THE GREEN INVESTMENT TREATY
“Green investment is urgently needed for a transition to a low-carbon economy, in particular for developing countries which face enormous investment gaps. The international investment treaty regime could play a galvanizing and reinforcing role through facilitating, promoting and protecting green investments while providing regulatory space for countries to implement climate change measures.”

Friends of Green Investment

The Friends of Green Investment is a multidisciplinary and international team, generating solutions to increase climate-friendly investment through strengthening international law.

The team consists of five team members from Argentina, China, the Netherlands and Switzerland, representing expertise in international investment law, international environmental law, dispute settlement, treaty negotiations, economics and sustainability science. More specifically, the team brings experience of working in developing countries such as African countries. They met through different conferences and sustainability networks.

The team members:

- **Wei Zhuang** (Chinese), Team Captain, is a Geneva-based international lawyer specializing on international law matters and WTO dispute settlement. Previously, she practiced international law at an international trade law firm in Geneva, the World Trade Organization and the United Nations. She also closely followed international climate change negotiations while serving as associate fellow with the Centre for International Sustainable Development Law.

  She holds a PhD in International Law from University of Geneva and an LL.M in International Dispute Settlement (MIDS). She is the author of the book “Intellectual Property Rights and Climate Change: Interpreting the TRIPS Agreement for Environmentally Sound Technologies” (CUP, 2017).

- **Peter Lunenborg** (Dutch) is an economist and seasoned policy advisor advising developing country governments in negotiating and drafting international trade and investment treaties at a Geneva-based intergovernmental organization of developing countries. His work on bilateral trade agreements has contributed to new treaties or changes in draft treaty texts. He is a member of the Advisory Panel to United Nations Forum on Sustainability Standards (UNFSS). He has been actively working with several UN agencies including UN-DESA, UNECA and UNEP and other organisations such as Commonwealth Secretariat.

  Mr. Lunenborg holds master degrees in Law as well as Economics from the Erasmus University Rotterdam. He has, among others, published in the Ashgate Research Companion to International Trade Policy and the Global Trade and Customs Journal.
• **Dimitrij Euler** (Swiss) is an international investment law expert and currently working at a leading international law firm in Germany. He has practiced international investment arbitration in a leading Swiss law firm. Mr. Euler has conducted risk assessments and developed clean energy projects mostly for clients in Africa.

He holds a PhD in International Investment Law from the University of Basel. Dimitrij is also the co-editor of the book *“Transparency in International Investment Arbitration”* (CUP, 2015). He won the Malawi Innovation Challenge Fund 2016 competition with a clean energy start-up.

• **Gustavo Laborde** (Argentinian) has 10 years of experience in international arbitration, including in energy and natural resources as arbitrator, tribunal secretary and counsel. He has practiced in the United States, Switzerland and France. He holds an LL.M in International Dispute Settlement (MIDS) and a Juris Doctor from Columbia Law School.

• **Xiaoyue Du** (Chinese) is Chief Sustainability Officer at a food technology start-up in Zurich, specializing in environmental science and sustainability. Through her work experience in Switzerland and in the US, she helps businesses define sustainability strategies, identify risks and opportunities, and find valuable, practical business solutions, specifically on energy, waste management, sustainable products and supply chain.

She holds a PhD and a Master in Environmental Science from Yale University in the US and a bachelor in geochemistry from University of Science and Technology of China.

The team has exerted all efforts to deliver a best-in-class product, taking into account the busy work schedules of team members. The team is looking forward to an engaging process with a view to further propagating this work with a broader group of stakeholders.

*Notes*
The text of the Green Investment Treaty does not represent the views of the entities team members are associated with. The image used is from VectorJunky.com.
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THE GREEN INVESTMENT TREATY

The Contracting Parties to this Treaty,

Reaffirming the importance of the 2030 Agenda for Sustainable Development of the United Nations as well as the United Nations Framework Convention on Climate Change and other agreements under its auspices, in particular the Paris Agreement,

Aware of the need for Parties to implement measures to ensure that the global average surface temperature increase does not exceed the pre-industrial temperature by more than 2 degrees Celsius and reaffirming their commitment to effectively implement in its law and practices, in its whole territory, the UNFCCC and other agreements under its auspices to which it is Party,

Reaffirming the right to regulate in relation to measures taken pursuant to the UNFCCC and other agreements under its auspices,

Recognising that fulfilling the promise of the Sustainable Development Goals and the Paris Agreement will require trillions of dollars of investments across the globe in renewable energy, energy efficiency, sustainable land use, and climate-resilient infrastructure,

Reaffirming the need to innovate, transfer and apply, at a meaningful scale, technologies that strengthen resilience to climate change or mitigate greenhouse gas emissions,

Recalling that parties to the Paris Agreement agreed to strengthen the global response to the threat of climate change through making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development,

Recalling that the Paris Agreement recognizes the importance of private-sector actors in the global effort to curb climate change, in particular Article 6.4 of the Agreement which urges signatories to incentivize and facilitate participation in the mitigation of greenhouse gas emissions by private entities,

Recognising that many investors simply refrain from investing in the absence of a stable and predictable policy framework protecting their investments and desiring to facilitate the increasing participation of Parties in green investment flows including, inter alia, through the strengthening of their domestic regulatory environment and its efficiency, predictability, stability and transparency,

Valuing the importance of voluntary corporate social responsibility principles and standards for investors,

Recognizing that the facilitation, promotion and protection of Green Investment of investors of one Party in the territory of the other Party will be conducive to the stimulation of mutually beneficial business activity, to the development of economic cooperation between them and to the promotion of sustainable development,
Considering the particular needs of developing and especially least-developed countries and desiring to enhance technical assistance and capacity building in the implementation of this Treaty,

Wishing to establish a framework of principles and rules for facilitating, promoting and protecting green investment in accordance with the objective of sustainable development,

HAVE AGREED AS FOLLOWS:

Part I – Definitions and Purpose

Article 1 – Object and Purpose

1. The object and purpose of this Treaty is to incentivize and protect investments that mitigate greenhouse gas emissions or strengthen resilience to climate change, ultimately to achieve the objectives of the Paris Agreement and the 2030 Agenda for Sustainable Development of the United Nations.

2. This Treaty complements the United Nations Framework Convention on Climate Change and other agreements under its auspices, including the Paris Agreement, by enabling the low-carbon transition and encouraging investors to invest in a sustainable future.

Article 2 – General Definitions

For the purposes of this Treaty:

central level of government has for each Party the meaning set out at Annex I (Party-Specific Definitions);

carbon sequestration means the removal and storage of carbon from the atmosphere in carbon sinks such as oceans, forests or soils through physical or biological processes, such as photosynthesis;

emissions means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time;

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

government procurement means the process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale, or use in the production or supply of goods or services for commercial sale or resale;
Green Investment refers to investments that mitigate greenhouse gas emissions or strengthen resilience to climate change, including but not limited to investments:

(a) concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of energy from renewable and sustainable non-fossil sources;

(b) that enhance energy efficiency;

(c) in carbon sequestration, including carbon capture and storage; and

(d) in climate-resilient infrastructure.

greenhouse gases means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;

investment means every kind of 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:

(a) an enterprise;

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

(c) bonds, debentures, other debt instruments and loans;¹

(d) futures, options and other derivatives;

(e) turnkey, construction, management, production, concession, revenue-sharing and other similar contracts;

(f) intellectual property rights;

(g) licences, authorisations, permits and similar rights conferred pursuant to the Party’s law;² and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges,

¹ Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

² Whether a particular type of licence, authorisation, permit or similar instrument (including a concession to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the Party’s law. Among such instruments that do not have the characteristics of an investment are those that do not create any rights protected under the Party’s law. For greater certainty, the foregoing is without prejudice to whether any asset associated with such instruments has the characteristics of an investment.
but investment does not mean an order or judgment entered in a judicial or administrative action, claims to money arising solely from commercial contracts, or a loan issued by one Party to another Party.

For greater certainty, investment includes tradable renewable energy certificates and greenhouse gas emission allowances.

**investment treaty** means any bilateral or multi-lateral treaty, including any treaty commonly referred to as a free trade agreement, economic integration agreement, trade and investment framework or cooperation agreement, or bilateral investment treaty, which contains provisions on the protection of investments or investors and a right for investors to resort to arbitration against contracting parties to that investment treaty;

**least-developed countries** are countries that qualify as least developed, as defined and classified by the United Nations Committee on Development Policy;

**measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

**Paris Agreement** refers to the agreement done at the 21st meeting of the Conference of the Parties under the UNFCCC on 12 December 2015, FCCC/CP/2015/L.9/Rev.1, including any further elaboration or amendment of this agreement, or any subsequent international agreement, treaty or convention superseding this agreement;

**Party** means any State or Regional Economic Integration Organization for which this 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;

**regional level of government** has for each Party the meaning set out at Annex 1 (Party-Specific Definitions);

**resilience to climate change** means the capacity of social, economic and environmental systems to cope with climate change, responding or reorganizing in ways that maintain their essential function, identity and structure, while also maintaining the capacity for adaptation, learning and transformation, leaving them better prepared for future climate change impacts;

**territory** has for each Party the meaning set out at Annex 1 (Party-Specific Definitions);

**UNCTAD** means United Nations Conference on Trade and Development;

**UNFCCC** means United Nations Framework Convention on Climate Change; and

**WTO** means World Trade Organisation.
Part II – Enabling the Low-Carbon Transition

Section 1: General Provisions

Article 3 – UNFCCC and Other Agreements Under Its Auspices

1. Parties recognise the value of the UNFCCC and other agreements under its auspices as a response of the international community to the problem of global climate change and stress the need to enhance the mutual supportiveness between climate change and investment policies, rules, and measures.

2. Each Party reaffirms its commitment to effectively implement in its law and practices, in its whole territory, the UNFCCC and other agreements under its auspices to which it is Party.

3. Each Party shall establish and communicate greenhouse gas emission reduction targets, in accordance with the Paris Agreement and subsequent decisions by the Conference of the Parties to the UNFCCC.

4. The provisions of this Part shall inform the preparation of nationally determined contributions by each Party pursuant to Article 4 of the Paris Agreement.

Article 4 – Consultation and Cooperation

Parties commit to consult and cooperate as appropriate with respect to the mitigation of greenhouse gas emissions by public and private entities, and in particular, investment-related issues. This commitment includes exchanging information on:

(a) the implementation and negotiation of Agreements under the auspices of the UNFCCC, to which a Party is party;

(b) on-going negotiations of treaties covering one or more subject matters of this Treaty, in particular the low-carbon transition; and

(c) each Party’s respective views on becoming a party to investment treaties.

Article 5 – Parties with Special Needs

1. Parties recognize the vulnerability of Parties with special needs, particularly least-developed countries or small island developing countries, to the adverse effects of climate change and their limited capacity to mitigate and adapt to climate change.

2. The Conference and subsidiary bodies established under this Treaty and the operating entities of the Financial Mechanism of the UNFCCC shall aim to ensure efficient access of financial resources through enhanced readiness support for Parties with special needs, particularly for least-developed countries or small island developing countries, in the
context of their national climate strategies and plans, pursuant to Article 9.9 of the Paris Agreement.

3. Parties with high capabilities shall endeavour to provide financial resources, including for the transfer of technology, needed by Parties with special needs to meet the agreed full incremental costs of implementing measures that are covered by this Part in accordance with Article 4.3 of the UNFCCC.

Section 2: Carbon Pricing

Article 6 – Market-Oriented Carbon Prices

1. Parties shall promote market-oriented carbon prices which more fully reflect social and environmental costs associated with greenhouse gas emissions.

2. Subject to the provisions of this Treaty and to their other international legal obligations, Parties shall, as appropriate, establish and maintain carbon pricing mechanisms such as a cap and trade system, emissions trading system or carbon taxes. In doing so, Parties shall take into account:

(a) the principle of equity and common but differentiated responsibilities and respective capabilities referred to in Article 3.1 of the UNFCCC, in the light of different national circumstances; and

(b) the risk of migration of domestic carbon-intensive industries.³

3. Parties shall explore, as appropriate, joint action in this area, such as minimum carbon prices, gradual increases in prices over time, and linking of emissions trading systems.

Article 7 – Redirection of Revenues

Parties shall endeavour to redirect the revenues deriving from carbon pricing mechanisms to Green Investment with a view to achieving the objectives of the 2030 Agenda for Sustainable Development of the United Nations and the UNFCCC and other agreements under its auspices, in particular the Paris Agreement.

Article 8 – Carbon Offsetting

Parties recognize the role that voluntary and mandatory carbon offsetting can play in achieving greenhouse gas emissions reduction targets.

Article 9 – International Cooperation

³ Assessment of this risk shall be based on facts and data about competitiveness.
1. Parties should support the UNFCCC in developing effective standards that enable carbon pricing mechanisms and the verification of the results achieved.

2. In order to further the implementation of Article 6 of the Paris Agreement, Parties shall aim to establish operational rules and modalities for international carbon pricing mechanisms under the auspices of the UNFCCC by [2020].

3. Parties recognize the need to effectively regulate and cap greenhouse gas emissions from international aviation and shipping. To this end, the Parties agree to work together through the International Civil Aviation Organisation (ICAO) and the International Maritime Organisation (IMO).

Section 3: Fossil Fuel Subsidy Reform

For the purposes of this Section:

**fossil fuel subsidy** means a financial contribution by a government or public body which provides a benefit for fossil fuel production or consumption relative to alternatives.

**Article 10 – Peer Review**

Parties shall participate, as soon as feasible, in peer reviews of inefficient fossil fuel subsidies with a view to enhancing transparency and accountability, taking into account existing processes.

