

# TREATY ON SUSTAINABLE INVESTMENT FOR CLIMATE CHANGE MITIGATION AND ADAPTATION\*

## Preamble

*[If bilateral:]*

[The Government of [...] and the Government of [...]],

*[If multilateral:]*

[The Governments of [...]],

*Recalling* their commitments to achieve sustainable development as set out in the 2030 Agenda for Sustainable Development including the Sustainable Development Goals and the Addis Ababa Action Agenda on Financing for Development;

*Recalling* that the United Nations has acknowledged climate change and its adverse effects to be a common concern of humankind;

*Recognizing* the necessity and urgency of addressing climate change;

*Recalling* their commitments to climate change mitigation and adaptation under the United Nations Framework Convention on Climate Change and the Paris Agreement adopted at the 21<sup>st</sup> session of the Conference of the Parties to that convention;

*Acknowledging* that climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve sustainable development;

*Reaffirming* that responses to climate change and other environmental threats must be coordinated with social and economic development in an integrated manner, taking into full account the legitimate priority needs of developing countries for the achievement of the Sustainable Development Goals;

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\* This Treaty and the accompanying Argumentation were prepared as part of a submission to the Stockholm Treaty Lab prize, an innovation contest for the drafting of a forward-looking, innovative and workable model treaty that aims to encourage investment in climate change mitigation and adaptation. The contestant team *The Creative Disrupters* comprises international law advisers (Martin Dietrich Brauch, Nathalie Bernasconi-Osterwalder, Howard Mann, Mintewab Afework Abebe, Maria Bisila Torao Garcia, Temur Potaskaevi and Gus Van Harten), senior economists (Aaron Cosbey and Ivetta Gerasimchuk), policy advisers (Yanick Touchette, Lourdes Sanchez, Erica Petrofsky and Karin Treyer) and communications experts (Katherine Clark and Ziona Eyob). The opinions expressed, the arguments employed and the approaches adopted in this submission—including the draft Treaty and the accompanying argumentation document—do not necessarily reflect those of the International Institute for Sustainable Development (IISD) or other affiliations of team members.

*Recognizing* the important contribution that investment must make to the sustainable development of the Parties, in particular to the achievement of the Parties' climate change mitigation and adaptation commitments and objectives;

*Recalling* that, as per the 2030 Agenda for Sustainable Development, each country's national circumstances and priorities will determine the different approaches, visions, models and tools appropriate for its achievement of sustainable development;

*Seeking* to encourage and increase sustainable investments that contribute to the achievement of the Parties' respective climate change mitigation and adaptation commitments and objectives; to discourage and eliminate unsustainable investments that impede the achievement of such commitments and objectives; and to ensure a just transition to environmentally, socially and economically sustainable, climate-friendly and resilient economies and societies, in full alignment with the Sustainable Development Goals;

*Reaffirming* the necessity and the right of the Parties to regulate under their domestic laws to achieve their climate change mitigation and adaptation commitments and objectives, and the Sustainable Development Goals;

Have agreed as follows:

## **Part 1: General Provisions**

### **Article 1.1: Definitions**

For purposes of this Treaty:

**adaptation** means adjustments in ecological, social, or economic systems in response to actual or expected climatic stimuli and their effects or impacts. It refers to changes in processes, practices and structures to moderate potential damages or to benefit from opportunities associated with climate change.

**domestic law** means the Constitution, laws, rules, regulations, procedures and administrative guidelines of a State, including decisions, judgments, orders and decrees by courts, regulatory authorities and judicial and administrative institutions having the force of law within the territory of a State.

**home State** means, in relation to:

- (a) a natural person, the State of nationality or predominant residence of the natural person in accordance with the laws of that State;
- (b) a juridical person, the State of incorporation or registration of the juridical person in accordance with the laws of that State.

**host State** means the State where the investment is located.

**investment** means an enterprise within the territory of the host State established, acquired or expanded by an investor of the home State, including through the constitution,

maintenance or acquisition of a juridical person or the acquisition of shares, debentures or other ownership instruments of such an enterprise, provided that:

- (a) the enterprise is registered in accordance with the legal requirements of the host State;
- (b) the enterprise conducts substantial business activity in the host State; and
- (c) the investment has characteristics such as the commitment of capital or other resources, certain duration, the expectation of gain or profit and the assumption of risk.

An enterprise may possess assets such as:

- (a) shares, stocks, debentures and other equity instruments of the enterprise or another enterprise;
- (b) a debt security of another enterprise;
- (c) loans to an enterprise;
- (d) movable or immovable property and other property rights such as mortgages, liens, or pledges;
- (e) claims to money or to any performance under contract having a financial value;
- (f) copyrights and industrial property rights such as patents, trademarks, industrial designs and trade names, to the extent they are recognized under the law of the host State; and
- (g) rights conferred by law or under contract, including licences to cultivate, extract or exploit natural resources.

For greater certainty, investment does not include the following assets of an enterprise:

- (a) debt securities issued by a government or loans to a government;
- (b) portfolio investments;
- (c) investments of a speculative nature;
- (d) commercial activities;
- (e) claims to money that arise solely from commercial contracts for the sale of goods or services by a national or enterprise in the territory of a State to an enterprise in the territory of another State, or the extension of credit in connection with a commercial transaction, or any other claims to money that do not involve the kind of interests set out in subparagraphs (a) through (g) above;

- (f) any pre-operational expenditure relating to admission, establishment, acquisition or expansion of the enterprise incurred before the commencement of substantial business activity of the enterprise in the territory of the host State;
- (g) goodwill, brand value, market share or similar intangible rights;
- (h) an order or judgment sought or entered in any judicial, administrative or arbitral proceeding; or
- (i) any other claims to money that do not involve the kind of interests or operations set out in the definition of investment in this Treaty.

**investment of a Party** means an investment made by an investor of a Party.

**Investment Policy Review Mechanism** means the Investment Policy Review Mechanism established pursuant to Article 11.2: Investment Policy Review Mechanism of this Treaty.

**investor** means a natural person or a juridical person who has made an investment in the territory of the host State.

**investor of a Party** means, in relation to:

- (a) a natural person, an investor who is a national or predominant resident of that Party, in accordance with the laws of that Party; or
- (b) a juridical person, an investor who is a legally incorporated or registered enterprise in accordance with the laws of that Party, is effectively owned or controlled by a natural or juridical person of that Party and conducts substantial business activity in that Party.

**IPRM** means Investment Policy Review Mechanism.

**Joint Committee** means the Joint Committee established under Article 10.1: Joint Committee of this Treaty.

**just transition** means justice for all in the transition to environmentally, socially and economically sustainable, climate-friendly and resilient economies and societies, including the necessary adaptation to the impacts of climate change, as set out in Article 2.6: Just Transition.

**measure** means any form of legally binding governmental act directly affecting an investor or its investment, and includes any domestic law or policy, subject to the exclusion of measures of a state, provincial, municipal or other local-level government.

**mitigation** means the reduction of greenhouse gas emissions and the enhancement of sinks and reservoirs.

**non-classified investment** means an investment that does not qualify as either Sustainable Investment or Unsustainable Investment.

**non-classified investor** means an investor who has made a non-classified investment.

**Paris Agreement** means the Paris Agreement adopted on December 12, 2015 at the 21<sup>st</sup> session of the Conference of the Parties to the United Nations Framework Convention on Climate Change held in Paris from November 30 to December 13, 2015.

**Party** means a State that is Party to this Treaty.

**portfolio investment** means investment that constitutes less than 10 per cent of the shares of the company or otherwise does not give the portfolio investor the possibility to exercise effective management or influence on the management of the investment.

**substantial business activity** means a strong link between an enterprise and the economy of a State. Determining whether an enterprise has substantial business activity in a State requires an overall examination, on a case-by-case basis, of all the circumstances, including, among others, the nature and volume of its business, the number of jobs it creates, the extent and duration of its physical presence, the effect it has on the local community and the length of time the business has been in operation.

**Sustainable Development Goals** means the goals and targets referred to in paragraph 54 of United Nations General Assembly Resolution A/RES/70/1 of September 25, 2015.

**Sustainable Investment** means, for each Party, an investment in one of the sectors or sub-sectors listed in that Party's Schedule to Annex I.

**Sustainable Investor** means an investor who has made a Sustainable Investment in the territory of the host State.

**territory** means [to be completed by the Parties].

**TRIPS Agreement** means the Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C to the Agreement Establishing the World Trade Organization.

**Unsustainable Investment** means, for each Party, an investment in one of the sectors or sub-sectors listed in that Party's Schedule to Annex II.

**Unsustainable Investor** means an investor who has made an Unsustainable Investment in the territory of the host State.

## **Article 1.2: Objective**

1. The objective of this Treaty is:
  - (a) to encourage and increase Sustainable Investments;
  - (b) to discourage Unsustainable Investments and eliminate new Unsustainable Investments; and
  - (c) to ensure a just transition,

with a view to meeting the climate change mitigation and adaptation goals under the Paris Agreement and future international agreements on climate change mitigation and adaptation, and to achieving the Sustainable Development Goals and international goals to be adopted for the post-2030 sustainable development agenda.

2. Each Party shall take into account, as far as possible, the provisions of this Treaty and use it as a model when entering into, renegotiating or interpreting bilateral, regional or multilateral investment treaties or chapters in free trade agreements with third States or regional organizations, in order to further the objective of this Treaty and avoid conflict between the obligations of a Party under this Treaty and its obligations under other agreements.

### **Article 1.3: Scope of Application**

1. This Treaty shall apply to investments established, acquired or expanded before or after the entry into force of this Treaty.
2. This Treaty shall not apply to any pre-investment activity related to establishment, acquisition or expansion of an investment, including terms and conditions that continue to apply to the management, conduct, operation, sale or other disposition of the investment after its establishment, acquisition or expansion.
3. This Treaty shall not apply to events occurred or claims raised prior to the entry into force of this Treaty.
4. Notwithstanding Part 4: Responsible Investment, this Treaty shall not apply to taxation measures.

## **Part 2: Sustainable Investment**

### **Article 2.1: Climate Change and Sustainable Development Objectives**

1. The Parties reaffirm their commitment to meet their respective obligations under the Paris Agreement, to achieve the Sustainable Development Goals and to raise their respective levels of ambition on both counts.
2. The Parties acknowledge that the measures necessary to achieve climate change mitigation and adaptation, and other sustainable development objectives will negatively affect Unsustainable Investments.

### **Article 2.2: Promotion and Admission of Sustainable Investment**

1. Each Party shall admit non-classified and Sustainable Investments in its territory in accordance with its domestic law and shall apply such laws in good faith.
2. Each Party shall, as far as possible, encourage, promote and create favourable conditions for Sustainable Investments in its territory.

