
India's Changing Attitude to Investment Protection Treaties

**Volume II
Appendices A to J
Extracts from India's BITs**

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Anil Chawla Law Associates LLP
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India's Changing Attitude to Investment Protection Treaties

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Volume II – Appendices A to J; Extracts from India's BITs

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Appendix A

Definition of Investment and Investor

in Pre-2015 BITs of India

A1. India-UAE BIT¹

1. *The term "Investment" means every kind of asset invested by the Investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws, and regulations 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 any other property rights in rem such as mortgages, liens, pledges, or usufruct;*
 - (ii) *shares, stocks, bonds, debentures and any other similar forms of participation in a company and other debts and loans and securities issued by an Investor of a Contracting Party and returns retained for the purpose of reinvestment;*
 - (iii) *rights or claims to money or to any performance under contract having financial or economic value;*
 - (iv) *intellectual property rights, goodwill, technical processes, know-how, copyrights, trademarks, trade names and*

¹ Treaties: India-UAE BIT, 2013

patents in accordance with the relevant laws of the respective Contracting Parties;

- (v) any right conferred by law or by virtue of any licenses or permits granted pursuant to law, excluding any right conferred in respect of hydrocarbons.*

Any change of the form in which assets are invested or reinvested does not affect their character as Investment.

2. *"Investor" means any national, company or government of a Contracting Party.*

A2. India-Nepal², India-Congo³, and India-Seychelles⁴ BITs

- (b) "investment" means every kind of asset established or acquired, including changes in the form of such investment, by investor of one Contracting Party in accordance with the laws of the other Contracting Party in the territory of the latter and in particular, though not exclusively, includes:*

- (i) movable and immovable property as well as other rights related thereto 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) claims 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;*

² Treaties: India-Nepal BIT, 2011

³ Treaties: India-Democratic Republic of Congo BIT, 2010

⁴ Treaties: India-Seychelles BIT, 2010

- (c) *“investors” mean any national or company of a Contracting Party that has made an investment in the territory of the other Contracting Party;*
- (d) *“nationals” mean:*
 - (i) *In respect of India: natural persons deriving their status as Indian nationals from the law in force in India;*
 - (ii) *In respect of Nepal: natural persons deriving their status as Nepalese nationals from the law in force in Nepal.**

Notes

- * In case of the sub-clause (ii) of clause (d) above the country name should be replaced with Democratic Republic of Congo or Seychelles, as the case may be.

A3. India-Slovenia BIT⁵

1. *The term “investor” shall mean:*
 - (a) *natural persons having the nationality of either Contracting Party, in accordance with its laws, and*
 - (b) *legal persons, including corporation, commercial or other companies, associations, or any other entities which are incorporated or constituted in accordance with the law of that Contracting Party;*

having made an investment in the other Contracting Party’s territory.
2. *The term “investment” shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular, though not exclusively:*

⁵ Treaties: India-Slovenia BIT, 2011

- (a) *movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and usufructs;*
- (b) *shares, stocks, debentures and any other forms of equity participation in a company and rights derived therefrom;*
- (c) *claims to money or to any performance under contract having an economic value and associated with an investment;*
- (d) *intellectual property rights including in particular protection of copyright and related rights, including computer programmes, patents, industrial designs, trademarks and service marks, geographical indications, including appellations of origin, topographies of integrated circuits and know-how;*
- (e) *any right to conduct an economic activity, whether conferred by law or an administrative act by a competent state authority, or by contract, including concessions for prospect, to search for, extract or exploit natural resources.*

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investments, provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

A4. India-Lithuania BIT⁶

1. *The term “investment” means every kind of asset invested, established or acquired, including changes in the form of such investment, by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has*

⁶ Treaties: India-Lithuania BIT, 2011

been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

- i) movable and immovable property, such as mortgages, liens, pledges and similar rights;*
 - ii) shares, bonds, debentures and other forms of participation in an entity;*
 - iii) claims to money or to any performance under a contract having an economic value;*
 - iv) intellectual property rights, goodwill, technical processes and know-how, in accordance with the relevant laws of the respective Contracting Party;*
 - v) right to engage in economic and commercial activities conferred by law and by virtue of a contract, including concessions to search for and extract or exploit natural resources;*
- 2. The term “investor” means any natural person or entity of one of the Contracting Parties that has made an investment in the territory of the other Contracting Party in accordance with its national legislation:*
- i) A “natural person” shall mean:*

In respect of India: Persons deriving their status as Indian nationals from the laws in force in India.

In respect of Lithuania: Persons who are nationals of the Republic of Lithuania according to the laws and regulations of the Republic of Lithuania;
 - ii) An “entity” means in particular, though not exclusively, a company, an enterprise, a corporation or association incorporated or constituted in accordance with the laws of that Contracting Party and engaged in substantial business activities in the territory of that Contracting Party.*

A5. India-Latvia⁷ and India-Qatar⁸ BITs

- (a) *“investment” means every kind of asset established or acquired including changes in the form of such investment, in accordance with the national laws and regulations* 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 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 and regulations*** of the respective Contracting Parties;*
 - (v) *business concessions conferred by law or under contract, including concessions to search for and extract oil and other minerals#;*
- (b) *“investor” means any natural or juridical person who has made investment in the territory of the other Contracting Party:##*
- (i) *“natural person” means:*
in respect of the Republic of India: persons deriving their status as Indian nationals from the law in force in India;
in respect of the Republic of Latvia: a citizen or non-citizen in accordance with the laws and regulations of the Republic of Latvia;
 - (ii) *“juridical person” means:*

⁷ Treaties: India-Latvia BIT, 2010

⁸ Treaties: India-Qatar BIT, 1999

in respect of the Republic of India: any entity that is incorporated, constituted, set up or otherwise duly organized under the law in force in any part of India; whether or not for profit, whether privately or otherwise owned, with limited or unlimited liability, including any corporation, company, association, partnership, trust, joint venture, co-operatives or sole proprietorship;

in respect of the Republic of Latvia: commercial company (partnership or capital company), association and foundation incorporated or constituted in accordance with the laws and regulations of the Republic of Latvia, whether or not for profit;

Notes

- * In case of Qatar this clause should be read without the words “*and regulations*”.
- ** In case of Qatar this clause should be read with the words “*in rem*” between “*rights*” and “*such*”).
- *** In case of Qatar this clause should be read without the words “*and regulations*”.
- # In case of Qatar “*minerals*” should be replaced with “*natural resources*”.
- ## In case of Qatar, clause (b) should be read as follows:
 - (1) “*Investor*” means:
 - (i) *in respect of India:*
 - (a) *persons deriving their status as Indian nationals from the law in force in India;*
 - (b) *companies, corporations, firms and associations incorporated or constituted or established under the law in force in any part of India.*
 - (ii) *in respect of the State of Qatar:*
 - (a) *natural persons deriving their status as nationals of the State of Qatar according to its applicable laws.*
 - (b) *Government and Governmental agencies, corporations, companies, firms or business associations incorporated or*

constituted under the law in force in the State of Qatar and having their headquarters in the territory of the State of Qatar.

A6. India-Colombia BIT⁹

1. Investor

1.1 The term "Investor" means a physical or natural person or an entity of one of the Contracting Parties that has made investments in the territory of the other Contracting Party in accordance with its national legislation.

a. A "physical or natural person" shall mean a person who, in the case of India is a citizen of India, and in the case of Colombia is a national of Colombia pursuant to their respective legislations.

b. An entity shall mean a company, corporation, firm or association incorporated or constituted or otherwise duly established pursuant to the laws of the Contracting Party and is engaged in substantial business activities in the territory of that Contracting Party.

1.2 This Agreement shall not apply to investments made by natural persons who are nationals of both Contracting Parties.

2. Investment

2.1 Investments shall mean every type of assets that have been established or acquired by investors of a Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter including particularly, but not exclusively, the following:

⁹ Treaties: India-Colombia BIT, 2009

- a. *Movable and immovable property, as well as other property rights such as mortgages, liens or pledges;*
- b. *Shares, bonds, debentures and any other similar form of participation in an entity;*
- c. *Rights to money or to any performance under contract having an economic value;*
- d. *Intellectual property rights, including, among others, copyrights and related rights, and industrial property rights such as patents, technical processes, manufacturers' brands and trademarks, trade names, industrial designs, know-how and goodwill, in accordance with the relevant laws of the respective Contracting Party;*
- e. *Concessions granted by 'law, administrative act or contract, including concessions to explore, extract or exploit natural resources;*

Investment does not include:

- i) *Public debt operations;*
- ii) *Claims to money arising solely from:*
 - a) *Commercial contracts for the sale of goods and services by a national or legal entity in the territory of a Contracting party to a national or a legal entity in the territory of the other Contracting Party; or*
 - b) *The extension of credit in connection with a commercial transaction.*

2.2 *Any alteration in the form in which assets are invested or re-invested shall not affect their character as investments provided such a modification is in accordance with the definitions under this Article and is made in conformity with*

the legislation of the Contracting Party in whose territory the investment was made.

2.3 *In accordance with paragraph 2.1 of this Article, the minimum characteristics of an investment shall be:*

- a. The commitment of capital or other resources;*
- b. The expectation of gain or profit; and*
- c. The assumption of risk for the investor.*

A7. India-Mozambique¹⁰, India-Myanmar¹¹, India-Libya¹², India-Trinidad and Tobago¹³, India-Egypt¹⁴, India-Oman¹⁵, India-Vietnam¹⁶ and India-Tajikistan¹⁷ BITs

(b) *The term* “investment” means every kind of asset established or acquired, including changes in the form of such investment 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 others 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;*

¹⁰ Treaties: India-Mozambique BIT, 2009

¹¹ Treaties: India-Myanmar BIT, 2008

¹² Treaties: India-Libya BIT, 2007

¹³ Treaties: India-Trinidad and Tobago, 2007

¹⁴ Treaties: India-Egypt BIT, 1997

¹⁵ Treaties: India-Oman BIT, 1997

¹⁶ Treaties: India-Vietnam BIT, 1997

¹⁷ Treaties: India-Tajikistan BIT, 1995

- (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;*
- (c) *The term^{###} “investors” means any national or company of a Contracting Party.[@]*
- (d) *The term “nationals” means:^{@@} &*
 - (i) *in respect of the Republic of India, persons deriving their status as Indian nationals from the law in force in India;*
 - (ii) *in respect of the Republic of Mozambique, any mozambican citizen, in accordance with the Constitution in force in the Republic of Mozambique.^{@@@ \$\$\$\$}*

For additional clauses see notes below^{% %% and %%%}

Notes

- * In case of Egypt, Oman, Vietnam and Tajikistan this clause should be read without the starting words “*The term*”.
- ** In case of Egypt this clause should be read with the word “*usefruct*” in between “*liens*” and “*or pledges*”.
- *** In case of Egypt the word “*respective*” should be replaced with “*concerned*”.
- # In case of Trinidad and Tobago, the sub-clause (iv) of clause (b) reads as follows:
 - (iv) *intellectual property rights including, inter alia, goodwill, technical processes and know how, in accordance with the relevant laws of the respective Contracting Party;*
- ## In case of Tajikistan the word “*gas*” should be added in between the words “*oil*” and “*and*”.
- ### In case of Egypt, Oman, Vietnam and Tajikistan this clause should be read without the starting words “*The term*”.
- @ In case of Trinidad and Tobago, the clause (c) reads as follows:
 - (c) *“investor” means any national or company of a Contracting Party who has invested in the territory of the other Contracting Party;*