**Article 11 – Phase Out of Fossil Fuel Subsidies**

1. Parties recognise that fossil fuel subsidies encourage wasteful consumption, disadvantage renewable energy, and depress investment in energy efficiency.

2. Parties shall refrain from introducing new fossil fuel subsidies.

3. Parties shall, based on their national circumstances, rationalize and phase out inefficient fossil fuel subsidies within specified timelines, taking fully into account the specific needs and conditions of developing countries and minimizing the possible adverse impacts on their development in a manner that protects the poor and the affected communities. In particular,

   (a) Parties that are members of G-20 shall endeavour to phase out their inefficient fossil fuel subsidies by 2020; and

   (b) Other Parties shall endeavour to phase out their inefficient fossil fuel subsidies by 2025.
Article 12 – Redirection of Fossil Fuel Subsidies

Parties should, as appropriate, redirect savings made from the phase out of fossil fuel subsidies to Green Investment with a view to achieving the objectives of the 2030 Agenda for Sustainable Development of the United Nations and the UNFCCC and other agreements under its auspices, in particular the Paris Agreement.

Article 13 – International Cooperation

Parties agree to work together in the WTO and other relevant international organizations in order to achieve ambitious and effective disciplines on inefficient fossil fuel subsidies that encourage wasteful consumption.

Section 4: Promotion of Renewable Energy

Article 14 – Targets

Parties shall endeavour to establish and maintain renewable energy targets.

Article 15 – Provision of Incentives

1. Parties may, subject to the provisions of this Treaty and to their other international legal obligations, provide incentives to the private sector aimed at increasing the generation, dissemination or deployment of energy from renewable sources.

2. Granting authorities of Parties shall strive to provide such incentives in a manner that both ensures transparency and minimizes distortion of international markets on the basis of the following principles:

(a) Incentives should be provided in a non-discriminatory and even-handed manner, except as otherwise provided in this Treaty;

(b) The amount of incentives should be proportionate to the positive externalities associated with the reduced use of fossil fuel based energy;

(c) The duration of the provision of incentives should be time-bound, which could be modified on the basis of competitiveness of renewable energy in the relevant market;

(d) The granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, an incentive. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification; and

(e) A measure providing incentives shall be developed in accordance with the Article 49 (Opportunity to Comment and Information before Entry into Force).
3. For greater certainty, regulatory incentives do not fall within the scope of this Article.

**Article 16 – Renewable Energy Policies and Plans**

Parties are encouraged to develop and implement policies and plans that aim to increase the use of renewable energy, which may include realistic supply and demand forecasts, least cost planning associated with a low-carbon energy mix, resource assessments, transmission network development, land title reform and broader power sector development.

**Article 17 – Standards, Technical Regulations and Conformity Assessment**

1. Where international or regional standards exist with respect to the generation, dissemination or deployment of energy from renewable sources, Parties shall use these standards, or their relevant parts, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued. For the purposes of applying this paragraph, the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) shall be considered relevant international standard-setting bodies.

2. Where appropriate, Parties shall specify technical regulations based on product requirements in terms of performance, including environmental performance, rather than design or descriptive characteristics.

**Article 18 – Access to Information on Renewable Energy Resources**

1. Recognizing that increasing public access to information is important to enhancing actions under the Paris Agreement, Parties shall increase the availability of information on renewable energy resources and potential. To this end, each Party shall endeavour to collect renewable energy resource data (such as wind speed, irradiation, hydrology) on an ongoing basis.

2. Parties shall endeavour to conduct or support geological surveys on minerals that are important for the renewable energy sector.

3. In the implementation of this Article, when data is collected, each Party shall make such data available in such a manner as to enable investors to become acquainted with them, in accordance with its laws and regulations.

**Article 19 – International Cooperation**

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4 For the purpose of this Article, the definitions of Annex 1 (Terms and their Definitions for the Purpose of this Agreement) to the WTO Agreement on Technical Barriers to Trade are hereby incorporated into and made part of this Article.
Parties share the objective of working jointly to reach an agreement to establish multilateral disciplines on the provision of incentives within the scope of Article 15 (Provision of Incentives).

Section 5: Enhancing Energy Efficiency

For the purpose of this Section:


public financial institution means a financial institution over which the public authorities of a Party, including at the central, regional, local or other territorial level, exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence shall be deemed to exist when the public authorities of a Party, directly or indirectly in relation to a financial institution: (i) hold the major part of the financial institution’s subscribed capital; or (ii) control the majority of the votes attaching to shares issued by the financial institution; or (iii) can appoint more than half of the members of the financial institution’s administrative, managerial or supervisory body.

Article 20 – Targets

Parties shall endeavour to establish and maintain indicative national energy efficiency targets, based on primary energy consumption.

Article 21 – Encouraging Energy Efficiency Investments

1. Parties affirm the importance of energy efficiency considerations in all relevant decision-making to significantly increase and strengthen energy efficiency investments in their economies with a view to reducing total primary energy consumption in the context of a balanced progression of the three dimensions of sustainable development.

2. Parties recognise the vital role of the private sector. They shall encourage action by energy utilities, responsible authorities and specialised agencies, and close co-operation between industry and administrations with a view to improving energy efficiency.

3. Parties shall encourage energy efficiency investments and their positive impacts to be systematically considered along supply-side investments related to energy systems. This can be achieved through the consideration of possible reforms in the decision-making, planning, pricing and regulation of investments in energy and infrastructures.

Article 22 – Supply of and Access to Finance for Energy Efficiency Investments

1. Parties shall encourage collaboration to identify and explore how to unlock barriers preventing the supply of and access to finance for energy efficiency investments in local markets. To this end, Parties shall:
(a) review accounting and regulatory treatment for energy efficiency investments, where appropriate, to fairly reflect the net benefits and business risks of these investments;

(b) develop national and/or regional standards and policies that will support energy efficiency investment processes in key market segments consistent with regional and national priorities and conditions;

(c) develop finance mechanisms, where relevant, that can enhance the creditworthiness of repayment streams to energy efficiency investments, such as including these repayments within existing payment collection mechanisms;

(d) simplify public support programmes, where relevant for energy efficiency, to enable an optimal interaction with and the mobilisation of private finance streams to maximise overall funding flows and delivered benefits; and

(e) involve public financial institutions, where appropriate, to help formulate lending policies to prioritise and mobilise private capital towards energy efficiency investments.

2. Parties shall endeavour to take advantage of and promote access to private capital markets and existing international financing institutions in order to facilitate investments in energy efficiency.

3. Parties shall encourage the implementation of new approaches and methods for financing energy efficiency such as joint venture arrangements between energy users and external investors.

Article 23 – Priorities for Public Financial Institutions

Parties commit that public financial institutions shall, within their respective mandates, strengthen efforts to support energy efficiency and set the following priorities to increase energy efficiency investment, taking into account the needs of Small and Medium-Sized Enterprises:

(a) Embed energy efficiency considerations into the way in which investment and finance opportunities are considered;

(b) Increase activities in support of policy frameworks which require and promote energy efficiency and apply a life-cycle cost optimal approach to the procurement of new infrastructure and buildings;

(c) Work to ensure energy efficiency maintains a high, crosscutting internal profile and, where possible, is better monitored, measured and reported throughout their activities;

(d) Look to increase work with retail distribution channels through partner banks and other innovative retail mechanisms, to support scaling up and aggregation of individual energy efficiency investments;
(e) Work to ensure energy efficiency’s central role in the future of mobility, smart cities, energy grids, industry and infrastructure; and

(f) Engage in a more structured exchange of knowledge and the sharing of best practices, with attention to innovative financing mechanisms, definitions and eligibility criteria to safeguard energy efficiency performance standards.

Article 24 – Complementary Policies and Instruments

Parties recognize that stimulating the demand for energy efficiency investment requires a multi-sectoral framework of complementary policies and instruments. In this context, Parties shall endeavour to:

(a) provide clear regulatory and investment signals to encourage the uptake of energy efficiency investments within the development and upgrade cycles of their infrastructure, consistent with national development priorities and strategies;

(b) provide appropriate national and regional incentives and mechanisms that stimulate improved energy management; support energy efficient investment choices; and improve awareness of the value of energy efficiency investments with key decision-makers;

(c) contribute to and facilitate national and, where appropriate, regional mechanisms that make the data needed for energy efficiency measures and investments easily accessible to market participants involved in the development of these investments considering in-country communication protocols and clear systems of labels and certificates;

(d) provide support for the appropriate development, packaging, aggregation, standardisation, bundling and provision of tailored financing for energy efficiency investments through multiple national, regional or local retail channels, to deliver a change of scale for consumer and SME energy efficiency investing; and

(e) review and identify policies at the national and local level that can help accelerate the replacement cycle for “worst in class” facilities and buildings regarding their relative energy performance.

Article 25 – Standards, Technical Regulations and Conformity Assessment

1. Where international or regional standards exist with respect to energy efficiency, Parties shall use these standards, or their relevant parts, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

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5 For the purpose of this Article, the definitions of Annex 1 (Terms and their Definitions for the Purpose of this Agreement) to the WTO Agreement on Technical Barriers to Trade are hereby incorporated into and made part of this Article.
2. For the purposes of applying paragraph 1, the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) shall be considered relevant international standard-setting bodies. Parties recognize ISO 50001 ‘Energy management systems’ as a relevant international standard for the implementation of energy efficiency measures.

3. Where appropriate, Parties shall specify technical regulations on product requirements in terms of performance, including environmental performance, rather than design or descriptive characteristics.

Section 6: Sustainable Land Use

For the purposes of this Section:

REDD means reduced carbon emissions from deforestation and forest degradation;

REDD+ means reduced carbon emissions from deforestation and forest degradation, maintaining/enhancing carbon stocks, and promoting sustainable forest management.

Article 26 – Forest Restoration

1. Parties recognize that forests play a vital role in safeguarding the climate by naturally sequestering carbon and that reducing emissions from deforestation and increasing forest restoration will be extremely important in limiting global warming to 2 degrees Celsius.

2. Parties should, as appropriate, ensure that strong, large-scale economic incentives are in place commensurate with the size of the challenge. In particular, Parties should:

(a) support the private sector in eliminating deforestation from the production of agricultural commodities such as palm oil, soy, paper and beef products by no later than 2020, recognizing that many companies have even more ambitious targets;

(b) significantly reduce deforestation derived from other economic sectors by 2020;

(c) support alternatives to deforestation driven by basic needs such as subsistence farming and reliance on fuel wood for energy in ways that alleviate poverty and promote sustainable development;

(d) scale-up payments for verified emission reductions; and

(e) strengthen forest governance, transparency and the rule of law, while also empowering communities and recognizing the rights of indigenous peoples, especially those pertaining to their lands and resources.

3. Parties should, as appropriate, ensure that REDD and REDD+ credits can be traded within carbon markets and the generated benefits should be distributed in a fair manner.

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6 Such technical regulations include energy efficiency labelling schemes.
4. Parties should coordinate their efforts to reduce emissions from deforestation and forest degradation including through forging a strong international partnership on REDD+.

Article 27 – Sustainable Land Management

1. Parties recognize the important role of sustainable land management, including carbon sequestration through rehabilitation and restoration, in mitigating climate change while ensuring the long-term resilience and adaptive capacity of the more vulnerable communities.

2. Parties should adopt policies and incentives that promote sustainable land management with a view to reducing the greenhouse gas emissions in a demonstrable and cost-effective manner. To the extent practicable, Parties should:

   (a) work with the private sector to mobilize capital to scale up sustainable land-use practices and accelerate the greening of supply chains; and

   (b) promote low-emission land-use finance policies to direct finance towards sustainable land use.

3. Parties should facilitate the transition to land management practices that sustainably increase system resilience while reducing greenhouse gas emissions, including for example low-emissions agriculture, agroforestry and the restoration of high carbon-value ecosystems by requiring sectoral coordination, multi-stakeholder engagement and new approaches to integrated land use planning.

4. Parties should establish an evidence-based accounting framework for carbon debits and credits with a view to measuring progress in the land use sector.

Section 7: Innovation, Transfer and Application of Environmentally Sound Technologies

For the purposes of this Section:

**environmentally sound technologies** means technologies that control, reduce or prevent anthropogenic emissions of greenhouse gases in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors.

Article 28 – Technological Innovation

1. Parties recognize that to achieve the goals of the Paris Agreement, there is a pressing need to accelerate, encourage and enable technological innovation so that it can deliver environmentally sound technologies on a larger and more widespread scale.
2. In order to accelerate, encourage and enable technological innovation, Parties shall endeavour to:

(a) prioritize human, institutional and financial resources for such innovation, in accordance with their needs, priorities, and capacities;

(b) enhance public and private partnerships in the research, development and demonstration of environmentally sound technologies by increasing expenditure for it and providing a clear policy signal of a long-term commitment to act on climate change;

(c) strengthen national systems of innovation and enabling environments, including through market creation and expansion, and capacity-building;

(d) enhance existing and build new collaborative initiatives for environmentally sound technology innovation, including for sharing expertise, good practices and lessons learned;

(e) create an inclusive innovation process that involves all key stakeholders, facilitating the incorporation of diverse and relevant expertise, knowledge and views and generating awareness of the benefits and impacts; and

(f) acknowledge and protect indigenous and local knowledge and technologies and incorporate them in their national innovation systems.

**Article 29 – Access to and Transfer of Technology**

1. Parties agree to promote access to and transfer of environmentally sound technologies on mutually agreed terms to implement the objectives of this Treaty subject to their laws and regulations including intellectual property laws and to their international obligations.

2. Parties shall take measures, as appropriate, to prevent or control licensing practices or conditions pertaining to intellectual property rights which may adversely affect the international transfer of environmentally sound technologies and that constitute an abuse of intellectual property rights by right holders or an abuse of obvious information asymmetries in the negotiation of licences.