### **Article 2.3: Cooperation on Sustainable Investment**

- [1.] The Parties shall cooperate to encourage and increase Sustainable Investments and to discourage and eliminate new Unsustainable Investments in their respective territories by discussing and adopting, whether through their respective domestic laws or through protocols to this Treaty, policies and regulations in the following areas:
- (a) establishing coordinated long-term policy frameworks and targets to meet and exceed the climate change mitigation and adaptation goals under the Paris Agreement, including the Parties' nationally determined contributions pursuant to it, the Sustainable Development Goals, including renewable energy and energy efficiency targets, targets of emission reductions and green finance commitments;
  - (b) establishing coordinated long-term policy frameworks, targets and schedules to eliminate new Unsustainable Investment and economic activities, such as coal phase-outs, moratoriums and bans of fossil fuel extraction and use, and phase-out of environmentally harmful technologies, substances and practices;
  - (c) establishing effective mechanisms, such as carbon taxation and other forms of carbon pricing, to ensure the internalization of externalities related to climate change into Unsustainable Investment decisions and processes;
  - (d) setting mandatory standards for sustainable production and consumption, such as energy efficiency, climate-resilient infrastructure, waste management and other activities;
  - (e) creating disincentives to the consumption of goods and services produced by Unsustainable Investments;
  - (f) facilitating the issuance of visas for managers, executives and skilled employees of Sustainable Investors or Sustainable Investments of [the other][another] Party;
  - (g) establishing transparent procedures for the issuance of documents, licenses and certificates relating to the establishment and maintenance of Sustainable Investments of [the other][another] Party;
  - (h) providing for timely responses to any query from [the other][another] Party or from Sustainable Investors or Sustainable Investments of [the other][another] Party concerning commercial registration, technical requirements and environmental standards applicable to Sustainable Investments;
  - (i) promoting institutional cooperation [between][among] the Parties for the exchange of experiences in the development and management of regulatory frameworks for Sustainable Investments;
  - (j) promoting technological, technical, scientific and cultural cooperation through the implementation of actions, programs and projects for the exchange of

knowledge and experience [between][among] the Parties on Sustainable Investments;

- (k) promoting access to and transfer of technology with a view to fostering Sustainable Investments;
- (l) removing administrative, fiscal and other barriers to Sustainable Investments;
- (m) promoting, coordinating and implementing cooperation in professional qualification relevant to Sustainable Investments through greater interaction between relevant national institutions;
- (n) exchanging information and experiences on and business opportunities for Sustainable Investments;
- (o) channelling public investment and government procurement toward Sustainable Investments;
- (p) establishing technical requirements for infrastructure projects to be built in a sustainable climate-resilient manner, contributing to climate change mitigation and adaptation;
- (q) providing financing and guarantee facilities for Sustainable Investments;
- (r) reducing interest on loans to, and providing export finance for, Sustainable Investments;
- (s) organizing joint investment promotion events, tours with industrial leaders and Sustainable Investors, technology promotion and other measures designed to promote Sustainable Investment; and
- (t) other areas identified and agreed to by the Joint Committee.

[2.] The Parties shall harmonize product energy efficiency standards at high levels.

[3. Party A shall provide technical assistance to Party B in the implementation of this Article.]

#### **Article 2.4: Incentives for Sustainable Investment**

1. Each Party may introduce incentives in order to attract Sustainable Investments. Such incentives may include, among others:
  - (a) financial incentives in the forms of investment insurance, grants or loans at concessionary rates;
  - (b) fiscal incentives such as tax holidays, pioneer status and reduced tax rates;
  - (c) subsidized infrastructure or services, market preferences;

- (d) development-oriented incentives, to encourage preferential markets schemes and specific investors within the region;
  - (e) incentives for technical assistance or technology transfer; and
  - (f) investment guarantees.
2. Each Party commits not to challenge under international trade law or domestic law [the other][another] Party's subsidies or trade-related investment measures that are not incompatible with this Treaty and aimed at promoting Sustainable Investments.

**Article 2.5: Limitation of Advantages and Rights of Unsustainable Investors and their Investments**

1. The Parties shall not allow the establishment of Unsustainable Investments in their respective territories from [two] years after the date of entry into force of this Treaty.
2. The Parties shall allow the acquisition or expansion of existing Unsustainable Investments, provided that any expansion does not more than [double] the investment's productive capacity at the date of the entry into force of this Treaty.
3. The Parties may, in accordance with their respective domestic laws, refuse the entry of Unsustainable Investors or the establishment, acquisition or expansion of Unsustainable Investments, provided that such measures are non-discriminatory pursuant to Article 3.2: Non-discrimination.
4. According to modalities and timelines to be agreed to by the Joint Committee, the Parties shall progressively reduce and ultimately eliminate investment incentives for Unsustainable Investments, such as:
  - (a) subsidies or other financial support for the production and consumption of the products of Unsustainable Investments, such as fossil fuels;
  - (b) export credit accorded to the products of such investments; and
  - (c) privileges accorded to such investments or their operation under special export zones.
5. The Parties shall refrain from negotiating or concluding bilateral, regional or multilateral treaties that grant any substantive or procedural rights to Unsustainable Investors or their investments.
6. The Parties shall seek to renegotiate all their respective bilateral, regional and multilateral treaties that grant substantive or procedural rights to Unsustainable Investors or their investments so as to exclude such Unsustainable Investors and their investments from the scope of application of those treaties or to deny them access to investor-State dispute settlement procedures.

*[If bilateral, and if the Parties that have a bilateral investment treaty in force:]*

- [7. The Parties hereby amend their [bilateral investment treaty] so as to exclude Unsustainable Investors and their investments from the scope of application of that treaty and to deny them access to the investor–State dispute settlement procedures under that treaty.]

*[If multilateral:]*

- [7. All bilateral, regional and multilateral investment treaties to which Parties to this Treaty are the sole parties are hereby amended so as to exclude Unsustainable Investors and their investments from the scope of application of those treaties and to deny them access to investor–State dispute settlement procedures under those treaties.]

### **Article 2.6: Just Transition**

1. The Parties acknowledge that the transition to environmentally, socially and economically sustainable economies and societies, including the necessary adaptation to the impacts of climate change, poses major environmental, social and economic challenges to the achievement of the Sustainable Development Goals and of the Paris Agreement, including, among others:
  - (a) economic restructuring, resulting in the displacement of workers and possible job losses attributable to the greening of enterprises and workplaces;
  - (b) the need for enterprises, workplaces and communities to adapt to climate change to avoid loss of assets and livelihoods and involuntary migration; and
  - (c) adverse effects on the incomes of poor households from higher energy and commodity prices.
2. The Parties affirm their commitment to ensure justice for all in the transition referred to in this Article, in a manner that contributes to the achievement of the Sustainable Development Goals and of the Paris Agreement, and [re-]endorse the following instruments, incorporated into and made part of this Treaty:
  - (a) The Resolution Concerning Sustainable Development, Decent Work and Green Jobs adopted on June 19, 2013 by the General Conference of the International Labour Organization, meeting in Geneva at its 102<sup>nd</sup> Session; and
  - (b) The Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All agreed by the experts gathered at the Tripartite Meeting of Experts convened in Geneva by the International Labour Office from October 5 to 9, 2015.

### **Article 2.7: Cooperation on Just Transition**

- [1. ]The Parties shall cooperate to ensure a just transition in their respective territories by discussing and adopting, whether through their respective domestic laws or through protocols to this Treaty, policies and regulations, and by sharing knowledge and best

practices regarding environmentally, socially and economically sustainable macroeconomic and sectoral policies to ensure a just transition.

- [2. Party A shall provide technical assistance to Party B in the implementation of this Article.]

## **Part 3: Investment Protection**

### **Article 3.1: Classification**

1. An investor of a Party or its investment in a host State Party may request to the host State Party a determination of whether such investment qualifies, or whether a proposed investment of that investor would qualify, as a Sustainable Investment, Unsustainable Investment or non-classified investment in the host State Party for purposes of the application of this Treaty.
2. The host State Party shall issue a decision making the requested determination within [60] days from the date of receipt of a request by an investor or investment.
3. To make its determination, the host State Party shall consider:
  - (a) the relevant characteristics of the investment or proposed investment;
  - (b) the definitions contained in Article 1.1: Definitions;
  - (c) the content of the host State Party's Schedules to Annexes I and II; and
  - (d) other factors it may deem relevant.

### **Article 3.2: Non-Discrimination**

1. Each Party shall accord to an investor or investment of [the other][another] Party treatment no less favourable than the treatment it accords, in like circumstances, to its own investors and to their investments with respect to the conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.
2. Each Party shall accord to an investor or investment of [the other][another] Party treatment no less favourable than the treatment it accords, in like circumstances, to investors of a third country and their investment with respect to the conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investment in its territory.
3. For great certainty, references to "like circumstances" in this Article require an overall examination on a case-by-case basis of all the circumstances of an investor or investment, including, but not limited to:
  - (a) whether it qualifies as Sustainable Investment, Unsustainable Investment or non-classified investment;

- (b) its effects on third persons and the local community;
- (c) its effects on the local, regional or national environment, including the cumulative effects of all investments within a jurisdiction on the environment;
- (d) the sector in which it is;
- (e) the aim of the measure concerned;
- (f) the regulatory process generally applied in relation to the measures concerned; and
- (g) its global and national impacts on climate change or on the prospects for adaptation to climate change impacts.

The examination referred to in this paragraph shall not be limited to or be biased toward any one factor.

4. The treatment granted under this Article shall not be construed as to oblige a Party to extend to an investor or investment the benefit of any treatment, preference or privilege resulting from:
  - (a) its membership of, or association with, any existing or future free trade area, customs union, economic union, common market or monetary union;
  - (b) any existing or future free trade agreement;
  - (c) any international agreement or chapters of international agreements pertaining to the promotion or protection of investment;
  - (d) any international agreement or any domestic legislation relating wholly or mainly to taxation; or
  - (e) an agreement for the avoidance of double taxation.
5. For greater certainty, paragraph 2 shall not be interpreted in a way that allows the importation of substantive or dispute settlement provisions, rights or guarantees not provided for in this Treaty.
6. For greater certainty, this Article shall not be interpreted in a way that requires Parties to modify or eliminate any non-discriminatory procedures for the admission of investment.
7. This Article shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a);

- (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 this Article;
- (d) 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 Annex I;
- (e) government procurement; or
- (f) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

### **Article 3.3: Standard of Treatment**

1. No Party shall accord to an investor or investment of [the other][another] Party treatment that constitutes:
  - (a) denial of justice in any judicial or administrative proceedings;
  - (b) a fundamental breach of due process in judicial and administrative proceedings;
  - (c) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or
  - (d) manifestly abusive treatment, such as coercion, duress and harassment.
2. For greater certainty, a breach of the domestic law of the host State, of another provision of this Treaty, or of a provision of a separate international agreement does not establish that there has been a breach of this Article.
3. For greater certainty, this Treaty does not include the standards of “fair and equitable treatment,” “full protection and security” and “legitimate expectations.”

