Bilateral investment treaty
between
the Government of the Kyrgyz Republic
and
the Government of the Republic of India

Preamble

The Government of the Kyrgyz Republic and the Government of the Republic of India (hereinafter referred to as the "**Party**" individually or the "**Parties**" collectively);

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

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,

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

Have agreed as follows:

Chapter I – Preliminary
Article 1
Definitions

For the purposes of this Treaty:

1.1 "**confidential information**" means business confidential information, e.g. confidential commercial, financial or technical information which could result in material loss or gain or prejudice 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 the Kyrgyz Republic, Head of investment policy department/Head of investment policy division/Chief specialist of investment policy division, Ministry of Economy, Government of the Kyrgyz Republic.

(ii) for India, Secretary/Additional Secretary/Joint Secretary, Department of Economic Affairs, Ministry of Finance, Government of India

1.3 "**enterprise**" means:

(i) any legal entity constituted, organised and operated in compliance with the law of a Party, including any company, corporation, limited liability partnership 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 there.

1.4 **"investment"** means an enterprise constituted, organised and operated in good faith by an investor in accordance with the law of the Party in whose territory the investment is made, taken together with the assets of the enterprise, has the characteristics of an investment such as the commitment of capital or other resources, certain duration, the expectation of gain or profit, the assumption of risk and a significance for the development of the Party in whose territory the investment is made. An enterprise may possess the following assets:

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

(b) a debt instrument or security of another enterprise;

(c) a loan to another enterprise

(i) where the enterprise is an affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years;

(d) licenses, permits, authorisations or similar rights conferred in accordance with the law of a Party;

(e) rights conferred by contracts of a long-term nature such as those to cultivate, extract or exploit natural resources in accordance with the law of a Party, or

(f) intellectual property rights as listed in Article -1 of the TRIPs Agreement of World Trade Organisation; and

(g) moveable or immovable property and related rights;

(h) any other interests of the enterprise which involve substantial economic activity and out of which the enterprise derives significant financial value;

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

(i) portfolio investments of the enterprise or in another enterprise;

(ii) debt securities issued by a government or government-owned or controlled enterprise, or loans to a government or government-owned or controlled enterprise;

(iii)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;

(iv)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;

(v) goodwill, brand value, market share or similar intangible rights;

(vi)claims to money that arise solely from the extension of credit in connection with any commercial transaction;

(vii) an order or judgment sought or entered in any judicial, administrative or arbitral proceeding;

(viii) 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:

(a) a legal entity that is constituted, organised and operated under the law of that Party and that has substantial business activities in the territory of that Party; or

(b) 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 (a) herein.

1.6 "**law**" includes:

(i) the Constitution, legislation, subordinate/delegated legislation, laws & bylaws, rules & regulations, ordinance,

(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:

(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.

1.8 "**measure**" includes a law, regulation, rule, procedure, decision, administrative action, requirement or practice, notifications, policies, guidelines, procedures, administrative measures/executive actions at all levels of government, as amended, interpreted or modified from time to time.

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 or permanently 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 in case of Kyrgyz Republic, Plenipotentiary representatives of the Government of the Kyrgyz Republic in the regions, local state administrations, and in the case of Republic of India, a State Government or a Union Territory administration.

1.13 "**Territory**" means:

(i) In respect of the Kyrgyz Republic: the territory of the Kyrgyz Republic including the lands, internal waters and subsoil, the air space above it, which are subject to the sovereignty and jurisdiction in accordance with the terms of international law and national legislation of the Kyrgyz Republic.

(ii) 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 l982 United Nations Convention on the Law of the Sea and international law;

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

1.15 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 2
Scope and General Provisions

2.1 This Treaty shall apply to measures adopted or maintained by a Party relating to investments of investors of another Party in its territory, in existence as of 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, regulations and policies 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 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 by a local government;

(ii) any law or measure regarding taxation, including measures taken to enforce taxation obligations.

For greater certainty, it is clarified that where the State 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 State, 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.

Chapter II: Obligations of Parties

Article 3

Treatment of investments

3.1 No Party shall subject investments made by investors of the other Party to measures which constitute a violation of customary international law[1] through:

(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 treatment, such as coercion, duress and harassment.

3.2 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

[1] For greater certainty, it is clarified that "customary international law" only results from a general and consistent practice of States that they follow from a sense of legal obligation.

relating to physical security of investors which means ensuring foreign investors and their investments same level of physical security as provided to domestic investors and their investments and not to any other obligation whatsoever.

