

STOCKHOLM TREATY LAB PRIZE

TEAM EZRA

MULTILATERAL INVESTMENT TREATY

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PREAMBLE

The Parties to this Treaty,

Recalling the United Nations Framework Convention on Climate Change and other international environmental agreements with climate change-related aspects,

Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

Emphasizing the importance of the reduction of greenhouse gas emissions, the protection of ecosystems, and the participation in international efforts to promote sustainable economic development,

Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

Recognizing that the Paris Agreement and other international climate agreements do not incentivize green foreign direct investments and that these agreements must be buttressed by cooperative private and public sector actions,

Also Recognizing that a stable investment climate is essential to incentivizing private investor interest,

Considering that foreign direct investment has assumed great importance in the world economy and has considerably contributed to the development of their countries,

Wishing to promote the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations,

Recognizing that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development,

Wishing to establish a broad multilateral framework for international investment with high standards for the liberalization of investment regimes and investment protection and with effective dispute settlement mechanisms,

HAVE AGREED AS FOLLOWS:

SECTION A: GENERAL PROVISIONS

Article 1: Definitions

For the purpose of this Treaty:

- **Claimant** means an investor of a Party that is a party to an investment dispute with another Party.

- **Climate Investment** means an Investment that (i) substantially contributes to or can reasonably be expected to substantially contribute to a reduction in GHG emission levels that would not otherwise have occurred, or (ii) substantially enhances or can reasonably be expected to substantially enhance the adaptive capacities of sectors, communities, regions and nations. For the purposes of this definition, adaptive capacities means the ability or potential of a system to respond successfully to climate variability and climate change, and includes adjustments in both behavior and in resources and technologies. Climate Investments may include, but are not limited to, Investments in:
 - renewable energy or low-carbon energy alternatives;
 - combustion technologies for improved efficiency;
 - other technologies increasing energy efficiency;
 - sustainable infrastructure;
 - projects that reduce anthropogenic emissions or enhance anthropogenic removals by sinks of GHGs in any sector of the economy;
 - energy storage;
 - good or service substitutes of a demonstrably lower carbon footprint, relative to the substituted good or service;
 - research and development in adapting agriculture, forestry and fisheries to changing weather conditions;

- changes in the location and management of agriculture, forestry and fisheries in anticipation of changing weather conditions;
 - beach nourishment, dykes, and other projects protecting coastal zones from expected sea level rise;
 - the adaptation of water resources management systems to the increased likelihood of drought caused by climate change;
 - infrastructure projects designed to withstand flooding and severe weather events;
 - modifications to existing infrastructure increasing its ability to withstand flooding and severe weather events;
 - improvements in the capacity of the public health system to respond to emerging health issues resulting from climate shifts.
- **Depository** means the Secretary-General of the United Nations.
 - **Disputing parties** means both the Investor and the defending Party.
 - **Enterprise** means any entity constituted or organized 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, association, or similar organization; and a branch of an enterprise.
 - **Freely convertible currency** means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.
 - **GHG** means greenhouse gasses.
 - **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 1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States.
- **Intellectual Property** means copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.
- **Investor of a Party** means (i) a natural person having the nationality of, or who is permanently residing in, a Party in accordance with its applicable law; or (ii) a legal person or any other entity constituted or organized under the applicable law of a Party, whether or not for profit, and whether private or government owned or controlled, and includes, but is not limited to, a corporation, trust, partnership, sole proprietorship, joint venture, association or organization.
- **Investment** means every asset that an Investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics 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:
 - an Enterprise;
 - shares, stock, and other forms of equity participation in an enterprise;
 - bonds, debentures, loans and other debt instruments;
 - futures, options, and other derivatives;
 - turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
 - intellectual property rights;
 - rights conferred pursuant to law or contracts such as licenses, concessions, authorizations, permits, and similar rights conferred pursuant to domestic law;

- other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges; and
- claims to money and claims to performance.
- **Made Climate Investments** means establishing new Climate Investments, acquiring all or part of existing Climate Investments or moving into different fields of Climate Investment activity.
- **New York Convention** means the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- **Party** means a State or Regional Economic Integration Organization which has consented to be bound by this Treaty and for which the Treaty is in force.
- **Regional Economic Integration Organization** means an organization 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.
- **Territory** means with respect to a State that is a Party:
 - the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea;
 - subject to and in accordance with the international law of the sea: maritime areas such as the sea, sea-bed and its subsoil with regard to which that Party exercises sovereign rights and jurisdiction;
 - in the case of a Party which is an archipelagic State, its archipelagic waters;

With respect to a Regional Economic Integration Organization which is a Party, Territory means the Territories of the member States of such Organization, under the provisions contained in the agreement establishing that Organization.

