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INTERNATIONAL INVESTMENT & ARBITRATION MOOT COURT COMPETITION 2018

16 – 19 August 2018

MOOT PROPOSITION

Background:

1) Binda, the world's most populous democracy and a welfare state, has two major national problems that it is currently dealing with, namely, shortage of drinking water and that concerning untreated wastewater discharges in Binda. An estimated 65% of wastewater generated, both domestic wastewater industrial discharges, remain untreated. There is not a single body of water in Binda that is not polluted. National healthcare costs to be committed for disease control, hospitalisation and alleviation of infant mortality rates in the most populous democracy in the world have spiralled out of control and Binda faces a public health crises. A questionable international report issued in the year 2018, claims that 14 of the most polluted cities in the world are located in Binda. The international report also portends that shortage of water supplies would result in wars over water rights, and that wars would be fought over water rather than for oil in the not too distant future.

2) Newly enacted national legislation requires point sources of discharge, both domestic and industrial, into a receiving water body such as a river or lake, to meet tertiary drinking water standards. The means and methods to achieve this environmental objective is left up to the concerned state by implementing wastewater discharge controls on major individual industrial discharges and municipalities which have existing treatment plants, and those to be newly constructed.

3) National legislation is justified on the basis of cost-benefit (C/B) analysis in relation to public health and welfare. It was determined by Binda's parliament that the costs of investing in public infrastructure including wastewater treatment, accompanying sludge disposal including hazardous wastes, were outweighed by the health benefits to the nation as a result of a cleaner environment.

4) Under the Written Constitution of the Government of Binda, the individual states of the union are vested with the sole authority to approve, finance and implement programs and implementing regulations for environmental control. The individual states are therefore free to establish special economic zones (SEZs). An SEZ is a geographical region that has economic laws different from the general economic laws of Binda, with the intent of promoting economic growth through promotion of domestic and foreign investment, and for the development of infrastructure facilities.

5) Under the directions of the Pollution & Environment (PAE) Ministry, a new grants programme was established for the construction of wastewater collection and related pumping facilities that is to be funded 80% by the central government, 15% by the state government and 5% by local government in each state of the union. The treated wastewater, is pumped to receiving bodies of water such as rivers and lakes, or in the case of reclaiming drinking water from the wastewater, is piped and pumped to public entities and private industries for their use. The planning, design and construction of the wastewater collection and pumping network is financed by the PAE ministry's construction program, based on the experience and reputation of foreign engineering and construction firms under engineering, procurement and construction (EPC) contracts.

6) Binda is also rated Baa3 by Moody's, and BBB- by Standard and Poor's (S&P), which are two international rating agencies in respect of their economic assessment of the state of Binda's economy. Binda's ratings are not expected to improve unless the per capita income of Binda improves sufficiently, along with its human development index (HDI). Since the estimated budgeted outlay nationwide for a comprehensive cradle-to-grave treatment of all wastes is about 100 billion USD equivalent, Binda through its Foreign Investment Promotion Board (FIPB), provided 100% foreign direct investment (FDI) for proposed investments in environmental projects. The availability of expertise involving technology transfer from developed nations as well as the need to overcome inefficiencies in the domestic environmental industry in Binda were criteria on which FDI is to be promoted. The incentives offered to qualified foreign investors for concept planning, detailed planning and engineering, and construction and operation of treatment plants, included a 50-year tax-free leasing of lands for situating foreign investments in the form of comprehensive pollution control facilities. The state governments were also free to assure the free transfer of funds including profits by the foreign investors. The income to be earned by the foreign investors is to be primarily generated by a unit charge in BNR per 1,000 kilolitres of wastewater treated. In cases where wastewater was converted to drinking water, a separate charge is fixed based on BNR per 1,000 kilolitres of drinking water produced. The foreign promoters of the environmental projects essentially operate on a build-own-operate (BOO) basis.

7) The basic concept for the nationwide cleanup of rivers and water bodies was the establishment of expensive wastewater collection pipe network involving thousands of kilometers of pipes from residential and industrial wastewater discharge points enroute to large pumping stations. The pumping stations would pump the untreated wastewater through large diameter force mains to the treatment facility (privately owned treatment works or POTW) located more than 50 km away. The collection of wastewater from the various point sources generating the same comes under the construction grant program established by PAE. The wastewater, which is treated to tertiary treatment levels, would either be discharged to the river or other water bodies. Clean drinking water is also reclaimed from the tertiary treated water where found necessary. The clean drinking water is piped and pumped to municipalities and industries for distribution.