@@ In case of Trinidad and Tobago, equivalent of clause (d) reads as follows:

- (e) *"national" means a person deriving his or her status as a national from the law in force in the territory of the respective Contracting Party;*

@@@ In case of Myanmar, the sub-clause (ii) of clause (d) reads as follows:

- (ii) *In respect of the Union of Myanmar: Citizens of the Union of Myanmar, within the meaning of its existing laws.*

\$ In case of Libya, the sub-clause (ii) of clause (d) reads as follows:

- (ii) *In respect of Great Socialist People's Libyan Arab Jamahiriya: any natural person holding the nationality of Libya under the effective laws of Great Socialist People's Libyan Arab Jamahiriya.*

\$\$ In case of Vietnam, the sub-clause (ii) of clause (d) reads as follows:

- (ii) *in respect of Vietnam: any natural person having the nationality of Vietnam in accordance with its law;*

\$\$\$ In case of Tajikistan, the sub-clause (ii) of clause (d) reads as follows:

- (ii) *in respect of Tajikistan: A person who is a citizen of Tajikistan in accordance with the legislation in force, in the Republic of Tajikistan.*

& In case of Egypt, equivalent of clause (d) reads as follows:

- (c) *"nationals" means persons deriving their status as nationals of a Contracting Party from the law in force in that Contracting Party.*

% In case of Egypt, additional clause reads as follows:

- (a) *"companies" means corporations, firms and associations incorporated, or constituted or established under the laws in force in any part of either Contracting Party.*

%% In case of Oman, the sub-clause (ii) of clause (d) reads as follows:

- (i) *in respect of Oman, natural persons having the Omani nationality in accordance with the Sultanate of Oman Laws.*

%%% In case of Oman, Vietnam and Tajikistan additional clause reads as follows:

- (a) *"companies" means:*

- (i) *in respect of Oman: corporations, firms and associations incorporated or constituted under the law in force in Oman. (in case of Vietnam, country name should be replaced with Vietnam).*
- (ii) *in respect of India; corporations, firms and associations incorporated, constituted or established under the law in force in any part of India;*
- (ii) *In respect, of Tajikistan: Ministries, Departments , Organizations and Enterprises , Firms and Organizations set up or established in accordance with the legislation in force in any part of Tajikistan.*

A8. India-Bangladesh¹⁸, India-Jordan¹⁹ and India-UK²⁰ BITs

- (b) *“investment” mean every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made or acquisition by such investor of any asset so invested, including changes in the form of such investment and, in particular, though not exclusively, includes:*

@

- (i) *movable and immovable property as well as other 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;*

¹⁸ Treaties: India-Bangladesh BIT, 2009

¹⁹ Treaties: India-Jordan BIT, 2006

²⁰ Treaties: India-United Kingdom of Great Britain and Northern Ireland BIT, 1994

- (v) *business concession conferred by law or under contract, including concessions to search for and extract oil and other minerals*
- (c) *“investor” means any national or company of a Contracting Party;*
- (d) *“nationals” means:*
 - (i) *In respect of the Republic of India: persons deriving their status as Indian nationals from the laws in force in India;*
 - (ii) *In respect of Bangladesh#: persons deriving their status as Bangladeshi nationals from the laws in force in Bangladesh## @@;*

For additional clauses see notes below. @@@ \$

Notes

- * In case of UK, the word “*participation*” should be replaced with “*interest*”.
- ** In case of UK, the word “*rights*” should be replaced with “*rightful claims*”.
- *** In case of UK, the words “*goodwill, technical processes and know-how*” should be added between the words, “*rights*” and “*in accordance*”.
- # In case of UK, the word “*physical*” should be added before the word “*persons*”.
- ## In case of UK, country name should be replaced with United Kingdom.
- ### In case of Jordan, equivalent of clause (b) reads as follows:
 - (a) *“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:*
- @ In case of UK, clause (b) reads as follows:
 - (b) *“investment” means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes;*
- @@ In case of Jordan sub-clause (ii) of clause (d) be read as follows:

- (i) *In respect of the Hashemite Kingdom of Jordan: Natural person having the nationality of the Hashemite Kingdom of Jordan in accordance with its laws.*

@@@ In case of Jordan, the following should be read in addition to the above clause and sub-clauses:

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.

\$ In case of UK, additional clause reads as follows:

- (a) *"companies" means:*
 - (i) *in respect of the United Kingdom: corporations, firms and associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with the provisions of Article 13;*
 - (ii) *in respect of India: corporations, firms and associations incorporated or constituted under the law in force in any part of India;*

A9. India-Senegal²¹, India-North Macedonia²² * and India-Poland²³ BITs

- (a) *"investment" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:*

²¹ Treaties: India-Senegal BIT, 2008

²² Treaties: India-North Macedonia BIT, 2008

²³ Treaties: India-Poland BIT, 1996

- (i) *movable and immovable property as well as other rights such as mortgages, leases, liens or pledges of real property, usufructs and charges**;*
- (ii) *shares in, stock and debentures of a company and any other similar forms of participation in a company;*
- (iii) *rights to money or to any obligation*** under contract having a financial value;*
- (iv) *intellectual and industrial property rights, such as patents, copyrights, industrial designs, trade marks, know-how and goodwill, 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;*
- (b) *The term “investors” refers with regard to either Contracting Party to:*
 - (i) *natural persons having the nationality of the Contracting Party under the law in force of that Contracting Party:*
 - (ii) *legal entities, including companies, corporations, firms and business associations incorporated or constituted or established under the law of a Contracting Party.*

For additional clauses see notes below.###

Notes

* Country name “The Republic of Macedonia” was changed to “The Republic of North Macedonia” in 2019.

** In case of North Macedonia, the sub-clause (i) of clause (a) reads as follows:

- (i) *movable and immovable property, as well as other rights such as mortgages, liens or pledges;*

*** In case of Poland the word “obligation” should be replaced with “performance”.

In case of Poland, clause (a), sub-clauses (i) and (iv) of clause (a) read as follows:

1. *The term “investment” means every kind of asset established or acquired, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:*

- (a) *movable and immovable property as well as other rights such as mortgages, liens, pledges;*
- (d) *intellectual property rights, goodwill, technical processes and know-how in accordance with the relevant laws of the respective Contracting Party;*

In case of North Macedonia, the clause (b) reads as follows:

The term “investor” means any natural or legal person of one Contracting Party that invests in the territory of the other Contracting Party.

- a) *“natural person” with respect to either Contracting Party, means any national of the either Contracting Party who derives its status from the law in force in the respective Contracting Party;*
- b) *“legal person” with respect to either Contracting Party, means any legal person including enterprises, companies, corporations, business association and/or organisations established, incorporated or organised in accordance with the respective legislation of either Contracting Party and having their seat in the territory of that Contracting Party*

In case of Poland, additional clause reads as follows:

4. *Any change in the form of an investment admitted In accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, does not affect its character as an investment.*

A10. India-Syrian Arab Republic BIT²⁴

1. *The term “investments” shall mean any kind of asset invested or established or acquired, including changes in the form of such investment by investors of one Contracting Party in the territory of*

²⁴ Treaties: India-Syrian Arab Republic BIT, 2008

the other Contracting Party, in conformity with the laws and regulations of the latter, including, but not exclusively:

- a. movable and immovable property as well as other rights such as mortgages, privileges and guarantee, liens or pledges or any other similar rights;*
 - b. rights derived from shares, bonds or any other form of interest in companies in the territory of the other Contracting Party;*
 - c. patents, industrial designs, trade marks, trade names, know how, and other intellectual property rights; in accordance of the relevant laws of the respective Contracting Party.*
 - d. business concessions conferred by law or under contract related to investment including concessions to search for or exploit natural resources*
- 2. The term “investors” means for either Contracting Party, the following who invest in the territory of the other Contracting Party in accordance with the laws of the latter Contracting Party and the provisions of this Agreement :-*

In respect of India:

- a. natural persons deriving their status as Indian Nationals in accordance with the law in force in India;*
- b. Corporation, firms and associations incorporated or constituted under the law in force in any part of India.*

In respect of Syria :

- a. natural persons who have Syrian Nationality in accordance with Syrian laws and regulations;*
- b. juridical persons or other economic entities established in accordance with the Syrian laws and regulations and domiciled in the territory of the Syrian Arab Republic.*

A11. India-Brunei Darussalam BIT²⁵

- (b) *“investment” means every kind of asset established or acquired including changes in the form of such investment, 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 as well as securities issued by a Contracting Party subject to the respective national laws and regulations of the Contracting Parties;*
 - (iii) *rights to money or to any performance under contract having an economic value;*
 - (iv) *intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade names, trade and business secrets, technical processes, knowhow and goodwill 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, cultivate, extract or exploit natural resources;*
- (c) *“investors” means any national or company of a Contracting Party, that has made investments in the territory of other Contracting Party;*
- (d) *“nationals” means:*

²⁵ Treaties: India-Brunei Darussalam BIT, 2008

- (i) *in respect of India: persons deriving their status as Indian nationals from the law in force in India;*
- (ii) *in respect of Brunei Darussalam: natural persons who are accorded the status of a national of Brunei Darussalam under the applicable laws in Brunei Darussalam.*

A12. India-Uruguay BIT²⁶

- (b) *"investment" means any kind of assets acquired or established, including changes in the form of investment in accordance with the national laws of the Contracting Party in whose territory the investment was made, including, inter alia:*
 - (i) *Movable and immovable property as well as other rights such as mortgages, liens and pledges;*
 - (ii) *Stocks, shares, debentures of companies or any other form of participation in companies;*
 - (iii) *Rights related to claims to money or to any performance of contracts involving an economic value;*
 - (iv) *Intellectual property rights, such as copyrights, patents, technical processes, trade marks, industrial designs, trade names, know-how and keys, subject to the laws of the contracting parties;*
 - (v) *Business concessions conferred by law or under contract, including concessions to search for mining and oil and other minerals;*
- (c) *"investors" means a national or company of a Contracting Party, bearing in mind that a natural person who is a dual national shall be deemed to be exclusively a national of the State in respect of which it is dominant and effective nationality.*

²⁶ Treaties: India-Uruguay BIT, 2008

- (d) "national" means:
- (i) In respect of India: natural persons whose status is Indian nationals Under the law in force in India;
 - (ii) In relation to Uruguay: natural persons who have Uruguayan nationality in accordance with the laws of that country.