**Article 30 – Incentives for Technology Transfer**

Parties shall facilitate and promote the use of incentives granted to institutions and enterprises in its territory for the transfer of technology to institutions and enterprises of developing countries, in particular least-developed countries in order to enable them to establish a viable technological base. Each Party shall endeavour to bring any known measures to the attention of the Technology Committee for discussion and review.

**Article 31 – Technology Cooperation**
1. Parties shall promote and cooperate in the development, application and diffusion, including transfer, of technologies and know-how that control, reduce or prevent anthropogenic emissions of greenhouse gases. To this end, they will encourage cooperative efforts on:

(a) research and development activities;

(b) pilot or demonstration projects;

(c) the application of technological innovations; and

(d) the dissemination and exchange of know-how and information on technologies.

2. Parties agree to exchange views and information on their practices and policies affecting development, application and diffusion of environmentally sound technologies, both within their respective regions and with third countries. This shall in particular include measures to facilitate information flows, business partnerships, licensing and subcontracting.

Article 32 – Technology Mechanism

Parties agree that the provisions of this Section should inform the further work of the Technology Mechanism established under the UNFCCC.

Part III – Responsible Investment and Environmental Transparency

Section 1: General Provisions

Article 33 – Upholding Levels of Protection

1. Parties recognise that it is inappropriate to encourage investment by weakening or reducing the levels of protection afforded in their environmental and labour laws.

2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental and labour laws, to encourage the establishment, acquisition, expansion or retention of an investment in its territory.

3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental and labour laws to encourage investment.

Article 34 – Corporate Social Responsibility

1. Each Party shall encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies internationally recognised standards, guidelines and principles of corporate social responsibility that
have been endorsed or are supported by that Party. Corporate social responsibility includes issues such as environment, climate change, labour human rights, community relations, and anti-corruption.

2. With a view to building the capacity of local enterprises to take up corporate social responsibility standards, Parties may condition the granting of incentives on the observance of corporate social responsibility standards, or incorporate certain minimum standards, including those relating to anti-corruption, environmental, health and labour, into their domestic laws and regulations.

Section 2: Greenhouse Gas Emissions of Enterprises

Article 35 – Avoidance of Excessive Greenhouse Gas Emissions

Parties shall endeavour to refrain from approving the establishment, acquisition or expansion of investments that cause excessive greenhouse gas emissions without taking countervailing measures to offset the excessive greenhouse gas emissions, unless the relevant investments can be shown to be indispensable in light of prevailing circumstances, such as might be the case, in particular, in a least-developed country.

Article 36 – Greenhouse Gas Emissions Reduction by Enterprises

1. Parties should encourage enterprises operating within its territory or subject to its jurisdiction to mitigate greenhouse gas emissions to the extent that such reduction can be achieved without relevant additional cost or, in case of reductions that incur additional costs, to mitigate greenhouse gas emissions if the costs will, beyond reasonable doubt, be offset by future financial savings or financial gains within a reasonable time period. Examples of measures to mitigate greenhouse gas emissions include:

(a) eliminating excessive power consumption where possible, including for heating, cooling and lighting;

(b) promoting, to the maximum extent possible, measures that will reduce the need for consuming energy, such as improved insulation of buildings and improved efficiency of energy-consuming devices; and

(c) switching from fossil fuel-based energy sources to renewable energy sources.

2. With respect to enterprises operating within their territory, least-developed country Parties have the same obligation to the extent that other Parties or enterprises provide the financial and technical means required without imposing more than a minimal financial burden on the relevant enterprises in least-developed countries.
Article 37 – Targets by Enterprises

Parties shall take such reasonable measures as may be available to them to ensure that enterprises within their territories establish, as appropriate, targets for greenhouse gas emission reduction.

Article 38 – Disclosure of Greenhouse Gas Emissions by Enterprises

1. Each Party shall, as far as possible, require enterprises to disclose greenhouse gas emissions in accordance with International Organization for Standardization (ISO) standards or other relevant international standards or guidelines.

2. Each Party shall, as appropriate, require its enterprises to disclose evident climate change effects arising from the actions of all major subsidiaries and affiliates, and, as far as reasonably practicable, from enterprises’ supply chains, in accordance with relevant international standards and guidelines.

Article 39 – Verification

Parties shall, as appropriate, require independent verification of enterprises’ greenhouse gas emissions in an objective manner, as far as possible, in accordance with relevant international standards and guidelines.

Article 40 – Scope of Application

For greater certainty, each Party shall have discretion on the scope of application of the reporting or verification obligations which may apply in the implementation of this Section. Each Party shall take into account the costs of such obligations on enterprises.

Section 3: Environmental Impact Assessments

For the purpose of this Section:

environmental impact assessment means a national procedure for evaluating the likely impact of a proposed activity on the environment;

Article 41 – Obligation to Conduct Environmental Impact Assessments

7 For example, by incorporating disclosure obligations into contractual provisions.
8 For greater certainty, it is for each Party to determine in its domestic laws and regulations or in the authorization process for an investment, the specific content of the environmental impact assessment required in each case, having regard to the nature and magnitude of the proposed investment and its likely adverse impact on the environment as well as to the need to exercise due diligence in conducting such an assessment.
1. Each Party affirms its commitment to conduct environmental impact assessments in accordance with the multilateral or regional environmental agreement(s) to which it is a party

2. Parties affirm the requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.

**Article 42 – Basic Requirements of Environmental Impact Assessments**

Parties shall ensure that environmental impact assessments, if required under domestic laws and regulations,

(a) be conducted prior to the establishment or expansion of an investment;

(b) consider potential impacts involving all relevant stakeholder groups, in particular the most vulnerable;

(c) define baseline data and indicators for monitoring and to measure impacts;

(d) be promptly published in an easily accessible manner in order to enable interested parties to become acquainted with them; and

(e) be made available, and updated to the extent possible and as appropriate, through the internet.

**Article 43 – Climate Change**

Parties are encouraged to provide guidelines or requirements on how to consider climate change in an environment impact assessment. This may include

(a) a projection of the greenhouse gas emissions that will be caused directly or indirectly by the investment;

(b) identification of available opportunities to strengthen resilience to climate change and to mitigate greenhouse gas emissions; and/or

(c) discussion of the effects that projected future climate conditions will have on the investment.

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9 Such agreements include, where applicable, the United Nations Conventions on the Law of the Sea, the Convention on Biological Diversity Convention, the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and/or the ASEAN agreement on the Conservation of Nature and Natural Resources.
Part IV – Green Investment Facilitation, Promotion and Protection

Section 1: General Provisions

For the purposes of this Part:

investment agreement means a written agreement that is concluded and takes effect after the date of entry into force of this Treaty 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 89 (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.

“written agreement” refers to an agreement in writing, negotiated and executed by both parties, whether in a single instrument or in multiple instruments. For greater certainty, the following shall not be considered a written agreement:

(a) a unilateral act of an administrative or judicial authority, such as a permit, licence, authorisation, certificate, approval, or similar instrument issued by a Party in its regulatory capacity, or a subsidy or grant, or a decree, order or judgment, standing alone; and

(b) an administrative or judicial consent decree or order.

investment authorisation means an authorisation that the foreign investment authority of a Party grants to a covered investment or an investor of another Party;

For greater certainty, the following are not encompassed within this definition:

(a) actions taken by a Party to enforce laws of general application, such as competition, environmental, health or other regulatory laws;

(b) non-discriminatory licensing regimes; and

(c) a Party’s decision to grant to a covered investment or an investor of another Party a particular investment incentive or other benefit, that is not provided by a foreign investment authority in an investment authorisation.

Article 44 – Scope

1. Parties shall apply the provisions of this Part to Green Investment and investors of a Party that seek to make, are making or have made a Green Investment in the territory of the other Party.

2. For the purposes of this Part, investments or investors within the scope of paragraph 1 are not considered ‘like’ investments or investors outside the scope of paragraph 1.
3. Notwithstanding paragraph 1, Parties may, at any time, declare voluntarily to the Conference, through the Secretariat, its intention to apply one or more provisions of this Part to investments or investors outside the scope of paragraph 1.

**Article 45 – Right to Regulate**

Parties shall retain their right to regulate in the public interest within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.

**Article 46 – Relation to Other Investment Treaties**

1. With respect to matters covered by this Part and Section 1 of Part VI, this Treaty shall supersede any investment treaty in force or open for signature, ratification or accession at the date of entry into force of this Treaty. However, nothing in this Treaty shall affect the obligations of Parties to non-Parties arising under such investment treaties.

2. Notwithstanding paragraph 2, an investment treaty in force between two or more Parties shall remain applicable to Green Investment and investors of a Party that made a Green Investment in the territory of the other Party, if

(a) a claim has already been submitted to arbitration or another binding dispute settlement mechanism in accordance with that investment treaty before the date of entry into force of this Treaty; or

(b) that investment treaty provides for more favourable treatment of such investments or investors with respect to matters covered by this Part or Section 1 of Part VI. With respect to matters covered by this Part not covered by that investment treaty, the provisions of this Part shall apply.

3. Taking into account Article 4, Parties may enter into investment treaties with other Parties or non-Parties provided that such treaties do not derogate from the provisions of this Part and Section 1 of Part VI.

**Section 2: Investment Facilitation**

**Article 47 – Scope**

1. A Party’s obligations under this Section shall apply to measures adopted or maintained by:

(a) the central level of government of that Party; and
(b) any entity, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by the central level of government of that Party.

2. In fulfilling its obligations and commitments under this Section, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities, including any entity referred to in paragraph 1 (b).

3. This Section does not apply to:

(a) government procurement;

(b) investment agreements and the conditions thereby established, provided that this Section applies to investments made as a result of investment agreements. In case of inconsistencies between this Section and the terms of an investment agreement, the latter shall prevail;

(c) market access and right to establish, provided that nothing in this Section shall be construed as to modify Members’ obligations and commitments under the General Agreement on Trade in Services (GATS) in that regard.

Subsection A: Transparency

Article 48 – Publication and Information Available

1. Each Party shall promptly publish the following information in an easily accessible manner:

(a) laws, regulations, administrative procedures and judicial decisions of general application affecting investments; and

(b) texts or abstracts of public policies that may affect investments and investors.

2. Where a Party requires authorisation for admission, establishment, acquisition and expansion of investment the Party shall promptly publish or otherwise make publicly available the information necessary for investors or persons seeking to invest to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, inter alia, where it exists:

(a) the requirements and procedures;

(b) contact information of relevant competent authorities;

(c) fees;

(d) technical standards;

(e) procedures for appeal or review of decisions concerning applications;
(f) procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;

(g) opportunities for the involvement of investors in policy and rulemaking, such as through hearings or comments;

(h) indicative timeframes for processing of an application.

3. Each Party is encouraged to provide unofficial translations or a description of the content of the information referred to in subparagraphs 1 and 2 in clear simple language, preferably in languages commonly used by investors that seek to make, are making or have made an investment in the territory of that Party. Translations shall be deemed unofficial unless the Party that issued the original information declares them as authentic.

Article 49 – Opportunity to Comment and Information before Entry into Force

1. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall publish in advance its laws, regulations, procedures, and administrative rulings of general application it proposes to adopt in relation to matters covered by this Treaty, or publish in advance documents that provide sufficient details about such a possible new law, regulation, procedure or administrative ruling to allow interested persons and other Parties to assess whether and how their interests might be significantly affected.

2. To the extent practicable and in a manner consistent with its legal system for adopting measures each Party shall provide interested persons and other Parties a reasonable opportunity to comment on such proposed measures or documents published under paragraph 1.

3. To the extent practicable and in a manner consistent with its legal system for adopting measures each Party shall consider comments received under paragraph 2.

4. In publishing a law or regulation referred to in paragraph 1, or in advance of such publication, a Party is encouraged to explain the purpose and rationale of the law or regulation.

5. Each Party shall, to the extent practicable, endeavour to allow reasonable time between publication of the text of a law or regulation referred to in paragraph 1 and the date on which investors or investments must comply with the law or regulation.

6. Except in emergency situations, no law or regulation referred to in paragraph 1 shall enter into force prior to publication.

Subsection B: Procedures

Article 50 – Processing of Applications
1. Where authorisation is required for admission, establishment, acquisition and expansion of investment, the competent authorities of a Party shall:

(a) to the extent practicable, provide an indicative timeframe for processing of an application;

(b) to the extent practicable ascertain without undue delay the completeness of an application for processing under domestic laws and regulations;

(c) in the case of an application considered complete under domestic laws and regulations, within a reasonable period of time after the submission of the application, ensure that the processing of the application is completed, and that the applicant is informed of the decision concerning the application, and to the extent possible in writing;

(d) at the request of the applicant, provide without undue delay information concerning the status of the application;

(e) in the case of an application considered incomplete for processing under domestic laws and regulations, within a reasonable period of time, to the extent practicable:

   i. inform the applicant that the application is incomplete;

   ii. at the request of the applicant provide guidance on why the application is considered incomplete;

   iii. provide the applicant with the opportunity to provide the additional information that is required to complete the application; and

where none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time; and

(f) in the case of a rejected application, to the extent possible, either upon their own initiative or upon the request of the applicant, inform the applicant of the reasons for rejection and, where applicable, the procedures for resubmission of an application. An applicant should not be prevented from submitting another application solely on the basis of a previously rejected application.

2. The competent authorities of a Party shall ensure that authorisation, once granted, enters into effect without undue delay subject to the applicable terms and conditions.

Article 51 – Fees

Each Party shall ensure that the authorisation fees\(^\text{10}\) charged by the competent authority are reasonable, transparent, and do not in themselves restrict the relevant

\(^{10}\) Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.
investment.