8) A nationwide industrial pre-treatment program is simultaneously put in place for the abatement of conventional and non-conventional pollutants before being discharged into the wastewater collection system. Storm water is separately routed to rivers and other water bodies. The treated wastewater at the POTWs generates sludge which is a semisolid or semi-liquid material containing useful, but often containing toxic chemicals, heavy metals, and biological material that requires further treatment. The sludge in reduced volumes is suitable for ultimate disposal in treatment, storage and disposal (TSD) facilities. The treatment of the sludge generates air pollution that requires appropriate treatment prior to releasing the air pollutants in acceptable quantities.

9) Foreign investors with experience and expertise in concept planning were first identified to estimate available options for siting and determining costs. The outcome of this effort was the generation of environmental impact statements (EISs) which were the precursors to detailed planning, engineering, construction and operations.

10) Legal protection for foreign investments involving the planning, design, construction and operation of the pollution control and drinking water generating facilities, is provided under existing bilateral investment treaties (BITs) and multilateral treaties entered into by Binda with other countries. The protection offered to foreign investments under these treaties by the host government is a quid pro quo for the financial risks undertaken by the foreign investor from the home state under the treaty of which the investor is a national. The treaties entered into by Binda were covered under Article 253 of its

written Constitution. The court system in Binda was overloaded with a total case backlog of 27 million cases. In an effort to reduce the backlog of commercial cases and to streamline the judicial process, Binda recently enacted a Commercial Courts Act 2015 requiring only disputes relating to commerce including investments be filed before the newly established commercial courts in all the states in Binda.

11) The Prime Minister of Binda announced a new policy with the catchy phrase "*Treat in Binda*" where he anticipated and projected the creation of several hundred thousand new jobs, unskilled, skilled and professional in nature, as a direct result of foreign investment for protection of the environment. The finance minister heralded that there would be a significant multiplier effect to the economy, especially over the next decade, as a result of new money entering Binda's economy in the form of FDI which would stimulate growth in the construction industry, steel manufacturing and equipment manufacturing. The finance minister also foresees the creation of new skilled and professional jobs besides the improved quality of life for Binda's citizens, and an improvement to the human development index (HDI) rating of Binda, which stood at 131 out of 188 countries globally in the year 2016. The multiplier effect on the economy is significant since the "new" money entering Binda would generate employment as well as concomitant spending in the local economies of the 27 states of Binda. With the improvement in the HDI, and a positive impact on Binda's economy, the finance minister also anticipates an improvement in ratings by Moody's and S&P, which would positively impact the credit rating and favourable borrowing power for Binda's economy. The Prime Minister is also keen to capitalize on the demographic dividend existing in Binda, since 70% of its population of 1.5 billion are under the age of 35 years, and provides for favourable employment opportunities.

12) Binda's increasing consumption of petroleum products is amongst the highest in the world with reference to domestic demand for the number of barrels of crude oil. Binda is the 4th largest consumer of crude oil in the world with a consumption demand of 4.5 million barrels per day in the year 2016. About 80% of demand for oil in Binda is imported from the Middle East and other countries. The remaining 20% is generated from production of crude oil within the sub-continental shores of Binda. Each barrel of crude oil is measured to contain about 160 litres. The extent of petrol extracted from a barrel of crude is about 75 litres and about 40 litres of diesel. Every 1 USD equivalent rise or drop in the crude oil price results in a significant increase or decrease in cost to Binda's economy. This economic impact, is computed by applying the official exchange rate of 70 BNR for each USD, multiplied by 4.5 million barrels, which is an estimated BNR of 300 million (BNR 30 crores). The worldwide slump in oil prices around the time the new government in Binda took political office in the year 2014, provided Binda's new prime minister a windfall "savings" in the oil import bill. The drop in average worldwide oil prices from a high of 105 USD equivalent in 2013 to a low of under 50 USD up to the year 2017, helped prevent countries around the world from receding into intensive care as far as their economies were concerned.

13) However, in early 2018, the world economy began to feel the negative effects of the rise in international crude oil prices. The average crude oil price climbed quickly to 80 USD per barrel. A couple of years earlier, Binda had embarked on an ambitious infrastructure development program throughout the country regarding which remarkable progress was being made. With the onset of the rise in crude oil prices the prime minister faced economic decisions that would slow infrastructure development. Since the cost of purchasing Middle East crude, which was the major supplier of crude oil to Binda was pegged to the USD, Binda like other countries in the world incurred the cost of converting its BNR to the USD. The present situation threatens to turn into an economic crisis and one option to mitigate the monetary crisis in Binda was to directly trade with the Middle East suppliers of crude to Binda using local currencies between the crude exporting country and Binda, and through a barter system. This approach would also lower the impact on the foreign currency reserves which needed to be maintained at a sufficiently high level in Binda to secure the stability of its economy. Inflation throughout Binda

began to gallop forward as a result in the surge of crude oil prices from under 50 USD equivalent per barrel to 80 USD.