**A13. India-Ethiopia²⁷, India-China²⁸, India-Armenia²⁹,
India-Taiwan³⁰, India-Yemen³¹, India-Ghana³²,
India-Cyprus³³, India-Ukraine³⁴, India-Mongolia³⁵,
India-Lao People's Democratic Republic³⁶,
India-Thailand³⁷ and India-Sri Lanka³⁸ BITs**

1. "investment" shall* mean every kind of asset established or acquired, including changes in the form of such investment, 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** rights such as mortgages, liens or pledges;
 - (ii) shares in and stocks and debentures of a company and any other similar forms of participation in a company***;

²⁷ Treaties: India-Ethiopia BIT, 2007

²⁸ Treaties: India-China BIT, 2006

²⁹ Treaties: India-Armenia BIT, 2003

³⁰ Treaties: India-Taiwan BIT, 2002

³¹ Treaties: India-Yemen BIT, 2002

³² Treaties: India-Ghana BIT, 2002

³³ Treaties: India-Cyprus BIT, 2002

³⁴ Treaties: India-Ukraine BIT, 2001

³⁵ Treaties: India-Mongolia BIT, 2001

³⁶ Treaties: India-Lao People's Democratic Republic BIT, 2000

³⁷ Treaties: India-Thailand BIT, 2000

³⁸ Treaties: India-Sri Lanka BIT, 1997

- (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 concession conferred by law or under contract, including concessions to search for and extract oil and other minerals@; *** @@ @@@*
2. *"investor" shall mean any natural person or a legal entity of a Contracting Party; \$ \$\$ \$\$\$ & && &&& % %%*
- (i) *natural person is a person deriving his status as a national from the laws in force of that Contracting Party;*
 - (ii) *legal entity means an entity constituted or incorporated under the laws of each contracting Party such as companies, corporations, firms and associations having its ' economic activity in the territory of that same Contracting Party.*

For additional clauses see notes below. %%% ^ ^^ ^^ ~ ^^

Notes

- * In case of Cyprus, Ukraine, Thailand and Sri Lanka this clause should be read without the word "shall".
- ** In case of Ghana and Mongolia the word "*property*" should be read in between the words "*other*" and "*rights*" here in this sub-clause)
- *** In case of Mongolia equivalent of sub-clauses (ii) and (v) of clause (1) read as follows:
 - (i) *shares in and stock and debentures of a company or interest in he property of such companies and any other similar forms of participation m a company;*
 - (v) *Business concession, including concessions to search for and extract oil and other natural resources, in accordance with the laws of the host country;*
- # In case of Lao People's Democratic Republic word "*rights*" should be read as "*claims*".

In case of Lao People's Democratic Republic and Sri Lanka sub-clause (iv) of clause (1) reads as follows:

(iv) *Intellectual property rights including* (in case of Sri Lanka, this sub-clause should be read without the word “including”) *goodwill, technical processes and know-how, in accordance with the relevant laws of the respective Contracting Party;*

In case of Ukraine and Thailand sub-clause (iv) of clause (1) reads as follows:

(iv) *intellectual property rights, goodwill, technical processes and know how in accordance with the relevant laws of the respective Contracting Party;*

@ In case of Lao People's Democratic Republic “oil and other minerals” should be replaced with “natural resources”.

@@ In case of Yemen, the sub-clause (v) of clause (1) reads as follows:

(v) *business concession, related to investment, conferred by law or under contract, to search for and extract natural resources;*

@@@ In case of Thailand sub-clause (v) of clause (1) reads as follows:

(v) *business concessions conferred by law or under contract, including concessions to search for and extract oil, minerals and other natural resources;*

\$ In case of China, the equivalent of clause (2) reads as follows:

(a) *“investor” means any national or company of a Contracting Party;*

(i) *“nationals” mean persons of either Contracting Party deriving their status as nationals of that Contracting Party from its laws in force.*

(ii) *“Companies” mean corporations, firms and associations incorporated or constituted or established in the territory of either Contracting Party under its laws in force.*

\$\$ In case of Sri Lanka, the clause (2) reads as follows:

(a) *“investor” means any national or company of a Contracting Party;*

\$\$\$ In case of Armenia, the equivalent of clause (2) reads as follows:

(3) *“investors” means for either Contracting Party, the following subjects who invest in the territory of the other Contracting Party in accordance with*

the laws of the latter Contracting Party and the provisions of this Agreement.

- (i) any natural person who is a citizen of either Contracting Party in accordance with its laws; or*
- (ii) any legal person such as company, corporation, firm, association incorporated or constituted in accordance with the laws and regulations of one of the Contracting Parties and having its registered office in the territory of that Contracting Party.*

& In case of Taiwan, the equivalent of clause (2) reads as follows:

- 3. “investor” means any natural person, who is born in and/or is a permanent resident of a territory and carrying a passport or any other identification card/ certificate of such nature issued by the competent authorities of that territory, or juridical persons, such as corporations, firms, associations, etc., incorporated, constituted or established under the laws in force in that territory.*

&& In case of Yemen, Mongolia, Lao People’s Democratic Republic and Thailand the equivalent of clause (2) reads as follows:

- (c) “investor” means any national or company of a Contracting Party;*

&&& In case of Ghana the equivalent of clause (2) reads as follows:

- (c) A investor means any national or company of a Contracting Party who has fulfilled the relevant conditions for establishment and operation in the territory of the other Contracting Party.*

% In case of Cyprus, the equivalent of clause (2) reads as follows:

- (c) “investors” mean any natural persons or companies of a Contracting Party;*

%% In case of Ukraine the equivalent of clause (2) reads as follows:

- (a) “investors” means any national or company of a Contracting Party;*

%%& In case of Armenia the following clause is also provided:

- (1) “Companies” means corporations, firms and associations incorporated or constituted or established under the law in force in any part of the Contracting Parties.*

^ In case of Yemen and Sri Lanka, additional clauses are as follows:

- (a) “Companies” means:
 - (i) *in respect of the Republic of India: corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;*
 - (ii) *In respect of the Republic of Yemen: any entity constituted or organized under the applicable laws whether privately or governmentally owned or controlled.*
 - (i) *in respect of Sri Lanka: corporations, firms and associations incorporated or constituted or established under the law in force in any part of Sri Lanka;*
- (d) “nationals” means:
 - (i) *In respect of the Republic of India: - natural (in case of Sri Lanka, with respect to India, this sub-clause should be read without the word “natural”) persons deriving their status as Indian nationals from the law in force in India;*
 - (ii) *In respect of the Republic of Yemen: - persons deriving their status as Yemeni nationals from the law in force in Yemen;*
 - (i) *in respect of Sri Lanka : persons who are citizens of Sri Lanka according to its laws;*

^^ In case of Ghana, Mongolia and Lao People’s Democratic Republic additional clauses provided are as follows:

- (a) *Companies means: (sic)*
 - (i) *in respect of India: corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;*
 - (ii) *in respect of the Republic of Ghana: (“corporations” should be read additionally here in case of Mongolia and Lao People’s Democratic Republic) firms and associations incorporated or constituted or established under the law in force in any part of Ghana. (in case of Mongolia and Lao People’s Democratic Republic, the country name should be replaced with the name of the respective country)*

(d) *A nationals means:*

- (i) *In respect to the Republic of India: - natural (in case of Lao People's Democratic Republic the word "natural" should be replaced with "physical") persons deriving their status as Indian nationals from the law in force in India;*
- (ii) *In respect of the Republic of Ghana: natural persons deriving this status as Ghanaian nationals from the law in force in Ghana. (in case of Mongolia and Lao People's Democratic Republic, the country name should be replaced with the name of the respective country)*

^^^ In case of Cyprus, additional clauses provided are as follows:

(a) *"Companies" mean:*

- (i) *In respect of India: corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;*
- (ii) *In respect of the Republic of Cyprus:- any legal persons constituted or incorporated in compliance with its laws and regulations and having their seat in the territory of the Republic of Cyprus;*

who in compliance with this Agreement are making investments in the territory of the other Contracting Party.

(d) *"natural person" means:*

- (i) *In respect of the Republic of India: persons deriving their status as Indian citizens from the law in force in India;*
- (ii) *In respect of the Republic of Cyprus:- persons having the citizenship of the Republic of Cyprus, in accordance with its laws and regulations.*

~ In case of Ukraine, additional clauses are as follows:

(a) *"companies" means:*

- (i) *in respect of India: corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;*
- (ii) *in respect of Ukraine; any legal entities which are established under the laws of Ukraine and recognized as legal persons by its laws and have their seat in the territory of Ukraine.*

- (d) *“nationals” means;*
- (i) *in respect of India: persons deriving their status as Indian nationals from the law in force in India;*
 - (ii) *in respect of Ukraine: any natural person having the nationality of Ukraine in accordance with its laws;*

~~ In case of Thailand, additional clauses are as follows:

- (a) *“Companies” means:*
- (i) *In respect of the Kingdom of Thailand, any juridical person incorporated or constituted under the law in force in the Kingdom of Thailand whether or not limited liability and whether or not for pecuniary profit;*
 - (ii) *In respect of India: corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;*
- (d) *“national” means:*
- (i) *in respect of the Kingdom of Thailand, any person who possesses Thai nationality under the law in force in the Kingdom of Thailand;*
 - (ii) *in respect of India, persons deriving their status as Indian nationals from the law in force in India;*

A14. India-Iceland³⁹, India-Bosnia and Herzegovina⁴⁰, India-Bahrain⁴¹, India-Indonesia⁴² and India-Romania⁴³ BITs

- (b) *“Investment” means every kind of asset established or acquired, including changes in the form of such investment, in accordance*

³⁹ Treaties: India-Iceland BIT, 2007

⁴⁰ Treaties: India-Bosnia and Herzegovina BIT, 2006

⁴¹ Treaties: India-Bahrain BIT, 2004

⁴² Treaties: India-Indonesia BIT, 1999

⁴³ Treaties: India-Romania BIT, 1997

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 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, extract, cultivate## or### exploit@ natural resources.*
- (c) “Investors” means any national or company of a Contracting Party@@, who has made investment in the territory of other Contracting Party; @@@ \$*
- (d) “Nationals” means: \$\$ \$\$\$*
- (i) in respect of India: persons deriving their status as Indian nationals from the law in force in India;*
 - (ii) in respect of Iceland: Natural persons having Icelandic citizenship in accordance with the Republic of Iceland’s legislation&.*

For additional clauses see notes below. && &&&

Notes

* In case of Indonesia, this clause should be read with “and regulations” in between “national laws” and “of the Contracting”.

** In case of Bahrain, replace “rights” with “claims”.

*** In case of Bosnia and Herzegovina equivalent of sub-clause (iv) of clause (b) reads as follows:

(d) *intellectual property rights, such as copyrights and related rights, patents, industrial designs, trademarks, trade names and know-how;*

In case of Indonesia sub-clause (iv) of clause (b) reads as follows:

(iv) *intellectual property rights, goodwill, technical processes and know-how in accordance with the relevant laws of the respective Contracting Party;*

In case of Romania this clause should be read without the word “cultivate”.

In case of Indonesia the words “cultivate or” be replaced with “and”.

@ In case of Romania the words “oil or other” be added here.

@@ In case of Romania, this clause ends here itself.

