

**BILATERAL INVESTMENT TREATY**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF**

**INDIA**

**AND**

**THE GOVERNMENT OF THE UNITED ARAB  
EMIRATES**

## **Preamble**

The Government of the Republic of India and the Government of the United Arab Emirates (hereinafter referred to as the “**Party**” individually or the “**Parties**” collectively):

- (A) Desiring to promote bilateral cooperation between the Parties with respect to foreign investments;
- (B) Recognizing that the promotion and the protection 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;
- (C) Reaffirming the right of Parties to regulate investments in their territory in accordance with their Law and policy objectives; and
- (D) Desiring to promote and to encourage competitive environment for the investors of both Parties,

have agreed as follows:

## Chapter I – Preliminary

### Article 1

#### Definitions

For the purposes of this Treaty:

- 1.1 “**Confidential Information**” mean business confidential information, e.g. confidential commercial, financial, technical or other information which could result in material loss or gain or prejudice a disputing party’s competitive position, and information that is privileged or otherwise protected from disclosure under the Law of a Party.
- 1.2 “**Designated Representative**” means:
- (i) for India, Secretary/Additional Secretary/Joint Secretary, Department of Economic Affairs, Ministry of Finance, Government of India.
  - (ii) for the UAE:
    - State Minister for Financial Affairs;
    - The Undersecretary of Ministry of Finance;
    - The Director International Financial Relations and Organizations Department, Ministry of Finance, Government of UAE.
- 1.3 “**Enterprise**” means:
- (i) any entity constituted, organised and operated in compliance with the Law of a Party, including any company, corporation, limited liability partnership, a trust or a joint venture; and
  - (ii) a branch of any such entity established in the territory of a Party in accordance with its Law and carrying out business activities thereof.
- 1.4. “**Investment**” means any of the following Investments, owned or controlled, directly or indirectly by an Investor of one Party in the Territory of the other Party (a) in accordance with the applicable laws and regulations of the Party in whose Territory the Investment is made, including the necessary approvals in the relevant economic sector, and (b) that has the characteristics of an investment such as the commitment of capital or other resources, the expectation of gain or profit and the assumption of risk.
- Such Investment only includes the following: -
- A. An Enterprise constituted, organized and operated in good faith, which can possess any of the following assets:
    - (a) shares, stocks, units in trusts and other forms of equity participation of the Enterprise or in another Enterprise;
    - (b) turnkey constructions, production or revenue sharing contracts or other similar contracts;
    - (c) bonds, debentures and other debt instruments of another Enterprise;
    - (d) a loan to another Enterprise;

- (e) licenses, permits, authorisations or similar rights conferred in accordance with the Law of a Party;
  - (f) long-term rights conferred by Law or under contract, but excluding concessions to search for, explore, extract, or exploit natural resources<sup>1</sup>.
  - (g) copyrights, know-how and intellectual property rights such as patents, trademarks, industrial designs and trade names, to the extent they are recognized under the Law of a Party;
  - (h) moveable or immovable property and related rights;
- B. Shares, stocks and other forms of equity participation in an Enterprise;
- C. Bonds, debentures, and loans and other debt instruments<sup>2</sup> issued by an Enterprise;

For greater clarity, Investment does not include the following assets:

- (i) debt securities issued by a government or government-owned or controlled Enterprise, or loans to a government or government-owned or controlled Enterprise;
- (ii) any pre-operational expenditure relating to admission, establishment, acquisition or expansion of the Enterprise incurred before the commencement of substantial business operations of the Enterprise in the Territory of the Party where the Investment is made;
- (iii) 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 Party to an Enterprise in the Territory of another Party;
- (iv) claims to money that arise solely from the extension of credit in connection with any commercial transaction;
- (v) goodwill, brand value, market share or similar intangible rights;
- (vi) an order or judgment sought or entered in any judicial, administrative or arbitral proceeding; or
- (vii) 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.

1.5 “**Investor**” means a natural or juridical person of a Party, other than a branch or representative office, that has made an Investment in the Territory of the other Party;

For the purposes of this definition, a “**juridical person**” means:

- i. any entity, corporation, limited partnership, trust or beneficiary of a trust that is owned or controlled (directly or indirectly) by the Govern-

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<sup>1</sup>For greater certainty, the Parties confirm their understanding that the term natural resources does not relate to renewable energy.

<sup>2</sup> Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an Investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, may not have such characteristics.

ment or Sub-national Government of a Party, provided that any of the mentioned vehicles is incorporated or established in the Territory of that Party; or

- ii. a legal entity that is constituted, organised and operated under the Law of that Party whether for profit or not for profit and that has substantial business activities<sup>3</sup> in the Territory of that Party; or
- iii. a legal entity that is constituted, organised and operated under the laws of that Party and that is directly or indirectly owned or controlled by a natural person of that Party or by a legal entity mentioned under sub clause (i) or (ii) herein.

1.6 “**Law**” includes:

- (i) the Constitution, legislation, bylaws, rules & regulations, ordinances, notifications, administrative measures/executive actions at all levels of government pursuant to law, as amended from time to time;
- (ii) decisions, judgments, orders and decrees by courts, regulatory authorities, judicial and administrative institutions having the force of law within the territory of a Party.

1.7 “**Local Government**” includes:

In case of India

- (i) an urban local body, municipal corporation or village level government; or
- (ii) an Enterprise owned or controlled by an urban local body, a municipal corporation or a village level government.

In case of UAE:

- (i) municipalities, local economic departments or local financial departments; or
- (ii) an Enterprise owned or controlled by a municipality, a local economic department or a local financial department.

For greater certainty, Local Government does not include Sub-national Government for both Parties.

1.8 “**measure**” includes a Law, regulation, rule, procedure, decision, administrative action pursuant to Law.

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<sup>3</sup>Substantial Business Activity should be established by an overall examination, on a case-by-case basis, of the relevant circumstances. These circumstances may include whether the entity (a) has a continuous physical presence, including through ownership or rental of premises, in the territory of that Party; (b) has its central administration in the territory of that Party; (c) employs staff in the territory of that Party; and (d) generates turnover and pays taxes in the territory of that Party.