3.3 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.

3.4 In considering an alleged breach of this article, a Tribunal shall take account of whether the investor or, as appropriate, the locally-established enterprise, pursued action for remedies before domestic courts or tribunals prior to initiating a claim under this Treaty.

Article 4
National Treatment

4.1 Each Party shall not apply to investor or to investments made by investors of the other Party, measures that accord less favourable treatment than that it accords, in like circumstances,[2] to its own investors or to investments by such investors with respect to the management, conduct, operation, sale or other disposition of investments in its territory.

4.2 The treatment accorded by a Party under Article 4.1 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 5
Expropriation

5.1 Neither Party may nationalize or expropriate an investment of an investor (hereinafter "**expropriate**") of the other Party either directly or through measures

[2] 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. These circumstances include, but are not limited to, (a) the goods or services consumed or produced by the investment; (b) the actual and potential impact of the investment on third persons, the local community, or the environment, (c) whether the investment is public, private, or state-owned or controlled, and (d) the practical challenges of regulating the investment.

having an effect equivalent to expropriation, except for reasons of public purpose[3], in accordance with the due process of law and on payment of adequate compensation. Such compensation shall be adequate and be at least equivalent to the fair market value of the expropriated investment immediately on the day 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.

5.2 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 6.

5.3 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;

---

[3] 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.

(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.

5.4 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.

5.5 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.

5.6 In considering an alleged breach of this Article, a Tribunal shall take account of whether the investor or, as appropriate, the locally-established enterprise, pursued action for remedies before domestic courts or tribunals prior to initiating a claim under this Treaty.

Article 6
Transfers

6.1 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 and 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 5 [Expropriation], Article 7[Compensation for losses] and under Chapter IV.

6.2 Unless otherwise agreed to between the Parties, currency transfer under Article 6.1 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.

6.3 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.

6.4 Notwithstanding anything in Article 6.1 and 6.2 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 7
Compensation for Losses

Each Party shall accord to investors of another 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, state of national emergency or a natural disaster.

Article 8
Subrogation

8.1 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.

8.2 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 9
Entry and Sojourn of Personnel

9.1 Subject to its law relating to the entry and sojourn of non-citizens and on the basis of reciprocity, 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.

9.2 For the purposes of this Article, "**natural person of the other Party**" means a natural person who resides in the territory of that Party or elsewhere, and who under the law of that other Party:

(i) is a national of that other Party; or

(ii) has the right of permanent residence in that other Party, provided that such other Party accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, and notifies the same after the entry into force of this Agreement or under any bilateral or multilateral agreement on trade in services entered into between the Parties. Such notification shall include the assurance to assume, with respect to the permanent residents, in accordance with its laws and regulations, the

same responsibilities that such other Party bears with respect to its nationals. For the purpose of clarification, no Party is obliged to accord to permanent residents of another Party treatment more favourable than would be accorded by that other Party to such permanent residents.

Article 10
Transparency

10.1 Each Party shall, to the extent possible, ensure that its laws, regulations, procedures, and administrative rulings 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.

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

(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.

10.3 Each Party shall, upon request by the other Party, promptly respond to specific questions from and provide information to the other Party with respect to matters referred to in Article 10.1.

10.4 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 11
Compliance with laws

The parties reaffirm and recognize that:

(i) 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.

(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, including timely payment of their tax liabilities.

(iv)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

Investors and their enterprises operating within its territory of each Party shall endeavor 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 labor, the environment, human rights, community relations and anti-corruption.

Chapter IV
Settlement of Disputes between an Investor and a Party

Article 13
Scope and Definitions

13.1 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.

13.2 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 9 and 10 of this Treaty.

13.3 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 9 and 10, and not disputes arising solely from an alleged breach of a contract between a Party and an investor. Such disputes shall only be resolved by the domestic courts or in accordance with the dispute resolution provisions set out in the relevant contract.

13.4 An investor may not submit a claim to arbitration under this Chapter if the investment has been made through fraudulent misrepresentation, concealment, corruption, money laundering or conduct amounting to an abuse of process or similar illegal mechanisms.

13.5 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 judicial authority of the Parties; or

(ii) accept jurisdiction over any claim that is or has been subject of an arbitration under Chapter V.