### **Article 3.4: Direct Expropriation**

1. A Party shall not directly nationalize or expropriate an investment of [the other][another] Party through formal transfer or seizure of title or the property right, except:
  - (a) for a public purpose;
  - (b) under due process of law;
  - (c) in a non-discriminatory manner; and
  - (d) on payment of prompt, adequate and effective compensation.
2. The compensation referred to in paragraph 1 shall:

- (a) amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became known, whichever is earlier. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value, provided that the fair market value of an investment with little or no operating history shall not exceed the amounts invested by the investor;
  - (b) include simple interest at a normal commercial rate from the date of expropriation until the date of payment; and
  - (c) be paid without undue delay, in accordance with the domestic law of the host State, in a freely convertible currency.
3. The affected investor shall have the right, under the law of the expropriating Party, to a prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Party, in accordance with the principles set out in this Article.
4. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, to the extent that such issuance is consistent with the TRIPS Agreement.
5. For greater certainty, the revocation, limitation or creation of intellectual property rights, to the extent that these measures are consistent with the TRIPS Agreement, do not constitute expropriation. Moreover, a determination that these measures are inconsistent with the TRIPS Agreement does not establish an expropriation.
6. For greater certainty, this Treaty only provides for direct expropriation and does not cover indirect expropriation.

### **Article 3.5: Senior Management and Employees**

1. A Party shall not require an investor to appoint, to senior management positions for its investment, individuals of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an 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.
3. Subject to its domestic law relating to the entry of aliens and engagement of non-national labour or management, each Party shall grant temporary entry to nationals of [the other][another] Party, employed by an investor of the other Party, for the purpose of rendering services to an investment of that investor in the territory of the host State, in a capacity that is senior managerial or executive or requires specialized knowledge.
4. Notwithstanding any provisions of this Treaty, a Party may require an investor or investment of [the other][another] Party, in keeping with its size and nature, to have progressive increases in the number of senior management, executive or specialized

knowledge positions that nationals of the host State occupy; institute training programs for the purposes of achieving the increases set out in the preceding paragraph and to Board of Director positions; and to establish mentoring programs for this purpose.

### **Article 3.6: Transfers**

1. Each Party shall permit all transfers relating to an investment of [the other][another] Party to be made without undue restriction or delay in a freely convertible currency and at the market rate of exchange applicable on the date of transfer. Such transfers include:
  - (a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment;
  - (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, or other forms of returns or amounts derived from the investment;
  - (c) proceeds from the sale or liquidation of the whole or a part of the investment;
  - (d) payments made under a contract entered into by the investor or its investment, including payments made pursuant to a loan agreement;
  - (e) payments made pursuant to Article 3.4: Direct Expropriation;
  - (f) earnings and other remuneration of foreign personnel working in connection with an investment; and
  - (g) payments of damages pursuant to an award issued under Part 9.
2. A Party shall not require its investors to transfer, or penalize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of [the other][another] Party.
3. Nothing in this Article shall be construed to prevent a Party from applying in an equitable and non-discriminatory manner and not in a way that would constitute a disguised restriction on transfers, its laws relating to:
  - (a) bankruptcy, insolvency or the protection of the rights of creditors;
  - (b) issuing, trading or dealing in securities;
  - (c) criminal or penal offences;
  - (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and
  - (e) the satisfaction of judgments in adjudicatory proceedings.

## **Part 4: Responsible Investment**

### **Article 4.1: Compliance with International Law**

Investors and investments shall, at all times, ensure that the establishment, acquisition, management, operation and disposition of investments occur in a manner that furthers and does not hinder compliance of the host State and the home State with their international law obligations, including under, among others:

- (a) multilateral environmental agreements;
- (b) the Paris Agreement and future international agreements on climate change mitigation and adaptation;
- (c) human rights treaties; and
- (d) International Labour Organization conventions.

### **Article 4.2: Compliance with Domestic Laws**

1. Investors and investments shall, at all times, comply with the domestic law of the host State concerning the establishment, acquisition, expansion, management, operation and disposition of investments.
2. Investors and investments shall, at all times, comply with the domestic law of the home State concerning the management and operation of investments.

### **Article 4.3: Anti-Corruption**

1. Investors and investments shall not, prior to the establishment of an investment or afterwards, offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a public official of the host State, or a member of an official's family or business associate or other person in close proximity to an official, for that official or for a third party, in order that the official or third party act or refrain from acting in relation to the performance of official duties, in order to achieve any favour in relation to a proposed investment or any licences, permits, contracts or other rights in relation to an investment.
2. Investors and investments shall not be complicit in any act described in paragraph 1, including incitement, aiding and abetting, and conspiracy to commit or authorization of such acts.

### **Article 4.4: Provision of Information**

1. An investor shall provide information to Parties concerning the investment in question and the corporate history and practices of the investor, for purposes of decision-making in relation to that investment, its classification as Sustainable Investment or Unsustainable Investment, or solely for statistical purposes. The investor shall provide all other information relevant to the proposed investment decision, whether

specifically requested or not, to the potential host State making a decision in relation to admitting the investment. The Parties shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the investment.

2. Parties may make the information provided available to the public, including in the community where the investment may be located, subject to the protection of confidential business information.
3. An investor shall not commit fraud or provide false or misleading information provided in accordance with this Article.
4. Nothing in this Article shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its domestic law or in connection with disputes between the investor and the State regarding the investment.

#### **Article 4.5: Minimum Standards on Human Rights, Labour and the Environment**

1. Investors and investments have a duty to respect human rights in the workplace and in the host State and in the community in which they are located. Investors and investments shall not undertake or cause to be undertaken acts that breach such human rights. Investors and investments shall not assist in, or be complicit in, the violation of the human rights by others in the host State, including by public authorities or during civil strife.
2. Investors and investments shall act in accordance with core labour standards as required by the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work of 1998, as well as with the domestic law of the host State governing labour matters.
3. Investors and investments shall not establish, manage or operate investments in a manner inconsistent with international human rights, labour and environmental obligations binding on the host State or the home State, whichever obligations are higher.

#### **Article 4.6: Transparency of Contracts, Payments and Project Information**

1. Save as otherwise provided for in this Treaty, investors or their investments shall make public in a timely manner all contracts related to the establishment or right to operate an investment made by the investor or the investment with a government in the host State, subject to redaction of confidential business information.
2. Investors or their investments shall make public in a timely manner all payments made to a government related to the establishment or right to operate of an investment, including taxes, royalties and similar payments, as well as relevant project information.
3. Where feasible, such contracts and payments shall be made available on an Internet website freely accessible by the public.

4. Investors or their investments shall disclose relevant project information upon request by the host State or individuals and communities of the host State.

#### **Article 4.7: Tax Base Erosion and Profit Shifting**

1. Investors and investments shall meet or exceed national and internationally accepted standards of corporate financial governance for the sector involved, in particular for transparency and in the application of internationally accepted accounting standards.
2. Investors and investments shall ensure that all transactions with related or affiliated companies shall be arms-length transactions at fair market price. Investors and investments shall not undertake any transfer pricing practices between themselves or any other related or affiliated companies.
3. Investors and investments shall conduct their operations in a manner that fully complies with all applicable tax laws and international standards relating to ensuring tax benefits are not reduced through base erosion and profit shifting (BEPS) practices. Investors shall avoid undertaking aggressive tax or other financial practices that have such effects. Investors and investments shall provide the financial information required by the host State to ensure compliance with the applicable laws.
4. Investors and investments shall comply with all reasonable government requests for information on their supply chain and sales chain transactions.
5. The Parties shall cooperate in the detection and prevention of illicit financial flows and BEPS practices, including through the provision of information necessary to identify and prevent such acts.

#### **Article 4.8: Corporate Governance**

Investors and investments shall, [in accordance with domestic laws,] among others:

- (a) ensure the equitable treatment of all shareholders, in accordance with domestic laws;
- (b) encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises;
- (c) ensure that timely and accurate disclosure is made on all material matters regarding a corporation, including the financial situation, performance, beneficial ownership and governance of the company; risks related to environmental liabilities; and any other matters in accordance with the relevant regulations and requirements; and
- (d) provide information relating to human resource policies, such as programs for human resource development.

#### **Article 4.9: Pre-Establishment Impact Assessment and Social Licence to Operate**

1. Investors or their investments shall carry out an impact assessment or assessments of their proposed investments prior to their establishment, as required by the laws of the host State for such an investment, covering the life cycle of the proposed investment.
2. Investors or their investments shall make the impact assessment or assessments:
  - (a) public [including via the Internet] and
  - (b) accessible to the local communities, or other persons with potentially affected interests, in an effective and sufficiently timely manner so as to allow comments to be made to the investor, investment or government prior to the completion of the host State processes for establishing the proposed investment.
3. Investors or their investments shall be responsible for obtaining the social licence to operate their projects by structuring and implementing mechanisms to ensure community information, inclusion and engagement, including community development agreements.

#### **Article 4.10: Environmental Management and Improvement**

1. Investments shall, in keeping with good practice requirements relating to the size and nature of the investment, maintain an environmental management system consistent with recognized international environmental management standards and good business practice standards.
2. Emergency response and decommissioning plans, where necessary, shall be included and regularly reviewed and updated in the environmental management system process, and made accessible to the host State and the public.
3. A closure fund to ensure that resources are available to implement the decommissioning plan shall be established and maintained by the investor or its investment in accordance with applicable law and good industry practice for such funds.
4. Environmental management plans shall include provisions for the continued improvement of environmental management technologies and practices throughout the life cycle of the investment. Such improvements shall be consistent with applicable laws, but shall strive to exceed legally applicable standards and always maintain high levels of environmental performance consistent with best industry practice.

#### **Article 4.11: Development Goals**

Investors and their investments shall support the integration of the investment into local economic development policies and strategies through, among others, and consistent with the size and nature of the investment:

- (a) supporting the development of local businesses through programs to train and purchase goods and services from local suppliers;
- (b) seeking to enhance productive capacity, where feasible, of local businesses through capacity building and technology development;
- (c) increasing employment and human resource capacity and training through direct training of employees for higher level work and training of prospective employees, including from sectors involved in a just transition;
- (d) providing research and development activities located in the host State and community, including of new technologies and technology transfer;
- (e) providing gender-specific training for women in the local community to contribute to the above goals;
- (f) developing investment-specific opportunities with the local community; and
- (g) recognizing the right of a Party, in accordance with applicable law, to take measures necessary to address historically based economic disparities suffered by identifiable ethnic or cultural groups due to discriminatory or oppressive measures against such groups prior to the signing of this Treaty.

**Article 4.12: Public Order, Consumer Rights and Non-Interference**

1. Investors and investments shall refrain from all acts that may be prejudicial to the public order, morals or to the public interest.
2. Investors and investments should act in accordance with fair business, marketing and advertising practices when dealing with consumers and should ensure the safety and quality of goods and services they provide.
3. Investors and investments shall respect socio-cultural values and refrain from interfering with internal political affairs and intergovernmental relations.
4. Investors and investments shall refrain from influencing the appointment of persons to public office or financing political parties.