@@@ In case of Bosnia and Herzegovina and Indonesia equivalent of clause (c) reads as follows:

2. *“investor” means any national or company of a Contracting Party:*

\$ In case of Bahrain equivalent of clause (c) reads as follows:

(a) *“Investor” means:*

(i) *natural persons deriving their status as nationals of either Contracting Party according to its applicable law.*

(ii) *corporations, firms or business associations incorporated or constituted or established under the law in force in either of the Contracting Parties.*

\$\$ In case of Bosnia and Herzegovina equivalent of clause (d) reads as follows:

2.1 *“national” means:*

a) *in respect of Bosnia and Herzegovina: any physical person deriving her/his status as Bosnia and Herzegovina citizen from the law in force in Bosnia and Herzegovina if she/he has permanent residence or main place of business in Bosnia and Herzegovina;*

b) *in respect of India: any person deriving her/his status as Indian national from the law in force in India;*

\$\$\$ In case of Indonesia, equivalent of clause (d) reads as follows:

(a) *“national” means:*

(i) *in respect of the Republic of Indonesia:*

natural person having the nationality of Indonesia in accordance with its laws;

(ii) *in respect of the Republic of India:*

persons deriving their status as Indian nationals from the law in force in India.

& In case of other countries, the country name be replaced with the name of the respective country.

&& Additional clause in case of Indonesia reads as follows:

(b) *"company" means:*

(i) *in respect of the Republic of Indonesia:*

legal person constituted or incorporated in accordance with its laws and regulations;

(ii) *in respect of the Republic of India:*

corporations, firms and associations incorporated or constituted or established under the law in force in any part of India.

&&& Additional clause in case of Romania reads as follows:

(b) *"company" means:*

(i) *In respect of Romania: legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organised under the law in force in Romania and have their seat together with real economic activities in the territory of Romania.*

(ii) *in respect of the Republic of India:*

corporations, firms and associations incorporated or constituted or established under the law in force in any part of India.

A15. India-Mexico BIT⁴⁴

7. **“investment”** means the following assets established or acquired by an investor of one Contracting Party in accordance with the laws in force of the other Contracting Party in whose territory the investment is made, and involving the commitment of capital, expectation of gain or profit or an assumption of risk:
- (a) an enterprise having substantial business operations in the territory of the host Contracting Party;
 - (b) shares, stocks and other forms of equity participation in an enterprise;
 - (c) bonds, debentures and other debt security of an enterprise
 - (i) where the enterprise is an affiliate of the investor, or
 - (ii) where the original maturity of the debt security is at least three years, but does not include a debt security, regardless of original maturity, of a Contracting Party or of a State enterprise;
 - (d) a loan to an 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,

but does not include a loan, regardless of original maturity, to a Contracting Party or to a State enterprise;
 - (e) movable and immovable property as well as other rights such as mortgages, liens or pledges, acquired in the expectation or used for the purpose of economic benefit or other business purposes;

⁴⁴ Treaties: India-Mexico BIT, 2007

- (f) *interests arising from the commitment of capital or other resources in the territory of a Contracting Party to economic activity in such territory, such as under*
 - (i) *contracts involving the presence of an investor's property in the territory of the other Contracting Party, including turnkey or construction contracts,*
 - (ii) *business concessions conferred by law or under contract, including concessions to search for and extract natural resources, or*
 - (iii) *contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;*
- (g) *intellectual property rights; and*
- (h) *claims to money involving the kind of interest set out in (a) to (g) above but no claims to money that arise solely from*
 - (i) *commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Contracting Party to an enterprise in the territory of the other Contracting Party, or*
 - (ii) *the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d) above;*

8. ***“investor of a Contracting Party” means:***

- (a) *a natural person having the nationality or citizenship of a Contracting Party in accordance with its applicable laws, or*
- (b) *an enterprise which is either constituted or otherwise organized under the law of a Contracting Party, and is engaged in substantive business operations in the territory of that Contracting Party;*

having an investment in the territory of the other Contracting Party;

A16. India-Greece BIT⁴⁵

1. *“Investment” means every kind of asset invested by an investor of one Contracting Party in the territory of the Other Contracting Party in accordance with the legislation of the latter Contracting Party, and in particular, though not exclusively, includes:*
 - (a) *movable and immovable property and any rights in rem such as servitudes, usufructs, mortgages, liens or pledges;*
 - (b) *shares in and stock and debentures of a company and any other form of participation in a company;*
 - (c) *claims to money or to any performance under contract having an economic value, as well as loans connected to an investment;*
 - (d) *intellectual property rights;*
 - (e) *concessions under public law, including concessions to search for, extract or exploit natural resources as well as other rights conferred by law, by contract or by decision of the authority, in accordance with the law;*

A possible change in the form in which the investments have been made does not affect their character as investments.

3. *“Investor” means with regard to either Contracting Party:*
 - a) *natural persons having the nationality of that Contracting Party in accordance with its law;*
 - b) *legal persons or other entities, including companies, corporations, business associations and partnerships, which are constituted or otherwise duly organised under the laws of that Contracting Party and have their substantive business activities in the territory of that same Contracting Party.*

⁴⁵ Treaties: India-Greece BIT, 2007

A17. India-Slovakia BIT⁴⁶

1. *“investment” means every kind of assets or rights established or acquired by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the host Contracting Party and shall include, in particular, though not exclusively:*
 - a. *movable and immovable property as well as and any other property rights such as mortgages, liens, leases or pledges;*
 - b. *shares in, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived therefrom;*
 - c. *claims to money or to any performance under contract having an economic value;*
 - d. *intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, in as far as both Contracting Parties are parties to them, including but not limited to, industrial property rights, copyrights and related rights, trademarks, patents. Industrial design and technical processes, rights in plant varieties, geographical indications, knowhow, trade secrets, trade names and goodwill.*

Any alternation or change of the form in which assets or rights are invested or reinvested shall not affect their character as an investment.
3. *“investor” means any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party:*
 - a) *the term “natural person” means a natural person having the nationality of that Contracting Party in accordance with its laws; and b) the term “legal person” means:*

⁴⁶ Treaties: India-Slovakia BIT, 2006

- i) *in respect of the Republic of India:*
- any entity that is incorporated, constituted, set up or otherwise duly organized under the laws and regulations of the Republic of India, whether or not for profit, whether privately or otherwise owned, with limited or unlimited liability, including any corporation, company, association, partnership, trust, joint venture, co-operatives or sole proprietorship. A legal person shall not include an entity, which is established and located in the territory of the Republic of India with negligible or nil business operations or with no real and continuous business activities carried out in its territory.*
- ii) *in respect of the Slovak Republic:*
- any entity which is incorporated or constituted in accordance with the laws and regulations of the Slovak Republic and which has its registered office, central administration or principal place of business in the Slovak Republic. However, should such a legal person have only its registered office in the territory of the Slovak Republic, its operations must possess a real and continuous link with the economy of that Contracting Party.*

A18. India-Saudi Arabia BIT⁴⁷

1. *the term “investment” means every kind of asset, owned by an investor of a Contracting Party in the territory of the other Contracting Party according to its legislation and in particular, but not exclusively includes:*

⁴⁷ Treaties: India-Saudi Arabia BIT, 2006

- a) *movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges, usufructs and similar rights;*
- b) *shares, stocks and debentures of companies and other right or interest in companies as well as securities issued by a Contracting Party or any of its investors, in accordance with the relevant laws and regulations of the host Contracting Party for such securities;*
- c) *claims to money such as loans or to any performance having an economic value, associated with an investment;*
- d) *intellectual property rights, including but not limited to copyrights, patents, industrial designs, know-how, trademarks, trade names and goodwill in accordance with the relevant laws of the respective Contracting Party;*
- e) *business concession conferred by law or under contract or any license or permit issued according to law;*

any alteration of the form in which assets are invested or reinvested shall not affect their classification as investment, provided that such alteration is not in conflict with the legislation of the Contracting Party in the territory of which the investment is made.

3. The term “investor” means:

- a) *In respect of the Republic of India:*
 - I. *nationals deriving their status as Indian nationals from the law in force in India;*
 - II. *companies, corporations, firms and associations incorporated or constituted or established under the law in force in any part of India.*
- b) *in respect of the Kingdom of Saudi Arabia:*
 - I. *natural persons possessing the nationality of the Kingdom of Saudi Arabia in accordance with the law of the Kingdom of Saudi Arabia;*

- II. *any entity having legal personality and constituted in accordance with the laws of the Kingdom of Saudi Arabia and having its head office in its territory such as corporations, enterprises, cooperatives, companies, partnerships, offices, establishments, funds, organizations, business associations and other similar entities irrespective of whether or not they are of limited liability;*
- III. *the Government of the Kingdom of Saudi Arabia and its financial institutions and authorities such as the Saudi Arabian Monetary Agency, public funds and other similar governmental institutions existing in Saudi Arabia.*

A19. India-Hungary BIT⁴⁸

- 1. *"investment" means every kind of asset established or acquired, in connection with economic activities by an investor of one Contracting Party in the territory of the other 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:*
 - (a) *movable and immovable property as well as other rights such as mortgages, liens or pledges;*
 - (b) *shares in and stock and debentures of a company and any other similar forms of participation in a company;*
 - (c) *rights to money or to any performance under contract having an economic value;*

⁴⁸ Treaties: India-Hungary BIT, 2003

- (d) *intellectual property rights, including patents, copyrights, trade marks and registered designs, in accordance with the relevant laws of the respective Contracting Party;*
- (e) *any right or business concessions conferred by law or under contract and any licenses pursuant to law, including the concessions to search for, exploit or extract oil and other natural resources.*

Any alteration of the form in which assets are invested shall not affect their character as investment.

- 2. *"investor" means any national or company of a Contracting Party who invests in the territory of the other Contracting Party.*
- 3. *"national" means natural persons having the nationality of either Contracting Party in accordance with its laws.*
- 4. *"company" means:*
 - (a) *in respect of Hungary: any entity with or without legal personality incorporated or constituted in accordance with its laws;*
 - (b) *in respect of India: corporations, firms and associations incorporated or constituted or established under the law in force in any part of India.*

A20. India-Sudan⁴⁹, India-Djibouti⁵⁰ and India-Kyrgyzstan⁵¹

BITs

- (a) *"Company" means:***
 - (i) *in respect of India: corporation, association firm duly incorporated, constituted, set up otherwise duly organized:*
 - (I) *under the law in force in any part India; or*

⁴⁹ Treaties: India-Sudan BIT, 2003

⁵⁰ Treaties: India-Djibouti BIT, 2003

⁵¹ Treaties: India-Kyrgyzstan BIT, 1997

- (II) *under the law of a third country but which is owned or controlled by an entity covered by paragraph(I) above or by a natural person who is a citizen of India;*
- (ii) *in respect of Sudan : any companies registered or established by company law Act 1925 and any other amend in en t.*
- (b) *“investment” means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is ide and in particular, though not exclusively, includes:*
 - (i) *movable and immovable property as well as rights*** such as mortgages, liens or pledges;*
 - (ii) *shares in and stock and debentures of a company or any other similar interests in the property of such# company##;*
 - (iii) *rights to money or to any performance tinder contract having a financial value;*
 - (iv) *intellectual property rights, in accordance with relevant laws of the respective Contracting Party;*
 - (v) *business concessions conferred by law or under contract, including concessions to search for, extract, or market### oil and other minerals ;*
- (c) *“investors” means any national or company of a Contracting Party;*
- (d) *“nationals” means:*
 - (i) *in respect of India : persons deriving their status as Indian nationals from the law in force in India;*
 - (ii) *in respect of Sudan : persons deriving their status as Sudanese nationals from the law in force in Sudan;@ @@*