**Article 52 – Review of Investment Approval and Screening Processes**

With a view to keeping costs to the investor to a minimum and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information, business practices, availability of techniques and technology, international best practices, and inputs from interested parties, each Party shall review its investment approval and screening processes and associated formalities and documentation requirements and, based on the results of the review, ensure, to the extent possible, that investment approval and screening processes are:

(a) adopted and/or applied within reasonable time frames;

(b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for investors;

(c) the least investment restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and

(d) not maintained, including parts thereof, if no longer required.

**Article 53 – Appeals and Review**

1. Each Party shall provide that any person to whom a competent authority issues a decision concerning authorisation for admission, establishment, acquisition or expansion of investment has the right, within its territory, to:

   (a) an administrative appeal to or review by an administrative authority higher than or independent of the competent authority that issued the decision; and/or

   (b) a judicial appeal or review of the decision.

2. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

3. Each Party shall ensure that the person referred to in paragraph 1(a) of this Article is provided with the reasons for the decision of the competent authority so as to enable such a person to have recourse to procedures for appeal or review where necessary.

**Subsection C: Institutional Governance**

**Article 54 – Investment Facilitation Mechanisms**

1. Each Party shall establish and maintain one or more Investment Facilitation
Mechanisms to:

(a) respond to reasonable enquiries by investors regarding investment policies and applications;

(b) provide investors with all relevant public information regarding: applicable domestic laws and regulations, legal competencies of government agencies or entities with delegated authority relevant to their investments, public policies, statistics and all other matters directly relevant to investment;

(c) assist investors of any other Party in obtaining information from government agencies or entities with delegated authority relevant to their investments and, if applicable, subnational authorities;

(d) inform relevant competent authorities about recurrent problems faced by investors which may require changes in investment legislation or procedures; and

(e) to recommend to the competent authorities, as appropriate, measures to improve the investment environment.

2. Each of the above provisions may be implemented by one or more existing mechanisms such as a Party’s Investment Promotion Agency, a designated National Focal Point or any other mechanisms as appropriate.

Article 55 – Resolving Difficulties and Complaints

1. For the purpose of resolving the difficulties and complaints of investors, each Party shall designate contact points at the central level of government, which shall have the following responsibilities:

(a) to assist investors from any other Party by seeking to resolve investment-related difficulties, in collaboration with government agencies, entities with delegated authority relevant to their investments, and, if applicable, with subnational authorities; and

(b) to address complaints or grievances regarding measures adopted or maintained by a Party affecting investors and their investments, whether in the form of law, regulation, rule, procedure, decision, administrative ruling, or any other form, in violation of the provisions of this Treaty, with a view to preventing disputes.

2. Further to the contact points referred to in paragraph 1, a Party shall maintain contact points at a regional level of government to promptly respond to the complaints and difficulties of investors of the other Party.

Subsection D: International Cooperation

Article 56 – International Cooperation
1. Parties commit to share experiences on the subject matters covered by this Section in UNCTAD and other relevant international organisations.

2. Parties share the objective of working jointly to begin structured discussions with the aim of developing a multilateral framework on investment facilitation at the WTO.

Section 3: Investment Promotion

Article 57 – Inward Investment Promotion

Each Party’s Investment Promotion Agency shall endeavour to promote Green Investment through the implementation of its activities, in accordance with its domestic laws and regulations, including through:

(a) selecting and targeting subsectors that match the Party’s development objectives; and

(b) facilitation and aftercare with a specific focus on networking, matchmaking and the forging of partnerships between relevant stakeholders, including international and domestic companies, local authorities and research institutions.\(^\text{11}\)

Article 58 – Pre-Investment Support

Each Party shall, as appropriate, take the following measures to reduce actual and perceived risks associated with investment:

(a) support preliminary legal and technical due diligence and other pre-investment studies; and

(b) select sites or identify priority locations, in particular for renewable energy generation.

Article 59 – Outward Investment Support

1. Where applicable, each Party shall, to the extent possible, improve the efficiency of outward investment screening and approval processes, provide appropriate policy support for outward investment, including investment insurance and guarantees, political risk coverage and investment promotion services.

2. Parties shall establish regular consultations between relevant authorities, or formal collaboration between Outward Investment Agencies and Investment Promotion Agencies for the promotion and facilitation of investment projects.

\(^{11}\) For instance, support in the development of clean technology clusters.
**Article 60 – Joint Activities**

Parties shall endeavour to organise joint activities such as exhibitions, conferences, seminars and outreach programmes to disseminate relevant investment information, including the information referred to in Article 18 (Access to Information on Renewable Energy Resources).

**Section 4: Investment Protection**

**Subsection A: General Provisions**

For the purposes of this Section:

- **covered investment** means, with respect to a Party, a Green Investment:
  
  (a) in its territory;
  
  (b) made in accordance with its 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 Treaty, or made or acquired thereafter;

- **economic integration agreement** means an agreement substantially liberalizing, inter alia, trade and investment, by providing for the absence or elimination of substantially all discrimination between or among parties thereto through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time frame.

- **enterprise** means any entity as defined in Article 2 (General Definitions), and shall also include any affiliate or subsidiary thereof;

- **enterprise of a Party** means an enterprise constituted or organized in any other manner under the laws of the Party concerned, having their registered office and engaged in substantial economic activities in the territory of that Party;

- **freely usable currency** means “freely usable currency” as determined by the International Monetary Fund under its *Articles of Agreement*;

- **investor of a non-Party** means, with respect to a Party, an investor that attempts to make,¹² is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

- **investor of a Party** means a Party, a natural person or an enterprise of a Party, other

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¹² For greater certainty, the Parties understand that, for the purposes of the definitions of “investor of a non-Party” and “investor of a Party”, an investor “attempts to make” an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for a permit or licence.
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;

**natural person of a Party** means an individual who, according to laws of a Party, is
a national or permanent resident of that Party, provided that this natural person does
not simultaneously possess the nationality of another Party. If an individual is a
national of more than one Party, he or she shall only be considered to be a national of
the Party to which he or she has the most dominant and effective ties.

**Article 61 – Scope**

1. This Section shall apply to measures or omissions attributable to a Party in relation to:
   (a) investors of another Party; and
   (b) covered investments.

2. A Party’s obligations under this Section shall apply to measures or omissions
   attributable to:
   (a) the central, regional or local governments or authorities of that Party; and
   (b) any entity or person, including a state enterprise or any other body, who exercises
governmental authority delegated by the central, regional or local governments or other
authorities of that Party.

4. This Section shall not bind a Party in relation to acts, omissions or facts that took
   place before the date of entry into force of this Treaty for that Party, or to situations that
   ceased to exist before that date.

**Article 62 – Relation to Other Provisions**

In the event of an inconsistency between the provisions of this Section and another
provision of this Treaty, the other provision shall prevail, but only to the extent of the
inconsistency.

**Subsection B: Standards of Treatment**

**Article 63 – National Treatment**

1. Each Party shall accord to investors of another Party treatment no less favourable
   than that it accords, in like circumstances, to its own investors with respect to the
   establishment, acquisition, expansion, management, conduct, operation, and sale or

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13 For greater certainty, whether treatment is accorded in “like circumstances” under Article 63 (National Treatment) or Article 64 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.
other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

**Article 64 – Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment referred to in this Article does not encompass international dispute resolution procedures or mechanisms, such as those included in Section 2 of Part IV (Resolution of Disputes between Parties).

4. The provisions of this Article shall not be so construed as to oblige a Party which is party to an economic integration agreement to extend, by means of most favoured nation treatment, to another Party which is not a party to that economic integration agreement, any preferential treatment applicable between the parties to that economic integration agreement as a result of their being parties thereto.

**Article 65 – Minimum Standard of Treatment**

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security in accordance with international law. This does not require treatment in addition to or beyond the minimum standard of treatment under customary international law. In particular, the obligations to provide:

(a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil or administrative adjudicatory proceedings in accordance with basic principles of due process embodied in the principal legal systems of the world; and
(b) “full protection and security” requires each Party to provide the level of physical security of investors and covered investments required under customary international law.

3. 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.

4. 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 a breach of this Article, even if it has an economic impact on the covered investment as a result.

**Article 66 – Expropriation and Compensation**

1. No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation, except:

   (a) for a public purpose;\(^{15}\)

   (b) in a non-discriminatory manner;

   (c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and

   (d) in accordance with due process of law.

2. Compensation shall:

   (a) be paid without delay;

   (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

   (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

   (d) be fully realiseable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

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\(^{14}\) For greater certainty, this Article shall be interpreted in accordance with Annex II (Expropriation).

\(^{15}\) The term “public purpose” refers to a concept in customary international law. Domestic law may express this or a similar concept by using different terms, such as “public necessity”, “public interest” or “public use”.

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4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article shall not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation or creation of intellectual property rights, to the extent that the issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

6. A Party’s decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant,

(a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or

(b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant,

does not, by itself, constitute an expropriation.

**Article 67 – Treatment in Case of Armed Conflict or Civil Strife**

1. Notwithstanding Article 72.6(b) (Non-Conforming Measures), each Party shall accord to investors of another Party and to covered investments non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:

(a) requisitioning of its covered investment or part thereof by the latter’s forces or authorities; or

(b) destruction of its covered investment or part thereof by the latter’s forces or authorities, which was not required by the necessity of the situation,

the latter Party shall provide the investor restitution, compensation or both, as appropriate, for that loss.

3. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 63 (National Treatment) but for Article 72.6(b) (Non-Conforming Measures).
Article 68 – Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;

(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Article 67 (Treatment in Case of Armed Conflict or Civil Strife) and Article 66 (Expropriation and Compensation); and

(f) payments arising out of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorised or specified in a written agreement between the Party and a covered investment or an investor of another Party.

4. Notwithstanding paragraphs 1, 2 and 3, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, futures, options or derivatives;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 69 – Performance Requirements

1. Parties reaffirm their obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs), the provisions of which, as they may be amended from time to time, are incorporated into and made part of this Treaty.
2. No Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party in its territory, impose or enforce any requirement, 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 in its territory, or to purchase goods 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 the investment;

(e) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process or other proprietary knowledge to a person in its territory;

(g) to supply exclusively from the territory of the Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market;

3. No Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party in its territory, on compliance with any requirement:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) 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 the investment; or

(d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings.

4. (a) Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraph 2(f) shall not apply:
(i) if a Party authorises use of an intellectual property right in accordance with Article 31\(^{16}\) of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party’s competition laws.

(c) Paragraphs 2(a), 2(b), 2(c), 3(a) and 3(b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.

(d) Paragraphs 2(b), 2(c), 2(f), 2(g), 3(a) and 3(b) shall not apply to government procurement.

(e) Paragraphs 3(a) and 3(b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

5. Nothing in paragraph 2 shall be construed to prevent a Party, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party in its territory, from imposing or enforcing a requirement, or enforcing a commitment or undertaking, to employ or train workers in its territory provided that the employment or training does not require the transfer of a particular technology, production process or other proprietary knowledge to a person in its territory.

6. For greater certainty, paragraphs 2 and 3 shall not apply to any commitment, undertaking or requirement other than those set out in those paragraphs.

7. This Article does not preclude enforcement of any commitment, undertaking or requirement between private parties, if a Party did not impose or require the commitment, undertaking or requirement.

**Article 70 – Senior Management and Boards of Directors**

1. No Party shall require that an enterprise of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality.

2. A Party may require that a majority of the board of directors or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

\(^{16}\) The reference to “Article 31” includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN (01)/DEC/2).
Article 71 – Subrogation

1. If a Party, or any agency, institution, statutory body or corporation designated by the Party, makes a payment to an investor of the Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to a covered investment, the other Party in whose territory the covered investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Section with respect to the covered investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

2. For greater certainty, the subrogated right or claim shall not be greater than the original right or claim of the investor.

Subsection C: Reservations and Exceptions

Article 72 – Non-Conforming Measures

1. Article 63 (National Treatment), Article 64 (Most-Favoured-Nation Treatment), Article 69 (Performance Requirements) and Article 70 (Senior Management and Boards of Directors) shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

   (i) the central level of government, as set out by that Party in its Schedule to Part I of Annex III;

   (ii) a regional level of government, as set out by that Party in its Schedule to Part I of Annex III; or

   (iii) a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming 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 Article 63 (National Treatment), Article 64 (Most-Favoured-Nation Treatment), Article 69 (Performance Requirements) or Article 70 (Senior Management and Boards of Directors).

2. Article 63 (National Treatment), Article 64 (Most-Favoured-Nation Treatment), Article 69 (Performance Requirements) and Article 70 (Senior Management and Boards of Directors) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out by that Party in its Schedule to Part 2 of Annex III.
3. If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in paragraph 1(a)(ii), creates a material impediment to investment in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.

4. No Party shall, under any measure adopted after the date of entry into force of this Treaty for that Party and covered by its Schedule to Part 2 of Annex III, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

5. (a) Article 63 (National Treatment) shall not apply to any measure that falls within an exception to, or derogation from, the obligations which are imposed by Article 3 of the TRIPS Agreement.

(b) Article 64 (Most-Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, or an exception to, or derogation from, the obligations which are imposed by Article 4 of the TRIPS Agreement.

6. Article 63 (National Treatment), Article 64 (Most-Favoured-Nation Treatment) and Article 70 (Senior Management and Boards of Directors) shall not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

7. Any amendments or modifications to a Party’s Schedules to Part 1 or 2 of Annex III, pursuant to this Article, shall be made in accordance with Article 129 (Amendments).

Article 73 – Special Formalities and Information Requirements

1. Nothing in Article 63 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with a covered investment, such as a residency requirement for registration or a requirement that a covered investment be legally constituted under the laws or regulations of the Party, provided that these formalities do not materially impair the protections afforded by the Party to investors of another Party and covered investments pursuant to this Section.