- 1.9 “**natural person**” means a national or citizen of a Party in accordance with its Law and regulations. A natural person who is a dual national or citizen shall be deemed to be exclusively a national or citizen of the country of her or his dominant and effective nationality/citizenship, where she/he ordinarily resides.
- 1.10 “**PCA Optional Rules**” means the Permanent Court of Arbitration Optional Rules for Arbitration Disputes between Two States, 20 October 1992.
- 1.11 The term “**Pre-Investment Activity**” includes any activities undertaken by the Investor or its Enterprise prior to the establishment of the Investment in accordance with the Law of the Party where the Investment is made. Any activity undertaken by the Investor or its Investment pursuant to compliance with sectoral limitations on foreign equity, and other limits and conditions applicable under any Law relating to the admission of Investments in the Party where the Investment is made in specific sectors falls within the meaning of “**Pre-Investment Activity**”.
- 1.12 “**Sub-national Government**” means:
- (i) In case of India, a State Government or a Union Territory administration or any of its authorities, when it exercises any governmental authority delegated to it, and
  - (ii) in case of UAE, each of the seven Emirates constituting the Federation of the United Arab Emirates or any of its authorities, when it exercises any governmental authority delegated to it;

but does not include Local Governments for either Party.

- 1.13 “**Territory**” means:
- (i) In respect of India: the territory of the Republic of India 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.
  - (ii) In respect of United Arab Emirates: the territory of the United Arab Emirates its territorial sea, airspace and submarine areas over which the United Arab Emirates exercises in conformity with international law and the Law of United Arab Emirates sovereign rights, including the Exclusive Economic Zone and the mainland and islands under its jurisdiction in respect of any activity carried on in connection with the exploration for or the exploitation of the natural resources.

1.14 “**WTO Agreement**” means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April, 1994.

1.15 The 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 2** **Scope and General Provisions**

2.1 This Treaty shall apply to measures adopted or maintained by the Government or the Sub-national Government of a Party relating to Investment(s) of Investor(s) of another Party in its Territory, in existence, before or after 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 as applicable from time to time.

2.2 Subject to the provisions of Chapter III of this Treaty, nothing in this Treaty shall extend to any Pre-Investment Activity, as defined in article 1.11 of this Treaty related to establishment, acquisition or expansion of any Investment, or to any measure related to such Pre-Investment Activities, including terms and conditions under such measure which continue to apply post-Investment to the management, conduct, operation, sale or other disposition of such Investments.

2.3 This Treaty shall not apply to claims arising out of events which occurred, or claims which have been raised prior to the entry into force of this Treaty.

2.4 This Treaty shall not apply to:

- (i) Any measure adopted or maintained by a Local Government;
- (ii) any measure regarding taxation, including measures taken to enforce taxation obligations.

For greater certainty, it is clarified that where the Party in which Investment is made decides that conduct alleged to be a breach of its obligations under this Treaty is a subject matter of taxation, such decision of that Party, whether before or after the commencement of arbitral proceedings, shall be non-justiciable and it shall not be open to any arbitration tribunal to review such decision

- (iii) 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.
- (iv) government procurement by a Party;

- (v) subsidies or grants provided by a Party;
- (vi) 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.

**Article 3**  
**Right of State to Regulate**

The Parties reaffirm the right of each Party to regulate, including through adopting or maintaining measures, within its Territory in pursuit of legitimate public policy objectives including, but not limited to the protection of the environment, health and safety. The mere fact that a Party regulates in a manner which negatively affects an Investment or interferes with an Investor's expectations, including its expectation of profits, is not a breach of an obligation under this Treaty.

**Chapter II: Obligations of Parties**  
**Article 4**  
**Treatment of Investments**

- 4.1 No Party shall subject Investments made by Investors of the other Party to measures resulting in:
- (i) denial of justice in any judicial or administrative proceedings; or
  - (ii) fundamental breach of due process; or
  - (iii) targeted discrimination on manifestly unjustified grounds, such as gender, race or religious belief; or
  - (iv) manifestly abusive or arbitrary treatment, such as coercion, duress and harassment.

If a measure is taken in pursuit of legitimate policy objectives, then such measure shall not be considered to be manifestly arbitrary treatment.

- 4.2 Each Party shall accord in its Territory to Investments of the other Party and to Investors with respect to their Investments full protection and security. For greater certainty, "full protection and security" only refers to a Party's obligations relating to physical security of Investors and to Investments made by the Investors of the other Party which does not require a treatment in addition to or beyond that which is required by the customary international law regarding the Minimum Standard of Treatment of aliens.



- 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.

#### **Article 5 National Treatment**

- 5.1 Each Party shall not accord to any Investor or Investment made by an Investor of the other Party, less favourable treatment than it accords, in like circumstances,<sup>4</sup> to its own Investors or Investments by its own Investors with respect to the management, conduct, operation, sale or other disposition of Investments in its Territory.
- 5.2 The treatment accorded by a Party under Article 5.1 means, with respect to a Sub-national Government, treatment no less favourable than the treatment accorded, in like circumstances, by that Sub-national Government to Investors, and to Investments of Investors, of the Party of which it forms a part.

#### **Article 6 Expropriation**

- 6.1 Neither Party may nationalize or expropriate an Investment of an Investor (hereinafter “**expropriate**”) of the other Party either directly or through measures having an effect equivalent to expropriation, except for reasons of public purpose<sup>5</sup>, in accordance with the due process of law and on payment of adequate compensation. Such compensation shall be adequate and be equivalent to the fair market value of the expropriated Investment on the day immediately before the expropriation takes place (“**date of expropriation**”), and shall 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.
- 6.2 Payment of compensation shall be made in a freely convertible currency. Interest on payment of compensation, where applicable, shall be paid in simple interest at a commercially reasonable rate from the date of expropriation until the date of actual payment. On payment, compensation shall be freely transferable in accordance with Article 7.

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<sup>4</sup>For greater certainty, whether treatment is 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 regulatory objectives.