14) During the relevant period, the Petrollar nation-state which is the world's largest economy, whose currency is denominated in USD, and with worldwide currencies being pegged to the USD, implemented new national legislation allowing for zero taxation of profits earned by its nationals and its companies doing business overseas and provided incentives for repatriating earnings overseas. This measure would ensure that there would be sufficient liquidity in the economy of Petrollar. It was therefore profitable for Petrollar's companies doing business overseas to bring back the profits earned overseas back to Petrollar. The President of Petrollar also issued an international diktat on the basis of its domination over the financial markets and international banks. Essentially, the President is attempting to secure peace in the Middle East, and therefore a policy decision was taken to isolate by embargo, a Middle East nation from pursuing a reckless path which could apparently escalate into that nation developing weapons of mass destruction. The effect of the policy diktat was that Binda cannot purchase oil from that Middle East nation which is one of its largest suppliers. This not only has a detrimental effect to Binda's economy but also hinders its political and cultural relationship with that Middle East nation.

15) In the year 2006, Binda developed guidelines for the functioning of special economic zones (SEZs) to be established in the states of Binda.

16) Binda is a dualist nation-state with treaty making subject to Article 253 of its Constitution as well as in respect of related articles. Under the BITs entered into by Binda, a primary mechanism to resolve foreign investment disputes was by investor-state arbitration conducted by international tribunals with jurisdictional powers encompassing investment treaty law. On a hierarchy basis, treaty law is considered on par with the national legislation of the host country, but below the supreme Constitution of the contracting nation-states. Investment treaty arbitration is typically conducted by mutual agreement of the disputing parties under an ad hoc tribunal that adopts procedural rules such as the UNCITRAL rules, or under the auspices of the Permanent Court of Arbitration (PCA), which is an institutional mechanism, that governs the appointment of arbitrators and arbitration proceedings. Binda also had its own Arbitration and Conciliation Act, 1996 with subsequent amendments, which was enacted along the lines of the UNCITRAL Model Law.

A. <u>Facts pertaining to claim 1</u>:

a. The southern states of Smallnadu and Kukatuka in Binda, entered into a joint agreement for the clean up and reuse of wastewater discharging into water bodies, under the recently enacted national legislation requiring national rivers to be usable for recreation and fishing under the Rivers Cleanup Act 2005. Smallnadu is the state located downstream of Kukatuka with the origins of the Kiwi river being in the latter state. The two states agreed to jointly establish a river basin authority which would coordinate and resolve inter-state disputes that may arise out of the environmental projects sanctioned in the two states.

b. A foreign investor, Airfresh, which is a corporation established in the nation-state of Nuland qualified and invested in the state of Kukatuka, by securing a contract for the planning, constructing, owning and operating a regional environmental project with all accompanying solid waste management, sludge disposal, TSD facilities for hazardous wastes, and air pollution control. Investment treaty protections for foreign investments were offered under the Nuland-Binda BIT. Prior to signing of the contract between Airfresh and the state of Kukatuka, the former

conducted due diligence on the functioning of the pollution regulatory authority in Kukatuka and the functioning of the National Green Tribunal (NGT) set up by the government of Binda under the National Green Tribunal Act, 2010. The NGT is meant to adjudicate expeditiously on environmental cases and petitions put before it, and the appellate authority is primarily the Supreme Court of Binda. Upon exercising due diligence, Airfresh determined that only a couple of cases involving major infrastructure project clearances sanctioned by the government of Binda were quashed out of about 300 cases filed by petitioners protesting the sanctioning of major project clearances.

c. Airfresh commissioned all of the designed and constructed facilities across the state of Kukatuka and met all of the environmental discharge parameters for water, waste and air pollution commencing with the year 2017. All of Airfresh's facilities were located in SEZs. In the year 2018, Airfresh was operating a hazardous waste landfill along with a treatment and disposal facility which was located close to the border of Smallnadu. Airfresh determined that it was in compliance with Binda's Hazardous & Other Waste (Management & Transboundary Movement Rules) Rules 2016. The facilities were also operating in compliance with the Kukatuka State Pollution Control Board regulations, and had obtained the necessary permits.

