

To help prevent corruption, which undermines efficiency, leads to a misallocation of resources, erodes public confidence in governments, and can lead to political and social unrest – all of which can interfere with sustainable development and efforts to combat climate change --, the compliance program referred to in Article 36 shall include a program designed to prevent, detect and remedy official bribery and other corrupt practices that materially aligns with guidance on compliance programs published by at least one leading authority (such as the OECD's *Good Practice Guidance on Internal Controls, Ethics and Compliance*, the ISO 37001 *Anti-Bribery Management System*, or the UN Office on Drugs and Crime's *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*), which shall be implemented fully. If official bribery is alleged by a disputing party, that party shall have the burden of proving it by clear and convincing evidence. If the tribunal is made aware of the possibility of official bribery by another source, such as an amicus curiae brief, the tribunal may proceed within its discretion to investigate the matter. If corruption is found to have occurred, damages shall be limited to the value that the respondent Party received from the investment; for added certainty, that does not include the value of any bribes involved in the corruption.

ARTICLE 17

FINANCIAL FLOWS AND REGULATION

1. The Parties are aware that adequate financial flows are essential to achieving a pathway toward low greenhouse gas emissions and climate-resilient development. The Parties and all stakeholders are encouraged to seek the optimal use of available climate-related financing.
2. The Parties are aware of the importance of economic stability and good macroeconomic fundamentals in promoting sustainable investment and fostering a productive financial system.
 - (a) Investors and Investments shall comply with all laws, regulations, and guidelines enacted by the Party concerning regulation, supervision and risk management within the financial and banking sector
 - (b) Investors and Investments shall adhere to international norms and standards in regards to credit, liquidity and market risks.
 - (c) Investors recognize the right of States to develop and institutionalize international standards and principles with respect to financial regulation, including but not limited to those emphasized in the Basel Accords:
 - (i) Minimum capital requirements;
 - (ii) Supervisory review; and
 - (iii) Market discipline.

OBLIGATIONS OF PARTIES TO INVESTORS AND INVESTMENTS

ARTICLE 18

MARKET ACCESS

1. A Party shall not adopt or maintain with respect to market access through establishment by an investor of the other Party, on the basis of its entire territory or on the basis of the territory of a national, provincial, territorial, regional or local level of government, a measure that:
 - (a) imposes limitations on:

- (i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive suppliers or the requirement of an economic needs test;
- (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (i) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- (j) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or
- (k) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test; or
- (b) restricts or requires specific types of legal entity or joint venture through which an enterprise may carry out an economic activity.

2. For greater certainty, the following are consistent with paragraph 1:

- (a) a measure concerning zoning and planning regulations affecting the development or use of land, or another analogous measure;
- (b) a measure requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation and telecommunications;
- (c) a measure restricting the concentration of ownership to ensure fair competition;
- (d) a measure seeking to ensure the conservation and protection of natural resources and the environment, including a limitation on the availability, number and scope of concessions granted, and the imposition of a moratorium or ban;
- (e) a measure limiting the number of authorisations granted because of technical or physical constraints, for example telecommunications spectrum and frequencies;
- (f) a measure requiring that a certain percentage of the shareholders, owners, partners, or directors of an enterprise be qualified or practice a certain profession such as lawyers or accountants; or

(g) a measure requiring that investments in land be in substantial compliance with the **SEE HH emails.**

ARTICLE 19

NATIONAL TREATMENT

1. Each Party shall accord to an investor of the other Party and to a covered investment, treatment no less favourable than the treatment it accords, in like situations to its own investors and to their investments with respect to the expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.
2. The treatment accorded by a Party under paragraph 1 means treatment no less favourable than the most favourable treatment accorded, in like situations, by a Party's government to investors of that Party in its territory and to investments of such investors.

ARTICLE 20

MOST FAVOURED NATION TREATMENT

1. Each Party shall accord to an investor of the other Party and to a covered investment, treatment no less favourable than the treatment it accords in like situations, to investors of a third country and to their investments with respect to the expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.
2. For greater certainty, the treatment accorded by a Party under paragraph 1 means treatment accorded, in like situations, by a Party's government to investors in its territory, and to investments of such investors, of a third country.
3. Paragraph 1 does not apply to treatment accorded by a Party providing for recognition, including through an arrangement or agreement with a third country that authorizes the accreditation of testing and analysis services and service suppliers, the accreditation of repair and maintenance services and service suppliers, as well as the certification of the qualifications of or the results of or work done by those accredited services and service suppliers.

4. For greater certainty, the “treatment” referred to in paragraphs 1 and 2 does not include procedures for the resolution of investment disputes between investors and states provided for in other international investment treaties and other trade agreements. Substantive obligations in other international investment treaties and other trade agreements do not in themselves constitute “treatment”, and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party pursuant to those obligations.

ARTICLE 21

FAIR AND EQUITABLE TREATMENT

1. Each Party shall accord in its territory to covered investments of the other Party and to investors with respect to their covered investments fair and equitable treatment and full protection and security in accordance with paragraphs 2 through 7.
2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitutes:
 - (a) denial of justice in criminal, civil or administrative proceedings;
 - (b) fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;
 - (c) manifest arbitrariness;
 - (d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief;
 - (e) abusive treatment of investors, such as coercion, duress and harassment; or
 - (f) a breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3 of this Article.
3. The Parties shall regularly, or upon request of a Party, review the content of the obligation to provide fair and equitable treatment. The Committee on Investment may develop recommendations in this regard and submit them to the Parties for decision.
4. When applying the above fair and equitable treatment obligation with respect to claims other than Water, the Tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.

5. For greater certainty, “full protection and security” refers to the Party’s obligations relating to the physical security of investors and covered investments.
6. For greater certainty, a breach of another provision of this Agreement, or of a separate international agreement does not establish a breach of this Article.
7. For greater certainty, the fact that a measure breaches domestic law does not, in and of itself, establish a breach of this Article. In order to ascertain whether the measure breaches this Article, the Tribunal must consider whether a Party has acted inconsistently with the obligations in paragraph 1.
8. For greater certainty, when applying the above fair and equitable treatment obligation, the Tribunal shall bear in mind the fact that climate change may result in serious conditions to which a Party must respond.

ARTICLE 22

EXPROPRIATION

1. A Party shall not nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (“expropriation”), except:

(a) for a public purpose;

(b) under due process of law;

(c) in a nondiscriminatory manner; and

(d) on payment of prompt, adequate and effective compensation.

For greater certainty, this paragraph shall be interpreted in accordance with Annex 22-A.

2. The compensation referred to in paragraph 1 shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became known, whichever is earlier. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. The compensation shall also include interest at a normal commercial rate from the date of expropriation until the date of payment and shall, in order to be effective for the investor, be paid and made transferable, without delay, to the country designated by the investor and in the currency of the country of which the investor is a national or in any freely convertible currency accepted by the investor.
5. The affected investor shall have the right, under the law of the expropriating Party, to a prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Party, in accordance with the principles set out in this Article.
6. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, to the extent that such issuance is consistent with the TRIPS Agreement.
7. For greater certainty, the revocation, limitation or creation of intellectual property rights, to the extent that these measures are consistent with the TRIPS Agreement, do not constitute expropriation. Moreover, a determination that these measures are inconsistent with the TRIPS Agreement does not establish an expropriation.

ARTICLE 23

COMPENSATION FOR LOSSES

Each Party shall accord to investors of the other Party, whose covered investments suffer losses owing to armed conflict, civil strife, a state of emergency or natural disaster in its territory, treatment no less favourable than that it accords to its own investors or to the investors of a third country, whichever is more favourable to the investor concerned, as regards restitution, indemnification, compensation or other settlement.

ARTICLE 24

TRANSFERS

1. Each Party shall permit all transfers relating to a covered investment to be made without restriction or delay in a freely convertible currency and at the market rate of exchange applicable on the date of transfer. Such transfers include:
 - (a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment;

- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, or other forms of returns or amounts derived from the covered investment;
 - (c) proceeds from the sale or liquidation of the whole or a part of the covered investment;
 - (d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;
 - (e) payments made pursuant to Articles 22 and 23;
 - (f) earnings and other remuneration of foreign personnel working in connection with an investment; and
 - (g) payments of damages pursuant to an award issued under this Agreement.
2. A Party shall not require its investors to transfer, or authorize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.
3. Nothing in this Article shall be construed to prevent a Party from applying in an equitable and non-discriminatory manner and not in a way that would constitute a disguised restriction on transfers, its laws relating to:
- (a) bankruptcy, insolvency or the protection of the rights of creditors;
 - (b) issuing, trading or dealing in securities;
 - (c) criminal or penal offences;
 - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and
 - (e) the satisfaction of judgments in adjudicatory proceedings.

ARTICLE 25

SUBROGATION

If a Party, or an agency of a Party, makes a payment under an indemnity, guarantee or contract of insurance that it has entered into in respect of an investment made by one of its investors in the territory of the other Party, the other Party shall authorize that the Party or its agency shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. These rights may be exercised by the Party or an agency of the Party, or by the investor if the Party or an agency of the Party thereof so authorizes.

OTHER OBLIGATIONS OF PARTIES

ARTICLE 26

PLANNING WITH RESPECT TO NATIONALLY DETERMINED CONTRIBUTIONS

Each Party's process for considering revising nationally determined contributions every five years, or adjusting existing nationally determined contributions in the interim, in accordance with Article 4 of the Paris Agreement shall be transparent and involve all relevant stakeholders, including foreign investors and civil society.