**Article 4.13: Intellectual Property Rights and Traditional Knowledge**

1. Each Party shall, in its effort promote investment and as applicable, ensure the enforcement of intellectual property rights within its territory and in accordance with the rights and obligations under the WTO TRIPS agreement and other relevant international instruments.
2. Notwithstanding paragraph 1, and in accordance with the rights and obligations established under the TRIPS Agreement, the Parties may provide exceptions, in accordance with generally accepted international legal standards and best practices, to the exclusive rights conferred by an intellectual property right, and allow for its use without the authorization of the right holder, including use by the government or third

parties authorized by the government. Investors shall respect such exceptions when adopted.

3. The Parties, as well as investors and their investments, shall, in accordance with generally accepted international legal standards and best practices, protect traditional knowledge systems and expressions of culture as well as related genetic resources, including those that are sought, used or exploited by investors, or are otherwise relevant to their contracts, practices and other operations in such Party. Where traditional resources are used by an investor or its investment, the investor or investment shall have the free, prior and informed consent of the traditional knowledge holder and shall fairly and equitably share benefits arising from the commercial or industrial use of their knowledge, at rates to be mutually agreed between the parties.
4. The national competent authority shall, in the absence of such mutual agreement, mediate between the concerned parties with a view to arriving at an agreement on the fair and equitable sharing of benefits.
5. The right to equitable remuneration might extend to non-monetary benefits, such as contributions to community development, depending on the material needs and cultural preferences expressed by the traditional or local communities themselves.
6. The Parties shall provide for, within their domestic laws, the patenting or equivalent protection of biological materials associated with traditional knowledge systems and expressions of culture for the protection of local communities in such Parties.

#### **Article 4.14: Community Engagement and Development**

Investors and investments shall:

- (a) establish and maintain, where appropriate, local community liaison processes, in accordance with internationally accepted standards when available;
- (b) establish and maintain, where appropriate, project-specific accountability mechanisms, in accordance with internationally accepted standards, to hear and address complaints from members of the community in which the investment is located regarding the social, economic and environmental performance of the investment;
- (c) promote the building and strengthening of local capacities through close collaboration with the community in which the investment is located;
- (d) foster the development of human capital, particularly through the creation of job opportunities in low-carbon sectors;
- (e) facilitate access of workers to professional qualification in low-carbon activities.

#### **Article 4.15: Corporate Social Responsibility**

1. Investors and investments shall meet and endeavour to exceed, in their practices and internal policies, the standards of corporate social responsibility endorsed or supported by the Parties, as well as those contained in the following documents, incorporated into and made part of this Treaty:
  - (a) The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977) as amended at its 329th (March 2017) Session;
  - (b) The 2012 edition of the Environmental and Social Performance Standards issued by the International Finance Corporation (IFC) of the World Bank Group;
  - (c) The text of the Guidelines for Multinational Enterprises updated and adopted in 2011 by the member States of the Organisation for Economic Co-operation and Development (OECD); and
  - (d) The Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, annexed to the report of the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises to the United Nations Human Rights Council (contained in United Nations Document A/HRC/17/31) and endorsed by the United Nations Human Rights Council in its resolution 17/4 of June 16, 2011 (contained in United Nations Document A/HRC/RES/17/4).
2. Investors and investments shall endeavour to voluntarily incorporate into their practices and internal policies other internationally recognized standards of corporate social responsibility, which may address issues such as labour, the environment, human rights, community relations and anti-corruption.
3. Where standards of corporate social responsibility increase, investors and investments shall strive to apply and achieve the higher-level standards.

### **Part 5: Rights of States**

#### **Article 5.1: Right to Regulate**

1. In accordance with customary international law and general principles of international law, the Parties reaffirm their inherent sovereign right to take regulatory or other measures to achieve legitimate social and economic policy objectives, such as those contained in their respective domestic laws or in international agreements to which each of them is party.
2. Except where the rights of a host State are expressly stated as an exception to the obligations of this Treaty, a host State’s pursuit of its rights to regulate shall be

understood as embodied within a balance of the rights and obligations of investors and investments and host States, as set out in this Treaty.

3. Nothing in this Treaty shall be construed to oblige a Party to pay compensation for adopting or enforcing non-discriminatory regulatory measures taken in good faith:
  - (a) to protect public morals and safety or to maintain public order;
  - (b) to protect human, animal or plant life or health;
  - (c) for the conservation of living or non-living exhaustible natural resources;
  - (d) to protect the environment;
  - (e) to protect human rights;
  - (f) for social or consumer protection;
  - (g) to protect cultural diversity;
  - (h) to protect national treasures of artistic, historic or archaeological value;
  - (i) to achieve the Sustainable Development Goals;
  - (j) to achieve the objectives of the Paris Agreement and other climate change mitigation and adaptation objectives;
  - (k) to secure compliance and to sanction non-compliance with its domestic law; or
  - (l) to comply with its international obligations under other treaties.
4. A Party's decision not to issue, renew or maintain a subsidy:
  - (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy; or
  - (b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy,does not constitute a breach of the provisions of this Treaty.
5. Nothing in this Treaty shall be construed as preventing a Party from discontinuing the granting of a subsidy or requesting its reimbursement where such a measure is necessary in order to comply with international obligations between the Parties or has been ordered by a competent court, administrative tribunal or other competent authority, or requiring that Party to compensate the investor therefor.

## **Article 5.2: Right to Pursue Development Goals**

Notwithstanding any other provision of this Treaty, a Party may, in accordance with its domestic law, seek to achieve national or subnational regional development goals by taking measures, among others:

- (a) to promote domestic investors and investments and local content;
- (b) to support the development of local entrepreneurs and local workforce;
- (c) to address historically-based economic disparities suffered by identifiable ethnic or cultural groups due to discriminatory or oppressive measures against such groups prior to the signing of this Treaty; or
- (d) to address the needs of a just transition.

## **Article 5.3: Performance Requirements**

1. Notwithstanding any other provision of this Treaty, a Party may, in accordance with its domestic law, seek to build competitive capacity in domestic producers, increase domestic employment and upgrade skills in the domestic workforce, by requiring that investors or investments during their operation:
  - (a) give preference to the purchase of host State goods or services;
  - (b) give preference to the employment of host State citizens, including in positions of management;
  - (c) conduct research and development in the host State; or
  - (d) carry out training activities that increase the capacity and competitiveness of host State employees and entrepreneurs.
2. The requirements referred to in paragraph 1 may be formulated as conditions for the establishment, acquisition or expansion of an investment or as conditions for the receipt or continued receipt of an advantage.
3. A Party imposing on investors or investments of [the other][another] Party the requirements referred to in paragraph 1, subparagraphs (a), (b) and (d), shall impose the same requirements on domestic investors or investments in like circumstances. Paragraph 3 of Article 3.2: Non-Discrimination shall apply to this Article.
4. Any preferential treatment accorded to domestic investors or investments as a result of the measures referred to in this Article should aim to eventually allow those investors or investments to compete unassisted in open markets. Accordingly, any advantage accorded to domestic investors under this Article:
  - (a) must be conditioned on explicit performance targets related to increasing competitiveness;

- (b) must not be maintained or replaced with similar advantages beyond a period of [seven] years; and
- (c) must not constitute a financial contribution equivalent to more than one-third of the operating budget of an investment in any given year.

**Article 5.4: Temporary Safeguard Measures with Regard to Capital Movements and Payments**

1. Where, in the opinion of a Party, capital movements and payments under this Treaty, including transfers, cause or threaten to cause serious
  - (a) difficulties for balance of payment purposes,
  - (b) external financial difficulties, or
  - (c) difficulties for macroeconomic management, including monetary policy or exchange rate policy,the Party concerned may take safeguard measures with regard to capital movements that it considers to be necessary, on a temporary basis so as to be eliminated as soon as conditions permit, for a period not to exceed 12 months.
2. A Party that adopts or maintains a measure referred to in paragraph 1 shall promptly notify the other Party and provide, as soon as possible, a schedule for its removal.
3. Where such measures are taken under subparagraphs 1(b) or 1(c), a Party shall enter into consultations with the other Party at its request, with a view to review such measures and seek the minimum impact of such measures on Sustainable Investors and non-classified investors.
4. Where, in the opinion of a Party that has taken such measures, it is necessary to extend them for a further period due to the extended period of conditions described in paragraph 1, the Party shall offer to enter into consultations with the other Party with a view to seeking the minimum impact of such measures on a Sustainable Investor. The Party may extend such measures, again on a temporary basis so as to be eliminated as soon as conditions permit, and in any event for a period of no longer than 12 months from their renewal.
5. Measures under this Article shall:
  - (a) not treat a Party less favourably than a third country in like circumstances;
  - (b) be consistent with the Articles of Agreement of the International Monetary Fund, done at Bretton Woods on July 22, 1944, as applicable;
  - (c) avoid unnecessary damage to the commercial, economic and financial interests of a Party.

6. Where restrictions are adopted or maintained under this Article, consultations between the Parties shall be held promptly in the Joint Committee, if such consultations are not otherwise taking place in a forum outside of this Treaty.
7. For greater certainty, nothing in this Treaty shall be construed to oblige a Party to pay compensation if it adopts or maintains reasonable measures for prudential reasons, such as:
  - (a) the protection of investors, depositors, financial market participants, policyholders, policy-claimants or persons to whom a fiduciary duty is owed by a financial institution;
  - (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
  - (c) ensuring the integrity and stability of a Party's financial system.
8. Nothing in this Treaty shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 3.6: Transfers.

#### **Article 5.5: National Security**

1. Nothing in this Treaty requires a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its national security interests.
2. Nothing in this Treaty shall apply to a Party's measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its national security interests.

### **Part 6: Sustainable Development**

#### **Article 6.1: Environmental, Labour and Human Rights Standards**

1. Each Party has the right to establish and modify, in its domestic law, its own domestic standards and levels of protection in environmental, labour and human rights matters. In the exercise of this right, each Party shall strive to provide for high levels of environmental, labour and human rights protection, taking into account internationally accepted standards and the international agreements to which it is party, and shall strive to continue to improve its standards.
2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic laws on environmental, labour and human rights protection. Accordingly, the Parties shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such domestic laws as an encouragement for the establishment, maintenance or expansion in its territory of an investment. If a Party considers that

[the other][another] Party has offered such an encouragement, it may request consultations with the other Party.

3. The Parties shall enforce, as far as possible, their respective domestic laws on environmental, labour and human rights matters.

