INVESTMENT COOPERATION AND FACILITATION TREATY BETWEEN THE FEDERATIVE REPUBLIC OF BRAZIL AND THE REPUBLIC OF INDIA

PREAMBLE

The Federative Republic of Brazil and The Republic of India (hereinafter referred to as the "Parties" collectively or individually as "Party");

Wishing to strengthen and enhance the bonds of friendship and the spirit of continuous cooperation between the parties;

Desiring to promote cooperation between the Parties with respect to bilateral investments;

Recognizing that the cooperation in and facilitation of investments of investors of one Party in the territory of the other Party will be conducive to the stimulation of mutually beneficial business activity, to the development of economic cooperation between them and to the promotion of sustainable development, including poverty reduction;

Reaffirming the right of Parties to regulate investments in their territory in accordance with their law and policy objectives;

Seeking to create and maintain favourable conditions for the investments of investors of a Party in the territory of the other Party;

Recognizing the importance of fostering a transparent and friendly environment for investments by investors of the Parties;

Wishing to encourage and strengthen contacts between investors and the governments of the Parties; and

Seeking to maintain a dialogue and foster government initiatives that may contribute to an increase in bilateral investments.

Agree, in good faith, to the following Investment Cooperation and Facilitation Treaty, hereinafter referred to as "Treaty", as follows:

Part I. Scope and Definitions

Article 1. Objective

The objective of this Treaty is to promote cooperation between the Parties in order to facilitate and encourage bilateral investments, through the establishment of an institutional framework for the management of an agenda for further investment cooperation and facilitation, as well as through mechanisms for risk mitigation and prevention of disputes, among other instruments mutually agreed to by the Parties.

Article 2. Definitions

2. For the purpose of this Treaty:

2.1 "Confidential information" means business confidential information, e.g. confidential commercial, financial or technical information which could result in material loss or gain or prejudice to competitive positions, and information that is privileged or otherwise protected from disclosure under the law of a Party.

2.2 "Enterprise" means:

a) Any legal entity constituted, organized and operated in compliance with the law of a Party, including any company, corporation, limited liability partnership or a joint venture; and

b) A branch of any such entity established in the territory of a Party in accordance with its law and carrying out business activities there. Nothing in this Treaty shall be construed to require any Party to authorize the provision of financial services

by branches.

2.3 "Host State" means the Party where the investment is made.

2.4 "Investment" means an enterprise, including a participation therein, in the territory of a Party, that an investor of the other Party owns or controls, directly or indirectly, or over which it exerts a significant degree of influence, that has the characteristics of an investment, including the commitment of capital, the objective of establishing a lasting interest, the expectation of gain or profit and the assumption of risk. The following assets of the enterprise, among others, are covered under this Treaty:

a) Shares, stocks and other forms of equity instruments of the enterprise or in another enterprise;

b) Debt instruments or securities of another enterprise;

c) Licenses, authorizations, permits, concessions or similar rights conferred in accordance with the law of a Party;

d) Loans to another enterprise;

e) Intellectual property rights as defined or referenced to in the Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (TRIPS); and

f) Movable or immovable property and related rights.

2.4.1 For greater certainty, "Investment" does not include the following:

i) An order or judgment sought or entered in any judicial, administrative or arbitral proceeding;

ii) Debt securities issued by a Party or loans granted from a Party to the other Party, bonds, debentures, loans or other debt instruments of-a State-owned enterprise of a Party that is considered to be public debt under the law of that Party;

iii) Any expenditure incurred prior to the obtainment of all necessary licenses, permissions, clearances and permits required under the law of a Party;

iv) Portfolio investments of the enterprise or in another enterprise;

v) Claims to money that arise solely from commercial contracts for the sale of goods or services by a national or an enterprise in the territory of a Party to an enterprise in the territory of another Party;

vi) Goodwill, brand value, market share or similar intangible rights;

vii) Claims to money that arise solely from the extension of credit in connection with any commercial transaction; and

vii) Any other claims to money that do not involve the kind of interests or operations as set out in the definition of investment in this Treaty.

2.5 "Investor" means:

a) Any natural person of a Party that makes an investment in the territory of the other Party; or

b) Any enterprise constituted and organized in accordance with the law of a Party, other than a branch, that has substantial business activities in the territory of that Party and that makes an investment in the territory of the other Party.

2.6 "Local government" includes:

a) An urban local body, municipal corporation or village level government; or

b) An enterprise owned or controlled by an urban local body, a municipal corporation or a village level government.

2.7 "Measure" includes a law, regulation, rule, procedure, decision, administrative action, requirement or practice.

2.7.1 For India, "law" includes:

a) The Constitution, legislation, subordinate/delegated legislation, laws and bylaws, rules and regulations, ordinance, notifications, policies and guidelines in accordance with an enactment or legislation, procedures, administrative measures/executive actions at all levels of government, as amended, interpreted or modified from time to time;

b) Decisions, judgments, orders, awards and decrees by Courts, regulatory authorities, judicial and administrative institutions having the force of law within the territory of a Party.