ARTICLE 27

ENVIRONMENTAL IMPACT ASSESSMENT

1. Each Party shall ensure that an environmental impact assessment is conducted before approving substantial investments, including analysing risks associated with climate change.
2. Environmental impact assessments shall analyse the environmental impacts of the proposed investment, including its implications for climate change, and related human rights and other social impacts, shall consider both the proposed investment and alternatives, including a no-action alternative, and shall be: early (i.e. before a decision to proceed with the investment is made); comprehensive, including all aspects of the proposed project from site examination through environmental remediation; in writing; made available and accessible to potentially affected persons and communities for public comment in a timely manner; subject to a public hearing or hearings; and responsive to public comments.

ARTICLE 28

MONITORING, DATA GATHERING AND REPORTING

1. Parties shall monitor the effects, both positive and negative, that foreign investors have on mitigating and adapting to climate change. In connection with that process, the reports provided by foreign investments under Article 35 shall be analysed for possible use in this connection, as shall the environmental impact statements prepared regarding investments under Article 27.
2. Parties shall make public the results of this monitoring, including analyses of reports by foreign investments.
3. Consistent with Sustainable Development Goal 13.3, each Party shall measure and report on citizens' awareness and understanding of climate change mitigation, adaptation, impact reduction and early warning. Such measurements shall be gathered, inter alia, through surveys in a form and manner that allows to have a fair representation of a country's overall climate change-awareness status. Citizens awareness will be measure through several nationally determined dimensions that are relevant to climate change in that Party (e.g. sea level rise, erosion, coastal degradation, new vector-born disease, water scarcity). The surveys shall be designed to measure citizens' understanding of the issues, key solutions and their individual role. They shall be distributed to policy makers and made public in that Party.

ARTICLE 29

LABOUR

1. In accordance with the Paris Agreement and the International Labour Organization (ILO) Guidelines on Just Transition, each Party shall ensure that workers and communities whose jobs and livelihoods depend on economic activities relating to climate change, including greenhouse gas-emitting sectors such as the fossil fuel industry, benefit from sustainable investments, active labour market policies including re-skilling, and social protection, including with respect to effects stemming from Party measures to mitigate and adapt to climate change.
2. Party measures to improve the quality or safety of work do not constitute a breach of this Agreement.

ARTICLE 30

PUBLICATION OF LAWS AND TRANSPARENCY

1. Each Party shall ensure that its:
 - (a) laws, regulations, procedures, and administrative rulings of general application; and
 - (b) adjudicatory decisions respecting any matter covered by this Agreement are promptly published or otherwise made publicly available. For greater certainty, this includes subsidies, other incentives and taxes related to climate change.
2. For purposes of this Article, “administrative ruling of general application” means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:
 - (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular covered investment or investor of the other Party in a specific case; or
 - (b) a ruling that adjudicates with respect to a particular act or practice.
3. The Parties agree to consult periodically on ways to improve the transparency practices set out in this Article.
4. To the extent possible, each Party shall:
 - (a) publish in advance any measure referred to in Article 30(1)(a) that it proposes to adopt; and
 - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.
5. With respect to proposed regulations of general application of its central level of government respecting any matter covered by this Agreement that are published in accordance with paragraph 4(a), each Party:
 - (a) shall publish the proposed regulations in a single official journal of national circulation and shall encourage their distribution through additional outlets;
 - (b) should in most cases publish the proposed regulations not less than 60 days before the date public comments are due;
 - (c) shall include in the publication an explanation of the purpose of and rationale for the proposed regulations; and
 - (d) shall, at the time it adopts final regulations, address significant, substantive comments received during the comment period and explain substantive revisions that it made to the proposed regulations in its official journal or in a prominent location on a government Internet site.

6. With respect to regulations of general application that are adopted by its central level of government respecting any matter covered by this Agreement, each Party:
 - (a) shall publish the regulations in a single official journal of national circulation and shall encourage their distribution through additional outlets; and
 - (b) shall include in the publication an explanation of the purpose of and rationale for the regulations.

7. Provision of Information
 - (a) On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure that the requesting Party considers might materially affect the operation of this Agreement or otherwise substantially affect its interests under this Agreement.
 - (b) Any request or information under this paragraph shall be provided to the other Party through the relevant contact points.
 - (c) Any information provided under this paragraph shall be without prejudice as to whether the measure is consistent with this Agreement.

ARTICLE 31

COOPERATION ON CLIMATE CHANGE-RELATED MATTERS

1. Each Party shall consider climate risks in any loans, subsidies, insurance or guarantees it offers to outbound investments to the other Party and shall refrain from such support if the proposed investment poses a significant climate-related risk.

2. Parties are encouraged to assist one another, as mutually agreed, in ensuring that investments achieve their goals relating to climate change. This should involve capacity building and, where appropriate, technology transfer.

3. Parties are also encouraged to consult regarding strategies to optimize access to and application of external capital, so as to support the Paris Agreement's commitment to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

ARTICLE 32

RESERVATIONS AND EXCEPTIONS

1. Articles 19, 20, 21 and 22 do not apply to:

- (a) an existing nonconforming measure that is maintained by a Party at the level of:
 - (i) a national government, as set out by that Party in its Schedule to Annex 32A [country];
 - (ii) a provincial, territorial, or regional government, as set out by that Party in its Schedule to Annex 32A [country]; or
 - (iii) a local government;
 - (b) the continuation or prompt renewal of a nonconforming measure referred to in subparagraph (a); or
 - (c) an amendment to a nonconforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with 19, 20, 21 and 22.
2. Articles 19, 20, 21 and 22 do not apply to a measure that a Party adopts or maintains with respect to a sector, subsector or activity, as set out in its Schedule to Annex 32A [country].
 3. Without prejudice to Articles 21 and 22 a Party shall not adopt a measure or series of measures after the date of entry into force of this Agreement and covered by its Schedule to Annex 32A [country], that require, directly or indirectly an investor of the other Party, by reason of nationality, to sell or otherwise dispose of an investment existing at the time the measure or series of measures become effective.
 4. In respect of intellectual property rights, a Party may derogate from Articles 19 and 20 if permitted by the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.
 5. Nothing in this Agreement shall be construed:
 - (a) to require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests; or
 - (b) to prevent a Party from taking an action that it considers necessary to protect its essential security interests:
 - (i) connected to the production of or traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods and materials, services and

- technology undertaken, and to economic activities, carried out directly or indirectly for the purpose of supplying a military or other security establishment;
- (ii) taken in time of war or other emergency in international relations; or
 - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
- (c) prevent a Party from taking any action in order to carry out its international obligations for the purpose of maintaining international peace and security.

ARTICLE 33

DENIAL OF BENEFITS

A Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:

- (a) an investor of a third country owns or controls the enterprise; and
- (b) the denying Party adopts or maintains a measure with respect to the third country that:
 - (i) relates to the maintenance of international peace and security; and
 - (ii) prohibits transactions with the enterprise or would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.

ARTICLE 34

FORMAL REQUIREMENTS

1. Notwithstanding Articles 19 and 20, a Party may require an investor of the other Party, or its covered investment, to provide routine information concerning that investment solely for informational or statistical purposes, provided that those requests are reasonable and not unduly burdensome. The Party shall protect confidential or protected information from any disclosure that would prejudice the competitive position of the investor or the covered investment. This paragraph does not prevent a

Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.

2. For greater certainty, a Party may require an investor of the other Party, or its covered investment, to provide information relating to the effects of the covered investment on climate change, including any effects that mitigate, adapt to or exacerbate climate change.

OBLIGATIONS OF INVESTORS AND INVESTMENTS

ARTICLE 35

PLANNING, IMPLEMENTING AND REPORTING

1. Each investment shall be subject to an environmental impact assessment before deciding to commence the investment. Environmental impact assessments shall comply with the criteria set forth in Article 27. The environmental impact assessment shall be communicated to the Party in which the investment is proposed to be made in a timely manner so as to allow that Party to assess fully the proposed investment, including its potential impact with respect to climate change. The investors in the proposed investment shall be responsible for ensuring the environmental impact assessment is conducted properly and in a timely manner.
2. Prior to commencing an investment, a compliance program in material compliance with ISO 37001 shall be in place. The compliance program shall be fully implemented throughout the course of the investment, including with respect to anti-corruption and any environmental remediation occasioned by the investment.
3. Prior to commencing an investment, an environmental management plan, including with respect to climate change, should be in place; and that plan should be implemented fully throughout the life of the investment, including during any environmental remediation at the end of the project.
4. Investments shall take all steps necessary to obtain a social license with respect to their activities.
5. Failure to comply with paragraphs 1 to 4 of this Article shall result in denial of benefits under this Agreement and in any fines or penalties that may be applicable under the Party's domestic law.

6. Investments shall report to the government of the host country on a bi-annual basis the impacts of the investment related to climate change. Material misstatement or misrepresentation shall be dealt with in accordance with local law and shall also result in limiting damages for any claim with respect to that investment to the actual value received by the host country from the investment.

ARTICLE 36

COMPLIANCE WITH DOMESTIC LAW AND INTERNATIONAL SAFEGUARDS

1. Investments shall comply with the Party's applicable law.
2. Investments shall be in material compliance with either the World Bank Environmental and Social Standards or the IFC Performance Standards.

ARTICLE 37

COUNTERCLAIMS AND OFFSETS

1. A Party may initiate a counterclaim against the Investor or Investment for a breach of the obligations set out under Article 35 (Planning, Implementing and Reporting) and Article 36 (Compliance with Domestic Law and International Safeguards), and may seek as a remedy suitable declaratory relief, enforcement action or monetary compensation.
2. In assessing the monetary compensation to be paid to a Party under this Article, the tribunal may take into consideration the following:
 - (a) whether the breach justifies an award of damages; and
 - (b) whether that Party has taken steps to mitigate its losses.
3. The Parties agree that a counterclaim made in accordance with this Article 37 shall not preclude or operate as a *res judicata* against applicable legal, enforcement or regulatory action in accordance with the law of the host country or in any other proceedings before judicial bodies or institutions of that country.
4. An initiation of a counterclaim by a Party shall not be deemed to be a waiver of that Party's objection to the tribunal's jurisdiction over an investment dispute.