<sup>5</sup>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.

6.3 The Parties confirm their shared understanding that:

- a) Expropriation may be direct or indirect:
  - (i) Direct expropriation occurs when an Investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
  - (ii) Indirect expropriation occurs if a measure or series of measures of a Party has an effect equivalent to direct expropriation, in that it substantially or permanently deprives the Investor of the fundamental attributes of property in its Investment, including the right to use, enjoy and dispose of its Investment, without formal transfer of title or outright seizure.
- b) The determination of whether a measure or a series of measures have an effect equivalent to expropriation requires a case-by-case, fact-based inquiry, that takes into consideration:
  - (i) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an Investment does not establish that an indirect expropriation has occurred;
  - (ii) the duration of the measure or series of measures of a Party;
  - (iii) the character of the measure or series of measures, notably their object, context and intent; and
  - (iv) whether a measure by a Party breaches the Party's prior binding written commitment to the Investor whether by contract, licence or other legal document.

6.4 For the avoidance of doubt, the Parties agree that an action taken by a Party in its commercial capacity shall not constitute expropriation or any other measure having similar effect.

6.5 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.

## **Article 7** **Transfers**

7.1 Subject to its Law, each Party shall permit all funds of an Investor of the other Party related to an Investment in its Territory to be freely transferred on a non-discriminatory basis. Such funds may include:

- (i) contributions to capital;

- (ii) 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;
- (iii) interest, royalty payments, management fees, and technical assistance and other fees;
- (iv) payments made under a contract, including a loan agreement;
- (v) payments made pursuant to Article 6 (*Expropriation*), Article 8 (*Compensation for losses*) and under Chapter IV.

7.2 Unless otherwise agreed between the Parties, currency transfer under Article 7.1 shall be permitted in the currency of the original Investment or any other convertible currency. Such transfer shall be made at the prevailing market rate of exchange on the date of transfer.

7.3 Nothing in this Treaty shall prevent a Party from conditioning or preventing a transfer through a good faith application of its Law, including actions relating to:

- i. bankruptcy, insolvency or the protection of the rights of the creditors;
- ii. compliance with judicial, arbitral or administrative decisions and awards;
- iii. compliance with labour obligations;
- iv. financial reporting or record keeping of transfers when necessary to assist Law enforcement or financial regulatory authorities;
- v. issuing, trading or dealing in securities, futures, options, or derivatives;
- vi. compliance with the Law on taxation;
- vii. criminal or penal offences and the recovery of the proceeds of crime;
- viii. social security, public retirement, or compulsory savings schemes, including provident funds, retirement gratuity programs and employees insurance programs;
- ix. severance entitlements of employees;
- x. requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of a Party; and
- xi. 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.

7.4 Notwithstanding anything in Article 7.1 and 7.2 to the contrary, the Parties may temporarily restrict transfers in the event of serious balance-of-payments difficulties or threat thereof, or in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

**Article 8**  
**Compensation for Losses**

Each Party shall accord to Investors of the other Party, and to Investments by such Investors, non-discriminatory treatment with respect to measures, including restitution, indemnification, compensation or other settlement, it adopts or maintains relating to losses suffered by Investments in its Territory, owing to war or other armed conflict, civil strife or state of national emergency.

**Article 9**  
**Subrogation**

- 9.1. If a Party or its designated agency makes a payment to any of its Investors under a guarantee or a contract of insurance it has entered into in respect of an Investment, the other Party shall recognize the validity of the subrogation in favour of such Party or agency thereof to any right or title held by the Investor.
- 9.2. A Party or its designated agency thereof which is subrogated to the rights of an Investor in accordance with paragraph 1 of this Article shall be entitled in all circumstances to the same rights as those of the Investor in respect of the Investment. Such rights may be exercised by the Party or its designated agency thereof, or by the Investor if the Party or any agency thereof so authorizes.

**Article 10**  
**Entry and Sojourn of Personnel**

Subject to its Law relating to the entry and sojourn of non-citizens, each Party shall permit natural persons of the other Party employed by the Investor or the locally established Enterprise to enter and remain in its Territory for the purpose of engaging in activities connected with the Investment.

**Article 11**  
**Transparency**

- 11.1 Each Party shall, to the extent possible, ensure that its Laws of general application in respect of any matter covered by this Treaty are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

- 11.2 Each Party shall, to the extent possible, and as provided for in its Laws:
- (i) publish any such measure that it proposes to adopt; and
  - (ii) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.
- 11.3 Each Party shall, upon request by the other Party, to the extent possible, promptly respond to specific questions from and provide information to the other Party with respect to matters referred to in Article 11.1.
- 11.4 Nothing in this Treaty shall require a Party to furnish or allow access to Confidential Information, the disclosure of which would impede Law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular juridical persons, public or private.

### **Chapter III – Investor obligations**

#### **Article 12 Compliance with Laws**

The parties reaffirm and recognize that:

- (i) In order to avail itself of the benefits and protections of this Treaty, an Investor and its Investments shall comply with all Laws, regulations, administrative guidelines and policies of a Party concerning the establishment, acquisition, management, operation and disposition of Investments.
- (ii) 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.
- (iii) Investors and their Investments shall comply with the provisions of Law of the Parties concerning taxation,
- (iv) An Investor shall provide such information as required by the Law of the Parties concerning the Investment.

#### **Article 13 Corporate Social Responsibility**

Investors and their Enterprises operating within the Territory of each Party shall endeavour to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies, such as

statements of principle that have been endorsed or are supported by the Parties. These principles may address issues such as labour, the environment, human rights, community relations and anti-corruption.

