

MODEL TREATY ON PROMOTION AND PROTECTION OF GREEN INVESTMENT

The Government of [Country] and the Government of [Country] (hereinafter the “Contracting Parties”);

declaring the adherence to the UN Sustainable Development Goals and Paris Climate Agreement;

desiring to create favorable conditions for foreign investment which contributes to climate change mitigation and adaptation, including the development of renewable energy;

agreeing that the encouragement and reciprocal protection under international agreements of such investments will be conducive to the stimulation of business activities;

recognizing the State’s right to regulate in the interests of sustainable development, protection of human rights, maintenance of health, labor and environmental standards;

understanding the importance of providing effective means of disputes’ settlement and enforcing rights with respect to investment under national law and through international arbitration;

desiring to achieve these objectives in a manner consistent with international law,

having resolved to conclude the Treaty to promote and protect of investment,

Have agreed as follows:

Article 1: Definitions

For purposes of this Treaty:

(1) **“Area”** means with respect to a state that is a Contracting Party:

(a) the territory under its sovereignty or jurisdiction, it being understood that territory includes land, internal waters and the territorial sea; and

(b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction.

With respect to a Regional Economic Integration Organisation which is a Contracting Party, Area means the Areas of the member states of such Organisation, under the provisions contained in the agreement establishing that Organisation.

(2) **“Climate Change Mitigation and Adaptation Materials, Products and Equipment”** means the items included in Annex I.

(3) **“Contracting Party”** means a state or Regional Economic Integration Organisation which has consented to be bound by this Treaty and for which the Treaty is in force.

(4) **“Covered Investment”** means an Investment of an Investor made in the Area and in accordance with the laws and regulations of another Party, related to or associated with an Economic Activity in the Climate Change Mitigation and Adaptation Sector in existence as of the date of entry into force of this Treaty or established, acquired, or expanded thereafter;

(5) **“Economic Activity in the Climate Change Mitigation and Adaptation Sector”** means an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing or sale of Climate Change Mitigation and Adaptation Materials, Products and Equipment, and includes:

- (a) construction and operation of power generation facilities powered by renewable energy sources;
- (b) deployment of climate-friendly technologies or technologies that mitigate the impact of climate change in agriculture, infrastructure, water management, coastal zones;
- (c) land transportation, distribution, storage and supply of Climate Change Mitigation and Adaptation Materials, Products and Equipment, e.g., by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such activities;
- (d) removal and disposal of wastes from energy related facilities such as power stations, including radioactive wastes from nuclear power stations;
- (e) decommissioning of renewable energy related facilities;
- (f) marketing and sale of, and trade in Climate Change Mitigation and Adaptation Materials, Products and Equipment; and
- (g) research, consulting, planning, management, design activities and other services related to the activities mentioned above and aimed at Improving Climate Change Mitigation and Adaptation Efficiency.

(6) **“Freely Convertible Currency”** means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.

(7) **“Investment Agreement”** means an agreement concerning Investment between an Investor of one Contracting Party and the other Contracting Party, including concession agreement.

(8) **“Investment”** means every kind of asset owned or controlled, directly or indirectly, by an Investor of a Contracting Party, who commits resources with the expectation of gain or profit, and includes:

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
- (d) Intellectual Property and intellectual property rights;
- (e) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Climate Change Mitigation and Adaptation Sector,

however Investment does not include:

- (a) *ad hoc* and short-term commercial contract for the sale of goods or services;

(b) portfolio investments;

(c) an order or judgment entered in a judicial or administrative action.

A change in the form in which assets are Invested does not affect their character as Investments and the term “Investment” includes all Investments, whether existing at or made after the date of entry into force of this Treaty (hereinafter referred to as the “Effective Date”) provided that the Treaty shall only apply to matters affecting such Investments after the Effective Date.

(9) **“Intellectual Property”** includes copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.

(10) **“Investor”** means:

(a) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law. A natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality.

(b) a company or other organisation organised in accordance with the law applicable in that Contracting Party;

(c) a company or other organisation owned or controlled by the Contracting Party unless it is acting as an agent for that Contracting Party or is discharging an essentially governmental function.

(11) **“Making of Investments”** means establishing new Investments, acquiring all or part of existing Investments or moving into different fields of Investment activity.