RESOLUTION OF DISPUTES BETWEEN INVESTORS OR AN INVESTMENT AND A PARTY

[DURING THE COURSE OF NEGOTIATING THIS AGREEMENT – THAT IS BEFORE ENTERING INTO IT – THE PROSPECTIVE PARTIES TO THIS AGREEMENT SHALL CHOOSE AMONG THREE OPTIONS REGARDING DISPUTE RESOLUTION: (A) DISPUTE SETTLEMENT IN DOMESTIC TRIBUNALS; (B) THREE-ARBITRATOR INVESTOR-STATE DISPUTE SETTLEMENT, TOGETHER WITH A TRANSPARENCY REQUIREMENT; AND (C) A STANDING INVESTMENT COURT, WHICH ALSO EMBODIES A TRANSPARENCY REQUIREMENT. THE HEADINGS FOR THOSE THREE OPTIONS ARE PROVIDED BELOW, TOGETHER WITH A PLACEHOLDER ARTICLE INDICATING THAT THE ACTUAL PROVISIONS RELATING TO EACH OPTION ARE PROVIDED IN ANNEXES 38-A, 38-B AND 38-C, RESPECTIVELY. FOR ADDED CLARITY, THE AGREEMENT AS ENTERED INTO WILL CONTAIN ONLY ONE OF THE THREE OPTIONS. ONCE THAT DECISION IS MADE, THE PROVISIONS IN THE ANNEX MAY BE ADDED TO THE TEXT OF THIS AGREEMENT, AND ARTICLE NUMBERS 37 AND FOLLOWING CAN BE ADJUSTED ACCORDINGLY.]

ARTICLE 38A

OPTION A: DISPUTE SETTLEMENT IN DOMESTIC TRIBUNALS

THE DETAILS OF THIS OPTION ARE PROVIDED IN ANEX 38-A.

ARTICLE 38B

OPTION B: THREE-ARBITRATOR INVESTOR-STATE DISPUTE SETTLEMENT

THE DETAILS OF THIS OPTION ARE PROVIDED IN ANEX 38-B.

ARTICLE 38C

OPTION C: STANDING INVESTMENT COURT

THE DETAILS OF THIS OPTION ARE PROVIDED IN ANEX 38-C.

DISPUTES BETWEEN PARTIES

ARTICLE 39

DISPUTES BETWEEN PARTIES

1. Any dispute between the Parties concerning the interpretation of this Treaty, that is not resolved through consultations or other diplomatic channels, shall be submitted on the request of either Party for a binding decision or award by a tribunal in accordance with applicable rules of international law. The UNCITRAL Rules on Transparency in Treaty-Based Investment Disputes shall apply. In the absence of an agreement by the Parties to the contrary, the UNCITRAL Arbitration Rules shall govern, except as modified by the Parties or this Treaty. The Code of Conduct in Annex 38-B-1/38-C-1 shall apply.
2. Unless the Parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each Party and the third, who shall be the presiding arbitrator, appointed by agreement of the Parties. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Article, the Secretary-General of ICSID, on the request of either Party, shall appoint, in her or his discretion, the arbitrator or arbitrators not yet appointed. Arbitrators shall have expertise in international law and a basic familiarity with investment law, climate change law, and sustainable development law.
3. Expenses incurred by the arbitrators, and other costs of the proceedings, shall be paid for equally by the Parties. However, the tribunal may, in its discretion, direct that a higher proportion of with the costs be paid by one of the Parties.

FINAL CLAUSES

ARTICLE 40

COMMITTEE ON INVESTMENT

1. The Committee on Investment shall consist of three members appointed by each party and shall provide a forum for the Parties to consult on issues related to this Agreement, including:
 - (a) difficulties which may arise in the implementation of this Agreement;
 - (b) possible improvements of this Agreement, in particular in the light of experience and developments in other international *fora* and under the Parties' other agreements;

(c) possible improvements in the code of conduct for [arbitrators deciding disputes arising out of this Agreement under Article 38B] [Members of the Tribunal under Article 38C];

(d) any other matters referred to as provided in this Agreement.

2. The Committee on Investment may, on agreement of the Parties, and after completion of their respective internal requirements and procedures:

(a) recommend to Parties the adoption of interpretations of this Agreement;

(b) adopt and amend rules supplementing the applicable dispute settlement rules. These rules and amendments are binding on the [arbitrators deciding disputes arising out of the Agreement] [Tribunal established under this Agreement];

(c) adopt rules for mediation for use by disputing parties; [and]

(d) recommend to the Parties the adoption of any further elements of the fair and equitable treatment obligation pursuant to 21[.] [; and]

[(e) if OPTION C IS CHOSEN FOR SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A PARTY: make recommendations to the Parties on the functioning of the Appellate Tribunal.]

ARTICLE 41

ENTRY INTO FORCE

1. The Parties shall approve this Agreement in accordance with their respective internal requirements and procedures.
2. This Agreement shall enter into force on the first day of the second month following the date the Parties exchange written notifications certifying that they have completed their respective internal requirements and procedures or on such other date as the Parties may agree.

ARTICLE 42

WITHDRAWAL AND TERMINATION

1. A Party may denounce this Agreement by giving written notice of termination to the other Party's lead representative on the Committee on Investment. This Agreement shall be terminated 180 days after the date of that notice.
2. Notwithstanding paragraph 1, in the event that this Agreement is terminated, the provisions of this Agreement shall continue to be effective for a period of 10 years after the date of termination of this Agreement in respect of investments made before that date.

IN WITNESS WHEREOF the undersigned, duly authorized to this effect, have signed this Agreement.

DONE in duplicate at [city] this [number] day of [month, year], in the ____ and ____ languages, each text being equally authentic.

FOR THE GOVERNMENT OF [Country]:

FOR THE GOVERNMENT OF [Country]:

ANNEXES

ANNEX 3

Public debt

1. For the purposes of this Annex:

negotiated restructuring means the restructuring or rescheduling of debt of a Party that has been effected through

- (a) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or
- (b) a debt exchange or other similar process in which the holders of no less than 75 per cent of the aggregate principal amount of the outstanding debt subject to restructuring have consented to such debt exchange or other process; and

governing law of a debt instrument means a jurisdiction's laws applicable to that debt instrument.

2. No claim that a restructuring of debt of a Party breaches an obligation under Articles 18 through 25 may be submitted, or if already submitted continue, under Article 38 if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 19 or 20.
3. An investor of a Party may not submit a claim under Article 38 that a restructuring of debt of a Party breaches an obligation under Articles 18 through 25 (other than Article 19 or 20)¹ unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article 38-C-2 of Annex 38-C.
4. For greater certainty, **debt of a Party** means a debt instrument of any level of government of a Party.

¹ For greater certainty, mere differences in treatment accorded by a Party to certain investors or investments on the basis of legitimate policy objectives in the context of a debt crisis or threat thereof, including those differences in treatment resulting from eligibility for debt restructuring, do not amount to a breach of Article 19 or 20.

ANNEX 22-A

Expropriation

The Parties confirm their shared understanding that:

1. Expropriation may be direct or indirect:
 - (a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
 - (b) indirect expropriation occurs if a measure or series of measures of a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.
2. The determination of whether a measure or series of measures of a Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that takes into consideration, among other factors:
 - (a) 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.
4. For greater certainty, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations.

ANNEX 22-B

Joint declaration concerning Article 22.7

Mindful that the Tribunal for the resolution of investment disputes between investors and states is meant to enforce the obligations referred to in Article 38, and is not an appeal

mechanism for the decisions of domestic courts, the Parties recall that the domestic courts of each Party are responsible for the determination of the existence and validity of intellectual property rights. The Parties further recognise that each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement regarding intellectual property within their own legal system and practice. The Parties agree to review the relation between intellectual property rights and investment disciplines within three years after entry into force of this Agreement or at the request of a Party. Further to this review and to the extent required, the Parties may issue binding interpretations to ensure the proper interpretation of the scope of investment protection under this Agreement in accordance with the provisions of Article 38-C-13.3 of Annex 38-C.

ANNEX 32.5/33

Joint declaration on Articles 32.5 and 33

With respect to Articles 32.5 (National security) and 33 (Denial of benefits), the Parties confirm their understanding that measures that are "related to the maintenance of international peace and security" include the protection of human rights.

ANNEX 38-A: OPTION A

ARTICLE 38-A-1

RESOLUTION OF DISPUTES BETWEEN INVESTORS AND A PARTY

1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.
2. If the dispute is not resolved through consultation and negotiation, it shall be decided in the courts of the respondent, unless the disputing parties decide otherwise.
3. Disputes in the courts of a Party arising under this Agreement shall be decided expeditiously in accordance with due process and equal protection.