2.8 "Natural person" means a national, citizen or a permanent resident of a Party in accordance with its law.

2.9 "PCA Optional Rules" means the Permanent Court of Arbitration Optional Rules for Arbitration Disputes between Two States, signed on 20 October 1992.

2.10 "Pre-investment activity" means any activity undertaken by the investor or its investment pursuant to compliance with sectorial limitations on foreign equity, and other specific limits and conditions applicable under any law relating to the admission of investments in the territory of the Party, prior to the establishment of the investment.

2.11 "Sub-national government" means a State Government and a Union Territory administration in the case of India but does not include local governments; and, in the case of Brazil, means the States, the Federal District and the Municipalities.

2.12 "Territory" means:

a) In respect of Brazil, the territory, including land and air space, the exclusive economic zone, the territorial sea and the continental shelf and its seabed and subsoil, in which the country exerts sovereign rights or jurisdiction in accordance with international law and its national legislation.

b) In respect of India, the territory in accordance with the Constitution of India, including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights, or exclusive jurisdiction in accordance with its law and the 1982 United Nations Convention on the Law of the Sea and international law.

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

2.14 2.14 The Annexures, Provisos and Footnotes in this Treaty constitute an integral part of this Treaty and are to be accorded the same effect as other provisions in this Treaty.

Article 3. Scope and General Provisions

3.1 This Agreement shall apply to measures adopted or maintained by a Party relating to investments of investors of another Party in its territory, in existence as on the date of entry into force of this Treaty or established, acquired, or expanded thereafter, and which have been admitted by a Party in accordance with its law and policies as applicable from time to time.

3.2 The Parties shall encourage investments of investors of the other Party through cooperation and facilitation of investments as set forth in this Treaty.

3.3 This Treaty shall not limit the rights and benefits which an investor of a Party enjoys under national law in the territory of the other Party.

3.4 This Treaty shall not prevent the adoption and implementation of new legal requirements or restrictions to investors and their investments, as long as they are consistent with this Treaty.

3.5 Subject to the provisions of Part Ill, nothing in this Treaty shall apply to any Pre-investment activity, to any measure related to such Pre-investment activity, or to the terms and conditions of admission of an investment, which continue to apply post-establishment.

3.6 This Treaty shall not apply to:

a) Any measure by a local government, provided that it is consistent with Article 5 of this Treaty;

b) Any law or measure regarding taxation, including measures taken to enforce taxation obligations;

c) The issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the international obligations of Parties under the WTO Agreement;

d) Government procurement by a Party;

e) Subsidies or grants provided by a Party to vulnerable groups in accordance with its law;

f) Services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this provision, a service supplied in the exercise of governmental authority means any service which is not supplied on a

commercial basis; or

g) Claims arising out of events which occurred, or claims which have been raised prior to the entry into force of this Treaty.

3.7 A Party may decide not to apply this Treaty to an investor or an investment of an investor of that Party or of a non-party in the territory of that Party, unless inconsistent with this Treaty.

Part II. General Obligations of the Parties

Article 4. Treatment of Investments

4.1 Based on the applicable rules and customs of international law as recognized by each of the Parties and their respective national law, no Party shall subject investments made by investors of the other Party to measures which constitute:

a) Denial of justice in any judicial or administrative proceedings;

b) Fundamental breach of due process;

c) Targeted discrimination, such as gender, race or religious belief;

d) Manifestly abusive treatment, such as coercion, duress and harassment; or

e) Discrimination in matters of law enforcement, including the provision of physical security.

4.2 Nothing in this Treaty shall be construed as to prevent a Party from adopting or maintaining affirmative action measures towards vulnerable groups.

4.3 A determination that there has been a breach of another provision of this Treaty, or of a separate international agreement, does not establish that there has been a breach of this Article.

4.4 Subject to its laws and regulations and policies on the entry of foreign nationals, each Party shall provide the facilities and the necessary permissions for the entry, exit, residence and work of the investor of the other Party and any national of the other Party having a permanent or temporary relationship with the investment, including administrators, experts and technicians.

4.5 Existing investments shall not be affected by subsequent changes in admission requirements.

Article 5. National Treatment

5.1 Without prejudice to the measures in force under its legislation on the date of entry into force of this Treaty, each Party shall accord to investors of the other Party or to investments by investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors or to investments by its own investors, with respect to management, conduct, operation, sale or other disposition of investments in its territory.

5.2 For greater certainty, the treatment accorded 'in like circumstances' depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare or regulatory objectives.

5.3 For greater certainty, this Article shall not be interpreted as obliging the Parties to compensate for inherent competitive disadvantages which result from the foreign character of the investors and their investments.