#### **Article 6.2: Pre-Establishment Environmental, Social, Human Rights and Climate Change Impact Assessment**

1. The Parties shall ensure that their respective domestic laws require investors or their investments to carry out a pre-establishment impact assessment or assessments covering positive and negative impacts of the proposed investment on:
  - (a) the natural and human environment in the areas potentially impacted by the proposed investment and their vicinity;
  - (b) the social and labour rights of the persons in the areas potentially impacted by the proposed investment and their vicinity;
  - (c) the human rights of the persons in the areas potentially impacted by the proposed investment, including the progressive realization of human rights in those areas; and
  - (d) climate change mitigation and adaptation, including the quantification of greenhouse gas emissions of the proposed investment.
2. The Parties shall ensure that their respective domestic laws establish high standards for the impact assessment or assessments referred to in paragraph 1, requiring at a minimum that such assessment or assessments:
  - (a) be carried out by an entity that is wholly independent of the investor or its investment and any State with a stake in the investment;
  - (b) include input from independent experts—such as international and domestic human rights lawyers, trade unions and environmental and climate change specialists—with knowledge of the affected community;
  - (c) be carried out in a way that is transparent and accessible to the public, to investors and any other affected person; and
  - (d) actively seek participation of the communities most likely to be affected by the investment and ensure that their input is reflected in the impact assessment or assessments.

#### **Article 6.3: Transparency of Investment Information**

1. Each Party shall promptly publish, or otherwise make publicly available, its laws and regulations of general application as well as international agreements that may affect the investments of [the other][another] Party.

2. Each Party shall endeavour to promptly publish, or otherwise make publicly available, its policies and administrative guidelines or procedures that may affect investment under this Treaty.
3. Nothing in this Treaty shall require a Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its domestic law protecting confidentiality.
- [4. Party A shall provide technical assistance to Party B in the implementation of this Article.]

## **Part 7: Accountability Mechanism**

### **Article 7.1: Mediation and Compliance**

1. The Parties hereby establish an accountability mechanism with two complementary functions: (a) multistakeholder mediation and (b) compliance.
2. The multistakeholder mediation function shall:
  - (a) strive to resolve and respond to the issues and concerns raised in complaints brought by individuals or communities affected or potentially affected by an investment or brought by civil society organizations;
  - (b) adopt a flexible, collaborative and problem-solving approach; and
  - (c) identify and engage all stakeholders, including complainants, investors, investments and State Parties.
3. The compliance function shall:
  - (a) strive to ensure compliance of investors, investments and States with obligations under this Treaty in response to complaints brought by individuals or communities affected or potentially affected by an investment or brought by civil society organizations;
  - (b) include fact-finding through an impartial and careful investigation when there is factual disagreement between the stakeholders, as well as a final report; and
  - (c) identify and engage all stakeholders, including complainants, investors, investments and State Parties.

### **Article 7.2: Rosters of Mediators and Compliance Specialists**

1. The Joint Committee shall, upon the entry into force of this Treaty, appoint individuals to a roster of mediators comprising [X] individuals and a roster of compliance specialists comprising [X] individuals.

2. The same individual may serve on both rosters. The roster members shall be appointed for a [X]-year term, renewable [once], and may be reappointed [once]. Vacancies shall be filled as they arise. Parties shall consult with relevant representatives of civil society and industry for the choice of roster members. In principle, a roster member serving as mediator or compliance specialist when his or her term expires may continue to serve until the end of the complaint process. In case no agreement can be reached on the composition of the rosters, the [President of the International Court of Justice] shall appoint the remaining members to be appointed.
3. Members of both rosters shall:
  - (a) be of high moral standing;
  - (a) be independent of, and not be affiliated with or take instructions from, any of the potentially involved stakeholders;
  - (b) be recognized to have competence in the field of business and sustainable development and human rights;
  - (c) be knowledgeable about cultural realities relevant under this Treaty;
  - (d) be chosen strictly on the basis of objectivity, reliability and sound judgment;
  - (e) serve in their personal capacity; and
  - (f) comply with a code of conduct to be adopted by the Joint Committee.
4. Members of the roster of compliance experts shall also have a legal background.

### **Article 7.3: Lodging of a Complaint**

1. A natural person or group of natural persons of the host State Party or a civil society organization of the home State Party or host State Party (“complainants”) may lodge a complaint with a National Contact Point of a Party if the complainants:
  - (a) are negatively affected or potentially negatively affected by an investment;
  - (b) understand that a Party has not complied with the classification of investors and investments as Sustainable Investments or Unsustainable Investments under this Treaty; or
  - (c) understand that an investor or investment has not complied with an obligation under this Treaty.
2. The National Contact Point shall immediately inform the Joint Committee of the complaint.

#### **Article 7.4: Mediation**

1. The complainants and the investor or investment involved may agree to appoint a sole mediator drawn from the roster of mediators. In case no agreement can be reached on the sole mediator, the Joint Committee shall appoint the sole mediator by lot from the roster of mediators.
2. The appointed mediator shall establish such rules of procedure as are necessary to conduct the mediation and shall endeavour to invite all stakeholders to participate.
3. If no agreement can be reached among the stakeholders to continue with mediation, the mediator may issue a written recommendation that the complaint proceed to the compliance process under Article 7.5: Compliance Process.
4. The mediator may issue a written recommendation, based on input from all stakeholders and taking into account:
  - (a) indications of potentially significant present or future adverse effect; and
  - (b) indications that an investor, investment or State has not complied with an obligation under this Treaty.
5. The Joint Committee shall prepare a summary of the mediator's written assessment, share it with the complainants, make it publicly and freely available on the Internet and alert relevant stakeholders of the disclosure.

#### **Article 7.5: Compliance Process**

1. Where a mediator's written recommendation concludes that a compliance process is warranted, the complainants and the investor or investment involved may agree to appoint a compliance panel of three individuals drawn from the roster of compliance specialists. In case no agreement can be reached, the Joint Committee shall appoint the three members of the compliance panel by lot from the roster of compliance specialists.
2. The compliance process shall involve a systematic, documented verification process to objectively obtain and evaluate evidence to determine whether an investor or investment has complied or is complying with obligations under this Treaty, the violation of which may lead to adverse impacts.
3. The compliance process may involve a review of documents, interviews, observation of activities and conditions, or other appropriate means.
4. The compliance panel shall:
  - (a) before it begins the compliance investigation, draft and publish the terms of reference for such investigation, which shall specify:
    - i. the objectives and scope of the investigation;
    - ii. a brief description of the project or situation to be investigated;

- iii. the approach to and methods of the investigation;
    - iv. a schedule for its investigation and reporting tasks;
  - (b) conduct the compliance process according to the rules of procedure to be established by the Joint Committee; and
  - (c) endeavour to invite all stakeholders to participate.
- 5. The home State Party shall deny the benefits accorded under this Treaty to an investor or investment that refuses to engage meaningfully in the compliance process.
- 6. The compliance panel shall prepare an investigation report including:
  - (a) a brief description of the project;
  - (b) a description of the underlying issues that gave rise to the investigation;
  - (c) the objectives and scope of the investigation;
  - (d) the criteria against which the investigation was conducted; and
  - (e) the findings of the investigation with respect to non-compliance and any adverse effects.
- 7. The Joint Committee shall share the investigation report with the complainants, make it publicly and freely available on the Internet and alert relevant stakeholders of the disclosure.
- 8. Where the investigation report includes a finding of non-compliance, the Joint Committee shall monitor the situation.
- 9. Where the investigation report includes a finding of non-compliance against an investor or investment, and the home State Party shall deny the benefits accorded under this Treaty to an investor or investment that fails to come into compliance within a reasonable period of time.
- 10. Where the investigation report includes a finding of non-compliance against a Party, that Party shall come into compliance within a reasonable period of time and report on its progress to the Joint Committee.

## **Part 8: Denial of Benefits**

### **Article 8: Denial of Benefits**

1. A Party may, at any time, including after the institution of dispute settlement proceedings in accordance with this Treaty, deny benefits of this Treaty to an investor or investment:
  - (a) owned or controlled directly or indirectly by investors of a non-Party and

- i. the denying Party does not maintain diplomatic relations with such non-Party; or
  - ii. the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the investor or investment or would be violated or circumvented if the benefits of this Treaty were accorded to the investor or investment; or
  - iii. the investor or investment has no substantial business activities in the territory of the home State Party;
- (b) that has been established or restructured with the primary purpose of gaining access to the dispute settlement mechanisms provided for in this Treaty; or
  - (c) whose directors or executives have been convicted for violating the criminal laws of the host State or the home State in connection with the performance of their functions as directors or executives of such investor or investment.
2. The denial of benefits may be, depending on the Party's own assessment of the gravity of the circumstances mentioned in paragraph 1:
- (a) total, in case the Party decides to deny all benefits of this Treaty to an investor or investment, re-classifying it as Unsustainable Investor or Unsustainable Investment; or
  - (b) partial, in case the Party decides to deny certain benefits of this Treaty to a Sustainable Investor or its investment, re-classifying it as non-classified.

## **Part 9: Dispute Prevention and Settlement**

### **Article 9.1: Scope**

1. The mechanisms established under this Part may prevent, hear and settle:
- (a) disputes concerning claims or counterclaims by investors or investments that the host State has breached an obligation under Part 3: Investment Protection;
  - (b) disputes concerning claims or counterclaims by the host State, or claims by one or more natural or juridical persons of a Party, that an investor or investment has breached an obligation under Part 4: Responsible Investment;
  - (c) disputes concerning claims by one or more natural or juridical persons of a Party that the Party has breached an obligation under Part 6: Sustainable Development; and
  - (d) disputes between the Parties concerning the interpretation or application of this Treaty.

2. For greater certainty, an investor or investment may not submit a claim or dispute under this Part:
  - (a) if the investment has been established, acquired, expanded, operated or managed through fraudulent misrepresentation, concealment, corruption or conduct amounting to an abuse of process;
  - (b) if the investment has been established, acquired, expanded, operated or managed in violation of domestic law or obligations set out in this Treaty;
  - (c) if the investor or investment has:
    - i. committed serious human rights violations;
    - ii. sponsored persons or organizations convicted of serious human rights violations or violations against international humanitarian law or sponsoring internationally listed terrorist organizations;
    - iii. caused serious environmental damage;
    - iv. committed serious fraudulent actions against tax and fiscal laws and regulations;
    - v. caused grave labour law violations; or
    - vi. engaged in money laundering activities;
  - (d) concerning any pre-establishment obligations of the Parties.
3. An Unsustainable Investor or its investment may not submit claims or counterclaims under this Part. Claims or counterclaims by Unsustainable Investors or their investments shall be subject to the exclusive jurisdiction of the domestic courts of the host State.
4. Claims and disputes that fall outside of the scope of this Article may not be submitted to the mechanisms under this Part.

#### **Article 9.2: Notice of Dispute**

In the event of a dispute referred to in paragraph 1 of Article 1.3: Scope of Application, the claimant shall deliver to the respondent and to the Joint Committee a written notice of its intention to submit the dispute to the mechanism under this Part (“Notice of Dispute”). The notice shall specify:

- (a) the name and address of the claimant;
- (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, where applicable, the approximate amount of damages claimed.