ANNEX 38-B: OPTION B

RESOLUTION OF DISPUTES BETWEEN INVESTORS AND A PARTY

Article 38-B-1: Consultation and Negotiation

1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.
2. The claimant shall deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue.
3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

Article 38-B-2: Submission of a Claim to Arbitration

1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 38-B-1.2 (Consultation and Negotiation):
 - (a) the claimant, on its own behalf, may submit to arbitration hereunder a claim:
 - (i) that the respondent has breached:
 - (A) an obligation under this agreement;
 - (B) an investment authorisation; or
 - (C) an investment agreement; and
 - (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and/or
 - (b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration a claim:
 - (i) that the respondent has breached:
 - (A) an obligation under this Agreement;

(B) an investment authorisation; or

(C) an investment agreement; and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. When the claimant submits a claim pursuant to paragraph 1(a)(i)(B), 1(a)(i)(C), 1(b)(i)(B) or 1(b)(i)(C), the respondent may make a counterclaim in connection with the factual and legal basis of the claim or rely on a claim for the purpose of a set off against the claimant.
3. At least 90 days before submitting any claim to arbitration, the claimant shall deliver to the respondent a written notice of its intention to submit a claim to arbitration (notice of intent). The notice shall specify:
 - (a) the name and address of the claimant and, if a claim is submitted on behalf of an enterprise, the name, address and place of incorporation of the enterprise;
 - (b) for each claim, the provision of this Agreement, investment authorisation or investment agreement alleged to have been breached and any other relevant provisions;
 - (c) the legal and factual basis for each claim; and
 - (d) the relief sought and the approximate amount of damages claimed.
4. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:
 - (a) the ICSID Convention and the *ICSID Rules of Procedure for Arbitration Proceedings*, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;
 - (b) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;
 - (c) the UNCITRAL Arbitration Rules;

- (d) the SCC Arbitration Rules; or
 - (e) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.
5. A claim shall be deemed submitted to arbitration hereunder when the claimant's notice of or request for arbitration (notice of arbitration):
- (a) referred to in the ICSID Convention is received by the Secretary-General;
 - (b) referred to in the ICSID Additional Facility Rules is received by the Secretary-General;
 - (c) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or
 - (d) referred to in the SCC Arbitration Rules is received by the SCC;
 - (e) referred to under any arbitral institution or arbitration rules selected under paragraph 4(e) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration hereunder on the date of its receipt under the applicable arbitration rules.

6. The arbitration rules applicable under paragraph 4 that are in effect on the date the claim or claims were submitted to arbitration shall govern the arbitration except to the extent modified by this Agreement.
7. The claimant shall provide with the notice of arbitration:
- (a) the name of the arbitrator that the claimant appoints; or
 - (b) the claimant's written consent for the administering authority to appoint that arbitrator.

Article 38-B-3: Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with this Agreement.
2. The consent under paragraph 1 and the submission of a claim to arbitration hereunder shall be deemed to satisfy the requirements of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article II of the New York Convention for an “agreement in writing”; and

(c) Article I of the Inter-American Convention for an “agreement”.

Article 38-B-4: Conditions and Limitations on Consent of Each Party

1. No claim shall be submitted to arbitration hereunder if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 38-B-2.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 38-B-2.1(a)) or the enterprise (for claims brought under Article 38-B-2.1(b)) has incurred loss or damage.

2. No claim shall be submitted to arbitration hereunder unless:

(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and

[(option b) the notice of arbitration is accompanied:

(i) for claims submitted to arbitration under Article 38-B-2.1(a) (Submission of a Claim to Arbitration), by the claimant’s written waiver; and

(ii) for claims submitted to arbitration under Article 38-B-2.1(b)(Submission of a Claim to Arbitration), by the claimant’s and the enterprise’s written waivers,

of any right to initiate or continue before any court or administrative tribunal under the law of a Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 38-B-2 (Submission of a Claim to Arbitration).] [OR]

[(option c) the claimant has exhausted local remedies unless such exhaustion would be futile.]

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 38-B-2.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 38-B-2.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant’s or the enterprise’s rights and interests during the pendency of the arbitration.

Article 38-B-5: Selection of Arbitrators

1. Unless the disputing parties agree otherwise, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The ICSID Secretary-General shall serve as appointing authority for an arbitration hereunder.
3. If a tribunal has not been constituted within a period of 75 days after the date that a claim is submitted to arbitration hereunder, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Secretary-General shall not appoint a national of either the respondent or the Party of the claimant as the presiding arbitrator unless the disputing parties agree otherwise.
4. For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:
 - (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
 - (b) a claimant referred to in Article 9.18.1(a) (Submission of a Claim to Arbitration) may submit a claim to arbitration hereunder, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and
 - (c) a claimant referred to in Article 38-B-2.1(b) (Submission of a Claim to Arbitration) may submit a claim to arbitration hereunder, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.
5. In the appointment of arbitrators to a tribunal for claims submitted under Article 38-B-2.1(a)(i)(B) (Submission of a Claim to Arbitration), Article 38-B-2.1(b)(i)(B), Article 38-B-2.1(a)(i)(C) or Article 38-B-2.1(b)(i)(C), each disputing party shall take into account the expertise or relevant experience of particular candidates with respect to the relevant governing law under Article 38-B-8.2 (Governing Law). In addition, arbitrators shall have expertise in public international law and a basic familiarity with investment law, climate change law, and sustainable development. If the parties fail to agree on the appointment of the presiding arbitrator, the Secretary-General shall also take into account the expertise or relevant experience of particular candidates with respect to the relevant governing law under Article 38-B-8.2.

6. The Code of Conduct in Annex 38-A-B-1/38-C-1 shall apply to the arbitration.

Article 38-B-6: Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 38-B-2.4 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.
2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.
3. After consultation with the disputing parties, the tribunal may accept and consider written *amicus curiae* submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.
4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 38-B-13 (Awards) or that a claim is manifestly without legal merit.
 - (a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.
 - (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.

- (c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 38-B-13 (Awards), the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.
- (d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.
5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.
6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.
7. For greater certainty, if an investor of a Party submits a claim hereunder, including a claim alleging that a Party breached Article 9.6 (Minimum Standard of Treatment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.
8. A respondent may not assert as a defence, counterclaim, right of set-off or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.
9. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party

or to protect the tribunal's jurisdiction. A tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 9.18 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.

10. In any arbitration conducted hereunder, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.
11. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 9.28 (Awards) should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 38-B-7 (Transparency of Arbitral Proceedings).

Article 38-B-7: Transparency of Arbitral Proceedings

1. The UNCITRAL Rules on Transparency shall apply to arbitrations under this Agreement.
2. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:
 - (a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
 - (b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;
 - (c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and
 - (d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal

determines that the information was not properly designated, the disputing party that submitted the information may:

- (i) withdraw all or part of its submission containing that information; or
- (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).

In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.

- 5. Nothing herein requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavour to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.

Article 38-B-8: Governing Law

- 1. Subject to paragraph 3, when a claim is submitted under Article 38-B-2.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 38-B-2.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
- 2. Subject to paragraph 3 and the other provisions hereof, when a claim is submitted under Article 38-B-2.1(a)(i)(B) (Submission of a Claim to Arbitration), Article 38-B-2.1(a)(i)(C), Article 38-B-2.1(b)(i)(B) or Article 38-B-2.1(b)(i)(C), the tribunal shall apply:
 - (a) the rules of law applicable to the pertinent investment authorisation or specified in the pertinent investment authorisation or investment agreement, or as the disputing parties may agree otherwise; or
 - (b) if, in the pertinent investment agreement the rules of law have not been specified or otherwise agreed:
 - (i) the law of the respondent, including its rules on the conflict of laws; and
 - (ii) such rules of international law as may be applicable.

3. A decision of the Commission on Investment on the interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

Article 38-B-9: Third Party Funding

1. Where there is third party funding, the disputing party benefiting from it shall disclose to the other disputing party and to the Tribunal the name and address of the third party funder.
2. The disclosure shall be made at the time of the submission of a claim, or, if the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.
3. The tribunal may order the disclosure of the funding agreement based on the circumstances.
4. The Tribunal may order the party receiving third party funding to make a payment for security of costs depending on the circumstances. For the avoidance of doubt, the Tribunal may also make orders for security for costs in other circumstances if it deems it necessary.

Article 38-B-10: Interpretation of Annexes

1. If a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision on its interpretation under Article 27.2.2(f) (Functions of the Commission) to the tribunal within 90 days of delivery of the request.
2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 90 days, the tribunal shall decide the issue.

Article 38-B-11: Expert Reports

Without prejudice to the appointment of other kinds of experts when authorised by the applicable arbitration rules, a tribunal, on request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions that the disputing parties may agree.

Article 38-B-12: Consolidation

1. If two or more claims have been submitted separately to arbitration under Article 38-B-2.1 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.
2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:
 - (a) the names and addresses of all the disputing parties sought to be covered by the order;
 - (b) the nature of the order sought; and
 - (c) the grounds on which the order is sought.
3. Unless the Secretary-General finds within a period of 30 days after the date of receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.
4. Unless all the disputing parties sought to be covered by the order agree otherwise, a tribunal established under this Article shall comprise three arbitrators:
 - (a) one arbitrator appointed by agreement of the claimants;
 - (b) one arbitrator appointed by the respondent; and
 - (c) the presiding arbitrator appointed by the Secretary-General, provided that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.
5. If, within a period of 60 days after the date when the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.
6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 38-B-2.1 (Submission of a Claim to Arbitration) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
 - (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
 - (c) instruct a tribunal previously established under Article 9.21 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:
 - (i) that tribunal, on request of a claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and
 - (ii) that tribunal shall decide whether a prior hearing shall be repeated.
7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 38-B-2.1 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6. The request shall specify:
- (a) the name and address of the claimant;
 - (b) the nature of the order sought; and
 - (c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified hereby.
9. A tribunal established under Article 38-B-5 (Selection of Arbitrators) shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.
10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 38-B-5 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 38-B-13: Awards

1. When a tribunal makes a final award, the tribunal may award, separately or in combination, only:
 - (a) monetary damages and any applicable interest; and
 - (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.
2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 38-B-2.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.
3. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding, and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance herewith and the applicable arbitration rules.
4. For greater certainty, for claims alleging the breach of an obligation with respect to an attempt to make an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award to the respondent reasonable costs and attorney's fees.
5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 38-B-2.1(b) (Submission of a Claim to Arbitration) and an award is made in favour of the enterprise:
 - (a) an award of restitution of property shall provide that restitution be made to the enterprise;
 - (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
 - (c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.
6. A tribunal shall not award punitive damages.
7. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

8. Subject to paragraph 8 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
9. A disputing party shall not seek enforcement of a final award until:
 - (a) in the case of a final award made under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) revision or annulment proceedings have been completed; and
 - (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, the SCC Arbitration Rules or the rules selected pursuant to Article 38-B-2.4(e) (Submission of a Claim to Arbitration):
 - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or
 - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.
10. Each Party shall provide for the enforcement of an award in its territory.
11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 28.7 (Establishment of a Panel). The requesting Party may seek in those proceedings:
 - (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
 - (b) in accordance with Article 28.17 (Initial Report), a recommendation that the respondent abide by or comply with the final award.
12. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 11.
13. A claim that is submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

Article 38-B-14: Service of Documents

Delivery of notice and other documents to a Party shall be made to the place named for that Party. A Party shall promptly make publicly available and notify the other Parties of any change to the place.