Article 6. Direct Expropriation

6.1 Neither Party may nationalize or expropriate an investment of an investor (hereinafter "expropriate") of the other Party, except:

a) For reasons of public purpose; (1)

b) In a non-discriminatory manner;

c) On payment of effective and adequate (2) compensation, according to paragraph 6.2; and

d) In accordance with the due process of law.

6.2 Such compensation shall:

a) Be paid without undue delay;

b) Be at least equivalent to the fair market value of the expropriated investment, immediately before the expropriation takes place but not beyond thirty (30) days prior to the date of expropriation, plus interests at a rate determined according to market criteria, accrued since the expropriation date until the payment date, according to the legislation of the Host State;

c) Not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value; and

d) Be completely payable, freely exchanged into a convertible currency and freely transferable, according to Article 9.

6.3 For greater certainty, this Treaty only covers direct expropriation, which occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

6.4 Non-discriminatory regulatory measures by a Party or measures or awards by judicial bodies of a Party that are designed and applied to protect legitimate public interest or public purpose objectives such as public health, safety and the environment shall not constitute expropriation under this Article.

(1) For the avoidance of doubt, where India is the expropriating Party, any measure of expropriation relating to land shall be for the purposes as set out in its law relating to land acquisition and any questions as to "public purpose" and compensation shall be determined in accordance with the procedure specified in such law.

(2) For the avoidance of doubt, where Brazil is the expropriating Party, for the expropriation of property that is not performing its social function, in accordance with its Constitution and other applicable legislation, compensation may be paid in the form of debt bonds.

Article 7. Compensation for Losses

The investors of a Party whose investments in the territory of the other Party suffer losses due to war or other armed conflict, revolution, state of emergency, civil strife or any other similar events, shall enjoy, with regard to restitution, indemnity or other form of compensation, the same treatment as the latter Party accords to its own investors or the treatment accorded to investors of a third party, whichever is more favorable to the affected investor.

Article 8. Transparency

8.1 Each Party shall, as per its law, ensure that its laws, regulations, procedures and administrative rulings of general application in respect of any matter covered by this Treaty are published, or otherwise made available in electronic format, in such a manner so as to enable interested persons and the other Party to become acquainted with them.

8.2 Each Party shall, as provided for in its laws and regulations:

a) Publish any such measure that it proposes to adopt; and

b) Provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

8.3 Whenever possible, each Party shall disseminate this Treaty to their respective public and private financial agents, responsible for the technical evaluation of risks and the approval of loans, credits, guarantees and related insurances for investment in the territory of the other Party.

Article 9. Transfers

9.1 Each Party shall permit all funds of an investor of the other Party related to an investment in its territory to be, in compliance with applicable domestic procedures established by its regulations, freely transferred and on a non-discriminatory basis. Such funds may include:

a) Contributions to capital;

b) Profits, dividends, capital gains and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

c) Interest, royalty payments, management fees, and technical assistance and other fees;

d) Payments made under a contract, including a loan agreement, directly related to the investment; and

e) Payments made pursuant to Articles 6 and 7.

9.2 Nothing in this Treaty shall affect the right of a Party to adopt temporary regulatory measures, in a non-discriminatory manner, concerning the balance of payments in a balance of payments crisis, nor will it affect the rights and obligations of the Parties as members of the International Monetary Fund contained in the Articles of the Agreement of the International Monetary Fund, in particular exchange measures which are in conformity with the Agreement of the International Monetary Fund.

9.3 The adoption of temporary restrictive measures for transfers in case of the existence of serious balance of payments difficulties must be non-discriminatory and in accordance with the Articles of the Agreement of the International Monetary Fund.

9.4 Nothing in this Treaty shall prevent a Party from conditioning or preventing a transfer through application of its law, including actions relating to:

a) Bankruptcy, insolvency or the protection of the rights of the creditors;

b) Compliance with judicial, arbitral or administrative decisions and awards;

c) Compliance with labour obligations;

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

e) Issuing, trading or dealing in securities, futures, options, or derivatives;

f) Compliance with the law on taxation;

g) Criminal or penal offences and the recovery of the proceeds of crime;

h) Social security, public retirement, or compulsory savings schemes, including provident funds, retirement gratuity programs and employees insurance programs;

i) Severance entitlements of employees;

j) Requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of a Party; and

k) In the case of India, requirements to lock-in initial capital investments, as provided in India's Foreign Direct Investment (FDI) Policy, where applicable, provided that, any new measure which would require a lock-in period for investments will not apply to existing investments.

Article 10. Investment Measures and Combating Corruption and Illegality

10.1 Each Party shall adopt measures and make efforts to prevent and fight corruption, money laundering and terrorism financing with regard to matters covered by this Treaty, in accordance with its laws and regulations.