- **Tribunal** means a tribunal constituted under Section D (Investor-State Dispute Settlement) or E (State-State Dispute Settlement).
- **UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law.
- **UNCITRAL Transparency Rules** means the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

SECTION B: SCOPE AND APPLICATION

Article 2: Scope and Coverage

1. This Treaty applies to measures adopted or maintained by a Party relating to a Climate Investment in its Territory made by an Investor of another Party in existence as of the date of entry into force of this Treaty or established, acquired, or expanded thereafter.
2. This Treaty does not apply to Climate Investments made by Investors of another Party that do not have a genuine connection with that Party. An Investor has a genuine connection with a Party when there exists a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.
3. A Party's obligation under this Treaty shall also apply to:
 - a) any State enterprise or other person which exercises any regulatory, administrative, or other governmental authority delegated to it by that Party, and
 - b) any political subdivisions of that Party.
4. This Treaty does not bind Parties 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.
5. This Treaty does not apply to any investment disputes that were settled before the date of entry into force of this Treaty.

SECTION C: TREATMENT OF INVESTORS AND CLIMATE INVESTMENTS

Article 3: National Treatment

1. Each Party shall accord to Investors of another Party and to their Climate Investments, treatment no less favorable than that it accords, in like circumstances, to its own Investors and their Investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of Climate Investments in its Territory.
2. An Investor of a Party which has suffered losses relating to its Climate Investment in the Territory of another Party due to war or to other armed conflict, state of emergency, revolution, insurrection, civil disturbance, or any other similar event in the Territory of the latter Party, shall be accorded by the latter Party, as regards restitution, indemnification, compensation or any other settlement, treatment no less favorable than that which it accords to its own Investors.

Article 4: Fair and Equitable Treatment

1. Each Party shall accord to Climate Investments in its Territory of Investors of another Party fair and equitable treatment and full and constant protection and security. In no case shall a Party accord treatment less favorable than that required by international law.
2. A determination that there has been a breach of another provision of this Treaty, or of a separate international agreement, does not establish that there has been a breach of this Article.
3. The mere fact that one side takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, regardless of whether there is loss or damage to the covered investment as a result.

Article 5: Expropriation and Compensation

1. Climate Investments or returns of Investors of a Party shall not be i) expropriated (hereinafter referred to as “expropriation”) or ii) subjected to measures having an effect equivalent to expropriation (hereinafter referred to as “indirect expropriation”), in the area of an other Party, except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of prompt, adequate and effective compensation in accordance with this Article.
2. The compensation referred to in paragraph 1 of this Article shall be equivalent to the real value of the expropriated investment immediately before the expropriation, or before the impending expropriation became public knowledge, whichever is earlier, and shall include interest at a normal commercial rate, accrued from the date of expropriation until the date of payment. Compensation shall be fully realizable, freely transferable, and paid without delay. The affected Investor shall have a right to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that side in accordance with the principles set out in this paragraph.
3. For greater certainty, except in rare circumstances, non-discriminatory regulatory measures by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations. The determination of whether measures or series of measures taken by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors;
 - a) the economic impact of the Party measure, although the fact that a measure or series of measures by a Party has an adverse effect on the economic value of a Climate Investment, standing alone, does not establish that an indirect expropriation has occurred;
 - b) the extent to which the government measure interferes with distinct, reasonable, Climate Investment-backed expectations; and
 - c) the character of the government measure.

4. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to other measures related to intellectual property rights.
5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute an expropriation, regardless of whether there is loss or damage to the covered investment as a result.