### **Article 9.3: Amicable Settlement**

For at least six months from the receipt of the Notice of Dispute by the respondent, the disputing parties shall seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party mediation or other mechanisms, including the dispute prevention mechanism under Article 9.4: Dispute Prevention Mechanism.

### **Article 9.4: Dispute Prevention Mechanism**

1. Within 60 days from the date of receipt of a Notice of Dispute, the Joint Committee shall evaluate its contents and relevant circumstances and hold an extraordinary meeting to facilitate an amicable solution that prevents the escalation of the dispute.
2. The Joint Committee shall endeavour to invite all stakeholders, including the investor, the investment, relevant government officials and affected individuals and communities, to participate in the extraordinary meeting.
3. Within 60 days from the date of the extraordinary meeting, the Joint Committee shall publish a report indicating:
  - (a) the identification of the stakeholders concerned;
  - (b) the description of the alleged breaches; and
  - (c) the conclusions of the extraordinary meeting, including any recommendations by the Joint Committee to the stakeholders concerned.

### **Article 9.5: Requirements for Submission of a Dispute to the Tribunal**

1. A claimant may submit a dispute under Article 1.3: Scope of Application, subparagraphs 1(a), 1(b) or 1(c) to the Tribunal established under this Treaty provided that:
  - (a) six months have elapsed since the Notice of Dispute was filed with the respondent and no amicable solution has been reached;
  - (b) the claimant has first submitted a claim before the domestic courts of the host State for the purpose of exhausting local remedies, after the exhaustion of any administrative remedies, relating to the measure underlying the claim under this Treaty, and a resolution has not been reached within a reasonable period of time from its submission to a local court of the host State, or demonstrates to the Tribunal that there are no reasonably available legal remedies capable of providing effective remedies of the dispute concerning the underlying measure, or the legal remedies provide no reasonable possibility of such remedies in a reasonable period of time;

- (c) the claimant, on behalf of both the investor and the investment, where applicable, has provided a clear and unequivocal waiver of any right to pursue or to continue any claim relating to the measures underlying the claim made pursuant to this Treaty before local courts in the host State or in any other dispute settlement forum; and
  - (d) no more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged in the Notice of Dispute and knowledge that the claimant has incurred loss or damage, or one year from the conclusion of the request for local remedies initiated in the domestic courts;
2. Each Party hereby consents and each investor and investment, by virtue of establishing or continuing to operate or own an investment subject to this Treaty, consents to the settlement of disputes under Article 1.3: Scope of Application in accordance with the procedures set out in this Part, thus giving jurisdiction to the Tribunal and the Appellate Tribunal, in a manner that satisfies the requirements of:
- (a) Article 25 of the ICSID Convention and Chapter II of Schedule C of the ICSID Additional Facility Rules regarding written consent of the disputing parties; and
  - (b) Article II of the New York Convention for an agreement in writing.

**Article 9.6: Submission of a Dispute to the Tribunal**

1. A dispute may be submitted under the following rules:
  - (a) the ICSID Convention and Rules of Procedure for Arbitration Proceedings, for disputes between investors or their investments and states;
  - (b) the ICSID Additional Facility Rules if the conditions for proceedings pursuant to paragraph (a) do not apply;
  - (c) the UNCITRAL Arbitration Rules; or
  - (d) any other rules on agreement of the disputing parties.
2. In the event that the claimant proposes rules pursuant to subparagraph 4(d), the respondent shall reply to the claimant's proposal within 20 days of receipt. If the disputing parties have not agreed on such rules within 30 days of receipt, the investor may submit a claim under the rules provided for in subparagraph 4(c).
3. For greater certainty, a claim submitted under subparagraph 1(b) shall satisfy the requirements of Article 25(1) of the ICSID Convention.
4. The claimant may, when submitting its claim, propose that a sole Member of the Tribunal should hear the claim. The respondent shall give sympathetic consideration to that request, in particular if the claimant is a citizen or a small or medium-sized enterprise or the compensation or damages claimed are relatively low.

5. The rules applicable under paragraph 1 are those that are in effect on the date that the claim or claims are submitted to the Tribunal under this Part, subject to the specific rules set out in this Part and any supplementary rules adopted by the Joint Committee.
6. A claim is submitted for dispute settlement under this Part when:
  - (a) the request under Article 36(1) of the ICSID Convention is received by the Secretary-General of ICSID;
  - (b) the request under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretariat of ICSID;
  - (c) the notice under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent; or
  - (d) the request or notice initiating proceedings is received by the respondent in accordance with the rules agreed upon pursuant to subparagraph a(d).
7. Each Party shall notify the other Party of the place of delivery of notices and other documents by the investors pursuant to this Part. Each Party shall ensure this information is made publicly available.

#### **Article 9.7: Tribunal**

1. The Tribunal established under this Article shall decide claims submitted pursuant to Article 9.6: Submission of a Dispute to the Tribunal.

*[If bilateral:]*

- [2. The Joint Committee shall, upon the entry into force of this Treaty, appoint [nine][twelve][fifteen] Members of the Tribunal, ensuring equitable geographic and gender representation.]

*[If regional or multilateral:]*

- [2. The Joint Committee shall, upon the entry into force of this Treaty, appoint [nine][twelve][fifteen] Members of the Tribunal. The Members of the Tribunal shall be nationals of the Parties, and no [two][more than two] of whom may be nationals of the same State. Equitable gender and geographic representation shall be ensured.]
3. The Joint Committee may decide to increase or to decrease the number of the Members of the Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.
4. The Members of the Tribunal appointed pursuant to this Part shall be appointed for a five-year term, renewable once. However, the terms of seven of the [nine][twelve][fifteen] persons appointed immediately after the entry into force of this Treaty, to be determined by lot, shall extend to six years. Vacancies shall be filled as they arise. A person appointed to replace a Member of the Tribunal whose term of office has not expired shall hold office for the remainder of the predecessor's term. In

principle, a Member of the Tribunal serving on a division of the Tribunal when his or her term expires may continue to serve on the division until a final award is issued.

5. The Tribunal shall hear cases in divisions consisting of three Members of the Tribunal, no two of whom may be nationals of the same State, and one of whom shall chair the division.
6. Within 90 days of the submission of a claim pursuant to Article 9.6: Submission of a Dispute to the Tribunal, the President of the Tribunal shall appoint the Members of the Tribunal composing the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of the divisions is random and unpredictable, while giving equal opportunity to all Members of the Tribunal to serve.
7. The President and Vice-President of the Tribunal shall be responsible for organizational issues and shall be appointed for a two-year term and shall be drawn by lot from among the Members of the Tribunal who are nationals of third States. They shall serve on the basis of a rotation drawn by lot by the Chair of the Joint Committee. The Vice-President shall replace the President when the President is unavailable.
8. Notwithstanding paragraph 6, the disputing parties may agree that a case be heard by a sole Member of the Tribunal to be appointed at random from the nationals of States other than the disputing Parties or the home State or host State of disputing parties. The respondent shall give sympathetic consideration to a request from the claimant to have the case heard by a sole Member of the Tribunal, in particular where the claimant is one or more natural persons, a small or medium-sized enterprise or a civil society organization or the compensation or damages claimed are relatively low. Such a request shall be made before the constitution of the division of the Tribunal.
9. The Tribunal may draw up its own working procedures.
10. The Members of the Tribunal shall ensure that they are available and able to perform the functions set out under this Part.
11. In order to ensure their availability, the Members of the Tribunal shall be paid an annual salary to be determined by the Joint Committee, along with applicable modalities and conditions.
12. The annual salary referred to in paragraph 11 shall be paid equally by the Parties into an account managed by the Joint Committee. In the event that one Party fails to pay its contribution toward the annual salaries, the other Party may elect to pay. Any such arrears by a Party shall remain payable, with appropriate interest.
13. Unless the Joint Committee adopts a decision pursuant to paragraph 15, the amount of the fees and expenses of the Members of the Tribunal on a division constituted to hear a claim, other than the fees referred to in paragraph 12, shall be those determined pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 9.19: Final Award.

14. The Joint Committee shall create a Secretariat for the Tribunal to provide it with appropriate support.
15. If the Joint Committee has not made the appointments pursuant to paragraph 2 within 90 days from the date that a claim is submitted for dispute settlement, the [President of the International Court of Justice] shall, at the request of either disputing party appoint a division consisting of three Members of the Tribunal, unless the disputing parties have agreed that the case is to be heard by a sole Member of the Tribunal. The [President of the International Court of Justice] shall make the appointment by random selection from the existing nominations. [The President of the International Court of Justice may not appoint as chair a national of a disputing Party or of a State that is home State or host State to a disputing party, unless the disputing parties agree otherwise.]

### **Article 9.8: Appellate Tribunal**

1. An Appellate Tribunal is hereby established to review awards rendered under this Part.
2. The Appellate Tribunal may uphold, modify or reverse the Tribunal's award based on:
  - (a) errors in the application or interpretation of applicable law;
  - (b) manifest errors in the appreciation of the facts, including the appreciation of relevant domestic law; or
  - (c) the grounds set out in Article 52(1) (a) through (e) of the ICSID Convention, in so far as they are not covered by paragraphs (a) and (b).
3. The Members of the Appellate Tribunal shall be appointed by a decision of the Joint Committee at the same time as the decision referred to in paragraph 7.
4. The division of the Appellate Tribunal constituted to hear the appeal shall consist of three randomly appointed Members of the Appellate Tribunal.
5. Article 9.16: Transparency of Proceedings and Article 9.18: Non-Disputing Parties shall apply to the proceedings before the Appellate Tribunal.
6. The Joint Committee shall promptly adopt a decision setting out procedural, administrative and organizational matters that it determines to be necessary for the effective functioning of the Appellate Tribunal.
7. The Joint Committee shall periodically review the functioning of the Appellate Tribunal and may revise the decision referred to in paragraph 7, if necessary.
8. Upon adoption of the decision referred to in paragraph 7:
  - (a) a disputing party may appeal an award rendered pursuant to this Part to the Appellate Tribunal within 90 days after its issuance;

- (b) a disputing party shall not seek to review, set aside, annul, revise or initiate any other similar procedure as regards an award under this Part;
- (c) an award rendered pursuant to Article 9.19: Final Award shall not be considered final and no action for enforcement of an award may be brought until either:
  - i. 90 days from the issuance of the award by the Tribunal has elapsed and no appeal has been initiated;
  - ii. an initiated appeal has been rejected or withdrawn; or
  - iii. 90 days have elapsed from an award by the Appellate Tribunal and the Appellate Tribunal has not referred the matter back to the Tribunal;
- (d) a final award by the Appellate Tribunal shall be considered as a final award for the purposes of Article 9.21: Enforcement of Awards; and
- (e) Paragraph 3 of Article 9.21: Enforcement of Awards shall not apply.