Annex 38-B-1/38-C-1: Code of Conduct in International Arbitration

This Code of Conduct applies in any international dispute resolution mechanisms identified in the Agreement, both in situations of investor-State disputes and State-State disputes.

1. General Duties

At all times, arbitrators shall:

- (a) be independent and impartial;
- (b) avoid impropriety as well as reasonable appearance of impropriety;
- (c) avoid direct and indirect conflicts of interests and avoid the creation of such conflict;
- (d) observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved; and
- (e) at all times act diligently and fairly.

2. Conflict of Interest - Disclosure obligations

1. Prior to confirmation of her or his selection as an arbitrator under this Agreement, a candidate shall disclose any interest, relationship or matter that could reasonably be considered as affecting her or his independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of such interests, relationships and matters. The International Bar Association Guidelines on Conflict of Interest in International Arbitration should guide the disclosure obligations of candidates.
2. Without limiting the generality of the foregoing, candidates shall disclose the following interests, relationships and matters:
 - (a) any financial interest of the candidate:
 - (i) in the proceeding or in its outcome, and
 - (ii) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;

- (b) any financial interest of the candidate's employer, partner, business associate or family member:
 - (i) in the proceeding or in its outcome, and
 - (ii) in an administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves issues that may be decided in the proceeding for which the candidate is under consideration;
 - (c) any past or existing financial, business, professional, family or close social relationship with the interested parties in the proceeding, or their counsel, or such relationship involving a candidate's employer, partner, business associate or family member; and
 - (d) public advocacy or legal or other representation concerning issues closely related to dispute in the proceeding or involving the same matters.
3. A candidate or arbitrator shall communicate matters concerning actual or potential violations of this Code of Conduct to the head of the entity administrating the proceedings for consideration by the Parties.
 4. Once selected, an arbitrator shall continue to make all reasonable efforts to become aware of interests, relationships or matters referred to in this article and shall disclose them. The disclosure obligation is a continuing duty which requires an arbitrator to disclose such interests, relationships or matters that may arise during all stages of the proceeding. The arbitrator shall disclose such interests, relationships or matters promptly, in writing, for consideration by the Parties.

3. Independence and impartiality of arbitrators

1. An arbitrator shall avoid creating an appearance of bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party, or fear of criticism.
2. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of her or his duties.
3. An arbitrator shall not use her or his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence her or him.
4. An arbitrator shall not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.

5. An arbitrator shall avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

4. Disclosure of Prior Arbitral and Other Appointments

In addition to the general disclosure obligations above, arbitrators shall have specific disclosure obligations in relation to the specific dispute at issue. In particular:

1. Arbitrators shall disclose all past and pending arbitral appointments made by any of the parties, their subsidiaries and parent-companies involved in the arbitration.
2. Arbitrators shall disclose all pending appointments made by any of the counsel and law firms involved in the dispute, as well as any appointments made in the prior five years.
3. Arbitrators shall disclose all pending work made as counsel, expert or in any other functions with any of the parties involved in the arbitration, including counsel, law firms, expert companies and financial institutions, as well as the same work made for the same entities in the prior five years.
4. If and only if an arbitrator is bound by a confidentiality agreement in relation to a possibly relevant disclosure requirement, she or he will be permitted to confirm the absence of conflict by signed statement.

5. Duties Before the Appointment

1. Before accepting any appointment, arbitrators shall ensure their availability to resolve the case fully and in a timely manner.
2. Any pre-appointment interview shall be limited to availability and absence of conflicts.
3. If any pre-appointment interview occurs, it shall be fully disclosed to all parties. Minutes shall be taken and shared with all parties.
4. Under no circumstance shall the candidate discuss or be asked to discuss any issues pertaining to jurisdictional, procedural or substantive matters, whether in the abstract or specifically.
5. Negotiation pertaining to fees agreement shall be concluded prior to the appointment and when possible shall be undertaken by the entity administering the proceeding.

6. Duties of Arbitrators during the Appointment

1. Upon selection, an arbitrator shall be available to perform and shall perform her or his duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.
2. An arbitrator shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.
3. An arbitrator shall take all appropriate steps to ensure that her or his assistant and staff are aware of, and *mutatis mutandis* comply with the provisions of this code.
4. An arbitrator shall not engage in *ex parte* contacts concerning the proceeding.
5. Arbitrators shall at all times act with independence, impartiality, integrity and neutrality.
6. Arbitrators shall act fairly, diligently and punctually towards all parties involved.
7. Arbitrators shall act collegially with the best interest of the Parties in mind.

7. Obligations of Former Arbitrators

All former arbitrators shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the arbitration panel. In particular, former arbitrators shall not accept appointment from one of the parties or any person or entity closely connected to any of them, in the subsequent two years from the end of such arbitral proceedings.

8. Confidentiality

1. No arbitrator or former arbitrator shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
2. An arbitrator shall not disclose an arbitration panel ruling or parts thereof prior to its disclosure to the parties.
3. An arbitrator or former arbitrator shall not at any time disclose the deliberations of an arbitration panel, or any member's view.
4. These obligations are applicable *mutatis mutandis* to arbitrators assistants and secretaries.

9. Expenses

1. Each arbitrator shall keep a record and render a final account of the time devoted to the procedure and of her or his expenses as well as the time and expenses of her or his assistant.

Mediators

This Code of Conduct applies, *mutatis mutandis*, to mediators.

ANNEX 38-C: OPTION C

RESOLUTION OF DISPUTES BETWEEN INVESTORS AND A PARTY

Article 38-C-1: Scope of Dispute Settlement

1. An investor of a Party may submit to the Tribunal constituted hereunder a claim that the other Party has breached an obligation under:
 - (a) Articles 19-20, with respect to the expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of its covered investment, or
 - (b) Articles 21-24, where the investor claims to have suffered loss or damage as a result of the alleged breach.
2. Claims under subparagraph 1(a) with respect to the expansion of a covered investment may be submitted only to the extent the measure relates to the existing business operations of a covered investment and the investor has, as a result, incurred loss or damage with respect to the covered investment.
3. For greater certainty, an investor may not submit a claim hereunder if the investment has been made through fraudulent misrepresentation, concealment, or conduct amounting to an abuse of process.
4. A claim with respect to restructuring of debt issued by a Party may only be submitted hereunder in accordance with Annex 3.
5. The Tribunal constituted hereunder shall not decide claims that fall outside of the scope hereof.

Article 38-C-2: Consultations

1. A dispute should as far as possible be settled amicably. Such a settlement may be agreed at any time, including after the claim has been submitted pursuant to Article 38-C-5. Unless the disputing parties agree to a longer period, consultations shall be held within 60 days of the submission of the request for consultations pursuant to paragraph 4.

2. Unless the disputing parties agree otherwise, the place of consultation shall be the capital city of the respondent State in question or its governmental capital in the event a union is named as respondent.
3. The disputing parties may hold the consultations through videoconference or other means where appropriate, such as in the case where the investor is a small or medium-sized enterprise.
4. The investor shall submit to the other Party a request for consultations setting out:
 - (a) the name and address of the investor and, if such request is submitted on behalf of a locally established enterprise, the name, address and place of incorporation of the locally established enterprise;
 - (b) if there is more than one investor, the name and address of each investor and, if there is more than one locally established enterprise, the name, address and place of incorporation of each locally established enterprise;
 - (c) the provisions of this Agreement alleged to have been breached;
 - (d) the legal and the factual basis for the claim, including the measures at issue; and
 - (e) the relief sought and the estimated amount of damages claimed.

The request for consultations shall contain evidence establishing that the investor is an investor of the other Party and that it owns or controls the investment including, if applicable, that it owns or controls the locally established enterprise on whose behalf the request is submitted.

5. The requirements of the request for consultations set out in paragraph 4 shall be met with sufficient specificity to allow the respondent to effectively engage in consultations and to prepare its defence.
6. A request for consultations must be submitted within:
 - (a) three years after the date on which the investor or, as applicable, the locally established enterprise, first acquired or should have first acquired, knowledge of the alleged breach and knowledge that the investor or, as applicable, the locally established enterprise, has incurred loss or damage thereby; or
 - (b) two years after an investor or, as applicable, the locally established enterprise, ceases to pursue claims or proceedings before a tribunal or court under the law of a Party, or when such proceedings have otherwise ended and, in any event, no later than 10 years after the date on which the investor or, as applicable, the locally established enterprise, first acquired or should have first acquired knowledge of the

alleged breach and knowledge that the investor has incurred loss or damage thereby.

7. In the event that the investor has not submitted a claim pursuant to Article 38-C-5 within 18 months of submitting the request for consultations, the investor is deemed to have withdrawn its request for consultations and, if applicable, its notice requesting a determination of the respondent, and shall not submit a claim hereunder with respect to the same measures. This period may be extended by agreement of the disputing parties.