**Chapter IV**  
**Settlement of Disputes between an Investor and a Party**

**Article 14**  
**Scope and Definitions**

- 14.1 Without prejudice to the rights and obligations of the Parties under Chapter V, this Chapter establishes a mechanism for the settlement of disputes between an Investor and a Defending Party.
- 14.2 This Chapter shall only apply to a dispute between a Party and an Investor of the other Party with respect to its Investment, arising out of an alleged breach of an obligation of a Party under Chapter II of this Treaty, other than the obligation under Articles 10(*Entry and Sojourn of Personnel*), and 11(*Transparency*) of this Treaty.
- 14.3 A Tribunal constituted under this Chapter shall only decide claims in respect of a breach of this Treaty as set out in Chapter II, except under Articles 10(*Entry and Sojourn of Personnel*) and 11 (*Transparency*), as opposed to any other disputes arising solely from an alleged breach of a contract between a Party and an Investor. Such disputes shall only be resolved in accordance with the dispute resolution provisions set out in the relevant contract.
- 14.4 An Investor shall not submit a claim to arbitration under this Chapter if the Investment or the Investor with respect to its Investment has been finally judicially determined to have been made through fraud, fraudulent misrepresentation, concealment, corruption, money laundering round tripping or conduct amounting to an abuse of process or similar illegal mechanisms as provided under due process of law. Where proceedings have already been commenced under this Chapter, the Tribunal constituted under this Chapter shall suspend any proceedings pending the decision of the competent court(s) regarding above mentioned irregularities.
- 14.5 Where any proceedings are brought or ongoing against an Investor connected to the Investment, or against the Investment itself, in respect of any allegation of fraud, fraudulent misrepresentation, concealment, corruption, money laundering, round tripping or conduct amounting to an abuse of process or similar illegal mechanisms as provided under due process of law, any arbitral pro-

ceedings under this Chapter shall be suspended pending the decision of the competent court(s) regarding above mentioned irregularities.

- 14.6 In addition to other limits on its jurisdiction, a Tribunal constituted under this Chapter shall not have the jurisdiction to:
- (i) review the merits of a decision made by a competent judicial authority of the Territory of the Parties; or
  - (ii) accept jurisdiction over any claim that is or has been subject of an arbitration under Chapter V.
- 14.7 A dispute between an Investor and a Party shall proceed sequentially in accordance with this Chapter.
- 14.8 For the purposes of this Chapter:
- (i) “**Defending Party**” means a Party against which a claim is made under this Chapter.
  - (ii) “**disputing party**” means a Defending Party or a disputing Investor and “**disputing parties**” means both of them.
  - (iii) “**disputing Investor**” means an Investor of a Party that makes a claim against the other Party under this Chapter either on its own behalf or on behalf of the locally established Enterprise through which an Investment is made.
  - (iv) “**ICSID**” means the International Centre for Settlement of Investment Disputes.
  - (v) “**ICSID Additional Facility Rules**” means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Dispute.
  - (vi) “**ICSID Convention**” means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington on 18 March 1965.
  - (vii) “**New York Convention**” means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958.
  - (viii) “**Non-disputing Party**” means the Party to this Treaty which is not the Defending Party.
  - (ix) “**UNCITRAL Arbitration Rules**” means the arbitration rules of the United Nations Commission on International Trade Law.

**Article 15**  
**Proceedings under Different International Agreements**

- 15.1 Where claims are brought pursuant to this Chapter and another international agreement and:
- (a) there is a potential for overlapping compensation; or
  - (b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Chapter,
- 15.2 A Tribunal constituted under this Chapter shall, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to the other international agreement are taken into account in its decision, order or award.

**Article 16: Third Party Funding**

Third Party funding of the Investor in case of dispute is not permitted.

**Article 17**  
**Conditions Precedent to Submission of a Claim to Arbitration**

17.1 In respect of a claim that the Defending Party has breached an obligation under Chapter II, other than an obligation under Articles 10 (*Entry and Sojourn of Personnel*) or 11 (*Transparency*), a disputing Investor must first pursue available local remedies through submitting its claim before the competent domestic courts or administrative/regulatory bodies of the Defending Party in accordance with the applicable Laws and regulations in respect of the same measure or similar factual matters for which a breach of this Treaty is claimed. Such a claim before the relevant domestic courts or administrative bodies of the Defending Party must be submitted within one (1) year from the date on which the Investor first acquired, or should have first acquired, knowledge of the measure(s) in question and knowledge that the Investment, or the Investor with respect to its Investment, had incurred loss or damage as a result of the measure(s) (“**Disputing Investor’s Knowledge Date**”).

The date of filing of the first claim before the relevant domestic courts or administrative bodies of the Defending Party shall be referred to as the “**Date of Local Claim**”.

For the avoidance of doubt, the aforementioned one (1) year limitation period shall only be relevant to an Investor’s access to rights or recourse under this Treaty and shall be without prejudice to any other statutory limitation period under applicable Law that may apply to any other claim that the Investor may be entitled to bring.



In demonstrating compliance with the obligation to pursue local remedies, the Investor shall not assert that the obligation to pursue local remedies does not apply or has been met on the basis that the claim under this Treaty is by or against a different party or in respect of a different cause of action.

The requirement to pursue local remedies shall not be applicable, if the disputing Investor or the locally established Enterprise can demonstrate that there are no available domestic legal remedies capable of reasonably providing any relief in respect of the same measure or similar factual matters for which a breach of this Treaty is claimed by the disputing Investor.

For the purposes of this Article, local remedies shall be deemed to have been pursued for the purposes of being entitled to submit notice of dispute ("Notice of Dispute"), if no resolution that is satisfactory to the disputing Investor has been reached after pursuing for at least a period of three years from the disputing Investor's Knowledge Date (or lesser period where available local remedies have been exhausted within such period), regardless of any pending appeal or other ongoing proceedings in the domestic courts or administrative bodies of the Defending Party. In such case, the disputing Investor shall have the absolute right under this Chapter to transmit a Notice of Dispute to the Defending Party.

17.2 The Notice of Dispute shall:

- (a) specify the name and address of the disputing Investor or the Enterprise, where applicable;
- (b) set out the factual basis of the claim, including the measures at issue;
- (c) specify the provisions of the Treaty alleged to have been breached and any other relevant provisions;
- (d) demonstrate compliance with Article 17.1 and 17.2, where applicable;
- (e) specify the relief sought and the approximate amount of damages claimed; and furnish evidence establishing that the disputing Investor is an Investor of the Non-disputing Party.
- (f) specify complete details of the interest in Investment including ownership, control and economic rights for which the Investor claims to have suffered loss or damage as a result of the alleged breach, at all levels, over the period of time since Investment was made including nature and date of creation of such interest. A disputing Investor shall be deemed to have disclosed all details and should the Defending Party identify any material undisclosed information at a later point in time, the Defending Party shall withdraw the consent to Arbitration as under Article 19(*Consent to Arbitration*) and the arbitration proceedings shall be terminated.