d. In March 2018, the residents living adjacent to Airfresh's hazardous waste facilities in the neighbouring state of Smallnadu, launched a public agitation on the grounds that there was contamination in the neighbouring water bore wells close to their communities caused by the operation of the hazardous waste facilities. A series of samples of the bore well water over a 6 month period were jointly tested by the public, the Kukatuka and Smallnadu pollution control authorities. However, the alleged pollution of the public drinking water wells by Airfresh were unproved. Nevertheless, public opposition in Smallnadu to the operations of the Airfresh facilities in neighbouring Kukatuka did not abate, and threatened to turn violent with the local community sabotaging the facility despite security measures offered by the local police. The local Members of the Legislative Assembly (MLAs) raised questions in the Smallnadu state assembly, and compelled the state administration and the state pollution control board to agitate a claim before the jurisdictional NGT for closure of the Airfresh facilities. The NGT found for the public on the grounds that it was not proven by Airfresh that it did not contribute to the elevated levels of contaminants in the drinking water wells. Airfresh appealed to the appellate NGT and did not succeed. Airfresh appealed to the Supreme Court of Binda. Due to the heavy backlog of cases in the court of about 70,000 cases, it was expected that the case would not be heard for at least six months. In the meantime, the affected public approached the Supreme Court through a Public Interest Litigation (PIL) and obtained an interim stay order from the court preventing Airfresh from operating the hazardous waste landfill and related operations.

Claim 1:

Subsequently, under the Nuland-Binda BIT, Airfresh initiated investor-state arbitration under the UNCITRAL Arbitration Rules. Airfresh alleged that Binda expropriated its investment, and that the latter did not meet the claimant's legitimate expectations in relation to the protection of its investment, that the claimant was denied fair and equitable treatment (FET), and that Binda failed to provide full protection and security to its investment. Airfresh sought a claim for damages of BNR 200,00,00,000 (200 crores BNR).

B. Facts pertaining to claim 2:

a. The northern state of Bingee, by far the largest in Binda, also contained the biggest river in Binda, namely the Junjee, which ran from the west to the east of the state. The Junjee river is considered to be the holiest river in the country. Due to obseisance paid in reverence to the Gods supposedly etched in the scriptures of Binda's religious fabric, organic material is being continually thrown into the river along with human cadaver, and due to pollution caused by industrial discharges, the Junjee river is the repository of toxic material. The Junjee is the only river source available to produce safe drinking water for approximately 250 million residents of Bingee, and drinking water supply to another 250 million people in the neighbouring states. Environmentalists have chanted the slogan "Is Junjee killing the people or are people killing the Junjee" for several years.

b. The Prime Minister of Binda vowed to save the national river along with the mantra "*Save Junjee, Save Binda*".

c. Oxford, a company incorporated in the nation-state of Petrollar is its largest environmental services company, and is a complete solutions provider for the environment. Oxford was owned by shareholders across the globe, and who were nationals of various developed and developing countries including Binda. The nationals of Petrollar held the majority of the shares (55%). Oxford invested its engineering and construction services under a BOO scheme which came into operation in the year 2016, to clean up the river Junjee, and to provide clean drinking water from it, to about 250 million inhabitants of Bingee. The agreed upon rate for the supply of safe drinking water to the state of Bingee was 50 BNR per 1,000 litres (1 kilolitre). An escalation clause of 10% per year on the agreed rate for 5 years, was fixed under the contract signed by Oxford and the municipalities of Bingee state. The investment by Oxford was protected under the Petrollar-Binda BIT. Since the Prime Minister had directed his PAE ministry, and Commerce Ministry (CoM) to adopt innovative ideas for this project of national importance, Oxford was directed to incorporate the western concept of waterfront development along the Junjee river. Not only would this be a tourist attraction for international visitors and a money-spinner, but would also be a source of recreation for the local population and provide a clean environment during the conduct of local festivities. Waterfront development would include open-air theatres, boat rides, dining facilities and convention centers. The implementation of waterfront development would provide a tremendous boost to the local economy.

d. With the beneficial development of being able to repatriate its earnings with tax savings to Petrollar and thereby increased profits, Oxford looked forwarded to being able to do so from earnings and investments in Binda. However, due to the recent economic pressures faced by Binda concerning the substantial increase in crude oil import bill (liability), and due to the negative externality and dampening effect on the monetary situation in Binda resulting from the international diktat, the finance ministry of the government of Binda restricted the outward remittance of money by Binda and other major investors in Binda, citing required fiscal prudence due to the deteriorating domestic economic situation. The ministry however allowed minimal funds transfer out of Binda in a carefully monitored monetary program by the Reserve Bank of Binda.

e. Bingee's municipalities' finances and state of its economy worsened during the period 2017 and early 2018. The state of Bingee, on behalf of its municipalities, cited public policy reasons and directed Oxford to revise downward, the escalation clause of 10% per year on the sale/purchase of water to 5% per year. Emergency fiscal measures were implemented by passing general legislation requiring all municipalities and state government departments to resort to austerity measures. The municipalities in turn enacted regulations under the general legislation in respect of austerity measures, to cap the escalation increase in drinking water purchased from Oxford to 5% per year.

f. Other domestic providers of services similar to that provided by Oxford, who were also permitted to operate environmental facilities under an exemption in Bingee's national legislation, were not affected by the monetary restrictions imposed by Binda, but were affected by the austerity measures adopted by Bingee. Bingee's chief minister feared that his municipalities would be faced with user-charge litigation initiated by the constituency of Bingee, if escalation rates were not similarly reduced, which would otherwise have a significant political fallout.