13.6 A dispute between an investor and a Party shall proceed sequentially in accordance with this Chapter.

13.7 For the purposes of this Chapter:

(i) "**Defending Party**" means a Party against which a claim is made under this Article.

(ii) "**disputing party**" means a Defending Party or a disputing investor.

(iii) "**disputing parties**" means a disputing investor and a Defending Party.

(iv) "**disputing investor**" means an investor of a Party that makes a claim against another Party on its behalf under this Article, and where relevant, includes an investor of a Party that makes a claim on behalf of the locally established enterprise.

(v) "**ICSID**" means the International Centre for Settlement of Investment Disputes.

(vi) "**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.

(vii)"**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.

(viii) "**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.

(ix) "**Non-disputing Party**" means the Party to this Treaty which is not a party to a dispute under Chapter IV of this Treaty.

(x) "**UNCITRAL Arbitration Rules**" means the arbitration rules of the United Nations Commission on International Trade Law.

Article 14
Proceedings under different international agreements

14.1 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,

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 another international agreement are taken into account in its decision, order or award.

Article 15
Conditions Precedent to Submission of a Claim to Arbitration

15.1 In respect of a claim that the Defending Party has breached an obligation under Chapter II, other than an obligation under Article 9 or 10, a disputing investor must first submit its claim before the relevant domestic courts or administrative bodies of the Defending Party for the purpose of pursuing domestic remedies in respect of the same measure or similar factual matters for which a breach of this Treaty is claimed. Such 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 in question and knowledge that the

investment, or the investor with respect to its investment, had incurred loss or damage as a result.

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

Provided, however, that the requirement to exhaust local remedies shall not be applicable if the 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 investor.

15.2 Where applicable, if, after exhausting all judicial and administrative remedies by domestic proceedings relating to the measure underlying the claim for at least a period of five years from the date on which the investor first acquired knowledge of the measure in question, no resolution has been reached satisfactory to the investor, the investor may commence a proceeding under this chapter by transmitting a notice of dispute ("**notice of dispute**") to the Defending Party.

15.3 The notice of dispute shall: specify the name and address of the disputing investor or the enterprise, where applicable; set out the factual basis of the claim, including the measures at issue; specify the provisions of the Treaty alleged to have been breached and any other relevant provisions; demonstrate compliance with Article 15.1 and 15.2, where applicable; specify the relief sought and the approximate amount of damages claimed; and furnish evidence establishing that the disputing investor is an investor of the other Party.

15.4 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. In all such cases, the place of such consultation or negotiation or settlement shall be the capital city of the Defending Party.

15.5 In the event that the disputing parties cannot settle the dispute amicably, 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 six 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 15.1.

(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 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 13.2.

(iv)where the claim submitted by the disputing investor is for loss or damage to an interest in an enterprise 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 13.2.

(v) 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 ("n**otice of arbitration**"). 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 15.5 (iii) or (iv), as applicable; provided that a waiver from the enterprise under Article 15.5 (iii) or (iv) shall not be required only where the Defending Party has deprived the disputing investor of control of an enterprise;

d. specify the name of the arbitrator appointed by the disputing investor.

Article 16
Submission of Claim to Arbitration

16.1 A disputing investor who meets the conditions precedent provided for in Article 15 may submit the claim to arbitration under:

(a) the ICSID Convention, provided that both the Parties 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.

16.2 The applicable arbitration rules shall govern the arbitration except to the extent modified by this Chapter, and supplemented by any subsequent rules adopted by the Parties.

16.3 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.

16.4 Delivery of notice and other documents on a Party shall be made to the Designated Representative for each Party.

Article 17
Consent to Arbitration

17.1 Each Party consents to the submission of a claim to arbitration in accordance with the terms of this Agreement.

17.2 The consent given in Article 17.1 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 18
Appointment of Arbitrators

18.1 The arbitral 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.

18.2 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.

18.3 If a Tribunal has not been constituted within one hundred twenty days (*120*) days from the date that a Claim is submitted to arbitration under this Article, 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 is sub-paragraph (a) or (b) of Article 18.3 is a national of a Party, 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 who is not a national of either Party.

18.4 The appointing authority shall appoint in her/his discretion and after consultation with the disputing parties, the arbitrator or arbitrators not yet appointed.

Article 19
Prevention of Conflict of Interest of Arbitrators and Challenges

19.1 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.

19.2 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 Article 19.10 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 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.