17.3 For no less than six (6) months after receipt of the Notice of Dispute, the disputing parties shall use their best efforts to try to resolve the dispute amicably through meaningful consultation, negotiation or other third party procedures.

17.4 In the event that the disputing parties cannot settle the dispute amicably as stipulated in Article 17.3, a disputing Investor may submit a claim to arbitration pursuant to this Treaty, but only if the following additional conditions are satisfied:

- (i) not more than five (5) years have elapsed from the date on which the disputing Investor first acquired, or should have first acquired, knowledge of the measure in question and knowledge that the disputing Investor with respect to its Investment, had incurred loss or damage as a result; or
- (ii) where applicable, not more than twelve (12) months have elapsed from the conclusion of domestic proceedings pursuant to 17.1.
- (iii) the disputing Investor or the locally established Enterprise have waived their right to initiate or continue before any administrative tribunal or court under the Law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the Defending Party that is alleged to be a breach referred to in Article 14.2.
- (iv) In case of indirect Investment, a disputing Investor may submit a claim under Chapter IV only if both the disputing Investor and the legal entity of any other territory through which the Investment has been made, waive their right to initiate or continue any proceeding, including under any other bilateral or multilateral investment treaty, with respect to the measure of the Defending Party that is alleged to be a breach referred to in Article 14.2. Such waivers shall be provided in writing to the Defending Party by the disputing Investor and the legal entity of any other territory through which the Investment has been made.
- (v) where the claim submitted by the disputing Investor is for loss or damage to an interest in an Enterprise established in the Territory of the other Party that is a juridical person that the disputing Investor owns or controls, that Enterprise has waived its right to initiate or continue before any administrative tribunal or court under the Law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the Defending Party that is alleged to be a breach referred to in Article 14.2.
- (vi) At least 90 days before submitting any claim to arbitration, the disputing Investor has transmitted to the Defending Party a written notice of its intention to submit the claim to arbitration ("**Notice of Arbitration**"). This period of 90 days can run concurrently with the time period provided for in Article 17.3. The Notice of Arbitration shall:
  - a. attach the Notice of Dispute and the record of its transmission to the Defending Party with the details thereof;

- b. provide the consent to arbitration by the disputing Investor, or where applicable, by the locally established Enterprise, in accordance with the procedures set out in this Treaty;
- c. provide the waiver as required under Article 17.4 (iii),(iv) and/or (v) , as applicable; provided that a waiver from the Enterprise under Article 17.4 (iii),(iv) and/or (v) (as applicable) shall not be required where the Defending Party has deprived the disputing Investor of control of the Enterprise;
- d. where consistent with the applicable arbitration centre rules, specify the name of the arbitrator appointed by the disputing Investor.

### **Article 18**

#### **Submission of Claim to Arbitration**

- 18.1 A disputing Investor who meets the conditions precedent provided for in Article 17 may submit the claim to arbitration under:
- (a) the ICSID Convention, provided that both the Parties are full members of the Convention;
  - (b) the Additional Facility Rules of ICSID, provided that either Party, but not both, is a member of the ICSID Convention; or
  - (c) the UNCITRAL Arbitration Rules.
- 18.2 The applicable arbitration rules with respect to paragraph 18.1 shall govern the arbitration except to the extent modified by this Chapter, and supplemented by any subsequent rules adopted by the Parties.
- 18.3 A claim is submitted to arbitration under this Chapter when:
- (a) the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention is received by the Secretary-General of ICSID;
  - (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General of ICSID; or
  - (c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the Defending Party.
- 18.4 Delivery of notice and other documents on a Party shall be made to the Designated Representative for each Party, as defined in Article 1.2.

### **Article 19**

#### **Consent to Arbitration**

- 19.1 Each Party consents to the submission of a claim to arbitration in accordance with the terms of this Treaty.

- 19.2 The consent given in Article 19.1 and the submission by a disputing Investor of a claim to arbitration shall satisfy the requirement of:
- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties; and
  - (b) Article II of the New York Convention for an agreement in writing.

**Article 20**  
**Appointment of Arbitrators**

- 20.1 The Tribunal shall consist of three arbitrators with relevant expertise or experience in public international law, international trade and international investment law, or the resolution of disputes arising under international trade or international investment agreements. They shall be independent of, and not be affiliated with or take instructions from a disputing party or the government of a Party with regard to trade and investment matters. Arbitrators shall not take instructions from any organisation, government or disputing party with regard to matters related to the dispute.
- 20.2 One arbitrator shall be appointed by each of the disputing parties and the third arbitrator (“**Presiding Arbitrator**”) shall be appointed by agreement of the co-arbitrators and the disputing parties.
- 20.3 If a Tribunal has not been constituted within one hundred eighty days (180) days from the date that a claim is submitted to arbitration under this Chapter, the appointing authority under this Article shall be the following:
- a. in case of an arbitration submitted under ICSID Convention or the ICSID Additional Facility Rules, the Secretary-General of ICSID;
  - b. in case of an arbitration submitted under the UNCITRAL Rules, the Secretary-General of the Permanent Court of Arbitration;
- provided that if the appointing authority referred to in sub-paragraph (a) or (b) of Article 20.3 is a national of a Party or a state with which, at such time, either Party does not maintain diplomatic relations, the appointing authority shall be in the following order: the President, the Vice-President or the next most senior Judge of the International Court of Justice, in each case who is not a national of either Party or a state with which, at such time, either Party does not maintain diplomatic relations.
- 20.4 The appointing authority shall appoint in her/his discretion after consultation with the disputing parties, the arbitrator or arbitrators not yet appointed.