Claim 2:

Oxford attempts to settle the matter amicably and through conciliation did not bear any results. It further attempted to negotiate a settlement with the municipalities requesting them to hold the escalation clause in accord with the contract signed for the 5-year period, after which the escalation clause could be renegotiated. Oxford was unsuccessful. Oxford raised an investor-state arbitration claim against Binda under the Petrollar-Binda BIT alleging expropriation, breach of the treaty in relation to national treatment, and denial of free transfer of funds.

The claimant sought damages of 1000,00,00,000 (1,000 crores BNR).

Representation by the parties:

Claimant No. 1 - Airfresh hired the international law firm of Mouthwash & Associates to represent it before the ad hoc tribunal governed by the UNCITRAL Arbitration Rules. The disputing parties agree that the place of arbitration is Finland.

Claimant No. 2 - Oxford hired the international law firm of Diplomacy & Associates to represent it before an ad hoc tribunal operating under the Singapore International Arbitration Centre (SIAC) rules. The disputing parties agree that the venue is Singapore.

The **respondent State Binda** hired the Indian law firm of Noitall & Associates to be assisted by U.K. solicitors Dowe, Cheatem & How.

Appointment of Arbitrators and Challenge to the appointment of an Arbitrator:

Under Claim 1, Airfresh appointed Prof. Mint as its Arbitrator, and the Respondent State, Binda, appointed Justice Swamy. The presiding Arbitrator is Mr. Neutral.

Under Claim 2, Oxford appointed Prof. White as its Arbitrator, and the Respondent State, Binda, appointed Prof. Black. The presiding Arbitrator is Prof. Gray. Binda raised a challenge against Prof. White, alleging a conflict of interest. The challenge was that one of Mr. White's many nieces, who is also dear to him, is a Senior Investment Manager in Young & Coopers, an internationally established financial powerhouse having offices in 58 countries. Young & Coopers is a 10% shareholder in Oxford. Mr. White has provided his statement of full disclosure as required under the applicable provisions of the Petrollar-Binda BIT.

The arbitration cannot proceed on the merits until the challenge is resolved.

[**Note:** *Please note that for all purposes of this Competition the laws and procedures of treaty making of Binda are identical to that of Republic of India*.]

Annexure-I

AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF BINDA
AND
THE ESWATINIAN KINGDOM OF NULAND
FOR
THE PROMOTION AND PROTECTION OF INVESTMENTS

Preamble:

The Government of Republic of Binda and the Eswatinian Kingdom of Nuland (hereinafter referred to as the "**Contracting Parties**");

Desiring to create favourable conditions for greater economic cooperation between both States and in particular, for the investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the promotion of such investments and the reciprocal protection of investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

ARTICLE 1
Definitions

For the purposes of this Agreement:

1) 'investment' means every kind of asset established or acquired by investors of one Contracting Party in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

    i. movable and immovable property as well as other property rights such as mortgages, liens or pledges;

    ii. shares in and stock and debentures of a company and any other similar forms of participation in a company;

    iii. rights to money or to any performance under contract having a financial value;

    iv. intellectual property rights, in accordance with the relevant laws of the respective Contracting Party;

    v. business concessions conferred by law or under contract, including concessions to search for and extract oil and other minerals;

    Any change of the form in which assets or rights are invested or reinvested shall not affect their character as an investment, unless such changes are contrary to the approval granted, if any.

2) 'investors' means any national or company of a Contracting Party;

3) 'nationals' means:

i. In respect of the Republic of Binda: - persons deriving their status as Bindian nationals from the law in force in the Republic of Binda;

ii. In respect of the Eswatinian Kingdom of Nuland: Natural person having the nationality of the Eswatinian Kingdom of Nuland in accordance with its laws.

4) ‘Companies’ means:

i. In respect of the Republic of Binda: corporations, firms and associations incorporated or constituted or established under the law in force in any part of the Republic of Binda;

ii. In respect of the Eswatinian Kingdom of Nuland: any entity, which is incorporated or constituted in accordance with the laws and regulations of the Eswatinian Kingdom of Nuland and which has its registered office, central administration or principal place of business in the territory of the Eswatinian Kingdom of Nuland.

5) ‘returns’ means the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees;

6) "territory" means:

i. In respect of the Republic of Binda: the territory of the Republic of Binda 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 Binda has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the l982 United Nations Convention on the Law of the Sea and International Law.

ii. In respect of the Eswatinian Kingdom of Nuland: The territory of the Eswatinian Kingdom of Nuland, as well as, those maritime areas adjacent to the outer limit of the territorial sea, including the seabed and subsoil, over which the Eswatinian Kingdom of Nuland exercise, in accordance with the international law, sovereign rights and jurisdiction.