19.3 A disputing 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 Article 19.2 by the arbitrator, or (iii) otherwise becoming aware of the relevant facts or circumstances relevant to a challenge under Article 19.3, whichever is later.

19.4 The notice of challenge shall be communicated to the disputing party, to the arbitrator who is challenged, to the other arbitrators and to the appointing authority under Article 18.3. The notice of challenge shall state the reasons for the challenge.

19.5 When an arbitrator has been challenged by a disputing party, all disputing parties 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 of the validity of the grounds for the challenge.

19.6 If, within 15 days from the date of the notice of challenge, the disputing parties do not agree to the challenge or the challenged arbitrator does not withdraw, the disputing 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 18.3.

19.7 The appointing authority as specified under Article 18.3 shall accept the challenge made under Article 19.3 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.

19.8 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 the 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 disputing party to the arbitration had failed to exercise its right to appoint or to participate in the appointment.

19.9 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 disputing parties.

19.10 A justifiable doubt as to an arbitrator's independence or impartiality or freedom from conflicts of interest shall be deemed to exist on account of the following factors, including if:

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 an affiliate of the appointing party 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 to an affiliate of one of the parties 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 is a manager, director or member of the governing body, or has a similar controlling influence by virtue of shareholding or otherwise in one of the parties;

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

19.11 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. Such a code and may address topics such as disclosure obligations, the independence and impartiality of arbitrators and confidentiality.

Article 20
Conduct of Arbitral Proceedings

20.1 Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a country that is a party to 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.

20.2 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, the

proximity of the evidence, and give special consideration to the capital city of the Defending Party.

20.3 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 the rules on confidentiality or privilege under its law.

Article 21
Dismissal of Frivolous Claims

21.1 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.

21.2 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).

21.3 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.

21.4 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 21.2. However, if a Defending Party requests a hearing, the Tribunal may take an additional 30 days to issue the decision or award.

21.5 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.

21.6 When it decides on a preliminary objection by a Defending Party under Article 21.2 or 21.3, the Tribunal may, if warranted, award to the prevailing Defending 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 the disputing parties a reasonable opportunity to present its cases.

Article 22
Transparency in arbitral proceedings

22.1 Subject to applicable law regarding protection of confidential information, the Defending Party shall 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;

c. Transcripts of hearings, where available; and

d. decisions, orders and awards issued by the Tribunal.

22.2 Hearings for the presentation of evidence or for oral argument ("**hearings**") shall 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 arbitral 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.

22.3 An award of a Tribunal rendered under this Article shall be publicly available, subject to the redaction of confidential information. 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.

22.4 The Non-disputing Party may make oral and written submissions to the Tribunal regarding the interpretation of this Treaty.

Article 23
Burden of Proof and Governing Law

23.1 This Treaty shall be interpreted in the context of the high level of deference that international law accords to States with regard to their development and implementation of domestic policies.

23.2 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 the obligation under Article 9 or 10; (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 foreseeable and directly caused by the breach.

23.3 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.

Article 24
Joint Interpretations

24.1 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 Article upon issuance of such interpretations or decisions.

24.2 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.

24.3 The Tribunal may, on its own account or at the request of a Defending Party, request the joint interpretation of any provision of this Treaty that is subject of a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the Tribunal within sixty (60) days of the request. Without prejudice to the rights of the Parties under Article 24.1 and 24.2, if the Parties fail to submit a decision to the Tribunal within sixty (60) days, any interpretation issued individually by a Party shall be forwarded to the disputing parties and the Tribunal, which may take into account such interpretation.

Article 25
Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, and unless the disputing parties disapprove, a Tribunal may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety, technical or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may agree.

Article 26
Award

26.1 An award shall include a judgement 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.

26.2 The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both disputing parties to the arbitration.

26.3 A tribunal can only award monetary compensation for a breach of the obligations under Chapter II of the Treaty. Monetary damages shall not be greater

than the loss suffered by the investor or, as applicable, the locally established enterprise, 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.[4]

26.4 A tribunal may not award punitive or moral damages or any injunctive relief against either of the Parties under any circumstance.

Article 27
Finality and enforcement of awards

27.1 An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case and the tribunal must clearly state those limitations in the text of the award.

27.2 Subject to Article 27.3, a disputing party shall abide by and comply with an award without delay.

27.3 A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention

(i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules 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 has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

27.4. Each Party shall provide for the enforcement of an award in its territory in accordance with its law.

---

[4] Mitigating factors can 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 has caused to the environment or local community or other relevant considerations regarding the need to balance public interest and the interests of the investor.