Article 38-C-3: Mediation

1. The disputing parties may at any time agree to have recourse to mediation.
2. Recourse to mediation is without prejudice to the legal position or rights of either disputing party under this Chapter and is governed by the rules agreed to by the disputing parties, including, if available, the rules for mediation adopted by the Committee on Services and Investment pursuant to Article 38-C-26.3(c).
3. The mediator is appointed by agreement of the disputing parties. The disputing parties may also request that the Secretary General of SCC appoint the mediator.
4. The disputing parties shall endeavour to reach a resolution of the dispute within 60 days from the appointment of the mediator.
5. If the disputing parties agree to have recourse to mediation, Articles 38-C-2.6 and 38-C-2.8 shall not apply from the date on which the disputing parties agreed to have recourse to mediation to the date on which either disputing party decides to terminate the mediation. A decision by a disputing party to terminate the mediation shall be transmitted by way of a letter to the mediator and the other disputing party.

Article 38-C-4: Procedural and other requirements for the submission of a claim to the Tribunal

1. An investor may only submit a claim pursuant to Article 38-C-5 if the investor:
 - (a) delivers to the respondent, with the submission of a claim, its consent to the settlement of the dispute by the Tribunal in accordance with the procedures set out herein;

- (b) allows at least 180 days to elapse from the submission of the request for consultations and, if applicable, at least 90 days to elapse from the submission of the notice requesting a determination of the respondent;
 - (c) has fulfilled the requirements of the notice requesting a determination of the respondent;
 - (d) has fulfilled the requirements related to the request for consultations;
 - (e) does not identify a measure in its claim that was not identified in its request for consultations;
 - (f) withdraws or discontinues any existing proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim; and
 - (g) waives its right to initiate any claim or proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim.
2. If the claim submitted pursuant to Article 38-C-5 is for loss or damage to a locally established enterprise or to an interest in a locally established enterprise that the investor owns or controls directly or indirectly, the requirements in subparagraphs 1(f) and (g) apply both to the investor and the locally established enterprise.
 3. The requirements of subparagraphs 1(f) and (g) and paragraph 2 do not apply in respect of a locally established enterprise if the respondent or the investor's host state has deprived the investor of control of the locally established enterprise, or has otherwise prevented the locally established enterprise from fulfilling those requirements.
 4. Upon request of the respondent, the Tribunal shall decline jurisdiction if the investor or, as applicable, the locally established enterprise fails to fulfil any of the requirements of paragraphs 1 and 2.
 5. The waiver provided pursuant to subparagraph 1(g) or paragraph 2 as applicable shall cease to apply:
 - (a) if the Tribunal rejects the claim on the basis of a failure to meet the requirements of paragraph 1 or 2 or on any other procedural or jurisdictional grounds;
 - (b) if the Tribunal dismisses the claim pursuant to Article 38-C-14 or Article 38-C-15; or
 - (c) if the investor withdraws its claim, in conformity with the applicable rules under Article 38-C-5.2, within 12 months of the constitution of the division of the Tribunal.

Article 38-C-5: Submission of a claim to the Tribunal

1. If a dispute has not been resolved through consultations, a claim may be submitted hereunder by:
 - (a) an investor of a Party on its own behalf; or
 - (b) an investor of a Party, on behalf of a locally established enterprise which it owns or controls directly or indirectly.
2. A claim may be submitted under the following rules:
 - (a) the ICSID Convention and Rules of Procedure for Arbitration Proceedings;
 - (b) the ICSID Additional Facility Rules if the conditions for proceedings pursuant to paragraph (a) do not apply;
 - (c) the UNCITRAL Arbitration Rules;
 - (d) the SCC Arbitration Rules; or
 - (e) any other rules on agreement of the disputing parties.
3. In the event that the investor proposes rules pursuant to subparagraph 2(d), the respondent shall reply to the investor's proposal within 20 days of receipt. If the disputing parties have not agreed on such rules within 30 days of receipt, the investor may submit a claim under the rules provided for in subparagraph 2(a), (b), (c) or (d).
4. For greater certainty, a claim submitted under subparagraph 1(b) shall satisfy the requirements of Article 25(1) of the ICSID Convention.
5. The investor may, when submitting its claim, propose that a sole Member of the Tribunal should hear the claim. The respondent shall give sympathetic consideration to that request, in particular if the investor is a small or medium sized enterprise or the compensation or damages claimed are relatively low. The investor may also request an expedited procedure under the SCC Arbitration Rules.
6. The rules applicable under paragraph 2 are those that are in effect on the date that the claim or claims are submitted to the Tribunal hereunder, subject to the specific rules set out herein and supplemented by rules adopted pursuant to Article 38-C-26.3(b).
7. A claim is submitted for dispute settlement hereunder when:

- (a) the request under Article 36(1) of the ICSID Convention is received by the Secretary General of ICSID;
 - (b) the request under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretariat of ICSID;
 - (c) the notice under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent;
 - (d) the request under Article 6 is received by the SCC Secretariat; or
 - (e) the request or notice initiating proceedings is received by the respondent in accordance with the rules agreed upon pursuant to subparagraph 2(e).
8. Each Party shall notify the other Party of the place of delivery of notices and other documents by the investors pursuant hereto. Each Party shall ensure this information is made publicly available.

Article 38-C-6: Proceeding under another international agreement

Where a claim is brought pursuant hereto and another international agreement and:

- (a) there is a potential for overlapping compensation; or
- (b) the other international claim could have a significant impact on the resolution of the claim brought pursuant hereto,

the Tribunal shall, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to another international agreement are taken into account in its decision, order or award.

Article 38-C-7: Consent to the settlement of the dispute by the Tribunal

1. The respondent consents to the settlement of the dispute by the Tribunal in accordance with the procedures set out herein.
2. The consent under paragraph 1 and the submission of a claim to the Tribunal hereunder shall satisfy the requirements of:
 - (a) Article 25 of the ICSID Convention and Chapter II of Schedule C 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 38-C-8: Third party funding

1. Where there is third party funding, the disputing party benefiting from it shall disclose to the other disputing party and to the Tribunal the name and address of the third party funder.
2. The disclosure shall be made at the time of the submission of a claim, or, if the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.
3. The tribunal may order the disclosure of the funding agreement based on the circumstances.
4. The Tribunal may order the party receiving third party funding to make a payment for security of costs depending on the circumstances.

Article 38-C-9: Constitution of the Tribunal

1. The Tribunal established hereunder shall decide claims submitted pursuant to Article 38-C-5.
2. The Joint Committee shall, upon the entry into force of this Agreement, appoint fifteen Members of the Tribunal. Five of the Members of the Tribunal shall be nationals of a Member State of [signatory Party], five shall be nationals of [signatory Party] and five shall be nationals of third countries.
3. The Joint Committee may decide to increase or to decrease the number of the Members of the Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.
4. The Members of the Tribunal shall possess the qualifications required in their respective countries for appointment to judicial office, or be jurists of recognised competence. They shall have demonstrated expertise in public international law and a basic familiarity with investment law, climate change law, and sustainable development. It is also desirable that they have expertise in the resolution of international disputes.
5. The Members of the Tribunal appointed pursuant hereto shall be appointed for a five-year term, renewable once. However, the terms of seven of the 15 persons appointed immediately after the entry into force of this Agreement, to be determined by lot, shall extend to six years. Vacancies shall be filled as they arise. If a party refuses to appoint a member of the tribunal for more than 6 months, the ICSID Secretary General will

appoint an arbitrator to fill that vacancy. A person appointed to replace a Member of the Tribunal whose term of office has not expired shall hold office for the remainder of the predecessor's term. In principle, a Member of the Tribunal serving on a division of the Tribunal when his or her term expires may continue to serve on the division until a final award is issued.

6. The Tribunal shall hear cases in divisions consisting of three Members of the Tribunal, of whom one shall be a national of one Party, one a national of the other Party, and one a national of a third country. The division shall be chaired by the Member of the Tribunal who is a national of a third country.
7. Within 90 days of the submission of a claim pursuant to Article 38-C-5, the President of the Tribunal shall appoint the Members of the Tribunal composing the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of the divisions is random and unpredictable, while giving equal opportunity to all Members of the Tribunal to serve.
8. The President and Vice-President of the Tribunal shall be responsible for organisational issues and shall be appointed for a two-year term and shall be drawn by lot from among the Members of the Tribunal who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the Chair of the Committee on Investment. The Vice-President shall replace the President when the President is unavailable.
9. Notwithstanding paragraph 6, the disputing parties may agree that a case be heard by a sole Member of the Tribunal to be appointed at random from the third country nationals. The respondent shall give sympathetic consideration to a request from the claimant to have the case heard by a sole Member of the Tribunal, in particular where the claimant is a small or medium-sized enterprise or the compensation or damages claimed are relatively low. Such a request shall be made before the constitution of the division of the Tribunal.
10. The Tribunal may draw up its own working procedures.
11. The Members of the Tribunal shall ensure that they are available and able to perform the functions set out under this agreement.
12. In order to ensure their availability, the Members of the Tribunal shall be paid a monthly retainer fee to be determined by the Committee on Investment.
13. The fees referred to in paragraph 12 shall be paid equally by both Parties into an account managed by the ICSID Secretariat. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears by a Party shall remain payable, with appropriate interest.

14. Unless the Joint Committee adopts a decision pursuant to paragraph 15, the amount of the fees and expenses of the Members of the Tribunal on a division constituted to hear a claim, other than the fees referred to in paragraph 12, shall be those determined pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 38-C-21.5.
15. The Joint Committee may, by decision, transform the retainer fee and other fees and expenses into a regular salary, and decide applicable modalities and conditions.
16. The ICSID Secretariat shall act as Secretariat for the Tribunal and provide it with appropriate support.
17. If the Joint Committee has not made the appointments pursuant to paragraph 2 within 90 days from the date that a claim is submitted for dispute settlement, the Secretary General of ICSID shall, at the request of either disputing party appoint a division consisting of three Members of the Tribunal, unless the disputing parties have agreed that the case is to be heard by a sole Member of the Tribunal. The Secretary General of ICSID shall make the appointment by random selection from the existing nominations. The Secretary-General of ICSID may not appoint as chair a national of either Party unless the disputing parties agree otherwise.