ARTICLE 2
Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement. However, this Agreement shall not apply to the disputes arising before its entry into force.

ARTICLE 3
Promotion and Protection of Investment

1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and admit such investments in accordance with its laws, regulations and policy.

2) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

ARTICLE 4
National Treatment and Most-Favoured-Nation Treatment

1) Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments of its own investors or investments of investors of any third State.

2) In addition, each Contracting Party shall accord to investors of the other Contracting Party, including in respect of returns on their investments, treatment which shall not be less favourable than that accorded to investors of any third State.

3) The provisions of paragraphs (l) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

   (a) any existing or future customs unions or similar international agreement to which it is or may become a party, or

   (b) any matter pertaining wholly or mainly to taxation.

ARTICLE 5
Expropriation

1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose in accordance with law on a nondiscriminatory basis and against fair and equitable compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable rate until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

2) The investor affected shall have right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraph (1) of this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to ensure fair and equitable compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

ARTICLE 6
Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency or civil disturbances in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

ARTICLE 7
Repatriation of Investment and Returns

1) Each Contracting Party shall permit all funds of an investor of the other Contracting Party related to an investment in its territory to be freely transferred, without unreasonable delay and on a nondiscriminatory basis. Such funds may include:

   (a) Capital and additional capital amounts used to maintain and increase investments;

   (b) Net operating profits including dividends and interest in proportion to their share-holdings;

   (c) Repayments of any loan including interest thereon, relating to the investment;

   (d) Payment of royalties and services fees relating to the investment;

   (e) Proceeds from sales of their shares;

   (f) Proceeds received by investors in case of sale or partial sale or liquidation;

   (g) The earnings of citizens/nationals of one Contracting Party who work in connection with investment in the territory of the other Contracting Party.

2) Nothing in paragraph (l) of this Article shall affect the transfer of any compensation under Article 6 of this Agreement.

3) Unless otherwise agreed to between the parties, currency transfer under paragraph (1) of this Article 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.

ARTICLE 8
Subrogation

Where one Contracting Party or its designated agency has guaranteed any indemnity against non-commercial risks in respect of an investment by any of its investors in the territory of the other Contracting Party and has made payment to such investors in respect of their claims under this Agreement, the other Contracting Party agrees that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claim of such investors.

ARTICLE 9
Settlement of Disputes between an Investor and a Contracting Party

1) Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2) Any such dispute which has not been amicably settled within a period of six months may, if both Parties agree, be submitted:

   (a) for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Parties competent judicial, arbitral or administrative bodies; or

(b) to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law.

3) Should the Parties fail to agree, within a period of three months, on a dispute settlement procedure provided under paragraph (2) of this Article or where a dispute is referred to conciliation but conciliation proceedings are terminated other than by signing of a settlement agreement, the dispute may be referred to Arbitration. The Arbitration procedure shall be as follows:

(a) If the Contracting Party of the investor and the other Contracting Party are both parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965 and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes such a dispute shall be referred to the Centre; or

(b) to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:

i. The appointing authority under Article 7 of the Rules shall be the President, the Vice-President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting party and shall be a national of the State with which both Contracting Parties have diplomatic relationship.

ii. The parties shall appoint their respective arbitrators within two months.

iii. The arbitral award shall be made in accordance with the provisions of this Agreement and shall be binding for the parties in dispute.

iv. The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.

ARTICLE 10
Disputes between the Contracting Parties

1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, as far as possible, be settled through negotiation.

2) If a dispute between the Contracting Parties cannot thus be settled within six months from the time the dispute arose, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State that has diplomatic relationship with both Contracting Parties who, on approval by the two Contracting 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.

4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of

either Contracting Party or if he 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 Contracting Party shall be invited to make the necessary appointments.

5) The arbitral tribunal shall reach its decision by a majority of votes. Such decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedures.

ARTICLE 11
Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable from time to time relating to the entry and sojourn of non-citizens, permit natural persons who are investors of the other Contracting Party and top managerial personnel, experts and senior technicians employed by companies of the other Contracting Party to enter and remain in its territory for the purpose of engaging in activities connected with investments.

ARTICLE 12
Applicable Laws

1) Except as otherwise provided in this Agreement, all investment shall be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

2) Notwithstanding paragraph (1) of this Article, nothing in this Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws, normally and reasonably applied on a non-discriminatory basis.

ARTICLE l3
Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

ARTICLE l4
Entry into Force

This Agreement shall be subject to ratification and shall enter into force on the date of exchange of Instruments of Ratification.

ARTICLE l5
Duration and Termination

1) This agreement shall remain in force for a period of ten years and thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date on receipt of such written notice.