(12) **“Regional Economic Integration Organisation”** means an organisation constituted by states to which they have transferred competence over certain matters a number of which are governed by this Treaty, including the authority to take decisions binding on them in respect of those matters.

(13) **“Renewable energy sources”** mean drilling, solar, wind, biomass, geothermal, wave, tidal, hydro and other sources that can be generated continuously in nature and are inexhaustible.

(14) **“Returns”** means the amounts derived from or associated with an Investment, irrespective of the form in which they are paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees and payments in kind.

Article 2: Obligations of States in climate change mitigation and adaptation

(1) The Contracting Parties undertake to cooperate in the field of climate change mitigation and adaptation, including by promotion of development of renewable energy sector.

(2) Measures for cooperation may entail coordination of policies necessary for promoting the objectives of this Treaty; exchange of information and experiences relevant for this Treaty; formulation of stable and transparent legal frameworks creating conditions for the development of renewable energy resources; coordination and, where appropriate, harmonization of safety principles and guidelines for renewable energy products and their transport, as well as for energy

installations, at a high level; facilitating the exchange of technology information and knowhow; creating a favorable environment for Investments, including joint venture Investments.

(3) The Contracting Parties undertake to provide under national legislation the regulatory, financial, fiscal and market-based incentives to Investors carrying out Economic Activity in the Climate Change Mitigation and Adaptation Sector and introduce government policies promoting such activities. Such incentives and policy may include:

- (a) introduction feed-in tariffs and premium payments,
- (b) setting electric utility quotas,
- (c) conclusion of net metering agreements,
- (e) introduction of biofuel and heat obligations,
- (g) provision of tradable renewable energy certificate,
- (h) tax credits,
- (i) capital subsidies,
- (j) public investments, loans and grants,
- (k) entitlement to distribution of all or part of generated energy to the Contracting Party electricity grid,
- (l) reducing limitation on the operating hours of energy production facilities,
- (m) liberalization of market, regulatory exemptions granted to Climate Change Mitigation and Adaptation Sector,
- (n) other incentives and policies that the Contracting Parties consider to be effective.

Article 3: Making of Investments

(1) Each Contracting Party undertakes to accord non-discriminatory treatment to Investor(s) of the other Contracting Party during the Making of Investments. Non-discriminated treatment means the treatment no less favourable than that accorded to its own Investors or to Investors of any third state, whichever is the most favourable.

(2) Non-discriminatory treatment of Investors of the other Contracting Party during the Making of Investments shall provide open, stable and predictable entry conditions for Investments, which includes *inter alia* objective, transparent, non-discriminatory licensing or negotiation of Investment Agreements, if applicable under national legislation.

(3) Each Contracting Party has the right to determine in Annex II to this Treaty the cases, when it is entitled to accord differentiated treatment to Investors of the other Contracting Party in comparison to the treatment than that is accorded to its own Investors.

Article 4: National Treatment

(1) Each Contracting Party shall accord to Investors of the other Contracting Party treatment no less favorable than that it accords, in like circumstances, to its own Investors with respect to the management, conduct, operation, and sale or other disposition of investments in its territory.

(2) Each Contracting Party shall accord to Investments treatment no less favorable than that it accords, in like circumstances, to Investments in its territory of its own Investors with respect to the management, conduct, operation, and sale or other disposition of Investments.

Article 5: Most-favored-nation treatment

(1) Each Contracting Party shall accord to Investors of the other Contracting Party treatment no less favorable than that it accords, in like circumstances, to Investors of any third party with respect to the management, conduct, operation, and sale or other disposition of Investments in its territory.

(2) Each Contracting Party shall accord to Investments treatment no less favorable than that it accords, in like circumstances, to Investments in its territory of Investors of any third party with respect to the management, conduct, operation, and sale or other disposition of Investments.

(3) In relation to Investments, any preferential treatment granted by the Contracting State to Investors of any third party and to their Investments, under any existing or future agreements to which the Contracting State is a party shall be extended on a most-favored-nation basis.

(4) The treatment in paragraphs 1, 2 and 3 above shall not apply to:

- (a) Investor-State dispute settlement procedures that are available in other agreements to which Member States are party;
- (b) preferential treatment resulting from membership in a free-trade area or customs union;
- (c) preferential treatment resulting from double taxation treaties.