10.2 Nothing in this Treaty shall require any Party to protect investments made with capital or assets of illicit origin or investments in the establishment or operation of which illegal acts have been demonstrated to occur and for which national legislation provides asset forfeiture.

Part III. Investor Obligations or Responsibilities

Article 11. Compliance with Laws

The Parties reaffirm and recognize that:

a) Investors and their investments shall comply with all laws, regulations, administrative guidelines and policies of a Party concerning the establishment, acquisition, management, operation and disposition of investments.

b) Investors and their investments shall not, either prior to or after the establishment of an investment, offer, promise, or give any undue pecuniary advantage, gratification or gift whatsoever, whether directly or indirectly, to a public servant or

official of a Party as an inducement or reward for doing or forbearing to do any official act or obtain or maintain other improper advantage nor shall be complicit in inciting, aiding, abetting, or conspiring to commit such acts.

c) Investors and their investments shall comply with the provisions of law of the Parties concerning taxation, including timely payment of their tax liabilities.

d) An investor shall provide such information as the Parties may require concerning the investment in question and the corporate history and practices of the investor, for purposes of decision making in relation to that investment or solely for statistical purposes.

Article 12. Corporate Social Responsibility

12.1 Investors and their investments shall strive to achieve the highest possible level of contribution to the sustainable development of the Host State and the local community, through the adoption of a high degree of socially responsible practices, based on the voluntary principles and standards set out in this Article and internal policies, such as statements of principle that have been endorsed or are supported by the Parties.

12.2 The investors and their investments shall endeavour to comply with the following voluntary principles and standards for a responsible business conduct and consistent with the laws adopted by the Host State:

a) Contribute to the economic, social and environmental progress, aiming at achieving sustainable development;

b) Respect the internationally recognized human rights of those involved in the companies' activities;

c) Encourage local capacity building through close cooperation with the local community;

d) Encourage the creation of human capital, especially by creating employment opportunities and offering professional training to workers;

e) Refrain from seeking or accepting exemptions that are not established in the legal or regulatory framework relating to human rights, environment, health, security, work, tax system, financial incentives, or other issues;

f) Support and advocate for good corporate governance principles, and develop and apply good corporate governance practices, including anti-corruption measures;

g) Develop and implement effective self-regulatory practices and management systems that foster a relationship of mutual trust between the companies and the societies in which their operations are conducted;

h) Promote the knowledge of and the adherence, by workers, to the corporate policy, through appropriate dissemination of this policy, including professional training programs;

i) Refrain from discriminatory or disciplinary action against employees who submit grave reports to the board or, whenever appropriate, to the competent public authorities, about practices that violate the law or corporate policy;

j) Encourage, whenever possible, business associates, including service providers and outsources, to apply the principles of business conduct consistent with the principles provided for in this Article; and

k) Refrain from any undue interference in local political activities.

Part IV. Institutional Governance, Dispute Prevention and Settlement

Article 13. Joint Committee for the Administration of the Treaty

13.1 For the purpose of this Treaty, the Parties hereby establish a Joint Committee for the administration of this Treaty (hereinafter referred as "Joint Committee").

13.2 This Joint Committee shall be composed of government representatives of both Parties designated by their respective Governments.

13.3 The Joint Committee shall meet at such times, in such places and through such means as the Parties may agree. Meetings shall be held at least once a year and eo-chaired by the Parties.

13.4 The Joint Committee shall have the following functions and responsibilities:

a) Supervise the implementation and execution of this Treaty;

b) Discuss and make known opportunities for the expansion of mutual investment;

c) Coordinate the implementation of the mutually agreed cooperation and facilitation agendas;

d) Consult with investors and relevant stake-holders, when applicable, on their views on specific issues related to the work of the Joint Committee;

e) Discuss issues and seek to resolve disputes concerning investments of investors of a Party in an amicable manner; and

f) Supplement the rules for arbitral dispute settlement between the Parties.

13.5 The Joint Committee may establish ad hoc working groups, which shall meet jointly or separately from the Joint Committee. The ad hoc working groups may invite participation from investors.

13.6 The Joint Committee shall establish its own rules of procedure.

Article 14. National Focal Point or Ombudsman

14.1 Each Party shall designate a single National Focal Point, or Ombudsman, whose main responsibility shall be to support investors from the other Party in its territory.

14.2 In Brazil, the functions of the Ombudsman shall be performed by the Executive Secretariat of the Foreign Trade Board-CAMEX (3).

14.3 In India, the National Focal Point shall be established within the Department of Economic Affairs in the Ministry of Finance.