2) Notwithstanding termination of this Agreement pursuant to paragraph (1) of this Article, the Agreement shall continue to be effective for a further period of fifteen years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

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

Done at Nova Dula on this 1st day of December, 2006 in two originals each in the Sankethi, Arabic and English languages, both texts being equally authentic.

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

For the Government of the Binda

For the Eswatinian Kingdom of Republic of Nuland

Annexure-A Interpretation of Expropriation in Article 5 (Expropriation)

1. A measure of expropriation includes, apart from direct expropriation or nationalization through formal transfer of title or outright seizure, a measure or series of measures taken intentionally by a Party to create a situation whereby the investment of an investor may be rendered substantially unproductive and incapable of yielding a return without a formal transfer of title or outright seizure.
2. The determination of whether a measure or a series of measures of a Party in a specific situation, constitutes measures as outlined in paragraph 1 above requires a case by case, fact based inquiry that considers, among other factors:
    i. the economic impact of the measure or a series of measures, although the fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that expropriation or nationalization, has occurred;
    ii. the extent to which the measures are discriminatory either in scope or in application with respect to a Party or an investor or an enterprise;
    iii. the extent to which the measures or series of measures interfere with distinct, reasonable, investment-backed expectations;
    iv. the character and intent of the measures or series of measures, whether they are for bona fide public interest purposes or not and whether there is a reasonable nexus between them and the intention to expropriate.
3. Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives including health, safety and the environment concerns do not constitute expropriation or nationalization. Such actions should be in accordance with laws and regulations of the host Contracting Party.
4. Actions and awards by judicial bodies of a Party that are designed, applied or issued in public interest including those designed to address health, safety and environmental concerns do not constitute expropriation or nationalization.
5. This Annexure will form an integral part of the Agreement.

Annexure-II

BILATERAL INVESTMENT TREATY BETWEEN THE GOVERNMENT OF REPUBLIC OF BINDA AND THE KINGDOM EMIRATES OF PETROLLAR ON THE PROMOTION AND PROTECTION OF INVESTMENTS

Preamble:

The **Government of the Republic of Binda** and the **Kingdom Emirates of Petrollar** (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 Binda, Secretary/Additional Secretary/Joint Secretary, Department of Economic Affairs, Ministry of Finance, Government of Binda;

(ii) for Petrollar, Under-Secretary/ Officer In-charge/ Supervisor, Economic Advisory Wing, Ministry of Finance, Kingdom Emirates of Petrollar;

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 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) 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; 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, notifications, policies, guidelines, procedures, administrative measures/executive actions at all levels of government, as amended, interpreted or modified 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:

(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.

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 a State Government or a Union Territory administration in the case of Binda but does not include local governments; and State Government in case of Petrollar;

1.13 "**Territory**" means:

(i) In respect of Binda: the territory of the Republic of Binda in accordance with the Constitution of Binda, 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 Binda 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.

(ii) In respect of Petrollar: the territory of the Kingdom Emirates of Petrollar in accordance with the Constitution of Petrollar, including its territorial waters and the airspace above it and other

maritime zones including the Exclusive Economic Zone and continental shelf over which the Kingdom Emirates of Petrollar 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 that occurred, or claims that 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 relating to physical security of investors and to investments made by the investors of the other Party 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.

[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.

[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.

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 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;

   (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.

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[3] For the avoidance of doubt, where Binda 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.

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 Binda, requirements to lock-in initial capital investments, as provided in Binda'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

7.1 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

11.1 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

12.1 Investors and their enterprises operating within its 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 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 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 (6) 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) (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 ("notice of arbitration"). The notice of arbitration shall:

1. attach the notice of dispute and the record of its transmission to the Defending Party with the details thereof;
2. 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;
3. 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;
4. 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 2010.

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 2010, 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 2010, 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:

1. The arbitrator or her/his associates or relatives have an interest in the outcome of the particular arbitration;
2. 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;
3. The arbitrator is a lawyer in the same law firm as the counsel to one of the parties;
4. The arbitrator is acting concurrently with the lawyer or law firm of one of the parties in another dispute;
5. 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;
6. 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;
7. 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;
8. 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 2010, 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:

1. The notice of dispute and the notice of arbitration;

2. pleadings and other written submissions on jurisdiction and the merits submitted to the Tribunal, including submissions by a Non- disputing Party;

3. Transcripts of hearings, where available; and

4. 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:

1. 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.

2. 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 (VCLT), 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

25.1 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.

[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 harm or damage that has no remedy 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.

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.

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

28.1 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

29.1 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;

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

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

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.

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;

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;

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

[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.

(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 (VCLT).

Article 35
Denial of Benefits

35.1 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 anytime 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.