2. Notwithstanding Article 63 (National Treatment) and Article 64 (Most-Favoured-Nation Treatment), a Party may require an investor of another Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.
Article 74 – Denial of Benefits

1. A Party may deny the benefits of this Section to an investor of another Party that is an enterprise of that other Party and to investments of that investor if the enterprise:

(a) is owned or controlled by a person of a non-Party or of the Party where the investment is made; and

(b) has no substantial economic activities in the territory of any Party other than the denying Party.

2. A Party may deny the benefits of this Section to an investor of another Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibits transactions with the enterprise or that would be violated or circumvented if the benefits of this Section were accorded to the enterprise or to its investments.

Part V – Exceptions

Article 75 – General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between investments or investors of the Parties where like conditions prevail, or a disguised restriction on investment, nothing in this Treaty shall be construed to prevent the adoption or enforcement by a Party of measures:

(a) necessary to protect public morals or to maintain public order;\(^\text{17}\)

(b) necessary to protect human, animal or plant life or health;

(c) related to the conservation of living or non-living exhaustible natural resources; or

(d) necessary to secure compliance with laws and regulations that are not inconsistent with this Treaty.

Article 76 – Measures to Implement the UNFCCC and Other Agreements Under Its Auspices

Nothing in this Treaty shall be construed to prevent a Party from preparing to adopt, adopting or maintaining measures to implement the UNFCCC and other agreements under its auspices, provided that:

\(^{17}\) The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to the fundamental interests of society.
(a) The Party preparing to adopt, adopting or maintaining the measure

(i) has ratified or acceded to the UNFCCC, the Paris Agreement and any other agreement concluded under the auspices of the UNFCCC after 31 December 2019 opened for signature to all parties to the UNFCCC; and

(ii) has prepared and communicated to the UNFCCC Secretariat a nationally determined contribution in accordance with the Paris Agreement and subsequent decisions of the Conference of Parties to the UNFCCC; and

(iii) implements the transparency provisions of the Paris Agreement in particular Article 13 thereof; and

(b) The measure at issue:

(i) is a domestic mitigation measure within the scope of Article 4.2 of the Paris Agreement; and

(ii) relates to the Party’s nationally determined contribution; and

(iii) aims to achieve one or more objectives of the nationally determined contribution; and

(iv) is not a disguised restriction on international investment; and

(v) is developed in accordance with Article 49 (Opportunity to Comment and Information before Into Force) and, in the case of a final measure, published in accordance with Article 48 (Publication and Information Available); and

(c) The measure is not subject to a dispute in a competent court or administrative tribunal of the Party preparing to adopt, adopting or maintaining the measure, or if it has been subject to such dispute the competent court at the final level of appeal made a positive determination with respect to the legality of the measure in accordance with the domestic law of that Party and the prevailing interpretation given to the domestic law by the courts of that Party.

Article 77 – Security Exceptions

Nothing in this Treaty shall be construed

(a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any measure which is:

(i) necessary for the protection of its essential security interests; or

(ii) relating to the implementation of national policies respecting the non-proliferation of nuclear weapons or other nuclear explosive devices or needed to
fulfil its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, the Nuclear Suppliers Guidelines, and other international nuclear non-proliferation obligations or understandings.

(c) to prevent any Party from taking any measure in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 78 – Temporary Safeguard Measures

1. Nothing in this Treaty shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers for current account transactions in the event of serious balance of payments and external financial difficulties or threats thereof.

2. Nothing in this Treaty shall be construed to prevent a Party from adopting or maintaining restrictive measures with regard to payments or transfers relating to the movements of capital:

(a) in the event of serious balance of payments and external financial difficulties or threats thereof; or

(b) if, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management.

3. Any measure adopted or maintained under paragraph 1 or 2 shall:

(a) not be inconsistent with Article 63 (National Treatment) and Article 64 (Most-Favoured-Nation Treatment);

(b) be consistent with the Articles of Agreement of the International Monetary Fund;

(c) avoid unnecessary damage to the commercial, economic and financial interests of any other Party;

(d) not exceed those necessary to deal with the circumstances described in paragraph 1 or 2;

(e) be temporary and be phased out progressively as the situations specified in paragraph 1 or 2 improve, and shall not exceed 18 months in duration; however, in exceptional circumstances, a Party may extend such measure for additional periods of one year, by notifying the other Parties in writing within 30 days of the extension, unless after consultations more than one half of the Parties advise, in writing, within 30 days of receiving the notification that they do not agree that the extended measure is designed and applied to satisfy subparagraphs (c), (d) and (h), in which case the Party imposing the measure shall remove the measure, or otherwise modify the measure to bring it into conformity with subparagraphs (c), (d) and (h), taking into account the views of the other Parties, within 90 days of receiving notification that more than one half of the Parties do not agree;
(f) not be inconsistent with Article 66 (Expropriation and Compensation);

(g) in the case of restrictions on capital outflows, not interfere with investors’ ability to earn a market rate of return in the territory of the restricting Party on any restricted assets;\(^\text{18}\) and

(h) not be used to avoid necessary macroeconomic adjustment.

4. Measures referred to in paragraphs 1 and 2 shall not apply to payments or transfers relating to foreign direct investment.\(^\text{19}\)

**Article 79 – Taxation measures**

1. For the purposes of this Article:

   - **competent tax authority** means the competent authority pursuant to a tax convention in force between Parties or, when no such agreement is in force, the minister or ministry responsible for taxes or their authorized representatives;

   - **tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

   - **taxes and taxation measures** include excise duties, but do not include customs duties.

2. Except as provided in this Article or elsewhere in this Treaty, nothing in this Treaty shall apply to taxation measures.

3. Nothing in this Treaty shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between this Treaty and any such tax convention, that convention shall prevail to the extent of the inconsistency.

4. In the case of a tax convention between two or more Parties, if an issue arises as to whether any inconsistency exists between this Treaty and the tax convention, the issue shall be referred to the competent tax authorities of the Parties in question. The competent tax authorities of those Parties shall have six months from the date of referral of the issue to make a determination as to the existence and extent of any inconsistency. If those competent tax authorities agree, the period may be extended up to 12 months from the date of referral of the issue. No procedures concerning the measure giving rise to the issue may be initiated under Part VI (Dispute Settlement) until the expiry of the six-month period, or any other period as may have been agreed by the competent tax authorities. A panel or tribunal established to consider a dispute related to a taxation

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\(^{18}\) The term “restricted assets” in this subparagraph refers only to assets invested in the territory of the restricting Party by an investor of a Party that are restricted from being transferred out of the territory of the restricting Party.  

\(^{19}\) For the purposes of this Article, “foreign direct investment” means a type of investment by an investor of a Party in the territory of another Party, through which the investor exercises ownership or control over, or a significant degree of influence on the management of, an enterprise or other direct investment, and tends to be undertaken in order to establish a lasting relationship. For example, ownership of at least 10 per cent of the voting power of an enterprise over a period of at least 12 months generally would be considered foreign direct investment.
measure shall accept as binding a determination of the competent tax authorities of the Parties made under this paragraph.

5. Subject to paragraph 3:

(a) Article 63 (National Treatment) and Article 64 (Most-Favoured-Nation Treatment) shall apply to all taxation measures, other than those on income, on capital gains, on the taxable capital of corporations, on the value of an investment or property (but not on the transfer of that investment or property), or taxes on estates, inheritances, gifts and generation-skipping transfers;

but nothing in the Articles referred to in subparagraph (a) shall apply to:

(b) any most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;

(c) a non-conforming provision of any existing taxation measure;

(d) the continuation or prompt renewal of a non-conforming provision of any existing taxation measure;

(e) an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles;

(f) the adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes, including any taxation measure that differentiates between persons based on their place of residence for tax purposes, provided that the taxation measure does not arbitrarily discriminate between persons, goods or services of the Parties;

(g) a provision that conditions the receipt or continued receipt of an advantage relating to the contributions to, or income of, a pension trust, pension plan, superannuation fund or other arrangement to provide pension, superannuation or similar benefits, on a requirement that the Party maintain continuous jurisdiction, regulation or supervision over that trust, plan, fund or other arrangement; or

(h) any excise duty on insurance premiums to the extent that such tax would, if levied by the other Parties, be covered by subparagraph (c), (d) or (e).

7. Subject to paragraph 3, Article 69.3 (Performance Requirements), Article 69.4 and Article 69.6 shall apply to taxation measures.

8. Article 66 (Expropriation and Compensation) shall apply to taxation measures. However, no investor may invoke Article 66 (Expropriation and Compensation) as the basis for a claim if it has been determined pursuant to this paragraph that the measure is not an expropriation. An investor that seeks to invoke Article 66 (Expropriation and

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20 This is without prejudice to the methodology used to determine the value of such investment or property under Parties’ respective laws.
Compensation) with respect to a taxation measure must first refer to the competent tax authorities of the Party of the investor and the respondent Party, at the time that it gives its notice of intent under Article 83 (Submission of a Claim to Arbitration), the issue of whether that taxation measure is not an expropriation. If the competent tax authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation within a period of six months of the referral, the investor may submit its claim to arbitration under Article 83 (Submission of a Claim to Arbitration).

Part VI – Dispute Settlement

Section 1: Resolution of Disputes between Investors and Parties

For the purposes of this Section:

Board means board of directors of the Arbitration Institute of the Stockholm Chamber of Commerce;

claimant means an investor of a Party that is a party to an investment dispute with another Party. If that investor is a natural person, who is a permanent resident of a Party and a national of another Party, that natural person may not submit a claim to arbitration against that latter Party;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

IBA means International Bar Association;

ICSID means the International Centre for Settlement of Investment Disputes established by the ICSID Convention;

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, March 18, 1965;


non-disputing Party means a Party that is not a party to an investment dispute;

respondent means the Party that is a party to an investment dispute;

Secretariat means secretariat of the Arbitration Institute of the Stockholm Chamber of Commerce;
Secretary-General means the Secretary-General of ICSID;

UNCITRAL Arbitration Rules means the latest version of the arbitration rules of the United Nations Commission on International Trade Law, including the UNCITRAL Transparency Rules; and

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

Article 80 – Scope

1. A Party may choose, in accordance with Article 118 (Choice of Options) to exclude claims under:

(a) Article 63 (National Treatment) under Section 4 of Part IV (Investment Protection); and

(b) Article 64 (Most-Favoured-Nation Treatment) under Section 4 of Part IV (Investment Protection)

with respect to the establishment or acquisition of a covered investment.

2. An investor may not submit a claim under this Section if the investment has been made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.

Article 81 – Consultation and Negotiation

1. Before initiating an investment dispute under this Section, an investor shall initially seek to resolve the dispute through consultation and negotiation, which may include the resort to the contact point referred to in Article 55 (Resolving Difficulties and Complaints).

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 82 – Choice of Forum

1. If an investment dispute cannot be settled through consultation and negotiation within six months of the receipt by the respondent of a written request for consultations, each Party consents to the submission of the dispute, at the investor's choice:

(a) to the competent court of the Party that is a party to the dispute;
(b) to an arbitration in accordance with Article 83 (Submission of a Claim to Arbitration).

2. Once the investor has submitted the dispute in accordance with paragraph 1, the choice shall be final.

**Article 83 – Submission of a Claim to Arbitration**

1. Subject to Article 82 (Choice of Forum), the claimant:

   (a) on its own behalf, may submit to arbitration under this Section a claim:

   (i) that the respondent has breached an obligation under Part IV (Green Investment Facilitation, Promotion and Protection); and

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

   (b) 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 under this Section a claim:

   (i) that the respondent has breached an obligation under Part IV (Green Investment Facilitation, Promotion and Protection); and

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

2. At least 90 days before submitting any claim to arbitration under this Section, 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, address and the economic sector involved 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 Treaty, 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.

3. 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) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce;

(d) the UNCITRAL Arbitration Rules; or

(e) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this Section 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 under the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce is received by its Secretariat;

(d) referred to in the UNCITRAL Arbitration Rules, together with the statement of claim referred to therein, are received by the respondent; or

(e) referred to under any arbitral institution or arbitration rules selected under paragraph 3(d) or 3(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 under this Section on the date of its receipt under the applicable arbitration rules.

5. The arbitration rules applicable under paragraph 3 that are in effect on the date the claim or claims were submitted to arbitration under this Section shall govern the arbitration except to the extent modified by this Treaty.

6. 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 Secretary-General to appoint that arbitrator.

7. Each Party may choose, in accordance with Article 118 (Choice of Options) to consent to the submission of claims for breach of an investment agreement or investment authorization. Paragraphs 1 to 6 of this Article shall apply mutatis mutandis to the submission of such claims, subject to the following rules:
(a) A claimant may submit 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.

(b) Without prejudice to a claimant’s right to submit a claim for breach of an investment authorisation, a claimant shall not submit to arbitration such a claim if a Party has breached an investment authorisation by enforcing conditions or requirements under which the investment authorisation was granted.

(c) When the claimant submits a claim based on a breach of an investment agreement or investment authorization, 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. In the case of investment authorisations, this shall apply only to the extent that the investment authorisation, including instruments executed after the date the authorisation was granted, creates rights and obligations for the disputing parties.

**Article 84 – Consent of Each Party to Arbitration**

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Treaty.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section 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 1.1 of the UNCITRAL Arbitration Rules for agreement of the parties.

**Article 85 – Conditions and Limitations on Consent of Each Party**

1. No claim shall be submitted to arbitration under this Section 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 83 (Submission of a Claim to Arbitration and knowledge that the claimant or the enterprise has incurred loss or damage.