Notes

- * The above clauses have been reproduced from the India-Sudan BIT. The treaty itself has spelling mistakes which have not been corrected above.
- ** In case of Djibouti and Kyrgyzstan clause (a) reads as follows:
- (a) “Companies” means:
- (i) *in respect of India : corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;*
- (ii) *in respect of Djibouti : corporations, firms and associations incorporated or constituted or established under the law in force in any part of Djibouti;*
- (ii) *In respect of Kyrgyz Republic: legal persons, registered or established in accordance with the legislation of the Kyrgyz Republic in force.*
- *** In case of Kyrgyzstan, the words “*as well as rights*” should be replaced with “*and any other right to property*”.
- # In case of Kyrgyzstan, the words “*interests in the property of such*” should be replaced with “*forms of participation in a*”.
- ## In case of Djibouti sub-clause (ii) of clause (b) reads as follows:
- (ii) *shares in and stock and debentures of a company and any other similar forms of participation in a company;*
- ### In case of Armenia and Kyrgyzstan, this sub-clause be read without the word “*market*”.
- @ Country name in sub-clause (ii) of clause (d) should be replaced with the name of the respective country.
- @@ In case of Kyrgyzstan sub-clause (ii) of clause (d) reads as follows:
- (ii) *in respect of Kyrgyz Republic: physical persons, having the status of citizen of the Kyrgyz Republic under the legislation of the Kyrgyz Republic in force.*

A21. India-Serbia⁵² * and India-Belarus⁵³ BITs

- (a) *the term “investment” means every kind of asset established or acquired including changes in the form of such investment, 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 rights in rem** such as mortgages, liens or pledges;*
 - (ii) *shares in and stocks and debentures of a company and any other similar forms of participation in a company***;*
 - (iii) *claims to money or to any performance under contract having a financial value;*
 - (iv) *intellectual property rights, such as copyrights and related rights and Industrial property rights, in accordance with the laws of the respective Contracting Parties#;*
 - (v) *business concessions, including concessions to search for and extract oil, minerals and other natural resources conferred by law or under contract in accordance with the laws of the host Contracting Party;*
- (b) *the term “investors” shall mean any national or a legal entity who invests in the territory of the other Contracting Party- ##*
- (i) *“national” means natural persons deriving their status as nationals of the Contracting Party according to its applicable laws.*
 - (ii) *“legal entity” means legal persons incorporated or constituted or established under the law in force in either Contracting Party and having their seat in the territory of*

⁵²Treaties: India-Serbia BIT, 2003

⁵³ Treaties: India-Belarus BIT, 2002

that Contracting Party and making investment in the territory of the other Contracting Party.

Notes

- * In 2003, when this treaty was signed, Serbia was a part of Yugoslavia.
- ** In case of India-Belarus BIT, this sub-clause should be read without the words “*in rem*”.
- *** In case of India-Belarus BIT, word “*company*” in this sub-clause be replaced with “*legal person*”.
- # In case of India-Belarus, sub-clause (iv) of clause (a) should be read as follows:
 - (iv) *intellectual property rights in accordance with the relevant laws of the respective Contracting Party;*
- ## In case of India-Belarus, clause (b) should be read as follows:
 - 2. *The term “investor” means any natural or legal person of a Contracting Party, who makes investment in the territory of the other Contracting Party:*
 - (a) *the term “natural person” means:*
 - i) *in respect of the Republic of India: persons deriving their status as Indian nationals from the law in force in the Republic of India;*
 - ii) *in respect of the Republic of Belarus: person who is a national of the Republic of Belarus in accordance with the law in force in the Republic of Belarus;*
 - (b) *the term “legal person” means:*
 - (i) *in respect of the Republic of India: companies, corporations, firms and associations incorporated or constituted or established under the law in force in any part of the Republic of India;*
 - (ii) *in respect of the Republic of Belarus: legal entities constituted or otherwise duly established under the law in force of the Republic of Belarus.*

A22. India-Finland BIT⁵⁴

- (1) *The term “Investment” means every kind of asset established or acquired in accordance with national laws and regulations of the Contracting Party in whose territory the investment is made and, includes in particular, though not exclusively:*
- (a) *movable and immovable property as well as property rights such as mortgages, liens, pledges and leases;*
 - (b) *reinvested returns;*
 - (c) *shares in and stock and debentures of a company and any other form of participation in an enterprise;*
 - (d) *claims or rights to money or to any performances under contract having economic value;*
 - (e) *intellectual and industrial property rights, such as patents, copyrights, industrial designs, trade marks, know-how and goodwill, in accordance with the relevant laws of the respective Contracting Party;*
 - (f) *business concessions conferred by law or under a contract, such as concessions to search for, extract or exploit natural resources, including concessions for mining and oil and gas exploration.*
- (2) *A change in the form in which the assets are invested or reinvested does not affect their character as an investment.*
- (3) *The term “Investor” means*
- (a) *any natural person deriving his/her status as a national of a Contracting Party from the laws of that Contracting Party, and*
 - (b) *any legal person such as a corporation, firm and association, constituted or established under the laws of the Contracting*

⁵⁴Treaties: India-Finland BIT, 2002

Party and having its registered office in the territory of the same Contracting Party.

A23. India-Kuwait BIT⁵⁵

1. “companies” means
 - (a) *in respect of India corporations. firms and associations incorporated or constituted or established under the law in force in any part of India:*
 - (b) *in respect of Kuwait : any juridical person or other entity legally constituted under the laws and regulations of Kuwait, such as institutions, development funds, authorities, foundations, establishments, agencies, enterprises, cooperatives, partnerships, corporations, companies, firms, organisations and business associations or similar entities irrespective of whether their liabilities are limited or otherwise;*

This Agreement shall not apply to any indirect investments in a Contracting State made through a company incorporated in a third state unless such company is owned to an extent of at least 51% or is controlled by investors of the other Contracting State. An investor of a Contracting State shall be regarded as controlling a company incorporated in a third state if such investor has real ownership interest in, and exercises effective control over the company. The provisions of Article 10 shall apply to any dispute regarding whether an investor controls a company incorporated in a third state.

2. “investment” means every kind of asset, owned or controlled directly or indirectly by an investor of one Contracting State and invested in the territory of the other Contracting State in accordance with the

⁵⁵Treaties: India-Kuwait BIT, 2001

laws of the Contracting State. This term shall include in particular, though not exclusively:

- (a) tangible, intangible, movable and immovable property and any property rights such as leases, mortgages, liens, pledges, usufructs and other similar rights;*
- (b) shares, stocks, bonds, debentures and any other similar forms of participation in a company and other debts and loans and securities issued by any investor of a Contracting State, and returns retained for the purpose of reinvestment and associated activities as these terms are defined hereinafter;*
- (c) rights or claims to money or to any performance under contract having a financial or economic value;*
- (d) intellectual property rights, goodwill, technical processes, know-how, copyrights, trade marks, trade names and patents in accordance with the relevant laws of the respective host Contracting State;*
- (e) any right conferred by law, contract or by virtue of any licences or permits granted pursuant to law, including rights to prospect, explore, extract, or utilise natural resources, and rights to manufacture, use and sell products, and rights to undertake other economic and commercial activities.*

Any change of the form in which assets are invested or reinvested does not affect their character as investment.

- 3. Investors” means any national, company or Government of a Contracting State:*
- 4. nationals” means natural persons holding the nationality of a Contracting State in accordance with its applicable law.*

A24. India-Croatia BIT⁵⁶

The term "investment" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:

- (a) movable and immovable property as well as other rights in rem such as mortgages, liens, pledges or similar rights;*
 - (b) stocks, shares, debentures and other forms of participation in a companies;*
 - (c) rights to money or to any performance under contract having a financial value;*
 - (d) intellectual property rights including, but not limited to, copyrights, industrial property rights, trademarks, patents, industrial designs and technical processes, know-how, trade secrets, trade names and goodwill, in accordance with the relevant laws of the respective Contracting Party;*
 - (e) rights to engage in economic and commercial activities conferred by law and by virtue of a contract, including concessions to search for, extract or exploit natural resources.*
- (2) The term "investor" means in respect of either, Contracting Party:*
- (a) a natural person, a national of a Contracting Party according to its laws, who makes an investment in the territory of the other Contracting Party;*
 - (b) a legal person incorporated, constituted or otherwise duly organised in accordance with the laws and regulations of each Contracting Party.*

⁵⁶Treaties: India-Croatia BIT, 2001

A25. India-Sweden BIT⁵⁷

- (a) *"investments" mean every kind of asset established or acquired, including changes in the form of such investment, 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 any other property rights, such as mortgages, liens, leases 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, goodwill, technical processes and know how in accordance with the relevant laws of the respective Contracting Party;*
 - (V) *business concessions and other rights required to conduct economic activity conferred by law or under contract, including concessions to search for and extract oil and other minerals;*
- (b) *"investors" mean any national or company of a Contracting Party;*
- (c) *"nationals" mean any person who is a national of a Contracting Party in accordance with its laws;*
- (d) *"companies" mean any corporations, firms and associations incorporated or constituted under the law in force in the territory of either Contracting Party, or in a third country if at least 51 percent of the equity interest is owned by investors of that Contracting Party, or in which investors of that Contracting Party control at*

⁵⁷Treaties: India-Sweden BIT, 2000

least 51 percent of the voting rights in respect of shares owned by them.

A26. India-Portugal⁵⁸ and India-Bulgaria⁵⁹ BITs

- (1) *"Investments" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes*:*
- a) *Movable and immovable property as well as any other rights in rem **, such as mortgages, liens and pledges;*
 - b) *Shares, stocks, debentures, or other forms of interest in the equity of a company***;*
 - c) *Claims to money or to any performance under contract having financial value;*
 - d) *Intellectual property rights, in accordance with the relevant laws of the respective Contracting Party;*
 - e) *Business concessions conferred by law, under a contract, or an administrative act of a competent state authority, including concessions for prospecting, research and exploitation of natural resources#;*
- 3) *##The term "investors" means:*
- a) *Natural persons having the nationality of a Contracting Party, in accordance with its laws; and*
 - b) *Legal persons, including corporations, commercial companies or other companies or associations, incorporated or constituted in accordance, with the laws of a Contracting*

⁵⁸ Treaties: India-Portugal BIT, 2000

⁵⁹ Treaties: India-Bulgaria BIT, 1998

Party and engaged in substantive business operations in the territory of that Contracting Party;

Notes

* In case of Bulgaria, this paragraph should be read as follows:

(1) *The term “investment” shall mean every kind of asset invested, including changes in the form of such investment, in accordance with laws and regulations of the Contracting Party in whose territory the investment is made and in particular, though not exclusively, includes:*

** In case of Bulgaria, this sub-clause should be read without the words “in rem”.

*** In case of Bulgaria, sub-clause (b) of clause (1) should be read as follows:

(a) *shares, stocks, debentures or other forms of participation in companies;*

In case of Bulgaria, this sub-clause should be read without the words “including concessions for prospecting, research and exploitation of natural resources”.