**Article 9.9: Professional Qualifications and Ethical Requirements**

1. The Members of the Tribunal and the Members of the Appellate Tribunal shall:
  - (a) possess the qualifications required in their respective countries for appointment to judicial office, or be jurists of recognized competence;
  - (b) have demonstrated expertise in public international law. It is desirable that they have expertise in international investment, trade or human rights law and the resolution of disputes arising under international investment, trade or human rights agreements;
  - (c) be chosen strictly on the basis of objectivity, reliability and sound judgment;
  - (d) be independent of, and not be affiliated with or take instructions from, any State or organization;
  - (e) comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration and any supplemental code of conduct or rules adopted by the Joint Committee; and
  - (f) upon appointment, refrain from acting as arbitrator, counsel or as party-appointed expert or witness in any pending or new investment dispute under this or any other international agreement.
2. The Joint Committee shall elaborate further impartiality and disclosure requirements, as well as a process for challenging adjudicators.

### **Article 9.10: Third-Party Funding**

1. Where there is third-party funding, the disputing party benefiting from it shall disclose to the other disputing party and to the Tribunal the name and address of the third-party funder.
2. The disclosure shall be made at the time of the submission of a claim, or, if the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.

### **Article 9.11: Applicable Law and Interpretation**

1. When rendering its decision, the Tribunal shall apply this Treaty as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties.
2. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Treaty, under the domestic law of a Party. For greater certainty, in determining the consistency of a measure with this Treaty, the Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.
3. The Parties or the Joint Committee may adopt interpretations of this Treaty. An interpretation adopted by the Parties or the Joint Committee shall be binding on the Tribunal. The Parties or the Joint Committee may decide that an interpretation shall have binding effect from a specific date.
4. The Tribunal or the Appellate Tribunal [may][shall] request specialized international bodies with core expertise on human rights, labour, health, environmental or other public interest matters to give an advisory opinion on any [legal] question arising within the scope of their activities. [Specialized international bodies include the International Labour Organization (ILO), the World Health Organization (WHO) and human rights bodies within the United Nations system or regional human rights systems.] [Advisory opinions rendered by such specialized international bodies shall, within the confines of their areas of expertise, be binding on the Tribunal and the Appellate Tribunal.]

### **Article 9.12: Claims Manifestly Without Legal Merit**

1. The respondent may, no later than 30 days after the constitution of the division of the Tribunal, and in any event before its first session, file an objection that a claim is manifestly without legal merit.
2. An objection shall not be submitted under paragraph 1 if the respondent has filed an objection pursuant to Article 9.13: Claims Unfounded as a Matter of Law.

3. The respondent shall specify as precisely as possible the basis for the objection.
4. On receipt of an objection pursuant to this Article, the Tribunal shall suspend the proceeding on the merits and establish a schedule for considering such an objection consistent with its schedule for considering any other preliminary question.
5. The Tribunal, after giving the disputing parties an opportunity to present their observations, shall at its first session or promptly thereafter issue a decision or award stating the grounds therefor. In doing so, the Tribunal shall assume the alleged facts to be true.
6. This Article shall be without prejudice to the Tribunal's authority to address other objections as a preliminary question or to the right of the respondent to object, in the course of the proceeding, that a claim lacks legal merit.

#### **Article 9.13: Claims Unfounded as a Matter of Law**

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at an appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted pursuant to Article 9.6: Submission of a Dispute to the Tribunal is not a claim for which an award in favour of the claimant may be made under this Part, even if the facts alleged were assumed to be true.
2. An objection under paragraph 1 shall be submitted to the Tribunal no later than the date the Tribunal fixes for the respondent to submit its counter-memorial.
3. If an objection has been submitted pursuant to Article 9.12: Claims Manifestly Without Legal Merit, the Tribunal may, taking into account the circumstances of that objection, decline to address, under the procedures set out in this Article, an objection submitted pursuant to paragraph 1.
4. On receipt of an objection under paragraph 1, and, if appropriate, after rendering a decision pursuant to paragraph 3, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.

#### **Article 9.14: Interim Measures of Protection**

The Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. The Tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 9.6: Submission of a Dispute to the Tribunal. For the purposes of this Article, an order includes a recommendation.

### **Article 9.15: Discontinuance**

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

### **Article 9.16: Transparency of Proceedings**

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

### **Article 9.17: Information Sharing**

1. A disputing party may disclose to other persons in connection with the proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Part. However, the disputing party shall ensure that those persons protect the confidential or protected information contained in those documents.

2. This Treaty does not prevent a respondent from disclosing to officials of a Party such unredacted documents as it considers necessary in the course of proceedings under this Party. However, the respondent shall ensure that those officials protect the confidential or protected information contained in those documents.

#### **Article 9.18: Non-Disputing Parties**

1. In a dispute initiated by an investor or investment or by one or more natural or juridical persons of the home State or host State against a State, the respondent shall, within 30 days after receipt or promptly after any dispute concerning confidential or protected information has been resolved, deliver to the home State of the claimant:
  - (a) a request for consultations, a notice requesting a determination of the respondent, a claim submitted pursuant to Article 9.6: Submission of a Dispute to the Tribunal, a request for consolidation, and any other documents that are appended to such documents;
  - (b) on request:
    - i. pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;
    - ii. written submissions made to the Tribunal pursuant to Article 4 of the UNCITRAL Transparency Rules;
    - iii. minutes or transcripts of hearings of the Tribunal, if available; and
    - iv. orders, awards and decisions of the Tribunal; and
  - (c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been tendered to the Tribunal, unless the requested evidence is publicly available.
2. The Tribunal shall accept or, after consultation with the disputing parties, may invite, oral or written submissions from the non-disputing Party regarding the interpretation of this Treaty. The non-disputing Party may attend a hearing held under this Part.
3. The Tribunal shall not draw any inference from the absence of a submission pursuant to paragraph 2.
4. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on a submission by the non-disputing Party to this Treaty.

#### **Article 9.19: Final Award**

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

- (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages representing the fair market value of the investment, determined in a manner consistent with Article 3.4: Direct Expropriation, and any applicable simple interest in lieu of restitution;
  - (c) re-classification of an investment as Unsustainable Investment or non-classified investment.
2. Monetary damages shall not be greater than the loss suffered by the national, investor, investment or State, as applicable, reduced by any prior damages or compensation already provided. For the calculation of monetary damages, the Tribunal shall also reduce the damages to take into account any restitution of property or repeal or modification of the measure.
  3. The Tribunal may not award punitive damages.
  4. The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the claim. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the claim or the disputing party. If only parts of the claims have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.
  5. The Joint Committee shall consider supplemental rules aimed at reducing the financial burden on claimants who are natural persons, civil society organizations or micro, small and medium-sized enterprises. Such supplemental rules may, in particular, take into account the financial resources of such claimants and the amount of compensation sought.
  6. The Tribunal and the disputing parties shall make every effort to ensure the dispute settlement process is carried out in a timely manner. The Tribunal shall issue its final award within 24 months of the date the claim is submitted pursuant to Article 9.6: Submission of a Dispute to the Tribunal. If the Tribunal requires additional time to issue its final award, it shall provide the disputing parties the reasons for the delay.

#### **Article 9.20: Indemnification or Other Compensation**

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

### **Article 9.21: Enforcement of Awards**

1. An award issued pursuant to this Part shall be binding between the disputing parties and in respect of that particular case.
2. Subject to paragraph 3, a disputing party shall recognize and comply with an award without delay.
3. A disputing party shall not seek enforcement of a final award until:
  - (a) in the case of a final award issued under the ICSID Convention:
    - i. 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
    - ii. enforcement of the award has been stayed and revision or annulment proceedings have been completed;
  - (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or any other rules applicable pursuant to Article 9.6: Submission of a Dispute to the Tribunal, subparagraph 1(d):
    - i. 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or
    - ii. enforcement of the award has been stayed and a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.
4. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where the execution is sought.
5. Parties shall adopt such domestic rules as are required to make final awards enforceable in domestic legal proceedings in their States.
6. A final award issued pursuant to this Part is an arbitral award that is deemed to relate to claims arising out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.
7. For greater certainty, if a claim has been submitted pursuant to Article 9.6: Submission of a Dispute to the Tribunal, subparagraph 1(a), a final award issued pursuant to this Part shall qualify as an award under Chapter IV, Section 6 of the ICSID Convention.

### **Article 9.22: Role of the Parties**

1. A Party shall not bring an international claim, in respect of a claim submitted pursuant to Article 9.6: Submission of a Dispute to the Tribunal, unless the other Party has failed to abide by and comply with the award rendered in that dispute.

2. Paragraph 1 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

#### **Article 9.23: Consolidation**

1. When two or more claims that have been submitted separately pursuant to Article 9.6: Submission of a Dispute to the Tribunal have a question of law or fact in common and arise out of the same events or circumstances, a disputing party or the disputing parties, jointly, may seek the establishment of a separate division of the Tribunal pursuant to this Article and request that such division issue a consolidation order.
2. The Joint Committee shall elaborate the procedural details on consolidation.

#### **Article 9.24: Establishment of a Multilateral Investment Tribunal and Appellate Mechanism**

If a separate multilateral agreement enters into force between the Parties that establishes a multilateral investment tribunal and appellate mechanism for the purposes of settling investment disputes, and if that multilateral dispute settlement mechanism provides inclusive access to justice to the same or broader groups of stakeholders or economic actors that have standing to appear as claimants or respondents under this Part, the Joint Committee shall adopt a decision providing that disputes submitted to the Tribunal under this Part shall instead be decided pursuant to the multilateral mechanism and make appropriate transitional arrangements.

### **Part 10: Institutional Arrangements**

#### **Article 10.1: Joint Committee**

*[Drafting note: The following alternative for paragraph 1 may be considered for bilateral treaties including developing country State Parties, or treaties between a developing country State Party and a developed country State Party, as well as for regional or multilateral treaties.]*

- [1. The Parties hereby establish a Joint Committee for the administration of this Treaty, comprising an equal number of representatives of each State Party and ensuring balanced representation of government agencies responsible for the areas governed by this Treaty, including energy, environment, climate change, investment promotion and legal defense of the State.]