14.4 The National Focal Point/ Ombudsman, among other responsibilities, shall:

a) Endeavour to follow the recommendations of the Joint Committee and interact with the National Focal Point/Ombudsman of the other Party, in accordance with this Treaty;

b) Follow up on requests and enquiries of the other Party or of investors of the other Party with the competent authorities, including in the state and local levels, and inform them on the results of its actions;

c) Assess, in consultation with relevant government authorities, suggestions to improve the investment environment and complaints received from the other Party or investors of the other Party;

d) Address differences in investment matters, in collaboration with government authorities and relevant investors, with a view to helping in the prevention of disputes;

e) Provide timely and useful information on regulatory issues on general investment or on specific projects, to the extent possible; and

f) Report its activities and actions to the Joint Committee, when appropriate.

14.5 Each Party shall draw up rules of procedure for the operation of its National Focal Point/Ombudsman, expressly stipulating, where appropriate, time limits for the implementation of its various functions and responsibilities.

14.6 The National Focal Point/Ombudsman shall promptly reply to notifications and requests by the other Party and investors therefrom.

14.7 The Parties as per its law or policies shall ensure the means and resources for the National Focal Point/Ombudsman to perform its functions, as well as ensure its institutional access to its own other government bodies responsible for the terms of this Treaty.

14.8 The National Focal Points, or "Ombudsmen", shall cooperate with each other and with the Joint Committee with a view to helping in the prevention of disputes between the Parties.

(3) The Foreign Trade Board (CAMEX) is part of the Government Council of the Presidency of the Federative Republic of Brazil. Its main body is the Council, which is an inter-ministerial body.

Article 15. Exchange of Information between Parties

15.1 The Parties shall exchange information, whenever possible and relevant to reciprocal investments, concerning business opportunities, procedures, and requirements for investments, particularly through the Joint Committee and its National Focal Point/Ombudsman.

15.2 For this purpose, the Party shall provide, when requested, in a timely fashion, information related, in particular, to the following items:

a) Regulatory conditions for investments;

b) Governmental programs and possible related incentives;

c) Relevant public policies and legal frameworks;

d) Legal framework for investments, including legislation on the establishment of companies and joint ventures;

e) Related international treaties;

f) Customs procedures and tax regimes;

g) Statistical information on the market for goods and services;

h) Available infrastructure and public services;

i) Governmental procurement, public concessions and Public-Private Partnerships (PPPs);

j) Social and labour requirements;

k) Immigration legislation;

l) Currency exchange legislation;

m) Information on legislation of specific economic sectors or segments previously identified by the Parties; and

n) Regional investment projects.

Article 16. Treatment of Protected Information

16.1 The Parties shall respect the level of protection of information provided by the submitting Party, according to their respective law.

16.2 None of the provisions of the Treaty shall be construed to require any Party to disclose protected information, the disclosure of which would jeopardize law enforcement or otherwise be contrary to the public interest or would violate the privacy or harm legitimate business interests. For the purposes of this paragraph, protected information includes confidential information or information considered privileged or protected from disclosure under the law of a Party.

Article 17. Dissemination of Information to Investors

Subject to its law, each Party shall disseminate among investors general information on investments, regulatory frameworks and business opportunities.

Article 18. Dispute Prevention Procedure

18.1 If a Party considers that a specific measure adopted by the other Party constitutes a breach of this Treaty, it may invoke this Article to initiate a dispute prevention procedure within the Joint Committee.

18.2 The following rules apply to the aforementioned procedure:

a) To initiate the procedure, the interested Party shall submit a written request to the other Party, identifying the specific measure in question, and informing the findings of fact and law underlying the submission. The Joint Committee shall meet within ninety (90) days from the date of the request;

b) The Joint Committee shall have one hundred and twenty (120) days from the date of the first meeting, extendable by

mutual agreement, to evaluate the submission presented and to prepare a report;

c) The report of the Joint Committee shall include:

i) Identification of the submitting Party;

ii) Description of the measure in question and the alleged breach of the Treaty; and

iii) Findings of the Joint Committee.

d) In the event that the dispute is not resolved upon the completion of the time frames set forth in this Article, or there is non-participation of a Party in the meetings of the Joint Committee convened according to this Article, the dispute may be submitted to arbitration by a Party in accordance with Article 19 of the Treaty.

18.3 If the measure in question pertains to a specific investor, the following additional rules shall apply:

a) The initial submission shall identify the affected investor;

b) Representatives of the affected investor may be invited to appear before the Joint Committee; and

c) A Party may deny submission to the dispute prevention procedure matters pertaining to a specific investor which have been previously submitted by that investor to other dispute settlement mechanisms, unless those proceedings are withdrawn from other dispute settlement mechanisms.

18.4 Whenever relevant to the consideration of the measure in question, the Joint Committee may invite other interested stakeholders to appear before the Joint Committee and present their views on such measure.

18.5 The meetings of the Joint Committee and all documentation, as well as steps taken in the context of the mechanism established in this Article, shall remain confidential, except for the report submitted by the Joint Committee, subject to the law of each of the Parties.