In case of Bulgaria, equivalent of clause (3) reads as follows:

(1) *The term “investor” shall mean:*

(a) *With respect to the Republic of India;*

- natural persons deriving their status as Indian nationals from the law in force in India;

- corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;

(b) *With respect to the Republic of Bulgaria:*

- a natural person who is a national of the Republic of Bulgaria in accordance with its applicable legislation;

- any company, organization or association with or without juridical personality incorporated or constituted in accordance with the laws of the Republic of Bulgaria with a seat in its territory;

A27. India-Philippines BIT⁶⁰

1. *“Investment” means every kind of asset established or acquired, in accordance with the laws of the Contracting Party in whose territory the Investment is made and in particular, though not exclusively, includes:*
 - a) *movable and immovable property as well as other rights such as mortgages, liens, pledges or usufructs;*
 - b) *shares of stock and debentures of a company and any other similar forms of participation in a company;*
 - c) *rights to money or to any performance under contract having a financial value;*
 - d) *Intellectual property rights in accordance with the relevant laws of the respective Contracting Party;*
 - e) *business concessions conferred by law or under contract, including concessions to search for and extract or exploit natural resources.*
2. *“Nationals” means:*
 - a) *In respect of the Republic of India: person deriving their status as Indian nationals from the law in force in India;*
 - b) *In respect of the Republic of the Philippines: citizens of the Philippines within the meaning of article IV of its Constitution*
3. *“Companies” means:*
 - a) *In respect of the Republic of India: corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;*
 - b) *In respect of the Republic of the Philippines: corporations, partnerships or other associations, incorporated or constituted and actually doing business under the laws in*

⁶⁰ Treaties: India-Philippines BIT, 2000

force in any part of the territory of that Contracting Party wherein a place of effective management is situated. Provided that any particular company may be excluded from the foregoing definition by mutual agreement between the Contracting Parties on grounds of the need to maintain public order, to protect essential security interest or to fulfil commitments relating to peace and security.

4. *investor” means any national or company of a Contracting Party, as defined in paragraphs 2 and 3 above.*

A28. India-Austria BIT⁶¹

- (1) *the term "investor" means in respect of each Contracting Party*
- (a) *any natural person who is a citizen of either Contracting Party in accordance with its laws in force;*
 - (b) *any juridical person, partnership or any other entity constituted or incorporated in accordance with the laws in force of either Contracting Party;*
 - (c) *any juridical person, partnership or any other entity constituted or incorporated under the laws of a third State, which is controlled by investors referred to in (a) or (b), meaning that these investors have the ability to exercise decisive influence over the management and operation of the firstmentioned entity, demonstrated specifically by way of:*
 - (i) *ownership of at least 51 % of shares or voting rights,*
or
 - (ii) *the ability to exercise decisive control over the composition of the Board of Directors making or having made an investment in the territory of the other Contracting Party.*

⁶¹ Treaties: India-Austria BIT, 1999

- (2) *the term "investment" shall mean every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and comprises in particular, though not exclusively:*
- (a) *movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges and similar rights;*
 - (b) *shares and any other type of participation in companies or other business enterprises;*
 - (c) *claims to money that has been given in order to create a financial value or claims to any performance having a financial value;*
 - (d) *intellectual property rights such as copyrights, trademarks, patents, industrial designs and technical processes, know-how, trade secrets, trade names and goodwill in accordance with the relevant laws of the respective Contracting Party;*
 - (e) *business concessions conferred by law or under contract, including concessions to search for and extract oil and other minerals.*

A29. India-Argentina⁶² and India-Israel⁶³ BITs

- (a) *"companies" means corporations, firms and associations incorporated, constituted or established under the laws and regulations of either Contracting Party and engaged in substantive business operations in the territory of the same Contracting Party,^{***}*
- (b) *“investment” means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws and regulations of the Contracting Party in*

⁶² Treaties: India-Argentina BIT, 1999

⁶³ Treaties: India-Israel BIT, 1996

whose territory the investment is made and in particular, though not exclusively, includes:

- (i) Movable and immovable property as well as other 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*; loans only being included when they are directly related to a specific investment;*
 - (iv) Intellectual property rights, goodwill, technical processes and know how 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;*
- (c) The meaning and scope of the different assets shall be determined by the laws and regulations of the Contracting Party in the territory of which the investment has been made.***
- (d) "investor" means any national or company of a Contracting Party;****
- (e) "nationals" means any natural person who is a national of the respective Contracting Party in accordance with its laws on nationality;*

Notes

* In case of Israel, this sub-clause should be read only till “financial value”.

** In case of Israel, this clause should be deleted.

*** In case of Israel, clauses (a) and (d) read as follows:

- (a) “companies” means:*

Corporations, firms and associations incorporated or constituted or established under the law in force in any part of the respective Contracting Parties;

(d) “nationals” means:

(iii) *in respect of investments made in India: natural persons who are nationals of the State of Israel.*

(iv) *in respect of investment made in Israel: persons deriving their status as Indian nationals from the law in force in India as long as they have not acquired nationality or permanent resident status of the State of Israel.*

A30. India-Uzbekistan⁶⁴, India-Kazakhstan⁶⁵, and India-Turkmenistan⁶⁶ BITs

(1) *The term* “investor” means any natural or judicial person. making investments in the territory of the state of the other Contracting Party.***

a. *The term* “natural person” means:*

In respect of the republic of India: persons deriving their status as Indian nationals from the law in force in India.

*In respect of the Republic of Uzbekistan: natural persons having the citizenship or nationality of, or persons who are permanently residing in the Republic of Uzbekistan in accordance with its laws.****

b. *The term* “juridical person” means with regard to both Contracting Parties any legal entity - company, corporation, firm, association, enterprise, registered# or established in any part of that Contracting Party in accordance with its legislation in force.*

⁶⁴ Treaties: India-Uzbekistan BIT, 1999

⁶⁵ Treaties: India-Kazakhstan BIT, 1996

⁶⁶ Treaties: India-Turkmenistan BIT, 1995

- (2) *The term^{##} “investments” means any kind of asset established or acquired Including related rights on them^{###}, in accordance with the national laws of the Contracting Party in whose territory the investments are made, including, but not exclusively:*
- a. movable and immovable property as well as other rights such as mortgages, liens or pledges;*
 - b. shares in and stock and debentures of a company and any other similar forms of participation in a company as well as government securities[@];*
 - c. rights to money or to any performance under contract having a financial value;*
 - d. intellectual property rights, goodwill, technical processes and know how in accordance with the relevant laws of the respective Contracting Party;*
 - e. ^{@@}concessions granted by law or under contract, including concessions to search for and extract oil and other natural resources^{@@@}.*

Change in the form in which assets are invested does not affect their character as investments. ^{\$} ^{\$\$\$}

For additional clauses, see notes below.^{\$\$\$}

Notes

* In case of Kazakhstan this clause should be read without the starting words “*The term*”.

** In case of Turkmenistan, the equivalent of clause (1) reads as follows:

- (c) “investor” means any natural or company of a Contracting Party;*
- (d) “nationals” means:*
 - (i) in respect of India: persons deriving their status as Indian nationals from the law in force in India*
 - (ii) in respect of Turkmenistan : physical persons who are citizens of Turkmenistan in accordance with the legislation of Turkmenistan in force.*

- *** In case of Kazakhstan and Turkmenistan, the country name should be replaced with name of the respective country.
- # In case of Kazakhstan, the word “*registered*” should be replaced with “*incorporated or constituted*”.
- ## In case of Kazakhstan and Turkmenistan, this clause should be read without the starting words “*The term*”.
- ### In case of Kazakhstan and Turkmenistan, the words “*related rights on them*” be replaced with “*changes in the form of such investment*”.
- @ In case of Kazakhstan and Turkmenistan, this sub-clause should be read without the words “*as well as government securities*”.
- @@ In case of Kazakhstan and Turkmenistan, the word “*business*” should be read at the beginning of this sub-clause.
- @@@ In case of Kazakhstan and Turkmenistan, the words “*natural resources*” should be replaced by “*other minerals*” in this sub-clause.
- \$ In case of Turkmenistan, this sub-para should be excluded.
- \$\$ In case of Kazakhstan, this sub-para should be replaced by the following clause:
- (e) *Investment form modification, allowed in accordance with the legislation and other normative acts of the Contracting Party state, at the territory of which the investment has been made, does not change its nature as an investment.*
- \$\$\$ In case of Turkmenistan, additional clause reads as follows:
- (a) “*Companies*” means:
- (i) *in respect of India, corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;*
- (ii) *in respect of Turkmenistan, every juridical person, associations, firms, companies and other societies or unions with the rights of a juridical entity founded in accordance with the legislation of Turkmenistan and located on its territory.*

A31. India-Australia BIT⁶⁷

(a) *"company" means any corporation, association, partnership, trust or legally recognised entity that is duly incorporated, constituted, set up or otherwise duly organised:*

(i) *under the laws of a Contracting Party; or*

(ii) *under the law of a third country and is owned or controlled by an entity described in paragraph (a)(i) of this Article or by a natural person who is a citizen or permanent resident of a Contracting Party;*

regardless of whether or not the entity is organised for pecuniary gain, privately or otherwise owned, or organised with limited or unlimited liability;

(b) *"freely convertible currency" means a convertible currency as classified by the International Monetary Fund or any currency that is widely traded in international foreign exchange markets;*

(c) *"investment" means every kind of asset, including intellectual property rights, invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and investment policies of that Contracting Party, and in particular, though not exclusively, includes:*

(i) *moveable and immovable property as well as other rights such as mortgages, liens, or pledges;*

(ii) *shares, stocks, bonds and debentures and any other form of participation in a company;*

(iii) *right to money or to any performance having a financial value, contractual or otherwise;*

(iv) *business concessions and any other rights required to conduct economic activity and having economic value*

⁶⁷ Treaties: India-Australia BIT, 1999

conferred by law or under a contract, including rights to search for, extract and utilise oil and other minerals;

(v) activities associated with investments, such as the organisation and operation of business facilities, the acquisition, exercise and disposition of property rights including intellectual property rights;

(d) "investor" means:

(i) in respect of India, a company or a national. A national is a person deriving status as an Indian national from the laws in force in India;

(ii) in respect of Australia, a company or a natural person who is a citizen or permanent resident of Australia. A permanent resident is a natural person whose residence in Australia is not limited as to time under its laws;

A32. India-Morocco BIT⁶⁸

*(a) *movable and immovable property and any other property rights such as mortgages, pledges, and liens;*

(b) shares, stocks or any other form of participation in companies;

(c) claims to money or to any performance under contract having a financial value;

(d) intellectual property rights in accordance with the relevant laws of the respective Contracting Party;

(e) business concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources;

⁶⁸ Treaties: India-Morocco BIT, 1999

Any change of the legal form in which assets are invested or reinvested does not affect their character as investments in the meaning of this Agreement.

- (2) *The term "investor" means in respect of each Contracting Party:*
- (a) *any natural person having Moroccan or Indian nationality under the law in force in the respective Contracting Parties ;*
 - (b) *any legal person or entity constituted under the law in force in each of the Contracting Parties and having effective economic activity in the territory of that Contracting Party.*

Notes

- * The first paragraph of clause 1 of Article 1 seems to be missing from the BIT available in public domain.