Article 6: Transfers

1. Each Party shall ensure that all payments relating to a Climate Investment in its Territory of an Investor of another Party may be freely transferred into and out of its Territory without delay. Such transfers shall include, in particular, though not exclusively:
 - a) the initial capital and additional amounts to maintain or increase an investment;
 - b) returns;
 - c) payments made under a contract including a loan agreements;
 - d) proceeds from the sale or liquidation of all or any part of an investment;
 - e) payments of compensation warranted by this Treaty;
 - f) payments arising out of the settlement of a dispute;
2. Each Party shall further ensure that such transfers may be made in a freely convertible currency.
3. Notwithstanding paragraphs 1 and 2 of this Article, a Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures:
 - a) to protect the rights of creditors,

- b) relating to or ensuring compliance with laws and regulations (i) on the issuing, trading and dealing in securities, futures and derivatives, and (ii) concerning reports or records of transfers, or
 - c) in connection with criminal offenses and orders or judgements in administrative and adjudicatory proceedings.
4. The measures referred to in paragraph 3 and their application shall not be used as a means of avoiding the Party's commitments or obligations under this Treaty.

Article 7: Performance Requirements

1. Party shall not, in connection with the establishment, acquisition, expansion, management, operation, maintenance, use, enjoyment, sale or other disposition of a Climate Investment in its Territory of an Investor of another Party impose, enforce or maintain any of the following requirements, or enforce any commitment or undertaking:
- a) to export a given level or percentage of goods or services;
 - b) to achieve a given level or percentage of domestic content;
 - c) to purchase, use or accord a preference to goods produced or services provided in its Territory, or to purchase goods or services from persons in its Territory;
 - d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
 - e) to restrict sales of goods or services in its Territory that such investment produces or provides by relating such sales to the volume or value of its exports or foreign exchange earnings;
 - f) to transfer technology, a production process or other proprietary knowledge to a natural or legal person in its Territory, except when the requirement is imposed

or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws;

- g) to locate its headquarters for a specific region or the world market in the Territory of that Party;
- h) to supply one or more of the goods that it produces or the services that it provides to a specific region or the world market exclusively from the Territory of that Party;
- i) to achieve a given level or value of research and development in its Territory;
- j) to hire a given level of nationals;
- k) to establish a joint venture with domestic participation;
- l) to achieve a minimum level of domestic equity participation other than nominal qualifying shares for directors or incorporators of corporations.

2. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on investment, nothing in paragraph 1 shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:

- a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Treaty;
- b) necessary to protect human, animal or plant life or health;
- c) necessary to address historically based economic disparities suffered by identifiable ethnic or cultural groups due to discriminatory or oppressive measures against such groups;
- d) related to the conservation of living or non-living exhaustible natural resources.

Article 8: Publication of Laws and Decisions Respecting Investment

1. A Party shall promptly publish, or otherwise make publicly available, its laws, policies, regulations, procedures, administrative rulings, judicial decisions of general application, as well as international agreements pertaining to or affecting Climate Investments.
Where a Party establishes policies which are not expressed in laws or regulations or by other means listed in this paragraph but which may affect Climate Investments, that Party shall promptly publish them or otherwise make them publicly available.
2. Parties shall ensure that Investors of another Party can become acquainted with its laws, procedures, regulations and policies pertaining to the conditions of admission of Climate Investments, including procedures for application and registration, criteria for examination and approval of an application, timelines for processing an application and rendering a decision, and review or appeal procedures of a decision.

Article 9: Climate Investment Promotion

1. Parties shall encourage new Climate Investments in their Territory.
2. To enhance the level of Investment facilitation, Parties shall review and progressively simplify the formalities and requirements it imposes on Investors from another Party at least once every five years.
3. Parties actively provide Investors from another Party with investment facilitation, including:
 - a) facilitating investors of another Party in obtaining investment information, relevant operating licenses, personnel entry and exit, and business operations and management;
 - b) organizing and hosting symposiums, seminars and other activities beneficial to Climate Investments;

- c) enabling, on a best endeavor basis, Investors of another Party to gain access to and use public infrastructure facilities under reasonable and non-discriminatory conditions.
4. Parties acknowledge that different Parties have different forms of administrative, legislative and judicial systems and that Parties at different levels of development may not achieve the same standards at the same time.

Article 10: Green Investments and the Environment

The Parties recognize that it is inappropriate to encourage Climate Investments by relaxing laws, regulations, procedures, requirements, practices, policies or other measures adopted to protect and conserve the environment. Accordingly, Parties should not waive, be in breach of or otherwise derogate from such environmental measures to encourage Investors of another Party with respect to the establishment, acquisition, expansion or retention of Climate Investments in its Territory.

Article 11: Standards of Corporate and Social Responsibilities

Parties are encouraged to impose upon Investors from another Party and their Climate Investments the obligation to conduct themselves according to i) the standards of corporate and social responsibility laid down in the UN Guidelines on Business and Human Rights, which is attached to this Treaty as Annex A, and ii) the OECD Guidelines for Multinational Enterprises, which are attached to this Treaty as Annex B.