Article 19. Disputes between Parties

19.1 Any dispute between the Parties which has not been resolved after being subject to the Dispute Prevention Procedure may be submitted by either Party to an ad hoc Arbitral Tribunal, in accordance with the provisions of this Article. Alternatively, the Parties may choose, by mutual agreement, to submit the dispute to a permanent arbitration institution for settlement of investment disputes. Unless the Parties decide otherwise, such institution shall apply the provisions of this Part.

19.2 The purpose of the arbitration is to decide on interpretation of this Treaty or the observance by a Party of the terms of this Treaty. For greater certainty, the Arbitral Tribunal shall not award compensation.

19.3 A Tribunal constituted under this Article shall examine matters related to Part I, Part 11 (excluding Articles 8 and 10.1), Article 16, Article 21, and Part VII of this Treaty.

19.4 Such a Tribunal shall be constituted for each individual case in the following way: within two (2) months of the receipt of the request for arbitration, each Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who, on approval by the two Parties, shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two (2) months from the date of appointment of the other two members.

19.5 If within the periods specified in Article 19.4 the necessary appointment(s) have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointment(s). If the President is a national of either Party or if he or she is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointment(s). If the Vice President is a national of either Party or if he or she too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the necessary appointment(s).

19.6 Arbitrators must:

a) Have the experience or expertise in Public International Law/ international investment rules or international trade, or the resolution of disputes arising in relation to international investment agreements;

b) Be independent of and not be affiliated, directly or indirectly, with any of the Parties or with the other arbitrators or potential witnesses nor take instructions from the Parties; and

c) Comply with the code of conduct detailed in Annex II, or any other standard of conduct established by the Joint Committee.

19.7 The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties, who shall, in accordance with its law, comply with it without delay.

19.8 The Parties to the arbitration shall share the costs of the arbitration/including the arbitrator fees, expenses/ allowances and other administrative costs. Each Party shall bear the cost of its representation in the arbitral proceedings. The Tribunal may, however, in its discretion direct that the entire costs or a higher proportion of costs shall be borne by one of the two disputing Parties and this determination shall be binding on both disputing Parties.

19.9 The Tribunal shall decide all questions relating to its competence and/ subject to any agreement between the disputing Parties, determine its own procedure, taking into account the PCA Optional Rules.

Part V. Exceptions

Article 20. Tax Measures

20.1 No provision of this Treaty shall be interpreted as an obligation of one Party to give to an investor from the other Party, concerning the investment, the benefit of any treatment/ preference or privilege arising out of any agreement to avoid double taxation, current or future, of which a Party to this Treaty is a party or becomes a party.

20.2 No provision of this Treaty shall be interpreted in a manner that prevents the adoption or implementation of any measure aimed at ensuring the equitable or effective imposition or collection of taxes, according to the respective law of the Parties.

20.3 For greater certainty, where the Party in which an investment is made makes it evident to the other Party that a measure alleged to be a breach of its obligations under this Treaty has been adopted in compliance with a specific tax law, such measure of that Party shall not be open for review under Article 19.

Article 21. Prudential Measures

21.1 Nothing in this Treaty shall be construed to prevent a Party from adopting or maintaining prudential measures, such as:

a) The protection of investors, depositors, financial market participants, policy-holders, 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 the financial system of a Party.

21.2 Where such measures do not conform to the provisions of this Treaty, they shall not be used as a means of circumventing the commitments or obligations of the Party under this Treaty.

21.3 Nothing in this Treaty shall apply to non-discriminatory measures of general application taken by a central bank or monetary authority of a Party in pursuit of monetary and related credit policies or exchange rate policies. This paragraph is without prejudice to the rights and obligations of each of the Parties under Article 9.

Article 22. Provisions on Investment and Environment, Labor Affairs and Health

22.1 Nothing in this Treaty shall be construed to prevent a Party from adopting, maintaining or enforcing any measure it deems appropriate to ensure that investment activity in its territory is undertaken in a manner according to labor, environmental and health law of that Party, provided that this measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction.

22.2 The Parties recognize that it is inappropriate to encourage investment by lowering the standards of their labor, environmental or health law. Therefore, each Party shall not amend or repeal, nor offer the amendment or repeal of such law to encourage the establishment, maintenance or expansion of an investment in its territory, to the extent that such amendment or repeal involves decreasing their labor environmental or health standards. If a Party considers that another Party has offered such an encouragement, the issue shall be addressed through consultations with the other Party.

Article 23. General Exceptions

23.1 Nothing in this Treaty shall be construed to prevent the adoption or enforcement by a Party of measures of general applicability applied on a non-discriminatory basis that are necessary (4) to:

a) Protect public morals or maintaining public order;

b) Protect human, animal or plant life or health;

c) Ensure compliance with law(s) and regulations that are not inconsistent with the provisions of this Treaty;

d) Protect and conserve the environment, including all living and non-living natural resources; or

e) Protect national treasures or monuments of artistic, cultural, historic or archaeological value.