Article 6: Fair and equitable treatment

(1) Each Contracting Party shall accord to Investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

(2) Fair and equitable treatment includes the following obligations:

- (a) not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world;
- (b) not to engage in manifestly abusive treatment involving continuous, unjustified coercion and harassment;
- (c) not to infringe Investors' legitimate expectations based on Investment-inducing representations, commitments, assurances or promises.

(3) The Contracting States retain the right to introduce changes to its legislation and regulatory framework for Investments, provided that those changes are non-discriminatory and foreseeable.

Article 7: Employment of staff

(1) Investors of either Contracting Party shall be permitted to engage, within the territories of the other Contracting Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice, subject to its laws and regulations relating to the entry, stay and work of natural persons, not including the provisions on employment priority of its nationals, citizens or persons permanently residing in its territory.

(2) No Contracting Party may require an Investor of the other Contracting Party to appoint senior management positions individuals of any particular nationality.

Article 8: Transparency

(1) Each Contracting Party shall, to the extent possible, promptly publish, or otherwise make publicly available, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as international agreements which materially affect the Investments of Investors of the other Contracting Party in the territory of the former Contracting Party.

Article 9: Compensation for losses

(1) An Investor of the Contracting Party which suffers a loss with respect to any Investment in the Area of the other Contracting Party owing to war or other armed conflict, state of national emergency or civil strife shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment which is the most favourable of that which that Contracting Party accords to any other Investor, whether its own Investor or the Investor of any third state.

(2) Notwithstanding paragraph 1, if an Investor of the Contracting Party, in the situations referred to in paragraph 1, suffers a loss in the territory of the other Contracting Party resulting from:

(a) requisitioning of its Investment or part thereof by the latter's forces or authorities; or

(b) destruction of its Investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation, the latter Contracting Party shall provide the Investor restitution, compensation, or both, as appropriate, for such loss.

(3) Any compensation shall be prompt, adequate and effective and paid in accordance with Article 10 *mutatis mutandis*.

Article 10: Expropriation and compensation

(1) Contracting Parties shall not nationalize or expropriate Investments in their territory directly or indirectly or adopt any other measures tantamount or equivalent to nationalization or expropriation of Investments except: (a) in the public interest; (b) on a non-discriminatory basis; (c) in accordance with due process of law; and (d) on payment of prompt, adequate and effective compensation.

(2) For the purposes of the Treaty, the term expropriation means a compulsory compensatory measure carried out by the state for public purposes, as a result of which the Investor is deprived

of its Investment or substantially deprived of its right to own, manage, use or dispose of its Investment.

(3) The compensation shall amount to the fair market value of the Investment expropriated at the time immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the Investment (hereinafter referred to as the "Valuation Date").

(4) Such fair market value shall at the request of the Investor be expressed in a Freely Convertible Currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

Article 11: Right to regulate

(1) Consistent with the right of states to regulate and the customary international law principles on police powers, bona fide regulatory measures taken by the Contracting State that are designed and applied to protect or enhance legitimate public welfare objectives, such as public health protection, safety and the environment, which may arise *inter alia* as a result of the general application of the tax, currency or other legislation of the state, shall not constitute an expropriation.

Article 12: Transfer

(1) The Contracting States shall accord to Investors the right to:

(a) repatriate Investment Returns in a Freely Convertible Currency;

(b) repatriate funds for repayment of loans;

(c) repatriate proceeds from compensation of losses under Article 9 and compensation upon expropriation under Articles 10, and also the liquidation or sale of the whole or part of the Investment including an appreciation or increase of the value of the investment capital;

(d) transfer payments for maintaining or developing the Investment project, such as funds for acquiring raw or auxiliary materials, semi-finished products as well as replacing capital assets.

Article 13: Obligations and responsibilities of Investors

(1) Investor of the Contracting Party is obliged to comply with national laws and regulation of the other Contracting Party both during the Making of Investment and after the Investment is established.

(2) The conduct of Investors may be taken into account while evaluating the standard of protection provided by the Treaty.

(3) The Contracting Parties shall cooperate in encouraging the Investors to observe corporate social responsibility standards.

Article 14: Other obligations

(1) Each Contracting Party shall observe any obligation it has assumed with regard to Investments in its territory of Investors of the other Contracting Party *inter alia* under Investment Agreements.