Article 38-C-10: Appellate Tribunal

1. An Appellate Tribunal is hereby established to review awards rendered hereunder.
2. The Appellate Tribunal may uphold, modify or reverse the Tribunal's award based on:
 - (a) errors in the application or interpretation of applicable law;
 - (b) manifest errors in the appreciation of the facts, including the appreciation of relevant domestic law;
 - (c) the grounds set out in Article 52(1) (a) through (e) of the ICSID Convention, in so far as they are not covered by paragraphs (a) and (b).
3. The Members of the Appellate Tribunal shall be appointed by a decision of the Joint Committee at the same time as the decision referred to in paragraph 7.
4. The Members of the Appellate Tribunal shall meet the requirements of Article 38-C-9.4 and comply with Article 38-C-12.
5. The division of the Appellate Tribunal constituted to hear the appeal shall consist of three randomly appointed Members of the Appellate Tribunal.

6. Articles 38-C-18 and 38-C-20 shall apply to the proceedings before the Appellate Tribunal.
7. The Committee on Investment shall promptly adopt a decision setting out the following administrative and organisational matters regarding the functioning of the Appellate Tribunal:
 - (a) administrative support;
 - (b) procedures for the initiation and the conduct of appeals, and procedures for referring issues back to the Tribunal for adjustment of the award, as appropriate;
 - (c) procedures for filling a vacancy on the Appellate Tribunal and on a division of the Appellate Tribunal constituted to hear a case;
 - (d) remuneration of the Members of the Appellate Tribunal;
 - (e) provisions related to the costs of appeals;
 - (f) the number of Members of the Appellate Tribunal; and
 - (g) any other elements it determines to be necessary for the effective functioning of the Appellate Tribunal.
8. The Committee on Services and Investment shall periodically review the functioning of the Appellate Tribunal and may make recommendations to the Joint Committee. The Joint Committee may revise the decision referred to in paragraph 7, if necessary.
9. Upon adoption of the decision referred to in paragraph 7:
 - (a) a disputing party may appeal an award rendered pursuant hereto to the Appellate Tribunal within 90 days after its issuance;
 - (b) a disputing party shall not seek to review, set aside, annul, revise or initiate any other similar procedure as regards an award hereunder;
 - (c) an award rendered pursuant to Article 38-C-21 shall not be considered final and no action for enforcement of an award may be brought until either:
 - (i) 90 days from the issuance of the award by the Tribunal has elapsed and no appeal has been initiated;
 - (ii) an initiated appeal has been rejected or withdrawn; or

- (iii) 90 days have elapsed from an award by the Appellate Tribunal and the Appellate Tribunal has not referred the matter back to the Tribunal;
- (d) a final award by the Appellate Tribunal shall be considered as a final award for the purposes of Article 38-C-23; and
- (e) Article 38-C-23.3 shall not apply.

Article 38-C-11: Establishment of a multilateral investment tribunal and appellate mechanism

The Parties shall pursue with other trading partners the establishment of a multilateral investment tribunal and appellate mechanism for the resolution of investment disputes. Upon establishment of such a multilateral mechanism, the Joint Committee shall adopt a decision providing that investment disputes hereunder will be decided pursuant to the multilateral mechanism and make appropriate transitional arrangements.

Article 38-C-12: Ethics

1. The Members of the Tribunal shall comply with the Code of Conduct in Annex 38-B-1/38-C-1.
2. If a disputing party considers that a Member of the Tribunal has a conflict of interest, it may invite the President of the International Court of Justice to issue a decision on the challenge to the appointment of such Member. Any notice of challenge shall be sent to the President of the International Court of Justice within 15 days of the date on which the composition of the division of the Tribunal has been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.
3. If, within 15 days from the date of the notice of challenge, the challenged Member of the Tribunal has elected not to resign from the division, the President of the International Court of Justice may, after receiving submissions from the disputing parties and after providing the Member of the Tribunal an opportunity to submit any observations, issue a decision on the challenge. The President of the International Court of Justice shall endeavour to issue the decision and to notify the disputing parties and the other Members of the division within 45 days of receipt of the notice of challenge. A vacancy resulting from the disqualification or resignation of a Member of the Tribunal shall be filled promptly.
4. Upon a reasoned recommendation from the President of the Tribunal, or on their joint initiative, the Parties, by decision of the Joint Committee, may remove a Member from

the Tribunal where his or her behaviour is inconsistent with the obligations set out in paragraph 1 and incompatible with his or her continued membership of the Tribunal.

Article 38-C-13: Applicable law and interpretation

1. When rendering its decision, the Tribunal established hereunder shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties.
2. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of a Party. For greater certainty, in determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.
3. Where serious concerns arise as regards matters of interpretation that may affect investment, the Committee on Investment may, pursuant to Article 38-C-26.3(a), recommend to the Committee on Investment the adoption of interpretations of this Agreement. An interpretation adopted by the Committee on Investment shall be binding on the Tribunal established hereunder. The Committee on Investment may decide that an interpretation shall have binding effect from a specific date.

Article 38-C-14: Claims without legal merit

1. The respondent may, no later than 30 days after the constitution of the division of the Tribunal, and in any event before its first session, file an objection that a claim is manifestly without legal merit.
2. An objection shall not be submitted under paragraph 1 if the respondent has filed an objection pursuant to Article 38-C-15.
3. The respondent shall specify as precisely as possible the basis for the objection.
4. On receipt of an objection pursuant to this Article, the Tribunal shall suspend the proceedings on the merits and establish a schedule for considering such an objection consistent with its schedule for considering any other preliminary question.
5. The Tribunal, after giving the disputing parties an opportunity to present their observations, shall at its first session or promptly thereafter, issue a decision or award stating the grounds therefor. In doing so, the Tribunal shall assume the alleged facts to be true.

6. This Article shall be without prejudice to the Tribunal's authority to address other objections as a preliminary question or to the right of the respondent to object, in the course of the proceeding, that a claim lacks legal merit.

Article 38-C-15: Claims unfounded as a matter of law

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at an appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted pursuant to Article 38-C-5 is not a claim for which an award in favour of the claimant may be made hereunder, even if the facts alleged were assumed to be true.
2. An objection under paragraph 1 shall be submitted to the Tribunal no later than the date the Tribunal fixes for the respondent to submit its counter memorial.
3. If an objection has been submitted pursuant to Article 38-C-14, the Tribunal may, taking into account the circumstances of that objection, decline to address, under the procedures set out in this Article, an objection submitted pursuant to paragraph 1.
4. On receipt of an objection under paragraph 1, and, if appropriate, after rendering a decision pursuant to paragraph 3, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.

Article 38-C-16: Interim measures of protection

The Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. The Tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 38-C-5. For the purposes of this Article, an order includes a recommendation.

Article 38-C-17: Discontinuance

If, following the submission of a claim hereunder, the investor fails to take any steps in the proceeding during 180 consecutive days or such period as the disputing parties may agree, the investor is deemed to have withdrawn its claim and to have discontinued the proceeding. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, in an order take note of the discontinuance. After the order has been rendered the authority of the Tribunal shall lapse.

Article 38-C-18: Transparency of proceedings

1. The UNCITRAL Transparency Rules shall apply in connection with proceedings under this Agreement.
2. The request for consultations, the agreement to mediate, the notice of intent to challenge a Member of the Tribunal, the decision on challenge to a Member of the Tribunal and the request for consolidation shall be included in the list of documents to be made available to the public under Article 3(1) of the UNCITRAL Transparency Rules.
3. Exhibits shall be included in the list of documents to be made available to the public under Article 3(2) of the UNCITRAL Transparency Rules.
4. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, prior to the constitution of the Tribunal, the Party that is the respondent shall make publicly available in a timely manner relevant documents pursuant to paragraph 2, subject to the redaction of confidential or protected information. Such documents may be made publicly available by communication to the repository.
5. Hearings shall be open to the public. The Tribunal shall determine, in consultation with the disputing parties, the appropriate logistical arrangements to facilitate public access to such hearings. If the Tribunal determines that there is a need to protect confidential or protected information, it shall make the appropriate arrangements to hold in private that part of the hearing requiring such protection.
6. Nothing in this Agreement requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should apply those laws in a manner sensitive to protecting from disclosure information that has been designated as confidential or protected information.

Article 38-C-19: Information sharing

1. A disputing party may disclose to other persons in connection with the proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings hereunder. However, the disputing party shall ensure that those persons protect the confidential or protected information contained in those documents.
2. This Agreement does not prevent a respondent from disclosing to officials of its government such unredacted documents as it considers necessary in the course of proceedings hereunder. However, the respondent shall ensure that those officials protect the confidential or protected information contained in those documents.

Article 38-C-20: Non-disputing Party

1. The respondent shall, within 30 days after receipt or promptly after any dispute concerning confidential or protected information has been resolved, deliver to the nondisputing Party:
 - (a) a request for consultations, a notice requesting a determination of the respondent, a notice of determination of the respondent, a claim submitted pursuant to Article 38-C-5, a request for consolidation, and any other documents that are appended to such documents;
 - (b) on request:
 - (i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;
 - (ii) written submissions made to the Tribunal pursuant to Article 4 of the UNCITRAL Transparency Rules;
 - (iii) minutes or transcripts of hearings of the Tribunal, if available; and
 - (iv) orders, awards and decisions of the Tribunal; and
 - (c) on request and at the cost of the nondisputing Party, all or part of the evidence that has been tendered to the Tribunal, unless the requested evidence is publicly available.
2. The Tribunal shall accept or, after consultation with the disputing parties, may invite, oral or written submissions from the nondisputing Party regarding the interpretation of this Agreement. The nondisputing Party may attend a hearing held hereunder.
3. The Tribunal shall not draw any inference from the absence of a submission pursuant to paragraph 2.
4. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on a submission by the nondisputing Party to this Agreement.