(4) In considering whether a measure is "necessary", it shall be taken into account whether there was no less restrictive alternative measure reasonably available to a Party.

Article 24. Security Exceptions

24.1 Nothing in this Treaty shall be construed:

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

b) To prevent a Party from taking any action which it considers necessary for the protection of its essential security interests including but not limited to:

i) Action relating to fissionable and fusionable materials or the materials from which they are derived;

ii) Action taken in time of war or other emergency in domestic or international relations;

iii) Action relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

iv) Action taken so as to protect critical public infrastructure including communication, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructure; or

v) Any policy, requirement or measure including, without limitation, a requirement obtaining (or denying) any security clearance to any company, personnel or equipment.

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

24.2 Each Party shall inform the other Party to the fullest extent possible of measures taken under Article 24.1 and of their termination.

24.3 Nothing in this Treaty shall be construed to require a Party not to adopt or maintain measures in any legislation or regulations which it considers necessary for the protection of its essential security interests, especially when it relates to a non-Party.

24.4 This Article shall be interpreted in accordance with the understanding of the Parties on security exceptions as set out in Annex I, which shall form an integral part of this Treaty.

Part VI. Agenda for Further Investment Cooperation and Facilitation

Article 25. Agenda for Further Investment Cooperation and Facilitation

25.1 The Joint Committee shall develop and discuss an Agenda for Further Cooperation and Facilitation on relevant topics for the promotion and enhancement of bilateral investment. The topics that shall be initially addressed shall be decided in the first meeting of the Joint Committee.

25.2 The agenda shall be discussed between the competent government authorities of both Parties. The Joint Committee shall invite, when applicable, additional competent government officials for both parties in the discussions of the agenda.

25.3 The Parties shall submit to the Joint Committee the names of government bodies and its official representatives involved in these discussions.

Article 26. Relationship with other Treaties

26.1 This Treaty or any action taken hereunder shall not affect the rights and obligations of the Parties under any other agreement to which they are parties, including the Agreements of the World Trade Organization.

26.2 Any inconsistency, or question regarding the relationship between this Treaty and another bilateral agreement between the Parties, or a multilateral agreement to which both Parties are a party, shall be resolved in accordance with the Vienna Convention on the Law of Treaties.

Article 27. Amendments

27.1 This Treaty may be amended at any time at the request of either Party. The requesting Party must submit its request in written form explaining the grounds on which the amendment shall be made. The other Party shall consult with the requesting Party regarding the proposed amendment and must also respond to the request in writing.

27.2 This Treaty will stand automatically amended at all times to the extent that the Parties agree, after completion of their respective ratification procedures. Any agreement to amend the treaty pursuant to this Article must be expressed in writing, whether in a single written instrument or through an exchange of diplomatic notes. These amendments shall be binding on the tribunals constituted under Article 19 of this Treaty and an award must be consistent with all amendments to this Treaty.

27.3 Amendments shall enter into force according to the procedure described in Paragraph 28.2.

Article 28. Entry Into Force, Duration and Termination

28.1 Neither the Joint Committee nor the National Focal Point/Ombudsman shall replace or impair, in any way, any other agreement or the diplomatic channels existing between the Parties.

28.2 This Treaty shall enter into force ninety (90) days after the date of the receipt of the second diplomatic note indicating that all necessary internal procedures with regard to the conclusion and the entering into force of international agreements have been completed by both Parties.

28.3 This Treaty shall remain in force for a period of ten (10) years and shall lapse thereafter unless the Parties expressly agree in writing that it shall be renewed for an additional ten (10)-year period. On the occasion of the last Joint Committee meeting immediately prior to the completion of such period and of any additional ten (10) year period, the Parties shall discuss the matter.

28.4 This Treaty may be terminated any time after its entry into force if either Party gives to the other Party a prior notice in writing twelve (12) months in advance stating its intention to terminate the Treaty. The Treaty shall stand terminated immediately after the expiry of the twelve (12) month notice period.

28.5 In respect of investments made prior to the date when the termination of this Treaty becomes effective, the provisions of this Treaty shall remain in force for a period of five (5) years.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Treaty.

DONE at New Delhi, on this 25th day of January 2020, in two originals each in the Hindi, English and Portuguese languages, all texts being equally authoritative. In case of any divergence in interpretation, the English text shall prevail.