2. No claim shall be submitted to arbitration under this Section unless:

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

   (b) the notice of arbitration is accompanied:
(i) for claims submitted to arbitration under paragraphs 1(a) and 7 of Article 83 (Submission of a Claim to Arbitration), by the claimant’s written waiver; and

(ii) for claims submitted to arbitration under paragraphs 1(b) and 7 of Article 83 (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 83 (Submission of a Claim to Arbitration).

3. Notwithstanding paragraph 2(b), the claimant or the enterprise 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 86 – Composition of the Tribunal**

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 Board shall serve as appointing authority for an arbitration under this Section.

3. If a tribunal has not been constituted within a period of 75 days after the date that a claim is submitted to arbitration under this Section, the Board, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed. The Board 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. In the appointment of arbitrators, each disputing party shall take into account the expertise or relevant experience of particular candidates with respect to the relevant governing law under Article 89.2 (Governing Law). If the parties fail to agree on the appointment of the presiding arbitrator, the Board shall also take into account the expertise or relevant experience of particular candidates with respect to the relevant governing law under Article 89.2. For the purpose of assisting the parties and the Board the Secretariat will make available a list of persons considered to have expertise in the subject matters of the dispute at hand.

5. Arbitrators shall comply with the applicable arbitral rules regarding independence and impartiality of arbitrators and may take into account relevant international rules or guidelines on conflicts of interest in international arbitration in particular the IBA Guidelines on Conflicts of Interest in International Arbitration.

**Article 87 – Conduct of the Arbitration**
1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 83.3 (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. 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 94 (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 94 (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). 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 3.

3. 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 2 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.

4. When the tribunal decides a respondent’s objection under paragraph 2 or 3, 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.

5. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 65 (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.

6. 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.

7. 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 83 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.

8. In any arbitration conducted under this Section, 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.

**Article 88 – Transparency of Arbitral Proceedings**

The UNCITRAL Transparency Rules shall apply in connection with proceedings under this Section.

**Article 89 – Governing Law**

1. Subject to paragraph 3, when a claim is submitted under Article 83.1(a)(i) (Submission of a Claim to Arbitration) or Article 83.1(b)(i), the tribunal shall decide the issues in dispute in accordance with this Treaty and applicable rules of international law.

2. Subject to paragraph 3 and the other provisions of this Section, when a claim is submitted under Article 83.7 (Submission of a Claim to Arbitration), 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;\(^{21}\) and

(ii) such rules of international law as may be applicable.

3. A decision of the Conference on the interpretation of a provision of this Treaty under Article 119.3(e) (Ministerial Conference on Green Investment) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

**Article 90 – Discretion of the Tribunal**

Where the applicable arbitral rules allow the tribunal to exercise discretion in the conduct of the proceedings, the tribunal in exercising such discretion shall take into account

(i) the public interest in treaty-based investor-State arbitration and in the particular arbitral proceedings;

(ii) the respondent’s right to regulate pursuant to Article 45 (Right to Regulate); and

(iii) the disputing parties’ interest in a fair and efficient resolution of their dispute.

**Article 91 – 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 92 – Aggregation of Claims**

If two or more claims have been submitted separately to arbitration under Article 83.1 or 7 (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 request to aggregate such claims in accordance with the agreement of all the disputing parties sought to be covered by this request or the applicable arbitration rules.

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\(^{21}\) The “law of the respondent” means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case. For greater certainty, the law of the respondent includes the relevant law governing the investment agreement, including law on damages, mitigation, interest and estoppel.
Article 93 – Failure to Comply with Environmental Impact Assessment Requirements

Where a claimant is alleged by a respondent to have failed to implement one or more applicable requirements of environmental impact assessments contained in Article 42 (Basic Requirements of Environmental Impact Assessments), the tribunal shall consider whether such breach, if proven, is materially relevant to the issues before it, and if so, what mitigating or off-setting effects this may have on the merits of a claim or on any damages awarded in the event of such award.

Article 94 – 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 83.1(a) or 7 (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 with this Section and the applicable arbitration rules.

4. For greater certainty, for claims alleging the breach of an obligation under Part IV 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 83.1(b) or 7 (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 9 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, or the rules selected pursuant to Article 83.3(c) or (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. A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention.

12. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

**Article 95 – Appellate Mechanism**

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 should strive to reach an agreement that would have such appellate mechanism review awards rendered under Article 94 (Awards) in arbitrations commenced after the appellate mechanism’s establishment.
Section 2: Resolution of Disputes between Parties

For the purposes of this Section:

complaining Party means a Party that requests the establishment of a panel under Article 100.1 (Establishment of a Panel);

consulting Party means a Party that requests consultations under Article 98.1 (Consultations) or the Party to which the request for consultations is made;

disputing Party means a complaining Party or a responding Party;

panel means a panel established under Article 100 (Establishment of a Panel);

responding Party means a Party that has been complained against under Article 100 (Establishment of a Panel);

Rules of Procedure means the rules referred to in Article 104 (Rules of Procedure for Panels) and established in accordance with Article 119.2(d) (Ministerial Conference on Green Investment); and

third Party means a Party, other than a disputing Party, that delivers a written notice in accordance with Article 105 (Third Party Participation).

Article 96 – Cooperation

Parties shall at all times endeavour to agree on the interpretation and application of this Treaty, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation or application.

Article 97 – Scope

1. Unless otherwise provided in this Treaty, the dispute settlement provisions of this Section shall apply:

(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Treaty; or

(b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Treaty under Part II or Part III or that another Party has otherwise failed to carry out an obligation under this Treaty under Part II or Part III.

2. Parties acknowledge that the settlement of disputes provided for in this Section and the procedure pursuant to Article 122 (Compliance Council) are distinct and separate procedures.
Article 98 – Consultations

1. Any Party may request consultations with any other Party with respect to any matter described in Article 97 (Scope). The Party making the request for consultations shall do so in writing, and shall set out the reasons for the request, including identification of the actual or proposed measure or other matter at issue and an indication of the legal basis for the complaint. The requesting Party shall circulate the request concurrently to the Secretariat who shall circulate it among other Parties.

2. The Party to which a request for consultations is made shall, unless the consulting Parties agree otherwise, reply in writing to the request no later than seven days after the date of its receipt of the request. That Party shall circulate its reply concurrently to the other Parties through the Secretariat and enter into consultations in good faith.

3. A Party other than a consulting Party that considers it has a substantial interest in the matter may participate in the consultations by notifying the other Parties in writing no later than seven days after the date of circulation of the request for consultations. The Party shall include in its notice an explanation of its substantial interest in the matter.

4. Unless the consulting Parties agree otherwise, they shall enter into consultations no later than 30 days after the date of receipt of the request.

5. Consultations may be held in person or by any technological means available to the consulting Parties.

6. The consulting Parties shall make every attempt to reach a mutually satisfactory resolution of the matter through consultations under this Article. To this end:

(a) each consulting Party shall provide sufficient information to enable a full examination of how the actual or proposed measure might affect the operation or application of this Treaty; and

(b) a Party that participates in the consultations shall treat any information exchanged in the course of the consultations that is designated as confidential on the same basis as the Party providing the information.

7. In consultations under this Article, a consulting Party may request that another consulting Party make available personnel of its government agencies or other regulatory bodies who have expertise in the matter at issue.

8. Consultations shall be confidential and without prejudice to the rights of any Party in any other proceedings.

Article 99 – Good Offices, Conciliation and Mediation

22 For greater certainty, if the Party to which a request for consultations is made does not reply within the time period specified in this paragraph, it shall be deemed to have received the request seven days after the date on which the Party making the request for consultations transmitted that request.
1. Parties may at any time agree to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation or mediation.

2. Proceedings that involve good offices, conciliation or mediation shall be confidential and without prejudice to the rights of the Parties in any other proceedings.

3. Parties participating in proceedings under this Article may suspend or terminate those proceedings at any time.

4. If the disputing Parties agree, good offices, conciliation or mediation may continue while the dispute proceeds for resolution before a panel established under Article 100 (Establishment of a Panel).

**Article 100 – Establishment of a Panel**

1. A Party that requested consultations under Article 98.1 (Consultations) may request, by means of a written notice addressed to the responding Party, the establishment of a panel if the consulting Parties fail to resolve the matter within:

   (a) a period of 60 days after the date of receipt of the request for consultations under Article 98.1 (Consultations); or

   (b) any other period as the consulting Parties may agree.

2. The complaining Party shall circulate the request concurrently to all Parties through the Secretariat.

3. The complaining Party shall include in the request to establish a panel an identification of the measure or other matter at issue and a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

4. A panel shall be established upon delivery of the request.

5. Unless the disputing Parties agree otherwise, the panel shall be composed in a manner consistent with this Section and the Rules of Procedure.

6. If a panel has been established regarding a matter and another Party requests the establishment of a panel regarding the same matter, a single panel should be established to examine those complaints whenever feasible.

7. A panel shall not be established to review a proposed measure.

**Article 101 – Terms of Reference**

Unless the disputing Parties agree otherwise no later than 20 days after the date of delivery of the request for the establishment of a panel, the terms of reference shall be to:
(a) examine, in the light of the relevant provisions of this Treaty, the matter referred to in the request for the establishment of a panel under Article 100.1 (Establishment of a Panel); and

(b) make findings and determinations, and any jointly requested recommendations, together with its reasons therefor, as provided for in Article 108.4 (Initial Report).

Article 102 – Composition of Panels

1. A panel shall be composed of three members.

2. Unless the disputing Parties agree otherwise, they shall apply the following procedures to compose a panel:

   (a) Within a period of 20 days after the date of delivery of the request for the establishment of a panel under Article 100.1 (Establishment of a Panel), the complaining Party or Parties, on the one hand, and the responding Party, on the other, shall each appoint a panellist and notify each other of those appointments.

   (b) If the complaining Party or Parties fail to appoint a panellist within the period specified in subparagraph (a), the dispute settlement proceedings shall lapse at the end of that period.

   (c) For appointment of the third panellist, who shall serve as chair, the disputing Parties shall endeavour to agree on the appointment of a chair by the time the second panellist is appointed or within a period of 35 days after the date of delivery of the request for the establishment of a panel under Article 100.1 (Establishment of a Panel), whichever is longer.

3. If within the time limits set forth in paragraph 2 above, the required appointments have not been made, either Party may invite the Secretary-General of the Permanent Court of Arbitration to appoint the panellist(s) not yet appointed. If the Secretary-General is a national or a permanent resident of either Party, or he or she is otherwise unable to act, the First Secretary shall be invited to make the said appointments. If the First Secretary is a national or a permanent resident of either Party; or he or she is otherwise unable to act, the Deputy next in seniority who is not a national nor a permanent resident of either Party shall be invited to make the necessary appointments.

4. All panellists shall:

   (a) have expertise or experience in public international law, international investment, climate change or other matters covered by this Treaty; or the resolution of disputes arising under international investment or environmental treaties;

   (b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and

   (c) be independent of, and not affiliated with or take instructions from, any Party.
5. An individual shall not serve as a panellist for a dispute in which that person has participated under Article 99 (Good Offices, Conciliation and Mediation).

**Article 103 – Function of Panels**

1. A panel’s function is to make an objective assessment of the matter before it, which includes an examination of the facts and the applicability of and conformity with this Treaty, and to make the findings, determinations and recommendations as are called for in its terms of reference and necessary for the resolution of the dispute.

2. Unless the disputing Parties agree otherwise, the panel shall perform its functions and conduct its proceedings in a manner consistent with this Section and the Rules of Procedure.

3. The panel shall consider this Treaty in accordance with the rules of interpretation under international law as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (1969). The findings, determinations and recommendations of the panel shall not add to or diminish the rights and obligations of the Parties under this Treaty.

4. A panel shall take its decisions by consensus, except that, if a panel is unable to reach consensus, it may take its decisions by majority vote.

**Article 104 – Rules of Procedure for Panels**

The Rules of Procedure, established under this Treaty in accordance with Article 119.2(d) (Ministerial Conference on Green Investment), shall ensure that:

(a) disputing Parties have the right to at least one hearing before the panel at which each may present views orally;

(b) subject to subparagraph (f), any hearing before the panel shall be open to the public, unless the disputing Parties agree otherwise;

(c) each disputing Party has an opportunity to provide an initial and a rebuttal written submission;

(d) subject to subparagraph (f), each disputing Party shall:

   (i) make its best efforts to release to the public its written submissions, written version of an oral statement and written response to a request or question from the panel, if any, as soon as possible after those documents are filed; and

   (ii) if not already released, release all these documents by the time the final report of the panel is issued;
(e) the panel shall consider requests from non-governmental entities located in the territory of a disputing Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;

(f) confidential information is protected; and

(g) written submissions and oral arguments shall be made in English, unless the disputing Parties agree otherwise.

**Article 105 – Third Party Participation**

A Party that is not a disputing Party and that considers it has an interest in the matter before the panel shall, on delivery of a written notice to the disputing Parties, be entitled to attend all hearings, make written submissions, present views orally to the panel, and receive written submissions of the disputing Parties. The Party shall provide written notice no later than 10 days after the date of circulation of the request for the establishment of the panel under Article 100.2 (Establishment of a Panel).

**Article 106 – Role of Experts**

At the request of a disputing Party, or on its own initiative, a panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties agree and subject to any terms and conditions agreed by the disputing Parties. The disputing Parties shall have an opportunity to comment on any information or advice obtained under this Article.

**Article 107 – Suspension or Termination of Proceedings**

1. The panel may suspend its work at any time at the request of the complaining Party or, if there is more than one complaining Party, at the joint request of the complaining Parties, for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in this Section and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties agree otherwise.