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

Done at Nova Dula on this 29th day of June 2014 in two originals each in the Arabic, English and (languages), all texts being equally authoritative.

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

For the Government of the Republic of Binda

For the Kingdom Emirates of Petrollar

Annexure-III

Prof. Christian Gray
Sackington Park 2
Bronze Square, Broher
Singapore

BY COURIER

Prof. Mark White
Advocate at the Court
Diplomacy & Associates
14 Capital Square
Seaside
Singapore

Prof. Eric Black
Advocate at the Court
Noitall & Associates
16 Vakil Street
Temple City
Binda

16 May 2018

Dear Mr.White,
Dear Mr.Black,

First of all, I would like to thank you for your consent to my appointment I understand that you were confirmed simultaneously by the respective disputing parties on 14th May 2018. I look forward to working with you in resolving the dispute between the Parties.

The Arbitral Tribunal invites the Parties to a Case Management Conference via telephone on 30 May 2018 to discuss the further conduct of the arbitral proceedings.

At the Case Management Conference, we would like to discuss in particular the timetable for submissions/hearings and possible other issues, which you may consider relevant.

The dial - in details for the telephone conference and a detailed agenda will be provided in due course.

Kind regards,

Prof. Gray
(Presiding arbitrator)

Annexure-IV

Government of Republic of Binda,
Nova Dula, Binda

28th May, 2018

Notice of Challenge of Prof. White as arbitrator

Dear Arbitrators and disputing parties,

We herewith challenging Prof. White as arbitrator in the above referenced proceedings. There are serious and justifiable doubts as to his impartiality and independence resulting from his close connection to his niece who is a Senior Investment Manager in Young & Coopers, an internationally established financial powerhouse having offices in 58 countries. Young & Coopers is a 10% shareholder in Oxford.

The lack of disclosure of the aforenoted fact is itself sufficient grounds for Prof. White not to continue as the arbitrator in this proceeding, since it constitutes prima facie evidence of bias should Prof. White continue.

This fact in itself justifies a challenge to his appointment as an impartial arbitrator. In the light of the above disclosure it is reasonable on the part of the Respondent to believe that an appearance of bias is real, and that the independence of the arbitrator is in serious doubt as to affect the outcome of the tribunal's award.

The Tribunal must therefore hold that the claimant appoint a suitable arbitrator to replace Prof. White.

Kind regards,

Government of Republic of Binda

Annexure-V

Prof. Christian Gray
Sackington Park 2
Bronze Square, Broher
Singapore

BY EMAIL

Prof. Mark White
Advocate at the Court
Diplomacy & Associates
14 Capital Square
Seaside
Singapore

CC: All parties

05th June 2018

Notice of Challenge of Arbitrator

Dear Prof. White, appointed arbitrator for claimant, Oxford
Dear Prof. Black, appointed arbitrator for respondent-state, Binda

Please find enclosed the Notice of Challenge pursuant to Article 13 UNCITRAL Arbitration Rules 2010 in the above referenced arbitral proceedings concerning Prof. White, the arbitrator appointed by CLAIMANT.

We are confident that Prof. White, after having become aware of CLAIMANT's involvement underlying this challenge, will withdraw as arbitrator.

Should Prof. White, contrary to our expectations, not withdraw, the other two members of the tribunal including myself will decide the challenge.

Sincerely,

Prof. Christian Gray

Annexure-VI

REPLY NOTICE

Prof. Mark White
Advocate at the Court
Diplomacy & Associates
14 Capital Square, Seaside
Singapore

BY EMAIL

Prof. Christian Gray
Sackington Park 2
Bronze Square, Broher
Singapore.

CC: All parties

08th June 2018

Notice of Challenge of Arbitrator

Dear Prof. Gray,
Dear Prof. Black,

In Its Challenge notice dated 28th May 2018, the respondent-state raised concerns about my impartiality and independence and therefore my suitability to continue in this proceeding as an arbitrator.

I naturally regret the unfortunate perception of the situation which has been created by my kinship with a Senior Investment Manager in Young & Cooper. In my view, these connections are not justifiable as to my impartiality and independence.

The lack of disclosure regarding my remote kinship with relatives beyond my immediate family is not a ground for raising a perception of bias and lack of independence on my part as an impartial arbitrator. I would like to add, that the professional and private reputation of my niece (I have one dozen nieces and nephews) whose kinship with me is the stated reason for the challenge, is impeccable and she has a blemishless career which spans almost two decades. During the four score arbitrations that I have conducted, singly, as a co-arbitrator, and as a presiding arbitrator, I have never been challenged in relation to my appointment.

Further, taking into account the importance of the right for each party to choose its own arbitrator, I will not withdraw from my office as arbitrator.

Yours sincerely,

Prof. Mark White
(Arbitrator)