A33. India-Zimbabwe BIT⁶⁹

- (a) *"investments" means every kind of asset established or acquired, including changes in the form of such investment, in accordance with the national laws and regulations 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 any other rights in rem such as mortgages, liens and pledges;*
 - (ii) *shares, stocks and debentures of a company and any other similar forms of participation in a company;*
 - (iii) *claims to money or to any performance under contract having an economic value;*
 - (iv) *intellectual property rights, in accordance with the relevant laws of the respective Contracting Party;*

⁶⁹ Treaties: India-Zimbabwe BIT, 1999

- (v) *business concessions under public law or under contract including rights to search for, extract and exploit natural resources;*
- (c) *“investors” means any national or company of a Contracting Party.*
- (d) *“nationals” means natural persons deriving their status as nationals of a Contracting Party from the laws in force in that Contracting Party.*
- (e) *“companies” means:*
in respect of India:
Corporations, firms and associations incorporated or constituted or established under the law in force in any part of India.
in respect of Zimbabwe:
corporations, firms and associations incorporated or constituted under the laws in force in Zimbabwe and having their principal place of business in Zimbabwe.

A34. India-Turkey BIT⁷⁰

1. *The term “investor” means:*
 - (a) *natural persons deriving their status as nationals of either Party according to its applicable law.*
 - (b) *companies. including corporations, firms or business associations incorporated or constituted under the law in force in either of the Parties, and engaged in substantive business operations in the territory of that Party.*
2. *The term “investment” means every kind of asset established or acquired including changes in the form of such investment in accordance with the laws and regulations of the Party in which the*

⁷⁰ Treaties: India-Turkey BIT, 1998

investment is made and in particular, though not exclusively, shall include the following:

- (a) shares, stocks or any other form of participation in companies;*
 - (b) returns reinvested, claims to money or any other rights having financial value related to an investment;*
 - (c) movable and immovable property, as well as any other rights as mortgages, liens, pledges and any other similar rights as defined in conformity with the laws and regulations of the Party in whose territory the property is situated;*
 - (d) intellectual property rights, goodwill technical processes and know how in accordance with the relevant laws or the respective Party;*
 - (e) business concessions conferred by law or by contract, including concessions related to natural resources; -*
3. *The term investment shall cover all investments' existing at the time of entry into force of the Agreement as well as those made or acquired thereafter.*

A35. India-Mauritius BIT⁷¹

- (a) "investment" means every kind of asset established or acquired under the relevant laws and regulations 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 rights in rem such as mortgages, liens or pledges;*
 - (ii) shares, debentures and any other form of participation in a company;*

⁷¹ Treaties: India-Mauritius BIT, 1998

- (iii) *claims to money, or to any performance under contract having an economic value;*
- (iv) *intellectual property rights, goodwill, technical processes, knowhow, copyrights, trade-marks, trade-names and patents in accordance with the relevant laws of the respective Contracting Parties;*
- (v) *business concessions conferred by law or under contract, including any concession to search for, extract or exploit natural resources;*
- (b) *"investor" means in respect to either Contracting Party:*
 - (i) *the "national". that is a natural person deriving his or her status as a national of that Contracting Party from the relevant laws of that Contracting Party; and*
 - (ii) *the "company" that is a legal person, such as a corporation, firm or association; incorporated or constituted in accordance with the law of that Contracting Party;*
- (2) *Any change in the form in which assets are or have been invested does not affect their character as investment as defined in this Agreement.*

A36. India-BLEU BIT⁷²

- (a) *"Companies" means:*
 - (i) *In respect of India: Corporations, firms and associations incorporated or constituted or established under the law in force in any part of India;*
 - (ii) *In respect of the Belgo-Luxembourg Economic Union: any legal person constituted in accordance with the legislation of the Kingdom of Belgium or the Grand-Duchy of*

⁷² Treaties: India-BLEU (Belgium-Luxembourg Economic Union) BIT, 1997

- Luxembourg and having its registered office in the territory of the Kingdom of Belgium or the Grand-Duchy of Luxembourg;*
- (iii) *In respect of both Contracting Parties: companies established in a third country in accordance with its laws in which at least fifty-one percent equity interest is owned by investors of one of the Contracting Parties;*
- (b) *“investment” means any kind of assets and any contribution in cash, in kind or in services, invested or reinvested in any sector of economic activity, in accordance with the national laws of the Contracting Party in which the investment is made, and in particular, though not exclusively:*
- (i) *movable and immovable property as well as other rights such as mortgages, liens, usufruct or pledges;*
 - (ii) *shares in and stock and debentures a company and any other similar forms of participation in a company, including minority ones;*
 - (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, develop, exploit and extract oil, minerals or other natural resources;*
- (c) *“investors” means any national or company of a Contracting Party;*
- (d) *“nationals” means:*
- (i) *in respect of India: persons deriving their status as Indian nationals from the law in force in India;*
 - (ii) *in respect of the Be]go-Luxembourg Economic Union: any natural person who, according to the legislation of the Kingdom of Belgium or the Grand-Duchy of Luxembourg is*

considered as citizen of the Kingdom of Belgium or the Grand-Duchy of Luxembourg;

Changes in the legal form in which assets and capital have been invested or reinvested shall not affect their designation as “investments” for the purpose of this Agreement.

A37. India-Spain BIT⁷³

1. *The term “investor” means with regard to either Contracting Party:*
 - (a) *a physical person who, according to the law of that Contracting Party, is considered to be its national.*
 - (b) *any legal entity, including any company, association, partnership, corporation and any other organization incorporated or instituted or, otherwise, duly established under the law of that Contracting Party.*
2. *The term “investment” means every kind of asset invested in accordance with the national laws of the Contracting Party in whose territory the investment is made and includes in particular, though not exclusively, the following:*
 - (a) *shares in and stocks and debentures of a company and any other form of participation in a company;*
 - (b) *rights to money or to any performance under contract having economic or financial value, including loans granted for the purpose of creating economic value;*
 - (c) *movable and immovable property and any other property rights such as mortgages, liens, pledges and similar rights;*
 - (d) *Intellectual property rights, such as patents, tradenames, technical processes, trademarks, goodwill and know-how in*

⁷³ Treaties: India-Spain BIT, 1997

accordance with the relevant laws of the respective Contracting Party;

- (e) rights to undertake economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, extract or exploit natural resources.*

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment, provided that such a change is made in accordance with the laws and regulations of the host Contracting Party of the investment.

A38. India-France BIT⁷⁴

- (1) The term “investment” means every kind of asset, such as goods, intellectual property rights and other rights and interest of whatever nature, invested in the area of the Contracting Party in accordance with the laws of that Contracting Party, and in particular though not exclusively includes:*
 - a) Movable and immovable property as well as any other rights In rem such as mortgages, liens, usufructs and pledges, and similar rights;*
 - b) Shares and other kinds of interest including minority or indirect forms, in companies constituted in the territory of one Contracting Party;*
 - c) Debentures or rights to money, or to any legitimate performance having a financial value;*
 - d) Business concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources, which are located in the maritime area of the Contracting parties.*

⁷⁴ Treaties: India-France BIT, 1997

- (2) *The term “nationals” means physical persons possessing the nationality of either Contracting Party.*
- (3) *The term “company” means any legal person constituted on the territory of one Contracting Party in accordance with the laws of that Party.*
- (4) *The term “investor” means any national or company of a Contracting Party.*

A39. India-Switzerland BIT⁷⁵

- (1) *The term “investors” means with regard to either Contracting Party:*
 - (a) *natural persons who, according to the law of that Contracting Party, are its nationals;*
 - (b) *companies, including corporations, partnership firms and associations, constituted in accordance with the law of that Contracting Party and engaged in substantive business operations in the territory of the same Contracting Party;*
 - (c) *companies not established under the law of that Contracting Party in which at least 51 per cent of the equity interest is owned by persons of that Contracting Party, or in which persons of that Contracting Party control at least 51 per cent of the voting rights in respect of shares owned by them.*
- (2) *The term “investment” shall include every kind of asset and particularly:*
 - (a) *movable and immovable property as well as other property rights such as mortgages, liens or pledges;*
 - (b) *shares in and stocks of a company and any similar forms of participation in a company;*

⁷⁵ Treaties: India-Switzerland BIT, 1997

- (c) *rights to money, including bonds and debentures, or to any performance under contract having an economic value;*
- (d) *intellectual property rights (such as copyrights, patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin) as well as know-how and goodwill in accordance with the relevant laws of the respective Contracting Party;*
- (e) *business concessions and other rights to conduct economic activities conferred by law or under contract, including concessions to search for and extract oil and other minerals;*

A40. India-Czech Republic BIT⁷⁶

- (a) *The term „investor” shall mean any natural or legal person who invests in the territory of the other Contracting Party.*
 - (i) *The term „natural person” shall mean any natural person having the nationality of a Contracting Party in accordance with its laws.*
 - (ii) *The term legal person” shall mean, with respect to either Contracting Party, any entity including corporation, firm or association, incorporated or constituted in accordance with, and recognized as legal person by its laws, having its permanent seat in the territory of one of the Contracting Parties.*
- (b) *„Investment” means every kind of asset established or acquired in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party, including changes in the form of such investment, in accordance with the national laws of the Contracting Party in whose territory*

⁷⁶ Treaties: India-Czech Republic BIT, 1996

the investment is made and in particular, though not exclusively, includes:

- (i) movable and immovable property as well as other 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 associated with an investment;*
- (iv) intellectual property rights, goodwill, technical processes and know-how in accordance with the relevant laws of the respective Contracting Party;*
- (v) rights under business concessions and licenses conferred by law, including concessions to search for and extract oil and other minerals.*

A41. India-Republic of Korea BIT⁷⁷

1. *"investments" means every kind of asset invested in accordance with the national laws of the Contracting Party, by investors of one Contracting Party in the territory of the other Contracting Party and in particular, though not exclusively, includes :*
 - (a) movable and immovable property and any other property rights such as mortgages, liens or pledges;*
 - (b) shares in, stocks and debentures of, and any other forms of participation in a company or any business enterprise;*
 - (c) rights to money or to any performance under contract having a financial value;*
 - (d) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial*

⁷⁷ Treaties: India-Republic of Korea BIT, 1996

designs, technical processes, trade secrets and know-how, and goodwill in accordance with the relevant law of the respective Contracting Party;

- (e) business concessions and any other rights required to conduct economic activities and having economic value conferred by law or under contract, including rights to search for, extract and utilise oil, gas and other minerals;*
- (f) goods that, under a leasing contract, are placed at the disposal of a lessee in the territory of a Contracting Party in accordance with its laws, and regulations.*

Any change of the form in which assets are invested or reinvested, in accordance with the national law of the respective Contracting Party, shall not affect their character as an investment.