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

Article 28
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 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 final and binding on both disputing parties.

Article 29
Appeals Facility

The Parties may by agreement or after the completion of their respective procedures regarding the enforcement of this Treaty may establish an institutional mechanism[5] 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 20.1 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 30
Diplomatic Exchange between Parties

[5]This may include an appellate mechanism for reviewing investor-state disputes established under a separate multilateral agreement in future.

30.1 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.

30.2 Nothing in this Chapter precludes a Defending Party from requesting consultations or seeking agreement with the other Party on issues of interpretation or application of the Treaty. In response to such a request, the other Party shall engage in good faith consultations on the matters requested.

Chapter V: State-State Dispute Settlement
Article 31
Disputes between Parties

31.1 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 Articles 30 or 36,

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.

31.2 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.

31.3 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 third State 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.

31.4 If within the periods specified in Article 31.3 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 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).

31.5 The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties.

31.6 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.

31.7 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.

Chapter VI: Exceptions
Article 32
General Exceptions

32.1 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[6] to:

(i) protect public morals or maintaining public order;

(ii) protect human, animal or plant life or health;

---

[6]In considering whether a measure is "necessary", the Tribunal shall take into account whether there was no less restrictive alternative measure reasonably available to a Party.

(iii)ensure compliance with law and regulations that are not inconsistent with the provisions of this Agreement;

(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.

32.2 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 6.

32.3 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 Agreement and the IMF Articles of Agreement, the latter shall prevail.

Article 33
Security Exceptions

33.1 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.

33.2 Each Party shall inform the other Party to the fullest extent possible of measures taken under Article 33.1 and of their termination.

33.3 Nothing in this Chapter 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 Chapter were accorded to such juridical person or to its investments.

33.4 This Article shall be interpreted in accordance with the understanding of the Parties on security exceptions as set out in Annex 1, which shall form an integral part of this Treaty.

Chapter VII: Final Provisions
Article 34
Relationship with other Treaties

34.1 This Treaty or any action taken hereunder shall not affect the rights and obligations of the Parties under any other Agreements to which they are parties.

34.2 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 35
Denial of Benefits

A Party may at any time, including after the institution of arbitration proceedings in accordance with Chapter IV of this Treaty, deny the benefits of this Treaty to:

(i) an investment or investor owned or controlled, directly or indirectly, by persons of a non-Party or of the denying Party; or

(ii) an investment or investor that has been established or restructured with the primary purpose of gaining access to the dispute resolution mechanisms provided in this Treaty.

Article 36
Consultations and Periodic Review

36.1 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 30, addressing disputes arising under Chapter IV of this Treaty or any other disputes arising out of investment.

36.2 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.

36.3 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 37
Amendments

37.1 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.

37.2 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 38
Entry into force, duration and termination

38.1 This Treaty shall be subject to ratification and shall enter into force on the date of exchange of instruments of ratification.

38.2 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*) month notice period.

38.3 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 years.

38.4 This Treaty replaces "the Agreement between the Government of the Kyrgyz Republic and the Government of India for the Reciprocal Promotion and Protection of Investments", signed on 16th May 1997, which shall be terminated on the date of entry into force of this Agreement.

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

Done in Bishkek on 14th day of June, 2019 in two originals each in the Kyrgyz, Hindi, Russian and English (languages), all texts being equally authoritative. In case of any divergence in interpretation, the English text shall prevail.

For the Government of the Kyrgyz Republic

For the Government of the Republic of India

Annex 1: Security Exceptions

The Parties confirm the following understanding with respect to interpretation and/or implementation of Article 33 of this Treaty:

(i) the measures referred to in Article 33.3 are measures where the intention and objective of the Party imposing the measures is for the protection of its essential security interests. These measures shall be imposed on a non-discriminatory basis and may be found in any of its legislation or regulations:

a. In the case of India, the applicable measures referred to in Article 33.3 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. In the case of the Kyrgyz Republic the applicable measures referred to in Article 33.3, in the Kyrgyz Republic Law "On Foreign Currency Transactions", and other normative legal acts of the Kyrgyz Republic on currency regulation.

(ii) 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 33, any decision of such Party taken on such security considerations and its decision to invoke Article 33 at any time, whether before or after the commencement of arbitral proceedings shall be non-justiciable. It shall not be open to any arbitral 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.