SECTION D: INVESTOR-STATE DISPUTE SETTLEMENT

Article 12: Scope

1. An Investor of a Party may submit a claim that another Party has breached an obligation under Section C with respect to the expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of its Climate Investment to

arbitration under this Section where the Investor claims to have suffered loss or damage as a result of the alleged breach.

2. Claims under paragraph 1 with respect to the expansion of a Climate Investment may be submitted only to the extent the measure relates to the existing business operations of a Climate Investment and the Investor has, as a result, incurred loss or damage with respect to the Climate Investment.
3. An Investor may not submit a claim under this section if the Climate Investment has been made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.
4. An Investor may not submit a claim to arbitration under this section if its claim has not first been submitted to the relevant domestic courts or administrative bodies of the defending Party for the purpose of pursuing domestic remedies in respect of the same measure for which a breach of this Treaty is claimed.
5. Paragraph 4 of this Article shall not apply when the Investor demonstrates that the available domestic legal remedies are incapable of reasonably providing relief in respect of the same measure for which a breach of this Treaty is claimed by the Investor.
6. A Tribunal constituted under this section shall not decide on claims that fall outside the scope of this Article.

Article 13: 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 to arbitration pursuant to this section. 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 2.
2. The Investor shall submit to the disputing 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 Treaty 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.
3. The requirements of the request for consultations set out in paragraph 2 shall be met with sufficient specificity to allow the defending Party to effectively engage in consultations and to prepare its defense.
 4. In the event that the Investor has not submitted a claim to arbitration pursuant to this section 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 defending Party, and shall not submit a claim to arbitration under this section with respect to the same measures. This period may be extended by agreement of the disputing parties.

Article 14: Requirements for the Submission of a Claim to Arbitration

1. An Investor may submit a dispute to arbitration no later than five years from the date the Investor first acquired or should have acquired knowledge of the alleged breach which gave rise to the dispute.
2. An Investor may only submit a claim to arbitration pursuant to this section if it:
 - a) delivers to the defending Party, with the submission of a claim, its consent to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Section;

allows at least 6 months to elapse from the submission of the request for consultation;

- b) has fulfilled the requirements related to the request for consultations;
 - c) does not identify a measure in its claim that was not identified in its request for consultations;
 - d) 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
 - e) waives its right to initiate any other 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.
3. Upon request of the defending Party, the Tribunal shall decline jurisdiction if the Investor fails to fulfill any of the requirements of paragraphs 1 and 2.
4. The waiver provided pursuant to subparagraph 2(e) 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 24 (Claims Manifestly Without Merit).
 - c) if the Investor withdraws its claim within 12 months of the constitution of the Tribunal.

Article 15: Submission of a Claim to the Tribunal

1. If a dispute has not been resolved through consultations, a claim may be submitted under this Section by an Investor of a Party on its own behalf or, if applicable, on behalf of a Climate Investment which it owns or directly controls.
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 subparagraph 2(a) do not apply;
 - c) the UNCITRAL Arbitration Rules; or
 - d) any other rules on agreement of the disputing parties.
3. In the event that the Investor proposes rules pursuant to subparagraph 2(d), the defending Party 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) or (c).
4. For greater certainty, a claim submitted under subparagraph 2(b) shall satisfy the requirements of Article 25(1) of the ICSID Convention.
5. A claim is submitted for dispute settlement under this Section 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 defending Party; or
 - d) the request or notice initiating proceedings is received by the defending Party in accordance with the rules agreed upon pursuant to subparagraph 2(d).
6. Each Party shall deliver a copy of all notices and other documents by the Investors pursuant to this section to the Parties Group. Each Party shall ensure that this information is made publicly available.

Article 16: Party Consent to the Settlement of the Dispute by Arbitration

1. Each Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Treaty.
2. The consent under paragraph 1 and the submission of a claim to the Tribunal under this Section shall satisfy the requirements of:
 - a) Article 25 of the ICSID Convention and Chapter II of the ICSID Additional Facility Rules regarding written consent of the disputing parties, and
 - b) Article II of the New York Convention for an agreement in writing.