Article 15: Denial of benefits

(1) The Contracting Party may deny the benefits of this Treaty to an Investor of the other Contracting Party that is an enterprise of such other Contracting Party and to Investments of that Investor if the enterprise has no substantial business activities in the territory of the other Contracting Party and persons of a third party, or of the denying Contracting Party, own or control the enterprise.

Article 16: Entry into force, duration, and termination

(1) This Treaty shall enter into force thirty days after the date the Contracting Parties exchange instruments of ratification. It shall remain in force for a period of 20 years and shall continue in force thereafter unless any of the Contracting Parties notifies the other of its intention to terminate.

(2) This Treaty does not bind either Contracting Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Treaty.

(3) For five years from the date of termination, all other Articles shall continue to apply to Investments established or acquired prior to the date of termination.

Article 17: State-to-state dispute settlement

(1) The Contracting Parties shall endeavor to settle disputes concerning the application or interpretation of this Treaty through diplomatic channels or mediation.

(2) Any dispute between the Contracting Parties concerning the interpretation or application of this Treaty, that is not resolved through diplomatic channels within six months from the date on which either Contracting Party to the dispute requested amicable settlement, shall be submitted on the request of either Contracting Party for arbitration to the Permanent Court of Arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (hereinafter referred to as “UNCITRAL Arbitration Rules”) for a final and binding decision or award.

Article 18: Investor-state dispute settlement

(1) Disputes between a Contracting Party and an Investor of another Contracting Party relating to an alleged breach of an obligation under the Treaty shall, if possible, be settled through consultations or mediation.

(2) If such disputes cannot be settled according to the provisions of paragraph (1), the Investor may choose to submit it for resolution to:

(a) The International Centre for Settlement of Investment Disputes (hereinafter referred to as the “ICSID”), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18

March 1965 (hereinafter referred to as the “ICSID Convention”), if the Contracting Party of the Investor and the other party to the dispute are both parties to the ICSID Convention; or

(b) the International Centre for Settlement of Investment Disputes, established pursuant to the Convention referred to in subparagraph (a)(i), under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (hereinafter referred to as the “Additional Facility Rules”), if the Contracting Party of the Investor or the other party to the dispute, but not both, is a party to the ICSID Convention; or

(c) *ad hoc* arbitration tribunal established under the UNCITRAL Arbitration Rules together with the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration; or

(d) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce; or

(e) any other dispute settlement mechanism that was agreed to by the Contracting Parties.

(3) Subject to paragraph (2) each Contracting Party hereby gives its consent to the submission of a dispute to international arbitration unless the Investor has previously submitted the dispute to the national court of the Contracting Party. The consent of each Contracting Party with respect to subparagraph (a) is subject to other conditions of the ICSID Convention.

(4) An interested non-disputing party may submit a written statement and/or audio-visual or photographic material relevant for the dispute on its own initiative. Such statement and/or audio-visual or photographic material is not to be considered as part of the case file.

Article 19: Number, Appointment and Qualification of Arbitrators

(1) The tribunal, established for the purposes of Article 17 and Article 18, shall comprise three arbitrators, appointed in accordance with applicable arbitration rules.

(2) Where applicable, the appointing authority shall be the Secretary-General of the Permanent Court of Arbitration.

(3) The tribunal may consist only of arbitrators, who possess experience in the settlement of disputes in the energy sector as well as practice law in the sphere of international arbitration at least for seven years prior the appointment.

Article 20: Recognition and Enforcement of the Award

(1) Each Contracting Party shall recognize an award rendered pursuant to this Treaty as binding and enforce the pecuniary obligations imposed by that award within its territory as if it were a final judgment of a court in that Contracting Party.

(2) A party seeking recognition or enforcement in the territory of a Contracting Party shall furnish to a competent court or other authority, which such Contracting Party shall have designated for this purpose, a certified copy of the award.

(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the Contracting Party in whose territory such execution is sought.

Article 21: Governing law

(1) Unless otherwise is specified in this Treaty, when a claim is submitted under Article 17 or 18, the tribunal shall decide the issues in dispute in accordance with this Treaty and applicable rules of international law.

(2) Unless otherwise is specified in this Treaty, when a claim is submitted under Article 14 the tribunal shall apply:

(a) the rules of law specified in the pertinent or Investment Agreement, or as the disputing parties may otherwise agree; or

(b) if the rules of law have not been specified or otherwise agreed, the law of the respondent, including its rules on the conflict of laws, and such rules of international law as may be applicable.