*[Drafting note: The alternative below is the recommended option for paragraph 1 in bilateral treaties between developed country State Parties.]*

1. The Parties hereby establish a Joint Committee for the administration of this Treaty, comprising the following members:
  - (a) one representative from the ministry responsible for energy, designated by each Party;

- (b) one representative from the ministry responsible for environment or climate change, designated by each Party;
  - (c) one representative from the investment promotion authority, designated by each Party; and
  - (d) one representative from the office of the attorney-general, designated by each Party.
2. Members of the Joint Committee shall be appointed for a [two]-year term.
  3. The Joint Committee shall be co-chaired by one representative of each Party, serving for a [one]-year term on the basis of a rotation drawn by lot from among the members of the Joint Committee.
  4. The Joint Committee shall meet at such times, in such places and through such means as the Parties may agree, at least once a year for ordinary meetings, and within 30 days after a Party receives a request for an extraordinary meeting from [the other][another] Party. The Joint Committee shall agree on its meeting schedule and its agenda.
  5. Each ordinary meeting of the Joint Committee shall include a public hearing to discuss matters relating to the implementation and interpretation of this Treaty.
  6. The Joint Committee is responsible for all questions concerning the implementation and application of this Treaty. A Party may refer to the Joint Committee any issue relating to the implementation and interpretation of this Treaty.
  7. The Joint Committee shall:
    - (a) supervise and facilitate the implementation and application of this Treaty and further its objective, including cooperative activities and the review of the impact of this Treaty on sustainable development;
    - (b) supervise the work of any specialized committees established under this Treaty;
    - (c) coordinate the implementation of the mutually agreed cooperation agendas;
    - (d) without prejudice to the accountability and dispute settlement provisions of this Treaty, seek appropriate ways and methods of preventing problems that might arise in areas covered by this Treaty, or of amicably resolving issues or disputes that may arise regarding the interpretation or application of this Treaty;
    - (e) adopt its own rules of procedure;
    - (f) make decisions as set out in this Article; and
    - (g) consider any matter of interest relating to an area covered by this Treaty.
  8. The Joint Committee may:

- (a) delegate responsibilities to the specialized committees established pursuant to this Article;
  - (b) change or undertake the tasks assigned to specialized committees established pursuant to this Article or dissolve any of these specialized committees;
  - (c) consider or agree on amendments as provided in this Treaty;
  - (d) supplement the rules for dispute settlement established under this Treaty;
  - (e) make recommendations suitable for promoting the expansion of Sustainable Investment as envisaged in this Treaty;
  - (f) recommend amendments to the Schedules of the Parties to Annexes I and II;
  - (g) establish multistakeholder specialized committees, working groups and bilateral dialogues in order to assist it in the performance of its tasks; and
  - (h) take such other action in the exercise of its functions as decided by the Parties.
9. The Joint Committee shall, for the purpose of attaining the objective of this Treaty, have the power to make decisions as provided in this Treaty and interpretative statements in respect of any matter of this Treaty. The decisions and interpretative statements made by the Joint Committee shall be binding on the Parties and the accountability and dispute prevention and settlement mechanisms established under this Treaty, and the Parties shall implement them. The Joint Committee may also make appropriate recommendations to the Parties. The Joint Committee must adopt any decision, interpretative statement or recommendation by consent.
10. The Joint Committee shall promote transparency and public participation. To this end:
- (a) any decision or report of the Joint Committee shall be made public, including on a freely accessible Internet website;
  - (b) the Joint Committee shall establish consultative mechanisms to hear opinions presented by individuals, communities and civil society organizations on any matter related to this Treaty, including its implementation, and report annually on the follow-up to those communications; and
  - (c) the Joint Committee shall report annually on any matter that it addresses.

#### **Article 10.2: National Contact Points**

1. Each Party shall designate a National Contact Point to support investors and investments from [the other][another] Party in its territory.
2. The National Contact Point shall have the following responsibilities, among others:
  - (a) follow the recommendations of the Joint Committee;

- (b) interact with the National Contact Point of [the other Party][other Parties], in accordance with this Treaty;
  - (c) follow up on requests and enquiries made by [the other][another] Party or of an investor or investment of [the other][another] Party to the competent authorities and inform the petitioners of the results of its actions;
  - (d) assess, in consultation with relevant government authorities, suggestions and complaints received from the [the other][another] Party or an investor or investment of the other Party and recommend, as appropriate, actions to improve the investment environment;
  - (e) seek to prevent, manage and resolve investment disputes, in collaboration and coordination with government authorities, the National Contact Point of [the other Party][other Parties] and the Joint Committee;
  - (f) provide timely and useful information on regulatory issues on general investment or on specific projects; and
  - (g) report on its activities and actions to the Joint Committee.
3. Each Party shall determine time limits for the implementation of each of its functions and responsibilities, which will be communicated to the other Party.
  4. Each Party shall designate a single agency or authority as its National Contact Point, which shall give prompt replies to notifications and requests by the government and investors from [the other][another] Party.
  5. Where applicable, a Party may designate its National Contact Point for the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD) as its National Contact Point under this Treaty.

## **Part 11: Final Provisions**

### **Article 11.1: Entry into Force, Duration, Termination and Survival Clause**

1. This Treaty shall be subject to ratification by the Parties in accordance with their constitutional procedures. It shall enter into force 60 days after the deposit by the last Party of its instrument of ratification with [the other Party][the depository Party].
2. This Treaty shall remain in force indefinitely.
3. A Party may [terminate this Treaty][withdraw from this Treaty] by giving twelve months' prior official notice to the [other][depository] Party.
4. The rights of Sustainable Investors and Sustainable Investments shall continue in force for [five][ten] years following the [termination of the Treaty by their host State][withdrawal of their host State from the Treaty].

5. The rights of host States shall continue in force for [ten][twenty] years following [the termination of the Treaty][their withdrawal from the Treaty].

### **Article 11.2: Investment Policy Review Mechanism**

1. The Parties hereby establish an Investment Policy Review Mechanism (IPRM), inspired by the Trade Policy Review Mechanism created pursuant to Annex 3 of the Marrakesh Agreement establishing the World Trade Organization, concluded at Marrakesh on April 15, 1994, as amended.

*[Drafting note: In treaties with developing countries, Parties may want to adopt one of the longer options (five or seven years) for the periodicity of the IPRM review process.]*

2. The IPRM shall regularly, no less frequently than every [three][five][seven] years from the date of entry into force of this Treaty, review the operation and effectiveness of this Treaty, the progress of the Parties in meeting the objective of this Treaty and their commitments under the Treaty.
3. The Joint Committee shall, no later than one year before the first review referred to in paragraph 2, issue a decision on modalities, rules, protocols and reporting requirements under the IPRM, based on the following operating principles:
  - (a) Comprehensiveness: the review will cover all aspects of compliance and performance under the Treaty.
  - (b) Transparency: all submissions to the IPRM, all data collected by the IPRM and all the IPRM's reports and deliberations will be public.
  - (c) Openness and public participation: the IPRM will actively seek input beyond that provided by the Parties, drawing also on interested citizens, non-governmental organizations, inter-governmental organizations, research institutions, the private sector and academia, among others.
4. The Joint Committee may issue recommendations in order to improve the effectiveness of this Treaty and recommendations on reviewing its content.
5. A developing country Party may subject its implementation of this Article to the provision of technical or financial support.

### **Article 11.3: Amendment**

This Treaty may be amended by the mutual consent of the Parties through an exchange of notes or signing of an amendment agreement. An amendment shall enter into force 60 days following the deposit by the last Party of its instrument of ratification of the amendment with the [other][depository] Party.

### **Article 11.4: Annexes, Schedules and Notes**

The Annexes, Schedules and notes to this Treaty form an integral part of this Treaty.

## Article 11.5: Authentic Text

The authentic text of this Treaty shall be in [English][other].

Done at [place], on [date].

.....

For the Government of [...]

.....

For the Government of [...]

## Annex I: Sustainable Investment

1. The Schedule of a Party to this Annex sets, pursuant to Article 1.1: Definitions, the listed sectors or sub-sectors considered by that Party to meet the criteria for Sustainable Investment.
2. Each listing sets out the following elements:
  - (a) **Sector** refers to the general sector in which the listing is made;
  - (b) **Sub-sector** refers to the specific sector in which the listing is made;
  - (c) **Industry classification** refers, where applicable, to the activity covered by the reservation according to domestic industry classification codes;
  - (d) **Description** sets out the scope of the sector, sub-sector or activities covered by the listing.

### Annex I: Schedule of Party A [illustrative example]

<b>Sector:</b>	Manufacture of electrical equipment
<b>Sub-Sector:</b>	Manufacture of batteries and accumulators
<b>Industry classification:</b>	ISIC Rev 4 2720
<b>Description:</b>	Covers only the manufacture of rechargeable batteries, such as those intended for use in electric vehicles, power storage, etc.

<b>Sector:</b>	Manufacture of motor vehicles, trailers and semi-trailers
<b>Sub-Sector:</b>	
<b>Industry classification:</b>	ISIC Rev 4 29
<b>Description:</b>	Covers only the manufacture of electric vehicles

<b>Sector:</b>	Electricity, gas, steam and air conditioning supply
<b>Sub-Sector:</b>	Electric power generation, transmission and distribution
<b>Industry classification:</b>	ISIC Rev 4 3510
<b>Description:</b>	Covers only renewable energy systems: solar, wind, small-scale hydro and geothermal

<b>Sector:</b>	Specialized construction activities
<b>Sub-Sector:</b>	Electrical installation
<b>Industry classification:</b>	ISIC Rev 4 4321
<b>Description:</b>	Covers only installation of renewable energy solar, wind, small-scale hydro and geothermal

<b>Sector:</b>	Scientific research and development
<b>Sub-Sector:</b>	Research and experimental development on natural sciences and engineering
<b>Industry classification:</b>	ISIC Rev 4 7210
<b>Description:</b>	

## Annex II: Unsustainable Investment

1. The Schedule of a Party to this Annex sets, pursuant to Article 1.1: Definitions, the listed sectors or sub-sectors considered by that Party to meet the criteria for Unsustainable Investment.
2. Each listing sets out the following elements:
  - (a) **Sector** refers to the general sector in which the listing is made;
  - (b) **Sub-sector** refers to the specific sector in which the listing is made;
  - (c) **Industry classification** refers, where applicable, to the activity covered by the reservation according to domestic industry classification codes;
  - (d) **Description** sets out the scope of the sector, sub-sector or activities covered by the listing.

### Annex II: Schedule of Party A [illustrative example]

<b>Sector:</b>	Mining of coal and lignite
<b>Sub-Sector:</b>	
<b>Industry classification:</b>	ISIC Rev 4 05
<b>Description:</b>	

<b>Sector:</b>	Extraction of crude petroleum and natural gas
<b>Sub-Sector:</b>	
<b>Industry classification:</b>	ISIC Rev 4 06
<b>Description:</b>	

<b>Sector:</b>	Manufacture of coke and refined petroleum products
<b>Sub-Sector:</b>	
<b>Industry classification:</b>	ISIC Rev 4 12
<b>Description:</b>	

<b>Sector:</b>	Electricity, gas, steam and air conditioning supply
<b>Sub-Sector:</b>	Manufacture of gas; distribution of gaseous fuels through mains
<b>Industry classification:</b>	ISIC Rev 4 3520
<b>Description:</b>	

<b>Sector:</b>	Land transport and transport via pipelines
<b>Sub-Sector:</b>	Transport via pipeline
<b>Industry classification:</b>	ISIC Rev 4 4930
<b>Description:</b>	Covers only transport of gaseous fuel