Article 38-C-21: Final award

1. If the Tribunal makes a final award against the respondent, the Tribunal may only award, separately or in combination:
 - (a) monetary damages and any applicable interest;

- (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages representing the fair market value of the property at the time immediately before the expropriation, or impending expropriation became known, whichever is earlier, and any applicable interest in lieu of restitution, determined in a manner consistent with Article 22.
- 2. Subject to paragraphs 1 and 5, if a claim is made under Article 38-C-5.1(b):
 - (a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the locally established enterprise;
 - (b) an award of restitution of property shall provide that restitution be made to the locally established enterprise;
 - (c) an award of costs in favour of the investor shall provide that it is to be made to the investor; and
 - (d) the award shall provide that it is made without prejudice to a right that a person, other than a person which has provided a waiver pursuant to Article 38-C-4, may have in monetary damages or property awarded under a Party's law.
- 3. Monetary damages shall not be greater than the loss suffered by the investor or, as applicable, the locally established enterprise, reduced by any prior damages or compensation already provided. For the calculation of monetary damages, the Tribunal shall also reduce the damages to take into account any restitution of property or repeal or modification of the measure.
- 4. The Tribunal shall not award punitive damages.
- 5. The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the claim. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the claim. If only parts of the claims have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims. The above notwithstanding, the tribunal may take into account actions of the disputing parties and their counsel when allocating costs in the final award.
- 6. The Committee on Investment shall consider supplemental rules aimed at reducing the financial burden on claimants who are natural persons or small and medium-sized

enterprises. Such supplemental rules may, in particular, take into account the financial resources of such claimants and the amount of compensation sought.

7. The Tribunal and the disputing parties shall make every effort to ensure the dispute settlement process is carried out in a timely manner and in accordance with the relevant rules. The Tribunal shall issue its final award within 12 months of the submission of the final round of pleadings, including post-hearing submissions. If the Tribunal requires additional time to issue its final award, it shall provide the disputing parties the reasons for the delay.

Article 38-C-22: Indemnification or other compensation

A respondent shall not assert, and the Tribunal shall not accept a defence, counterclaim, right of setoff, or similar assertion, that an investor or, as applicable, a locally established enterprise, has received or will receive indemnification or other compensation pursuant to an insurance or guarantee contract in respect of all or part of the compensation sought in a dispute initiated hereunder.

Article 38-C-23: Enforcement of awards

1. An award issued hereunder shall be binding between the disputing parties and in respect of that particular case.
2. Subject to paragraph 3, a disputing party shall recognise and comply with an award without delay.
3. A disputing party shall not seek enforcement of a final award until:
 - (a) in the case of a final award issued under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) enforcement of the award has been stayed and revision or annulment proceedings have been completed;
 - (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, the SCC Arbitration Rules, or any other rules applicable pursuant to Article 38-C-5.2(e):
 - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

(ii) enforcement of the award has been stayed and a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

1. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where the execution is sought.
2. A final award issued hereunder is an arbitral award that is deemed to relate to claims arising out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.
3. For greater certainty, if a claim has been submitted pursuant to Article 38-C-5.2(a), a final award issued pursuant hereto shall qualify as an award under Section 6 of the ICSID Convention.

Article 38-C-24: Role of the Parties

1. A Party shall not bring an international claim, in respect of a claim submitted pursuant to Article 38-C-5, unless the other Party has failed to abide by and comply with the award rendered in that dispute.
2. Paragraph 1 shall not exclude the possibility of dispute settlement under Article 39 in respect of a measure of general application even if that measure is alleged to have breached this Agreement as regards a specific investment in respect of which a claim has been submitted pursuant to Article 38-C-5 and is without prejudice to Article 38-C-20.
3. Paragraph 1 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 38-C-25: Consolidation

1. When two or more claims that have been submitted separately pursuant to Article 38-C-5 have a question of law or fact in common and arise out of the same events or circumstances, a disputing party or the disputing parties, jointly, may seek the establishment of a separate division of the Tribunal pursuant to this Article and request that such division issue a consolidation order ("request for consolidation").
2. The disputing party seeking a consolidation order shall first deliver a notice to the disputing parties it seeks to be covered by this order.
3. If the disputing parties notified pursuant to paragraph 2 have reached an agreement on the consolidation order to be sought, they may make a joint request for the establishment of a separate division of the Tribunal and a consolidation order pursuant

to this Article. If the disputing parties notified pursuant to paragraph 2 have not reached agreement on the consolidation order to be sought within 30 days of the notice, a disputing party may make a request for the establishment of a separate division of the Tribunal and a consolidation order pursuant to this Article.

4. The request shall be delivered, in writing, to the President of the Tribunal and to all the disputing parties sought to be covered by the order, and shall specify:
 - (a) the names and addresses of the disputing parties sought to be covered by the order;
 - (b) the claims, or parts thereof, sought to be covered by the order; and
 - (c) the grounds for the order sought.
5. A request for consolidation involving more than one respondent shall require the agreement of all such respondents.
6. The rules applicable to the proceedings under this Article are determined as follows:
 - (a) if all of the claims for which a consolidation order is sought have been submitted to dispute settlement under the same rules pursuant to Article 38-C-5, these rules shall apply;
 - (b) if the claims for which a consolidation order is sought have not been submitted to dispute settlement under the same rules:
 - (i) the investors may collectively agree on the rules pursuant to Article 38-C-5.2; or
 - (ii) if the investors cannot agree on the applicable rules within 30 days of the President of the Tribunal receiving the request for consolidation, the UNCITRAL Arbitration Rules shall apply.
7. The President of the Tribunal shall, after receipt of a consolidation request and in accordance with the requirements of Article 38-C-9.7 constitute a new division (“consolidating division”) of the Tribunal which shall have jurisdiction over some or all of the claims, in whole or in part, which are the subject of the joint consolidation request.
8. If, after hearing the disputing parties, a consolidating division is satisfied that claims submitted pursuant to Article 38-C-5 have a question of law or fact in common and arise out of the same events or circumstances, and consolidation would best serve the interests of fair and efficient resolution of the claims including the interest of consistency of awards, the consolidating division of the Tribunal may, by order, assume jurisdiction over some or all of the claims, in whole or in part.

9. If a consolidating division of the Tribunal has assumed jurisdiction pursuant to paragraph 8, an investor that has submitted a claim pursuant to Article 38-C-5 and whose claim has not been consolidated may make a written request to the Tribunal that it be included in such order provided that the request complies with the requirements set out in paragraph 4. The consolidating division of the Tribunal shall grant such order where it is satisfied that the conditions of paragraph 8 are met and that granting such a request would not unduly burden or unfairly prejudice the disputing parties or unduly disrupt the proceedings. Before consolidating division of the Tribunal issues that order, it shall consult with the disputing parties.
10. On application of a disputing party, a consolidating division of the Tribunal established under this Article, pending its decision under paragraph 8, may order that the proceedings of the division of the Tribunal appointed under Article 38-C-9.7 be stayed unless the latter Tribunal has already adjourned its proceedings.
11. The division of the Tribunal appointed under Article 38-C-9.7 shall cede jurisdiction in relation to the claims, or parts thereof, over which a consolidating division of the Tribunal established under this Article has assumed jurisdiction.
12. The award of a consolidating division of the Tribunal established under this Article in relation to those claims, or parts thereof, over which it has assumed jurisdiction is binding on the division of the Tribunal appointed under Article 38-C-9.7 as regards those claims, or parts thereof.
13. An investor may withdraw a claim hereunder that is subject to consolidation and such claim shall not be resubmitted pursuant to Article 38-C-5. If it does so no later than 15 days after receipt of the notice of consolidation, its earlier submission of the claim shall not prevent the investor's recourse to dispute settlement other than hereunder.
14. At the request of an investor, a consolidating division of the Tribunal may take such measures as it sees fit in order to preserve the confidential or protected information of that investor in relation to other investors. Those measures may include the submission of redacted versions of documents containing confidential or protected information to the other investors or arrangements to hold parts of the hearing in private.

Article 38-C-26: Committee on Services and Investment

1. The Committee on Services and Investment shall provide a forum for the Parties to consult on issues related to this Chapter, including:
 - (a) difficulties which may arise in the implementation of this Chapter;
 - (b) possible improvements of this Chapter, in particular in the light of experience and developments in other international fora and under the Parties' other agreements.

2. The Committee on Services and Investment shall, on agreement of the Parties, and after completion of their respective internal requirements and procedures, adopt a code of conduct for the Members of the Tribunal to be applied in disputes arising out of this Chapter, which may replace or supplement the rules in application, and may address topics including:
 - (a) disclosure obligations;
 - (b) the independence and impartiality of the Members of the Tribunal; and
 - (c) confidentiality.

The Parties shall make best efforts to ensure that the code of conduct is adopted no later than the first day of the provisional application or entry into force of this Agreement, as the case may be, and in any event no later than two years after such date.

3. The Committee Services and Investment may, on agreement of the Parties, and after completion of their respective internal requirements and procedures:
 - (a) recommend to the Joint Committee the adoption of interpretations of this Agreement pursuant to Article 38-C-13.3;
 - (b) adopt and amend rules supplementing the applicable dispute settlement rules, and amend the applicable rules on transparency. These rules and amendments are binding on a Tribunal established hereunder;
 - (c) adopt rules for mediation for use by disputing parties as referred to in Article 38-C-3;
 - (d) recommend to the Joint Committee the adoption of any further elements of the fair and equitable treatment obligation pursuant to Article 21; and
 - (e) make recommendations to the Joint Committee on the functioning of the Appellate Tribunal pursuant to Article 38-C-10.8.