Article 17: Overlapping Claims

Where a claim is brought pursuant to this Section 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 to this Section,

the Tribunal may, after hearing the disputing parties, stay its proceedings or otherwise take proceedings brought pursuant to another international agreement into account in its decision, order or award.

Article 18: Appointments to Arbitral Tribunals

1. Unless the parties to the dispute otherwise agree, the Tribunal shall comprise three arbitrators, one appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the two party-appointed arbitrators.
2. If a Tribunal has not been constituted within 90 days after the date that a claim is submitted to arbitration, the arbitrator or arbitrators not yet appointed shall, on the request of either disputing party, be appointed by the appointing authority. The appointing authority shall be the Secretary-General of ICSID.

Article 19: Standing of the Climate Investment

An Enterprise constituted or organized under the law of a Party but which, from the time of the events giving rise to the dispute until its submission for resolution under Article 15, was an Investor of another Party, shall, for purposes of disputes concerning that Climate Investment, be considered "a Climate Investor of another Party" under this Article and "a national of another Contracting State" for purposes of Article 25(2)(b) of the ICSID Convention regarding a dispute not submitted for resolution by the Investor which owns or controls it.

Article 20: Scientific and Technical Expertise

1. On request of a disputing party or, unless the disputing parties disapprove, on its own initiative, the Tribunal may request a written report of a scientific or technical review board, or expert, on any factual issue concerning environmental or other scientific or technical matters raised by a disputing Party in a proceeding, subject to such terms and conditions as the disputing parties agree on.
2. The board, or expert, shall be selected by the Tribunal from among highly qualified, independent experts in the scientific or technical matters, after consultations with the disputing parties and the scientific or technical bodies identified by those parties.
3. The disputing parties shall be provided:
 - a) advance notice of, and an opportunity to provide comments to the Tribunal on, the proposed factual issues to be referred to the board, or expert; and
 - b) a copy of the board's, or expert's, report and an opportunity to provide comments on the report to the Tribunal.
4. The Tribunal shall take the report and any comments by the disputing parties on the report into account in the preparation of its award.

Article 21: Appellate Tribunal

1. An Appellate Tribunal is hereby established to review awards rendered under this Section.

2. The Appellate Tribunal may uphold, modify, reverse or remand a Tribunal's award based on:
 - a) errors in the application or interpretation of applicable law; or
 - b) manifest errors in the appreciation of the facts, including the appreciation of relevant domestic law.
3. The Members of the Appellate Tribunal shall be appointed by a decision of the Parties Group at the same time as the decision referred to in paragraph 8.
4. The Appellate Tribunal shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of Climate Investments generally.
5. Only parties to the dispute, not third parties, may appeal an award rendered under this Section. Third parties which have notified the Appellate Tribunal of a substantial interest in the matter may make written submissions to, and be given an opportunity to be heard by, the Appellate Tribunal.
6. The division of the Appellate Tribunal constituted to hear the appeal shall consist of three randomly appointed Members of the Appellate Tribunal.
7. Article 26 (Transparency of Proceedings) shall apply to the proceedings before the Appellate Tribunal.
8. The Parties Group shall promptly adopt a decision setting out the following administrative and organizational matters regarding the functioning of the Appellate Tribunal:
 - a) administrative support;
 - b) procedures for the initiation and 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.
9. The Parties Group shall periodically review the functioning of the Appellate Tribunal and may revise the decision referred to in paragraph 8, if necessary.
10. Upon adoption of the decision referred to in paragraph 8:
- a) a disputing party may appeal an award rendered pursuant to this Section to the Appellate Tribunal within 90 days of its issuance;
 - b) an award rendered pursuant to Article 31 (Final Awards) 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;
 - c) a final award by the Appellate Tribunal shall be considered as a final award for the purposes of Article 28 (Final Awards).

Article 22: Establishment of a Multilateral Investment Tribunal

The Parties shall pursue with other trading partners the establishment of a multilateral investment tribunal for the resolution of investment disputes. Upon establishment of such a

multilateral mechanism, the Parties Group shall adopt a decision providing that investment disputes under this Section will be decided pursuant to the multilateral mechanism and make appropriate arrangements.

Article 23: Applicable Law and Interpretation

When rendering its decision, the Tribunal established under this Section shall apply this Treaty as interpreted in accordance with the Vienna Convention on the Law of Treaties and other rules and principles of international law applicable to the disputing Party.