2. The panel shall terminate its proceedings if the disputing Parties request it to do so.

**Article 108 – Initial Report**

1. The panel shall draft its report without the presence of any Party.

2. The panel shall base its report on the relevant provisions of this Treaty, the submissions and arguments of the disputing Parties and any third Parties, and on any information or advice put before it under Article 106 (Role of Experts). At the joint
request of the disputing Parties, the panel may make recommendations for the resolution of the dispute.

3. The panel shall present an initial report to the disputing Parties no later than 150 days after the date of the appointment of the last panellist.

4. The initial report shall contain:

(a) findings of fact;

(b) the determination of the panel as to whether:

   (i) the measure at issue is inconsistent with obligations in this Treaty; or

   (ii) a Party has otherwise failed to carry out its obligations in this Treaty.

(c) any other determination requested in the terms of reference;

(d) recommendations, if the disputing Parties have jointly requested them, for the resolution of the dispute; and

(e) the reasons for the findings and determinations.

5. In exceptional cases, if the panel considers that it cannot release its initial report within the time period specified in paragraph 3, it shall inform the disputing Parties in writing of the reasons for the delay together with an estimate of when it will issue its report. A delay shall not exceed an additional period of 30 days unless the disputing Parties agree otherwise.

6. Panellists may present separate opinions on matters not unanimously agreed.

7. A disputing Party may submit written comments to the panel on its initial report no later than 15 days after the presentation of the initial report or within another period as the disputing Parties may agree.

8. After considering any written comments by the disputing Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.

**Article 109 – Final Report**

1. The panel shall present a final report to the disputing Parties, including any separate opinions on matters not unanimously agreed, no later than 30 days after presentation of the initial report, unless the disputing Parties agree otherwise. After taking any steps to protect confidential information, and no later than 15 days after the presentation of the final report, the disputing Parties shall release the final report to the public.

2. No panel shall, either in its initial report or its final report, disclose which panellists are associated with majority or minority opinions.
Article 110 – Implementation of Final Report

1. Parties recognise the importance of prompt compliance with determinations made by panels under Article 109(Final Report) in achieving the aim of the dispute settlement procedures in this Section, which is to secure a positive solution to disputes.

2. If in its final report the panel determines that:

(a) the measure at issue is inconsistent with a Party’s obligations in this Treaty; or

(b) a Party has otherwise failed to carry out its obligations in this Treaty,

the responding Party shall promptly eliminate the non-conformity.

3. Where appropriate, the disputing Parties may agree on a mutually satisfactory action plan to resolve the dispute, which shall be consistent with this Treaty and conform with the determinations and recommendations, if any, of the panel.

Article 111 – Compliance Review

Where there is disagreement between the disputing Parties as to whether the responding Party has eliminated the non-conformity found by the panel, such dispute shall be decided through recourse to the dispute settlement procedures contained in this Section including wherever possible resort to the original panel. The panel shall issue its report on the matter no later than 90 days after the responding Party provides written notice.

Article 112 – Non-Implementation

1. The responding Party shall, if requested by the complaining Party or Parties, enter into negotiations with the complaining Party or Parties no later than 15 days after receipt of that request, with a view to developing mutually acceptable compensation, if:

(a) the responding Party has notified the complaining Party or Parties that it does not intend to eliminate the non-conformity; or

(b) the responding Party fails to bring the measure found to be inconsistent with this Treaty into compliance therewith or otherwise comply with the final report within a reasonable period of time.

2. Compensation shall only be applied until the responding Party has eliminated the non-conformity, until a mutually satisfactory solution is reached.

Article 113 – Responsive Measures
1. If no satisfactory compensation has been agreed within 60 days after the date of the request for negotiations, any Party in whose favour the final report was rendered, shall notify the other Party, the Conference and the Compliance Council if it intends to suspend the application to the other Party of obligations under this Treaty.

2. The effect of any such suspension shall be proportionate to the effect of the other Party’s non-compliance. Such measures may not include suspension of the application of Article 65 (Minimum Standard of Treatment) and Article 66 (Expropriation and Compensation).

3. At the request of any Party to the final report upon conclusion of the 60-day period for negotiations, the Compliance Council shall consider the matter. The Compliance Council may:

(a) make recommendations, by consensus minus the disputing Parties;

(b) suspend the non-complying Party’s right to participate in decisions of some or all bodies established under this Treaty, by consensus minus the non-complying Party; and

(c) by consensus minus the Party which had intended to suspend the application to the other Party of obligations under this Treaty, decide that some or all of the suspensive measures shall not be taken.

4. Any dispute concerning the lawfulness of any responsive measures shall, at the request of any Party that is party to the dispute, be submitted for decision to a panel. The dispute settlement procedures contained in this Section shall apply, with such modifications as the panel deems appropriate, and the final report shall be issued no later than 90 days after the date of the request.

**Part VII – Implementation**

**Article 114 – Fulfilment of Obligations**

Except as otherwise provided in this Treaty, each Party shall ensure that all necessary measures are taken in order to give effect to the provisions of this Treaty.

**Article 115 – Designation of Articles under Categories**

1. Taking into account the principle of equity and common but differentiated responsibilities and respective capabilities referred to in Article 3.1 of the UNFCCC, in the light of different national circumstances, each Party may implement this Treaty in accordance with this Article.

2. Each Party may self-designate Articles from the following Sections for inclusion into Category A, B, C or D as defined in paragraph 3, upon ratification of or accession to this Treaty.\(^23\)

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\(^23\) For greater certainty, Parties shall implement provisions not listed in this paragraph.
(a) Carbon Pricing (Section 2 of Part II);
(b) Fossil Fuel Subsidy Reform (Section 3 of Part II);
(c) Promotion of Renewable Energy (Section 4 of Part II);
(d) Enhancing Energy Efficiency (Section 5 of Part II);
(e) Sustainable Land Use (Section 6 of Part II);
(f) Innovation, Transfer and Application of Environmentally Sound Technologies (Section 7 of Part II);
(g) Greenhouse Gas Emissions of Enterprises (Section 2 of Part III);
(h) Environmental Impact Assessments (Section 3 of Part III);
(i) Investment Facilitation (Section 2 of Part IV);
(j) Investment Promotion (Section 3 of Part IV); and
(k) Investment Protection (Section 4 of Part IV);

3. There are four categories of Articles:

(a) Category A contains Articles that a Party designates for implementation upon entry into force of this Treaty;

(b) Category B contains Articles that a Party designates for implementation on a date after a transition period of maximum 10 years following the entry into force of this Treaty;

(c) Category C contains Articles that a Party designates for implementation within 5 years following the entry into force of this Treaty and which require the provision of technical assistance and capacity building, in accordance with Article 117 (Provision of Technical Assistance and Capacity Building); and

(d) Category D contains Articles that a Party does not designate for implementation and which are not legally binding for that Party.

4. Each Party shall ensure that its designation of Articles reflects its highest possible ambition and takes into account its existing international obligations.

5. A Party shall refrain from designating the majority of Articles of a Section listed in paragraphs 2(a) to (j) under Category D or undermining the effectiveness or objectives of this Treaty through designation of Articles under Category D.
6. Where a Party is a party to an investment treaty which offers substantially similar treatment as Section 4 of Part IV (Investment Protection), it shall endeavour to designate all Articles of this Section under Category A.

7. Articles of a Section listed in paragraphs 2(a) to (j) which have not been designated under any Category by a Party upon ratification of or accession to this Treaty shall be deemed to be designated under Category A by that Party.

8. Upon ratification of or accession to this Treaty, each Party shall submit a notification of its designation of Articles under Category A, B, C or D to the Secretariat in accordance with the notification format contained in Annex IV (Notification: Designation of Articles under Categories). The Secretariat shall subsequently circulate the notification to other Parties.

9. Parties who have designated Articles under Categories B, C and D may shift such provisions to Category A or shift from Category D to B or C, or between Category B and C, provided that any applicable transition period is not extended. Any revised designation by a Party shall be notified to the Secretariat in accordance with the notification format contained in Annex IV (Notification: Designation of Articles under Categories). The Secretariat shall subsequently circulate the notification to other Parties.

Article 116 – Reporting in Relation to Articles Designated under Category B

1. At each regular meeting of the Conference, any Party which has designated an Article under Category B, shall report on its plans for and progress towards implementing that Article.

2. Any such Party shall provide a written report to the Conference on its plans for and progress towards implementing each such Article as follows:

(a) for any transition period of three years or less, the Party shall provide a written report six months before the expiration of the transition period; and

(b) for any transition period of more than three years, the Party shall provide a yearly written report on the anniversary date of entry into force of this Treaty for it, beginning on the third anniversary, and a written report six months before the expiration of the transition period.

3. Any Party may request additional information regarding another Party’s progress towards implementing an Article designated under Category B. The reporting Party shall promptly reply to such request.

4. No later than the date on which a transition period expires for an Article designated by a Party under Category B, that Party shall provide a written notification, through the Secretariat, to other Parties of what measures it has taken to implement that Article.

5. If a Party fails to provide the notification referred to in paragraph 4, the matter shall be automatically placed on the agenda for the next regular meeting of the Conference.
addition, any Party may request that the Conference meet promptly to discuss that matter.

**Article 117 – Provision of Technical Assistance and Capacity Building**

1. Parties should provide targeted technical assistance and capacity building to other Parties in particular least-developed countries so as to help them build sustainable capacity to implement their commitments, consistent with the principles referred to in paragraph 3.

2. Parties agree to facilitate the provision of technical assistance and capacity building to Parties that have designated Articles under Category C on mutually agreed terms either bilaterally or through the appropriate international organizations. The objective is to assist Parties to fully implement the provisions of this Treaty.

3. In providing technical assistance and capacity building with regard to the implementation of this Treaty, the following principles shall apply:

   (a) taking account of the overall developmental framework of recipient Parties and, where relevant and appropriate, ongoing reform and technical assistance programs;

   (b) ensuring that ongoing investment facilitation and promotion reform activities are factored into assistance activities;

   (c) promoting coordination between and among Parties and other relevant organisations, including UNFCCC and the Green Climate Fund, to ensure maximum effectiveness of and results from this assistance;

   (d) encouraging use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities; and

   (e) encouraging all Parties to provide capacity building to developing and least-developed country Parties and supporting such activities, where possible.

**Article 118 – Choice of Options**

1. For Article 80.1 (Scope) and Article 83.7 (Submission of a Claim to Arbitration), each Party may choose to apply the option provided by that provision, upon ratification of or accession to this Treaty.

2. Upon ratification of or accession to this Treaty, each Party shall submit a notification of the applicability of options under paragraph 1 to the Secretariat in accordance with the notification format contained in Annex V (Notification: Choice of Options). Any revision shall be notified in the same manner. The Secretariat shall subsequently circulate such notifications to other Parties.
Part VIII – Institutional and Administrative Provisions

Article 119 – Ministerial Conference on Green Investment

1. There shall be a Ministerial Conference on Green Investment (‘Conference’) composed of government representatives of each Party at the level of Minister, or designated senior official(s) designated by the Minister, which shall meet at least once every year.

2. The Conference shall:

(a) consider any matter relating to the implementation or operation of this Treaty;

(b) consider any proposal to amend or modify this Treaty;

(c) supervise the work of the Committees referred to in Article 121 (Committees), the Compliance Council and any other subsidiary bodies of the Conference;

(d) establish the Rules of Procedure referred to in Article 104 (Rules of Procedure for Panels), and, where appropriate, amend those Rules;

(e) consider or adopt reports from the Compliance Council;

(f) consider ways to further enhancing Green Investment between the Parties;

(g) decide on accessions to this Treaty;

(h) consider and adopt programmes of work to be carried out by the Secretariat;

(i) consider and approve the annual accounts and budget of the Secretariat; and

(j) consider and approve or adopt the terms of any headquarters or other agreement, including privileges and immunities considered necessary for the Conference and the Secretariat.

3. The Conference may:

(a) establish, refer matters to, or consider matters raised by any Committee, the Compliance Council or any other subsidiary body;

(b) merge or dissolve any subsidiary body in order to improve the functioning of this Treaty;

(c) develop arrangements for implementing this Treaty;

(d) seek to resolve differences or disputes that may arise regarding the interpretation or application of this Treaty;
(e) issue interpretations of the provisions of this Treaty;

(f) seek the advice, as appropriate, of non-governmental persons or groups on any subject matter falling within the scope of this Treaty;

(g) authorize and approve the terms of reference for further negotiations, and consider and adopt texts of amendments to this Treaty, including technical changes;

(h) establish rules of procedures for the conduct of its work; and

(i) take any other action as the Parties may agree.

**Article 120 – Secretariat**

1. In carrying out its duties, the Conference shall have a Secretariat which shall be composed of a Secretary-General and such staff as are the minimum consistent with efficient performance.

2. The Secretary-General shall be appointed by the Conference. The first such appointment shall be for a maximum period of five years.

3. In the performance of its duties the Secretariat shall be responsible to and report to the Conference.

4. The Secretariat shall provide the Conference with all necessary assistance for the performance of its duties and shall carry out the functions assigned to it in this Treaty and any other functions assigned to it by the Conference.

5. The Secretariat shall provide administrative assistance to a panel established under Article 100 (Establishment of a Panel).

6. The Secretariat may enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions.

**Article 121 – Committees**

1. Parties establish the following Committees to oversee the implementation of the respective provisions of this Treaty:

(a) Fossil Fuel Subsidy Committee (Section 3 of Part II);

(b) Renewable Energy Committee (Section 4 of Part II);

(c) Energy Efficiency Committee (Section 5 of Part II);

(d) Sustainable Land Use Committee (Section 6 of Part II);

(e) Technology Committee (Section 7 of Part II);
(f) Responsible Investment Committee (Part III); and

(g) Green Investment Facilitation and Promotion Committee (Part IV).