**Article 21**  
**Prevention of Conflict of Interest of Arbitrators and Challenges**

21.1 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.

21.2 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 relevant circumstances pertaining to the subject matter of the disputes that will create a conflict of interest, and to the 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 co-arbitrators, the parties to the arbitration 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.

21.3 The arbitrators shall:

- a. have experience or expertise in public international law, international investment rules, or in dispute settlement derived from international investment agreements;
- b. be independent from the Parties and the disputing Investor, and not be affiliated with or receive instructions from any of them;
- c. not take instructions from any organisation or government with regard to matters before the Tribunal for which they are appointed;
- d. avoid creating an appearance of bias and not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party, disputing party or any other person involved or participating in the proceeding, fear of criticism or financial, business, professional, family or social relationships or responsibilities;
- e. not, directly or indirectly, incur any obligation, or accept any benefit, enter into any relationship, or acquire any financial interest that would in any way interfere, or appear to interfere, with the proper performance of their duties, or that is likely to affect their impartiality;
- f. not use their position as a member of the Tribunal to advance any personal or private interests and avoid actions that may create the impression that others are in a special position to influence them;

- g. perform their duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence;
- h. avoid engaging in *ex parte* contacts concerning the proceeding; and consider only those issues raised in the proceeding and which are necessary for a decision or award and not delegate this duty to any other person.

21.4. The Parties 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 as amended from time to time. Such a code may address topics such as disclosure obligations, the independence and impartiality of arbitrators and confidentiality.

## **Article 22**

### **Conduct of Arbitral Proceedings**

- 22.1 Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a country that is a member of the New York Convention, selected in accordance with:
- (a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or
  - (b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.
- 22.2 Unless otherwise agreed by the disputing parties, the Tribunal may determine a place for meetings and hearings and the legal seat of arbitration. In doing so, the Tribunal shall take into consideration the convenience of the disputing parties and the arbitrators, the location of the subject matter and the proximity of the evidence.
- 22.3 When considering matters of evidence or production of documents, the Tribunal shall not have any powers to compel production of documents which the Defending Party claims are protected from disclosure under its applicable Law.

## **Article 23**

### **Dismissal of Frivolous Claims**

- 23.1 Without prejudice to a Tribunal's authority to address other objections, a Tribunal shall address and decide as a preliminary question any objection by the Defending Party that a claim submitted by the Investor is: (a) not within the scope of the Tribunal's jurisdiction, or (b) manifestly without legal merit or unfounded as a matter of Law.

- c. Transcripts of hearings, where available; and
- d. decisions, orders and awards issued by the Tribunal.

- 24.2 Hearings for the presentation of evidence or for oral argument (“hearings”) shall, subject to the written consent of the Defending Party, and to the extent possible, be made public in accordance with the following provisions:
- a. Where there is a need to protect Confidential Information or protect the safety of participants in the proceedings, the Tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.
  - b. The Tribunal shall make logistical arrangements to facilitate public access to hearings, including by organizing attendance through video links or such other means as it deems appropriate. However, the Tribunal may, after consultation with the disputing parties, decide to hold all or part of the hearings in private where this becomes necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.
- 24.3 Subject to the mutual written agreement of the disputing parties, (i) an award of a Tribunal rendered under this Chapter shall be publicly available, subject to the redaction of Confidential Information; and (ii) where a Defending Party determines that it is in the public interest to do so and notifies the Tribunal of that determination, all other documents submitted to, or issued by, the Tribunal shall also be publicly available, subject to the redaction of Confidential Information.

## **Article 25**

### **Burden of Proof and Governing Law**

- 25.1 The Disputing Investor at all times bears the burden of establishing: (a) jurisdiction; (b) the existence of an obligation under Chapter II of this Treaty, other than an obligation under Article 10 (*Entry and Sojourn of Personnel*) or 11 (*Transparency*); (c) a breach of such obligation; (d) that the Investment, or the Investor with respect to its Investment, has suffered actual and non-speculative losses as a result of the breach; and (e) that those losses were directly caused by the breach.
- 25.2 The governing law for interpretation of this Treaty by a Tribunal constituted under this Article shall be: (a) this Treaty; (b) the general principles of public international law relating to the interpretation of treaties, including the presumption of consistency between international treaties to which the Parties are party; and (c) for matters relating to domestic law, the law of the Defending Party.

- 23.2 Such objection shall be submitted to the Tribunal as soon as possible after the Tribunal is constituted, and in no event later than the date the Tribunal fixes for the Defending Party to submit its counter-memorial (or, in the case of an amendment to the Notice of Arbitration, the date the Tribunal fixes for the Defending Party to submit its response to the amendment).
- 23.3 On receipt of an objection under this Article, 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. In deciding an objection under this Article, the Tribunal shall assume to be true claimant's factual allegations in support of any claim in the Notice of Arbitration (or any amendment thereof). The Tribunal may also consider any relevant facts not in dispute.
- 23.4 The Tribunal shall issue an award under this Article no later than 150 days after the date of the receipt of the request under Article 23.2. However, if a Defending Party requests a hearing, the Tribunal may take an additional 30 days to issue the decision or award.
- 23.5 The Defending Party does not waive any objection as to competence or any argument on the merits merely because the Defending Party did or did not raise an objection or make use of the expedited procedure set out this Article.
- 23.6 When it decides on a preliminary objection by a Defending Party under this Article 23, the Tribunal may, if warranted, award to the prevailing disputing party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the Tribunal shall consider whether either the claim by the disputing Investor or the objection by the Defending Party was frivolous, and shall provide each of the disputing parties a reasonable opportunity to present its case.