Article 24: Claims Manifestly Without Merit

1. The defending Party may, no later than 30 days after the constitution of the Tribunal, and in any event before its first session, file an objection that a claim is manifestly without legal merit.
2. The defending Party shall specify as precisely as possible the basis for the objection.
3. 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 procedure for considering any other preliminary question.
4. 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 addressing the objection. In doing so, the Tribunal shall assume the alleged facts to be true.
5. 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 25: Interim Measures of Protection

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.

Article 26: Transparency of Proceedings

1. The UNCITRAL Transparency Rules, as modified by this Section, shall apply in connection with proceedings under this Section.
2. The request for consultations, 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, defending Parties shall make publicly available in a timely manner relevant documents pursuant to paragraph 2, subject to the redaction of confidential or proprietary information. Such documents may be made publicly available by communication to the repository.
5. Nothing in this Section requires a defending Party to withhold from the public information required to be disclosed by its laws. The defending Party should apply those laws in a manner sensitive to protecting from disclosure information that has been designated as confidential or proprietary information.

Article 27: Disclosures and Confidentiality

1. Disputing parties and other participants in proceedings shall protect any confidential or proprietary information which may be disclosed in the course of proceedings and which is designated as such by the Party providing the information. Parties and other participants in the proceedings may not disclose such information without a prior written authorization from the Party which provided it.

2. 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 under this Section. However, the disputing party shall ensure that those persons protect the confidential or protected information contained in those documents.

Article 28: Final Awards

1. The Tribunal, in its final award shall set out its findings of law and fact, together with the reasons therefor and may, at the request of a disputing party, provide the following forms of relief:
 - a) a declaration that the Party has failed to comply with its obligations under the this Treaty;
 - b) pecuniary compensation, which shall include interest from the time the loss or damage was incurred until time of payment;
 - c) restitution in kind in appropriate cases, provided that the Party may pay pecuniary compensation in lieu thereof where restitution is not practicable; and
 - d) with the agreement of the parties to the dispute, any other form of relief.
2. 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.
3. The Parties Group 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.

4. A final award shall be final and binding between the parties to the dispute and shall be carried out without delay by the disputing party against whom it is issued, subject to its post-award rights under the arbitral systems utilized.
5. The Tribunal and the disputing parties shall make every effort to ensure the dispute settlement process is carried out in a timely manner. The Tribunal shall issue its final award within 24 months of the date the claim is submitted.
6. A final award issued pursuant to this Section 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.
7. For greater certainty, if a claim has been submitted pursuant to this Section, a final award issued pursuant to this Section shall qualify as an award under Section 6 of the ICSID Convention.

Article 29: Place of Arbitration

Any arbitration under this Article shall be held in a State that is party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

SECTION E: STATE-STATE DISPUTE SETTLEMENT

Article 30: Scope

This Section applies to the resolution of disputes between Parties regarding the interpretation or application of this Treaty unless the disputing Parties agree to apply other rules or procedures. However, the disputing Parties may not depart from any obligation regarding notification to the Parties Group.

Article 31: Arbitration

1. Any dispute between Parties as to whether one of them has acted in contravention of this Treaty, that is not resolved through consultations or other diplomatic channels, shall, at the request of any Party that is a party to the dispute, be submitted to an arbitral tribunal for a binding decision or award.
2. In the absence of an agreement by the Parties to the contrary, the UNCITRAL Arbitration Rules shall govern the arbitration.
3. A request, identifying the matters in dispute, shall be delivered to the other disputing Party through diplomatic channels, unless that Party has designated another channel for receipt of notification and so notified the Depositary, and a copy of the request shall be delivered to the Parties Group.
4. Unless the disputing Parties otherwise agree, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each Party and the third, who shall be the chairman, appointed by agreement of the parties. The arbitrators shall be appointed within 30 days after receipt of a request for arbitration.
5. If the necessary appointments have not been made within the periods specified in paragraph 4, either Party to the dispute may, in the absence of any other agreement, invite the Secretary General of ICSID to make the necessary appointments. The Secretary-General shall do so, to the extent feasible, in consultations with the Parties to the dispute and within 30 days after receipt of the request.
6. Article 26 (Transparency of Proceedings) shall apply *mutatis mutandis* to arbitrations under this Section.

Article 32: Awards

1. The Tribunal shall decide disputes in accordance with this Treaty, interpreted and applied in accordance with the applicable rules of international law.