2. The Committees shall be composed of senior government representatives, or their designees, of the relevant national authorities of each Party responsible for the implementation of the respective provisions of this Treaty.

3. The purpose of the Committees and their functions shall be to:

(a) provide a forum to discuss and review the implementation of the respective provisions;

(b) provide periodic reports to the Conference regarding the implementation of the respective provisions;

(c) coordinate with other Committees established under this Treaty as appropriate; and

(d) perform any other functions as the Parties may decide.

4. Each Committee established under this Article may establish rules of procedures for the conduct of its work.

**Article 122 – Compliance Council**

1. Parties hereby establish the Compliance Council which shall operate under the Conference. It shall consist of at least [nine] Parties to this Treaty. The Conference shall elect Parties for terms of two years. Outgoing Parties may be re-elected for one consecutive term, unless in a given case the Conference decides otherwise. The Conference shall elect a Chair of the Compliance Council from among the members annually.

2. The Compliance Council shall, unless it decides otherwise, meet twice a year. The Secretariat shall arrange for and service the Compliance Council’s meetings.

3. The Compliance Council shall:

(a) consider any submission or referral made in accordance with paragraphs 4 and 5 below with a view to securing a constructive solution; and

(b) prepare, at the request of the Conference, and based on any relevant experience acquired in the performance of its functions under subparagraph (a) above, a report on compliance with or implementation of obligations arising out of this Treaty.

4. A submission may be brought before the Compliance Council by:

(a) one or more Parties that have reservations about another Party’s compliance with its obligations under this Treaty. Such a submission shall be addressed in writing to the Secretariat and supported by corroborating information. The Secretariat shall, within two weeks of receiving a submission, send a copy of it to the Party whose compliance is
at issue. Any reply and information in support thereof shall be submitted to the Secretariat and to the Parties involved within three months or such longer period as the circumstances of a particular case may require. The Secretariat shall transmit the submission and the reply, as well as all corroborating and supporting information, to the Compliance Council, which shall consider the matter as soon as practicable; or

(b) a Party that concludes that, despite its best endeavours, it is or will be unable to comply fully with its obligations under this Treaty. Such a submission shall be addressed in writing to the Secretariat and explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. The Secretariat shall transmit the submission to the Compliance Council, which shall consider it as soon as practicable.

5. Where a Committee established under Article 121 (Committees) becomes aware of possible non-compliance by a Party with its obligations, it may request the Party concerned to furnish necessary information about the matter. If there is no response or the matter is not resolved within three months or such longer period as the circumstances of the matter may require, the Committee concerned shall bring the matter to the attention of the Compliance Council.

6. To assist the performance of its functions under paragraph 3 above, the Compliance Council may:

(a) request, through the Secretariat, further information on matters under its consideration;

(b) undertake, at the invitation of the Party concerned, information gathering in the territory of that Party; and

(c) consider any information forwarded by the Secretariat or Committees concerning compliance with this Treaty.

7. The Compliance Council shall ensure the confidentiality of any information that has been provided to it in confidence.

8. A Party in respect of which a submission or referral is made shall be entitled to participate in the consideration by the Compliance Council of that submission or referral, but shall not take part in the preparation and adoption of any report or recommendations of the Compliance Council in accordance with paragraph 9 below.

9. The Compliance Council shall report at least once a year on its activities to the Conference and make such recommendations as it considers appropriate, taking into account the circumstances of the matter, regarding compliance with this Treaty. Each report shall be finalized by the Compliance Council no later than 10 weeks in advance of the session of the Conference at which it is to be considered.

10. Council members that are from Parties that have designated Articles under Category D in respect of which compliance procedures in accordance with paragraphs 3, 6, 7 and 9 above are being undertaken shall not participate in those procedures. If as a result of the operation of this paragraph the size of the Compliance Council is reduced to five
members or less, the Compliance Council shall forthwith refer the matter in question to
the Conference.

11. Parties, meeting within the Conference, may, upon consideration of a report and any
recommendations of the Compliance Council, decide upon measures to bring about full
compliance with the obligations under this Treaty in question, including measures to
assist a Party’s compliance. 24

12. The Compliance Council may establish rules of procedures for the conduct of its
work.

13. The application of this Article shall be without prejudice to the provisions of Part VI
(Dispute Settlement).

Article 123 – Decision-Making

1. The Conference and all subsidiary bodies established under this Treaty shall take all
decisions by consensus, except as otherwise provided in this Treaty, or as otherwise
decided by the Parties.

2. The Conference or any subsidiary body shall be deemed to have taken a decision by
consensus if

(a) no Party present at any meeting when a decision is taken objects to the proposed
decision, or

(b) Parties that have not designated a provision under Category D take a decision by
consensus, in case of matters concerning a provision designated by one or more Parties
under Category D.

3. For the purposes of Article 119.3(e) (Ministerial Conference on Green Investment), a
decision shall be taken by agreement of all Parties. A decision shall be deemed to be
reached if a Party which does not indicate agreement when the Conference considers the
issue does not object in writing to the interpretation considered by the Conference within
five days of that consideration.

Article 124 – Consultative Mechanisms

1. Each Party shall make use of existing, or establish new, consultative mechanisms,
such as domestic advisory groups, to seek views and advice on issues relating to this
Treaty. These consultative mechanisms shall comprise independent representative
organisations of civil society in a balanced representation of environmental groups,
business organisations, as well as other relevant stakeholders as appropriate. Through

24 Measures to assist a Party’s compliance includes facilitation of technical assistance and capacity
building taking into account Articles 4.3, 4.4 and 4.5 of the UNFCCC and Article 117 (Provision of
Technical Assistance and Capacity Building).
such consultative mechanisms, stakeholders may submit opinions and make
recommendations on any matter related to this Treaty on their own initiative.

2. Parties shall facilitate a joint Civil Society Forum composed of representatives of civil
society organisations established in their territories, including participants in the
consultative mechanisms referred to in paragraph 1, in order to conduct a dialogue to
further the objectives and implementation of this Treaty. The Civil Society Forum shall
be convened once a year unless otherwise agreed by the Parties. The Parties shall
promote a balanced representation of relevant interests, including independent
representative employers, unions, labour and business organisations, environmental
groups, as well as other relevant civil society organisations as appropriate. The Parties
may also facilitate participation by virtual means.

Part IX – Final Provisions

Article 125 – Integral Parts

1. Any provisions designated under Category A, B or C shall constitute an integral part
of this Treaty for the concerned Party.

2. The most recent notification of the applicability of options under Article 118 (Choice
of Option) shall constitute an integral part of this Treaty for the concerned Party.

3. The Annexes and footnotes to this Treaty shall constitute an integral part of this
Treaty.

Article 126 – Signature

This Treaty shall be open for signature until 31 December 2019 by States and Regional
Economic Integration Organizations.

Article 127 – Ratification, Acceptance or Approval

This Treaty shall be subject to ratification, acceptance or approval by signatories.
Instruments of ratification, acceptance or approval shall be deposited with the
Depositary.

Article 128 – Accession

This Treaty shall be open for accession, from the date on which the Treaty is closed for
signature, by a state or Regional Economic Integration Organization that is prepared to
comply with the obligations in this Treaty, on terms to be approved by the Conference.
The instruments of accession shall be deposited with the Depositary.

Article 129 – Amendments
Parties may agree, in writing, to amend this Treaty. When so agreed by all Parties and approved in accordance with the applicable legal procedures of each Party, an amendment shall enter into force 60 days after the date on which all Parties have notified the Depositary in writing of the approval of the amendment in accordance with their respective applicable legal procedures, or on such other date as Parties may agree.

Article 130 – Entry into Force

1. This Treaty shall enter into force 60 days after the date on which all original signatories have deposited an instrument of ratification with the Depositary.

2. In the event that this Treaty does not enter into force under paragraph 1, it shall enter into force 60 days after the date on which signatories that have notified the Depositary in writing of the completion of their applicable legal procedures account for at least an estimated 55 per cent of the total global greenhouse gas emissions.25

Article 131 – Reservations

Reservations in respect of any of the provisions of this Treaty may only be made to the extent provided for in this Treaty.

Article 132 – Withdrawal

1. At any time after five years from the date on which this Treaty has entered into force for a Party, that Party may give written notification to the Depositary of its withdrawal from the Treaty.

2. Any such withdrawal shall take effect upon the expiry of one year after the date of the receipt of the notification by the Depositary, or on such later date as may be specified in the notification of withdrawal.

3. The provisions of this Treaty shall continue to apply to Green Investment made in the territory of a Party by investors of other Parties or in the territory of other Parties by investors of that Party as of the date when that Party's withdrawal from the Treaty takes effect for a period of 20 years from such date.

Article 133 – Review

1. The Conference shall review, within three years of the date of entry into force of this Treaty and at least every five years thereafter, the implementation of this Treaty with a view to updating and enhancing this Treaty, through negotiations, as appropriate, to ensure that the disciplines contained in this Treaty remain relevant to climate change and investment issues and challenges confronting the Parties.

25 Solely for the limited purpose of paragraph 2 of this Article, “total global greenhouse gas emissions” means the most up-to-date amount communicated on or before the date of adoption of this Treaty by Parties to the UNFCCC.
2. In conducting a review pursuant to paragraph 1, the Conference shall take into account:

(a) the work of all Committees, Compliance Council and any other subsidiary bodies established under this Treaty;

(b) relevant developments in international fora in particular UNFCCC and WTO; and

(c) as appropriate, input from non-governmental persons or groups of the Parties including input from the consultative mechanisms referred to in Article 124 (Consultative Mechanisms).

Article 134 – Depositary

The Secretary-General of the United Nations shall be the depositary of this Treaty.

Article 135 – Authentic Texts

1. The Arabic, Chinese, English, French, Russian and Spanish texts of this Treaty are equally authentic.

2. In the event of any divergence between those texts, the English text shall prevail.
Annexes

Annex I – Party-Specific Definitions

Further to Article 2 (General Definitions), for the purposes of this Treaty, unless provided elsewhere in this Treaty:

**central level of government** means:

(a) for Party A: …

(b) for Party B: …

**regional level of government** means:

(a) for Party A: …

(b) for Party B: …

**territory** means:

(a) for Party A: …

(b) for Party B: …
Annex II – Expropriation

Parties confirm their shared understanding that:

1. A measure or a series of measures of a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Article 66 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, in which an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

3. The second situation addressed by Article 66 (Expropriation and Compensation) is indirect expropriation, in which 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.

(a) 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 considers, among other factors:

(i) the economic impact of the measure of series of measures, although the fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the duration of the measure or series of measures of a Party;

(iii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations;\(^{26}\) and

(iv) the character of the measure or series of measures, notably their object, context and intent.

(b) Non-discriminatory measures of 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, except in rare circumstances when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive.

\(^{26}\) For greater certainty, whether an investor’s investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.
Annex III – Non-Conforming Measures

Part 1 – Explanatory Notes

1. The Schedule of a Party to Part I of this Annex sets out, pursuant to Article 72 (Non-Conforming Measures), a Party’s existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 63 (National Treatment)

(b) Article 64 (Most-Favoured-Nation Treatment);

(c) Article 69 (Performance Requirements); or

(d) Article 70 (Senior Management and Boards of Directors).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Sub-Sector, where referenced, refers to the specific subsector for which the entry is made;

(c) Industry Classification, where referenced, refers to the activity covered by the non-conforming measure, according to the provisional codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(d) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 72.1(a) (Non-Conforming Measures), do not apply to the listed measure(s) as indicated in the introductory note for each Party’s Schedule;

(e) Level of Government indicates the level of government maintaining the listed measures;

(f) Measures identifies the laws, regulations or other measures for which the entry is made. A measure cited in the Measures element:

   (i) means the measure as amended, continued or renewed as of the date of entry into force of this Treaty, and

   (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(g) Description, as indicated in the introductory note for each Party’s Schedule, either sets out the non-conforming measure or provides a general non-binding description of the measure for which the entry is made.
Part 2 Explanatory Notes

1. The Schedule of a Party to Part II of this Annex sets out, pursuant to Article 72 (Non-Conforming Measures), the specific sectors, subsectors or activities for which that Party may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 63 (National Treatment);

(b) Article 64 (Most-Favoured-Nation Treatment);

(c) Article 69 (Performance Requirements); or

(d) Article 70 (Senior Management and Boards of Directors).

2. Each Schedule entry sets out the following elements:

(a) **Sector** refers to the sector for which the entry is made;

(b) **Sub-Sector**, where referenced, refers to the specific subsector for which the entry is made;

(c) **Industry Classification**, where referenced, refers to the activity covered by the non-conforming measure, according to the provisional codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(d) **Obligations Concerned** specifies the obligations referred to in paragraph 1 that, pursuant to Article 72.2 (Non-Conforming Measures), do not apply to the sectors, subsectors or activities listed in the entry;

(e) **Description** sets out the scope or nature of the sectors, subsectors or activities covered by the entry to which the reservation applies; and

(f) **Existing Measures**, where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities identified in the **Description** element of that entry.

3. In accordance with Article 72.2 (Non-Conforming Measures), the articles of this Treaty specified in the **Obligations Concerned** element of an entry do not apply to the sectors, subsectors and activities identified in the **Description** element of that entry.

4. With respect to entries on Most-Favoured-Nation Treatment relating to bilateral or multilateral international agreements, the absence of language regarding the scope of the reservation for differential treatment resulting from an amendment of those bilateral or multilateral international agreements in force or signed before the date of entry into force of this Treaty is without prejudice to each Party’s respective interpretation of the scope of that reservation.
### Annex IV – Notification: Designation of Articles under Categories

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Annex V – Notification: Choice of Options

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