#### **Article 24**

#### **Transparency in arbitral proceedings**

- 24.1 Subject to applicable Law regarding protection of Confidential Information and the mutual written agreement of the disputing parties, the Defending Party shall, to the extent possible, make available to the public the following documents relating to a dispute under this Chapter:
- a. the notice of dispute and the notice of arbitration;
  - b. pleadings and other written submissions on jurisdiction and the merits submitted to the Tribunal, including submissions by a Non-disputing Party;



**Article 26**  
**Joint Interpretations**

- 26.1 Joint interpretations of specific provisions and decisions on application of this Treaty issued subsequently by the Parties in accordance with this Treaty shall be binding on tribunals established under this Chapter upon issuance of such interpretations or decisions.
- 26.2 In accordance with the Vienna Convention of the Law of Treaties, 1969 and customary international law, other evidence of the Parties subsequent agreement and practice regarding interpretation or application of this Treaty shall constitute authoritative interpretations of this Treaty and must be taken into account by Tribunals under this Chapter.

**Article 27**  
**Award**

- 27.1 An award shall include a judgment as to whether there has been a breach by the Defending Party of any rights conferred under this Treaty in respect of the disputing Investor and its Investment and the legal basis and the reasons for its decisions.
- 27.2 The Tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on both disputing parties to the arbitration.
- 27.3 A Tribunal can only award monetary compensation for a breach of the obligations under Chapter II of the Treaty. Such compensation shall not be greater than an amount determined by such Tribunal with reference to actual loss but monetary damages shall not be greater than the actual loss suffered by the Investor (excluding incidental and consequential damages including future profits, and assets excluded from the scope of this Treaty). Such compensation shall be reduced by any prior damages or compensation already provided by a Party. 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, or other mitigating factors.<sup>6</sup>
- 27.4 A tribunal may not award punitive or moral damages or any injunctive relief against either of the Parties under any circumstance.

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<sup>6</sup>Mitigating factors may include current and past use of the Investment, the history of its acquisition and purpose, compensation received by the Investor from other sources, any unremedied harm or damage that the Investor may have caused to the environment or local community or other relevant considerations regarding the need to balance public interest and the interests of the Investor.

**Article 28**  
**Finality and enforcement of awards**

- 28.1 An award rendered by a Tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
- 28.2 Subject to Article 28.3, a disputing party shall abide by and comply with an award rendered by a Tribunal established under this Treaty without delay.
- 28.3 A disputing party shall not seek enforcement of a final award until:
- (a) in the case of a final award made under the ICSID Convention where both the Parties are members of ICSID Convention
    - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
    - (ii) revision or annulment proceedings have been completed; and
  - (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules
    - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
    - (ii) a court of seat of arbitration has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.
- 28.4. Each Party shall provide for the enforcement of an award in its Territory in accordance with its Law. For the avoidance of doubt, this Article 28.4 shall not prevent the enforcement of an award in accordance with New York Convention.
- 28.5 A claim that is submitted to arbitration under this Chapter shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

**Article 29**  
**Costs**

The disputing parties shall share the costs of the arbitration, with arbitrator fees, expenses, allowances, and other administrative costs. The disputing parties shall also bear the cost of its own legal representation including experts in the arbitral proceedings.

**Article 30**  
**Appeals Facility**

Without prejudice to other provisions of this Treaty, the Parties may by mutual agreement establish an institutional mechanism<sup>7</sup> to develop an appellate body or similar mechanism to review awards rendered by Tribunals under this chapter. Such appellate body or similar mechanism may be designed to provide coherence to the interpretation of provisions in this Treaty. In developing such a mechanism, the Parties may take into account the following issues, among others:

- a) the nature and composition of an appellate body or similar mechanism;
- b) the scope and standard of review of such an appellate body;
- c) transparency of proceedings of the appellate body;
- d) the effect of decisions by an appellate body or similar mechanism;
- e) the relationship of review by an appellate body or similar mechanism to the arbitral rules that may be selected under Articles 22.1 of this Treaty; and
- f) the relationship of review by an appellate body or similar mechanism to existing domestic Laws and international law on the enforcement of arbitral awards.

**Article 31**  
**Diplomatic Exchange between Parties**

31.1 If a disputing Investor has commenced a dispute against a Defending Party under this Chapter, the Non-disputing Party shall not give diplomatic protection, or bring an international claim, in respect of such dispute between one of its Investors and the Defending Party, unless the Defending Party has failed to abide by and comply with an award or the decisions of its courts, as the case may be, in accordance with this Chapter and other applicable Law regarding recognition and enforcement of foreign judgments and arbitral awards.

**Chapter V: State-State Dispute Settlement**

**Article 32**  
**Disputes between Parties**

32.1 Disputes between the Parties concerning:

- (i) the interpretation or application of this Treaty; or
- (ii) whether there has been compliance with obligations to consult in good faith under Article 37,

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<sup>7</sup>This may include an appellate mechanism for reviewing investor-state disputes established under a separate multilateral agreement in future.

should, as far as possible, be settled through consultation or negotiation, which may include the use of non-binding third-party mediation or other mechanisms.

- 32.2 If a dispute between the Parties cannot be settled within six months from the time the dispute arose, it shall upon the request of either Party be submitted to a Tribunal.
- 32.3 Such a Tribunal shall be constituted for each individual case in the following way: Within two 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 non-Party with which both Parties maintain diplomatic relations who, on approval by the two Parties, shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.
- 32.4 If, within the periods specified in Article 32.3, 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 of a state with which one or both of the Parties does not maintain diplomatic relations 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 of a state with which one or both of the Parties does not maintain diplomatic relations 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).
- 32.5 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.
- 32.6 The Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties.
- 32.7 The Parties 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.

## **Chapter VI: Exceptions**

### **Article 33 General Exceptions**

- 33.1 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 regarding :
- (i) protect public morals or maintaining public order;
  - (ii) protect human, animal or plant life or health;
  - (iii) ensure compliance with Laws that are not inconsistent with the provisions of this Treaty;
  - (iv) protect and conserve the environment, including all living and non-living natural resources;
  - (v) protect national treasures or monuments of artistic, cultural, historic or archaeological value.
- 33.2 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 a Party's rights and obligations under Article 7.
- 33.3 Nothing in this Treaty shall affect the rights and obligations of Parties as members of the International Monetary Fund under the IMF Articles of Agreement, as applicable from time to time, including the use of exchange actions which are in conformity with the IMF Articles of Agreement. In case of any inconsistency between the provisions of this Treaty and the IMF Articles of Agreement, the latter shall prevail.