2. The Tribunal may, at the request of a disputing Party, recommend provisional measures which either disputing Party should take to avoid serious prejudice to the other pending its final award.
3. The Tribunal, in its award, shall set out its findings of law and fact, together with the reasons therefore, and may, at the request of a disputing Party, award the following forms of relief:
 - a) a declaration that an action of a disputing Party is in contravention of its obligations under this Treaty;
 - b) a recommendation that a disputing Party bring its actions into conformity with its obligations under the Treaty;
 - c) pecuniary compensation for any loss or damage to the requesting disputing Party's Investor or its Climate Investment; and
 - d) any other form of relief to which the disputing Party against whom the award is made consents, including restitution in kind to an Investor.
4. It shall issue its award in provisional form to the Parties to the dispute on a confidential basis, as a general rule within 180 days after the date of formation of the Tribunal. The Parties to the dispute may, within 30 days thereafter, submit written comment upon any portion of it. The Tribunal shall consider such submissions, may solicit additional written comments of the Parties, and shall issue its final award within 15 days after closure of the comment period.
5. The Tribunal shall promptly transmit a copy of its final award to the Parties Group, which shall make it publicly available.
6. Tribunal awards shall be final and binding between the Parties to the dispute.
7. Each Party shall pay the cost of its representation in the proceedings. The costs of the Tribunal shall be paid for equally by the Parties unless the Tribunal directs that they be shared differently. Fees and expenses payable to Tribunal Members will be subject to

schedules established by the Parties Group and in force at the time of the constitution of the Tribunal.

8. If a dispute concerning the application or interpretation of this Treaty has not been settled within a period of 12 months following the date on which the claim has been submitted to arbitration, any of the Parties to the dispute may submit it to the International Court of Justice for a decision.

SECTION F: EXCEPTIONS AND SAFEGUARDS

Article 33: General Exceptions

1. This section shall not apply to Article 5 (Expropriation and Compensation).
2. Nothing in this Treaty shall be construed:
 - a) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Framework Convention on Climate Change or any protocols, agreements or accords within it;
 - b) to preclude the application of measures necessary for the maintenance of public order;
 - c) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - i) taken in time of war, or armed conflict, or other emergency in international relations;
 - ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons of mass destruction; or
 - iii) relating to the production of arms and ammunition;

- d) to require any Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests;
 - e) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
3. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties, or a disguised Climate Investment restriction, nothing in this Treaty shall be construed to prevent any Party from taking any measure necessary for the maintenance of public order.
 4. Actions or measures taken pursuant to this Article shall be notified to the Parties Group.
 5. If a Party has reason to believe that actions or measures taken by another Party under this Article have been taken solely for economic reasons, or that such actions or measures are not in proportion to the interest being protected, it may request consultations with that other Party. That other Party shall provide information to the requesting Party regarding the actions or measures taken and the reasons therefor.

Article 34: Monetary and Exchange Rate Policies

1. Nothing in this Treaty shall be construed to prevent any Party from taking any measures in pursuance of its monetary or exchange rate policies.
2. Where such measures do not conform with the provisions of this Treaty, they shall not be used as a means of avoiding the Party's commitments or obligations under this Treaty.

Article 35: Prudential Measures

1. Nothing in this Treaty shall be construed to prevent any Party from taking prudential measures with respect to financial services, including measures for the protection of Investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an

enterprise providing financial services, or to ensure the integrity and stability of its financial system.

2. Where such measures do not conform with the provisions of this Treaty, they shall not be used as a means of avoiding the Party's commitments or obligations under this Treaty.

Article 36: Taxation

1. This Treaty shall not affect the rights and obligations of a Party as contained in any other international agreement covering taxation, including bilateral investment protection treaties.
2. For the purposes of this Article, "taxation" means the taxes, duties or any other equivalent charges of the law of a Party or of a political subdivision thereof or a local authority therein, or any administrative practices of a Party relating to taxes.

Article 37: Competition Laws

Nothing in this Treaty shall be construed to prevent a Party from adopting, maintaining or enforcing non-discriminatory competition laws.

SECTION G: RELATIONSHIP TO OTHER INTERNATIONAL AGREEMENTS

Article 38: Relationship to Other International Agreements

Upon ratification, Parties must specify which of the following provisions will apply to them:

EITHER:

This Treaty shall not affect the rights and obligations of Parties deriving from other international agreements or international law.

OR

In the event of a conflict between the obligations of the Parties under this Treaty and their obligations under any other international agreement, their obligations under this Treaty shall prevail.