FOR THE FEDERATIVE REPUBLIC OF BRAZIL

Ernesto Araújo

Minister of Foreign Affairs

Marcos Troyjo

Deputy Minister for Foreign Trade and International Affairs of the Ministry of Economy

FOR THE REPUBLIC OF INDIA

Mr. Atanu Chakraborty

Secretary, Department of Economic Affairs, Ministry of Finance

1. The Parties confirm the following understanding with respect to interpretation and/or implementation of Article 24 of this Treaty:

a) The measures referred to in Article 24.3 are measures where the intention and objective of the Party imposing the measures is for the protection of its essential security interests, and in the case of India, the applicable measures referred to in Article 24.3 are currently set out in the regulations framed under the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder. India shall, upon request by the other Party, provide information on the measures concerned;

b) Where the Party asserts as a defence that conduct alleged to be a breach of its obligations under this Treaty is for the protection of its essential security interests protected by Article 24, any decision of such Party taken on such security considerations and its decision to invoke Article 24 at any time, whether before or after the commencement of arbitral proceedings shall be non-justiciable. Such a conduct shall not be open for review by any arbitral tribunal.

1. Every arbitrator appointed to resolve disputes under this Treaty shall, during the entire arbitration proceedings, be impartial, independent and free of any actual or potential conflict of interest.

2. Upon nomination and, if appointed, every arbitrator shall, on an ongoing basis, disclose in writing any circumstances that may, in the eyes of the disputing Parties, give rise to doubts as to her/his independence, impartiality, or freedom from conflicts of interest. This includes any items listed in paragraph 10 of this Annex and any other relevant circumstances pertaining to the subject matter of the dispute, and to existing or past, direct or indirect, financial, personal, business, or professional relationships with any of the Parties, legal counsel, representatives, witnesses, or co-arbitrators. Such disclosure shall be made immediately upon the arbitrator acquiring knowledge of such circumstances, and shall be made to the eo-arbitrators, the Parties and the appointing authority, if any, making an appointment. Neither the ability of those individuals or entities to access this information independently, nor the availability of that information in the public domain, will relieve any arbitrator of his or her affirmative duty to make these disclosures. Doubts regarding whether disclosure is required shall be resolved in favour of such disclosure.

3. A Party may challenge an arbitrator appointed under this Treaty:

a) If facts or circumstances exist that may, in the eyes of the Parties, give rise to justifiable doubts as to the arbitrator's independence, impartiality or freedom from conflicts of interest; or

b) In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of the arbitrator performing his or her functions, provided that no such challenge may be initiated after fifteen days of that Party: (i) learning of the relevant facts or circumstances through a disclosure made under paragraph 2 of this Annex by the arbitrator; or (ii) otherwise becoming aware of the relevant facts or circumstances relevant to a challenge under this paragraph; whichever is later.

4. The notice of challenge shall be communicated to the other Party, the arbitrator who is challenged, the other arbitrators and the appointing authority under Article 19.5, if any. The notice of challenge shall state the reason(s) for the challenge.

5. When an arbitrator has been challenged by a Party, the other Party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance ofthe validity ofthe grounds for the challenge.

6. If, within 15 days from the date of the notice of challenge, the other Party does not agree to the challenge or the challenged arbitrator does not withdraw, the Party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority as specified under Article 19.5.

7. The appointing authority as specified under Article 19.5 shall accept the challenge made under paragraph 3 of this Annex

if, even in the absence of actual bias, there are circumstances that would give rise to justifiable doubts as to the arbitrator's lack of independence, impartiality, freedom from conflicts of interest, or ability to perform his or her role, in the eyes of an objective third party.

8. In any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in this Treaty and the arbitration rules that were applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a Party to the arbitration had failed to exercise its right to appoint or to participate in the appointment.

9. If an arbitrator is replaced, the proceedings may resume at the stage where the arbitrator who was replaced ceased to perform his or her functions unless otherwise agreed by the Parties.

10. A justifiable doubt as to an arbitrator's independence or impartiality or freedom from conflict of interest shall be deemed to exist on account of the following factors, amongst others:

a. The arbitrator or her/his associates or relatives have an interest in the outcome of the particular arbitration;

b. The arbitrator is or has been a legal representative/advisor of the appointing Party, or any of its entities, in the preceding three (3) years prior to the commencement of arbitration;

c. The arbitrator is a lawyer in the same law firm as the counsel to one of the Parties;

d. The arbitrator is acting concurrently with the lawyer or law firm of one of the Parties in another dispute;

e. The arbitrator's law firm is currently rendering or has rendered services to one of the Parties, or any of its entities, out of which such law firm derives financial interest;

f. The arbitrator has received a full briefing of the merits or procedural aspects of the dispute from the appointing Party or her/his counsel prior to her/his appointment;

g. The arbitrator has publicly advocated a fixed position regarding an issue on the case that is being arbitrated.

11. The Joint Committee shall by mutual agreement and after completion of their respective procedures adopt a separate code of conduct for arbitrators to be applied in disputes arising out of this Treaty, which may replace or supplement the existing rules in application. Such a code may address topics such as disclosure obligations, the independence and impartiality of arbitrators and confidentiality.