### **Article 34 Security Exceptions**

- 34.1 Nothing in this Treaty shall be construed:
- (i) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
  - (ii) 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:
    - (a) action relating to fissionable and fusionable materials or the materials from which they are derived;

- (b) action taken in time of war or other emergency in domestic or international relations;
  - (c) 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;
  - (d) 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;
  - (e) any policy, requirement or measure including, without limitation, a requirement obtaining (or denying) any security clearance to any company, personnel or equipment; or
- (iii) 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.

34.2 Each Party shall inform the other Party to the fullest extent possible of measures taken under Article 34.1 and of their termination.

34.3 Nothing in this Treaty shall be construed to require a Party to accord the benefits of this Treaty to an Investor of the other Party where a Party adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Party or an Investor of a non-Party that would be violated or circumvented if the benefits of this Treaty were accorded to such juridical person or to its Investments.

34.4 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 this Article, any decision of such Party taken on such security considerations and its decision to invoke this Article at any time, whether before or after the commencement of arbitral proceedings shall be non-justiciable. It shall not be open to any Tribunal constituted under Chapter IV or Chapter V of this Treaty to review any such decision, even where the arbitral proceedings concern an assessment of any claim for damages and/or compensation, or an adjudication of any other issues referred to the Tribunal.

**Chapter VII: Final Provisions**  
**Article 35**  
**Relationship with other Treaties**

- 35.1 This Treaty or any action taken hereunder shall not affect the rights and obligations of the Parties under any other agreements or treaties to which they are parties.
- 35.2 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 36**  
**Denial of Benefits**

36.1 The benefits of this Treaty, including after the institution of arbitration proceedings in accordance with Chapter IV of this Treaty, shall not be available to:

- (i) an Investment or Investor owned or controlled, directly or indirectly, by juridical entities or natural persons of a non-Party or of the denying Party; or
- (ii) an Investment or Investor that has been established or restructured or does not have substantial business activity or has otherwise acquired the nationality of a Party with the primary purpose of gaining access to the dispute resolution mechanisms provided in this Treaty.

36.2 The benefit under this Treaty shall not be extended to an Investor of the other Party and to Investments of that Investor in case (i) a Specified Non-Party<sup>8</sup>, or (ii) a natural person or an entity of a Specified Non-Party, has beneficial interest<sup>9</sup> in the Investor or Investment of the other Party.

36.3 The benefit under this Treaty shall not be provided to the Investor of the other Party and to Investments of that Investor, if an Investment is routed through the territory of a non-Party or a Specified Non-Party, and a natural person or an entity of a Specified Non-Party, holds a beneficial interest in the entity through which such Investment is routed

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<sup>8</sup>The Specified Non-Party means the Land Bordering countries of India.

<sup>9</sup>For the purposes of Article 36.2 and 36.3, the term "beneficial interest" shall mean any person who is acting alone or together with one or more persons, directly or indirectly, possesses or has financed the possession of, any of the following rights or entitlements in the relevant entity, namely:- (i) holds more than ten percent of the Investment; or (ii) holds more than ten percent of the voting rights; or (iii). has right to receive or participate in more than ten percent of the total distributable dividend, any other distribution or profit or economic interest in a financial year or (iv) has right to exercise control in any manner.

**Article 37**  
**Consultations and Periodic Review**

- 37.1 Either Party may request, and the other Party shall promptly agree to, consultations in good faith on any issue regarding the interpretation, application, implementation, execution or any other matter including, but not limited to:
- (i) reviewing the implementation of this Treaty;
  - (ii) reviewing the interpretation or application of this Treaty;
  - (iii) exchanging legal information; and
  - (iv) subject to Article 31, addressing disputes arising under Chapter IV of this Treaty or any other disputes arising out of Investment.
- 37.2 Further to consultations under this Article, the Parties may take any action as they may jointly decide, including making and adopting rules supplementing the applicable arbitral rules under Chapter IV or Chapter V of this Treaty, issuing binding interpretations of this Treaty, and adopting joint measures in order to improve the effectiveness of this Treaty.
- 37.3 The Parties shall meet every five years after the entry into force of this Treaty to consult and review the operation and effectiveness of this Treaty.

**Article 38**  
**Amendments**

38.1 Amendments to this Treaty may be proposed 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.

38.2 This Treaty will stand automatically amended at all times to the extent that the Parties agree. 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 Chapter IV or Chapter V of this Treaty and a tribunal award must be consistent with all amendments to this Treaty.

**Article 39**  
**Entry into force, duration and termination**

39.1 The Parties shall notify each other in writing of the completion of their internal legal procedures necessary for the entry into force of this Treaty. The Treaty shall enter into force thirty (30) days after the date of receipt of the later notification regarding ratification.



- 39.2 This Treaty shall remain in force for a period of ten years and shall lapse thereafter unless the Parties expressly agree in writing that it shall be renewed. 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) months notice period.
- 39.3 In respect of Investments made prior to the date when the termination or the expiry of this Treaty becomes effective, the provisions of this Treaty shall remain in force for a period of ten years.
- 39.4 The India UAE BIT 2014 shall cease to have effect upon the date of entry into force of this Treaty or shall lapse on 12 September 2024, whichever date is earlier ("Date of Cessation"). Both Parties agree that any claim under the India UAE BIT 2014 that arose on or prior to the Date of Cessation shall be brought no later than Five (5) months from the Date of Cessation. For greater clarity, any claim arising in the period before the Date of Cessation shall be brought under the India-UAE BIT 2014 only.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Treaty.

Done at Abu Dhabi on 13 February 2024 in two originals each in the Hindi, English and Arabic, all texts being equally authoritative.

In case of any divergence in interpretation, the English text shall prevail.

**For the Government of the Republic  
of India**

**For the Government of the United  
Arab Emirates**

**H.E Vinay Mohan Kwatra**  
**Foreign Secretary**

**H.E. Mohamed Bin Hadi Al  
Hussaini**  
**Minister of State for Financial  
Affairs**