SECTION H: IMPLEMENTATION AND OPERATION

Article 39: Parties Group

1. There shall be a Parties Group comprised of the Parties.
2. The Parties Group shall facilitate the operation of this Treaty. To this end, it shall:
 - a) carry out the functions assigned to it under this Treaty;
 - b) at the request of a Party, clarify, by consensus, the interpretation or application of this Treaty;
 - c) consider any matter that may affect the operation of this Treaty; and
 - d) take such other actions as it deems necessary to fulfill its mandate.
3. In carrying out the functions specified in paragraph 2, the Parties Group may consult governmental and non-governmental organizations or persons.

4. The Parties Group shall elect a Chair, who shall serve in a personal capacity. Meetings shall be held at intervals to be determined by the Parties Group. The Parties Group shall establish its rules and procedures.
5. Except where otherwise provided, the Parties Group shall make decisions by consensus. A Party may abstain and express a differing view without barring consensus.
6. Decisions under paragraph 5 may include a decision to adopt a different voting rule for a particular question or category of questions.
7. Where a decision cannot be made by consensus, the decision shall be made by a majority comprising three quarters of the Parties.
8. Paragraph 7 shall not apply to the following decisions:
 - a) decisions under paragraph 6;
 - b) decisions on budgetary matters, which shall be made by consensus of Parties whose assessed contributions represent, in combination, at least two thirds of the total assessed contributions.
9. The Parties Group shall be assisted by a Secretariat.
10. Parties Group and Secretariat costs shall be borne by the Parties as approved and apportioned by the Parties Group.

SECTION I: FINAL PROVISIONS

Article 40: Signature

This Treaty shall be open for signature at the Depositary by all States, regional economic integration organizations, and any separate customs territories which possess full autonomy in the conduct of matters covered by this Treaty and are able to undertake obligations under the terms of this Treaty.

Article 41: Ratification

This Treaty is subject to ratification, acceptance, or approval by signatory Parties. The instruments of ratification, acceptance, or approval shall be deposited with the Depositary.

Article 42: Entry into Force

1. This Treaty shall enter into force on the Territory of a signatory Party on the thirtieth day following the date of deposit of that signatory Party's instrument of ratification.
2. Article 21 (Appellate Tribunal) shall not enter into force until the thirtieth day following the date of deposit with the Depositary of the tenth signatory Party's instrument of ratification.
3. Article 39 (Parties Group) shall not enter into force until the thirtieth day following the date of deposit with the Depositary of the fourth signatory Party's instrument of ratification.

Article 42: Authentic Texts

The originals of this Treaty, of which the Chinese, English, French, Russian, and Spanish texts are equally authentic, shall be deposited with the Depositary.

Article 43: Non-Applicability

This Treaty shall not apply as between any Parties at the time of signature, if the signatory Party does not consent to such application.

Article 44: Reservations

At the time of signing or ratifying this Treaty, a Party may formulate any reservation that is not contrary to the object or purpose of this Treaty. Reservations shall be included in the instrument of ratification, acceptance, or approval deposited with the Depositary.

Article 45: Invalidity, Termination, Withdrawal from or Suspension of the Operation of the Treaty

1. A Party which, under the provisions of this Treaty, invokes either a defect in its consent to be bound by this Treaty or a ground for impeaching the validity of this Treaty, terminating it, withdrawing from it or suspending its operation, must notify the other Parties to this Treaty of its claim. The notification shall indicate the measure proposed to be taken with respect to this Treaty and the reasons therefor.
2. If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no Party to this Treaty has raised any objection, the Party making the notification may carry out the measure which it has proposed. The Treaty shall remain in force for the remaining Parties.
3. If, however, objection has been raised by any other Party to this Treaty, the Parties shall seek a solution through the means indicated in the sections of this Treaty dealing with dispute settlement.

Article 46: Suspension of the Operation of the Treaty between specific Parties

1. Two or more Parties to this Treaty may conclude an agreement to suspend the operation of provisions of this Treaty, temporarily and as between themselves alone.
2. The Parties seeking suspension of the operation of this Treaty shall notify the other Parties to this Treaty of those provisions of the treaty the operation of which they intend to suspend.
3. The Parties' decision to suspend this Treaty does not affect the enjoyment by the other Parties of their rights under the treaty or the performance of their obligations.

ANNEX A

ANNEX B