3. *"Investors" means any national or company of one Contracting Party investing in the territory of the other Contracting Party.*

(a) "nationals" means:

- (i) in respect of India, natural persons deriving their status as Indian nationals from the law in force in India,*
- (ii) in respect of Korea, natural persons having the nationality of the Republic of Korea in accordance with its laws.*

(b) "companies" means;

- (i) in respect of India, corporations, firms and associations incorporated or constituted under the law in force in any part of India,*
- (ii) in respect of Korea, any legal persons such as firms, organisations, corporations or associations incorporated or constituted in accordance with its laws and regulations.*

A42. India-Italy BIT⁷⁸

1. *The term "Investment" means every kind of asset invested, before or after the entry into force of. this Agreement, by an investor of a contracting Party in the territory of the other contracting Party, in accordance with the national laws of the latter Contracting Party and in particular, though not exclusively, includes:*
 - a) *movable and immovable property, including rights in rem on property of a third Party, such as mortgages, liens or pledges;*
 - b) *shares, debentures, equity holdings or any other instruments of credit, as well as Government and public securities in general on the basis of respective national laws and regulations;*
 - c) *right to money or to any performance under contract having a financial value, as well as reinvested income related to the initial investment;*
 - d) *intellectual and industrial property rights such as copyright, commercial trade marks, patents, industrial designs, know-how, trade secrets, trade names and goodwill, in accordance with the relevant laws of the respective Contracting Party;*
 - e) *any economic right accruing by law or by contract and any licence and franchise, including concessions to prospect for, extract and commercialize oil and other minerals.*
3. *The term "nationals" means persons deriving their status as Indian or Italian nationals from the law in force in India or Italy;*
4. *The term "companies" means, in reference to either Contracting Party, corporations, foundations, firms and associations incorporated or constituted under the law in force in either*

⁷⁸ Treaties: India-Italy BIT, 1995

Contracting Parties and regardless of whether their liability is limited or otherwise;

5. *The term "investors" means any national or company of a Contracting Party investing in the territory Contracting Party;*

A43. India-Netherlands BIT⁷⁹

- (a) *"investments" means every kind of asset invested in accordance with the national laws and regulations of the Contracting Party in the territory of which 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, leases, liens, or pledges;*
 - ii. *rights derived from shares, bonds and other kinds of interest in companies;*
 - iii. *rights to money or to any performance having value;*
 - iv. *intellectual property rights, technical processes, goodwill and know how in accordance with the relevant laws of the respective parties;*
 - v. *rights granted under law or under contract such as business concessions to search for and extract oil, natural gas and other minerals.*
- (b) *"nationals" means:*
- i. *in respect of India: persons deriving their status as Indian nationals from the law in force in India;*
 - ii. *in respect of the Netherlands: natural persons having the nationality of the Netherlands;*
- (c) *"companies" means:*

⁷⁹ Treaties: India-Netherlands BIT, 1995

- i. *in respect of India: corporations, firms and associations incorporated or constituted under the law in force in any part of India;*
 - ii. *in respect of the Netherlands: legal persons constituted under the law of the Netherlands;*
- (d) *"investors" means: nationals or companies of a Contracting Party;*

A44. India-Denmark BIT⁸⁰

- (1) *The term "investment" means every kind of asset established or acquired in accordance with the national laws of the Contracting Party in whose territory the investment is made and shall include in particular, but not exclusively:*
- (i) *movable and immovable property, as well as any other rights such leases, mortgages, liens, pledges, privileges, guarantees and any other similar rights,*
 - (ii) *shares, stock or other forms of participation in a company or business enterprise and bonds and debt of a company or business enterprise,*
 - (iii) *returns reinvested, rights to money and performance pursuant to contract having an economic or financial value,*
 - (iv) *industrial and intellectual property rights, such as copy rights, patents, trade names, technical processes, trademarks, goodwill and know-how in accordance with relevant laws of the respective Contracting Party,*
 - (v) *concessions or other rights conferred by law or under contract, including concessions to search for, extract or exploit oil and other minerals.*

⁸⁰ Treaties: India-Denmark BIT, 1995

- (2) *A change in the form in which assets are invested, does not affect their character as investments.*
- (4) *"Investor" means any national or juridical person of a Contracting Party.*
- (5) *"National" means :*
 - (a) *In respect of Denmark: natural persons having the citizenship or nationality of, or who are permanently residing in Denmark in accordance with its laws.*
 - (b) *In respect of India: persons deriving their status as Indian national from the law in force in India.*
- (6) *Juridical person means in respect of each Contracting Party: any entity established in accordance with, and recognized as a legal person by the law of that Contracting Party, such as companies, firms, associations, development finance institutions, foundations or similar entities irrespective of whether their liabilities are limited and whether or not their activities are directed at profit.*

A45. India-Malaysia BIT⁸¹

- (a) *“investments” means every kind of asset invested in accordance with the laws, regulations and national policies of the Contracting Parties in whose territory the investment is made and in particular, though not exclusively, includes:*
 - (i) *movable and immovable property and any other property rights such as mortgages, liens or pledges;*
 - (ii) *shares, stocks and debentures of companies or interests in the property of such companies;*
 - (iii) *rights to money or a claim to any performance having financial value:*

⁸¹ Treaties: India-Malaysia BIT, 1995

- (iv) *intellectual property rights, including rights with respect to copyrights, patents, trademarks, tradenames, industrial designs, trade secrets, technical processes and know-how and goodwill 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, cultivate, extract, or exploit natural resources.*
- (c) *“investor” means any national or company of a Contracting Party;*
- (d) *“national” means any natural person possessing the citizenship of or permanently residing in the territory of a Contracting Party, and not having the citizenship of the other Contracting Party, in accordance with its laws;*
- (e) *“company” means any corporation, partnership, trust, joint-venture, organisation, association or enterprise incorporated or duly constituted in accordance with applicable laws of that Contracting Party;*
- 2. *Any alteration of the form in which assets are invested shall not affect their classification as investments, provided that such alteration is not contrary to the approval, if any, granted in respect of the assets originally invested.*

A46. India-Germany BIT⁸²

- (a) *"Companies" means:*
 - (i) *in respect of the Republic of India: corporations, firms and associations incorporated or constituted under the law in force in any part of India;*
 - (ii) *in respect of the Federal Republic of Germany' juridical persons as well as commercial or other companies or*

⁸² Treaties: India-Germany BIT, 1995

associations with or without legal personality having their seat in the territory of the Federal Republic of Germany, irrespective of whether or not their activities are directed at profit;

(b) *"Investment" means every kind of asset invested in accordance with the national laws of the Contracting Party where the investment is made and, in particular, though not exclusively, includes:*

- (i) *movable and immovable property as well as other rights such as mortgages, liens, or pledges;*
- (ii) *shares in, and stock and debentures of, a company, and any other forms of such interests in a company,*
- (iii) *right to money or to any performance under contract having a financial value;*
- (iv) *intellectual property rights, including patents, copyrights, registered designs, trade marks, trade names, technical processes, know-how and goodwill in accordance with the relevant laws of the respective Contracting Party;*
- (v) *business concessions conferred by law or under contract, including concessions for mining and oil exploration;*

(c) *"Investors" means nationals or companies of a Contracting Party who have effected or are effecting investment in the territory of the other Contracting Party,*

(d) *"Nationals" means:*

- (i) *in respect of the Republic of India: persons deriving their status as Indian nationals from the law in force in India;*
- (ii) *in respect of the Federal Republic of Germany: Germans within the meaning of the Basic Law of the Federal Republic of Germany;*

A47. India-Russia BIT⁸³

1. *The term “investment” means every kind of asset, including Intellectual property rights. Invested by an investor of one Contracting Party in the territory of the State of the other Contracting Party in accordance with the laws of the State of that Contracting Party, in particular:*
 - a. *movable and Immovable property, as well as related rights in rem;*
 - b. *shares, stock and any other form of participation in a company, enterprise, corporation, firm, association or other legal entity;*
 - c. *claims based on rights to money or to any performance under contract having a financial value;*
2. *The term “investor” means with regard to each Contracting Party:*
 - a. *Any natural person having the citizenship of the State of that Contracting Party In accordance with its laws;*
 - b. *An legal entity, including a corporation, company, firm, enterprise or association incorporated or constituted in the territory or the State of that Contracting Party in accordance with its laws;*

⁸³ Treaties: India-Russian Federation BIT, 1994

Appendix B

Expropriation

in Pre-2015 BITs of India

B1. India-UAE¹ and India-Kuwait^{2*} BITs

- 1.a) *Investments made by Investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated, dispossessed or subjected to direct or indirect Measures having effect equivalent to nationalization, expropriation or dispossession (hereinafter collectively referred to as "expropriation") by the other Contracting Party except for a public purpose related to the internal needs of that Contracting Party and against expeditious, adequate and effective compensation and on condition that such Measures are taken on a non-discriminatory basis and in accordance with the procedures established under law.*
- b) *Such compensation shall amount to the actual value of the expropriated Investment and shall be determined and computed on the basis of the fair market value of the expropriated Investment at the time immediately before the expropriatory action was taken or the impending expropriation became publicly known, whichever is earlier (hereinafter referred to as the "valuation date"). Such compensation shall include interest at the prevailing commercial market rate, however, in no event less than the prevailing six month*

¹ Treaties: India-UAE BIT, 2013

² Treaties: India-Kuwait BIT, 2001

LIBOR-rate of interest or equivalent, from the date of expropriation until the date of payment.

- c) *Where the above-mentioned fair market value cannot be readily ascertained, the compensation shall be determined on equitable principles taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the Investment, replacement value,** book value and goodwill. The amount of compensation finally determined shall be expeditiously paid to the Investor in a freely convertible currency and allowed to be freely transferable without delay.*
2. ****The Investor affected shall have a right, under the law of the Contracting Party making 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 clause# (1) of this Article. The Contracting Party making the expropriation shall make every endeavor 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 its applicable law in force in any part of its own territory, and in which Investors of the other Contracting Party own shares, stocks, debenture or other rights of interest it shall ensure that the provisions of clause# (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 such rights or interest.*
4. *The term "expropriation" shall also apply to interventions or regulatory Measures by a Contracting Party such as the freezing or blocking of the Investment,## compulsory sale of all or part of the Investment, or other comparable Measures, that have a de facto confiscatory or expropriatory effect in that their effect results in totally or near totally### depriving the Investor@ from the ownership control or substantial benefits over his Investment or*

which may result in total or near total@@ loss or damage to the economic value of his Investment.

Notes

- * In case of Kuwait, the word “*Party*” should be replaced with “*State*”.
- ** In case of Kuwait, the words “*appreciation. current returns. discounted cash flow value*” should be added in between the words “*replacement value*” and “*book value*”.
- *** In case of Kuwait, the words, “*Without prejudice to his rights under Article 9 of this Agreement*” should be added at the beginning of this para.
- # In case of Kuwait, the word “*clause*” should be replaced with “*paragraph*”.
- ## In case of Kuwait, the following words should be added here “*levying or arbitrary or excessive tax on the investment*”.
- ### In case of Kuwait, this paragraph should be read without the words “*totally or near totally*”.
- @ In case of Kuwait, the words “*in fact*” should be added here.
- @@ In case of Kuwait, this paragraph should be read without the words “*total or near total*”.

B2. India-Nepal³ and India-Colombia⁴ BITs

- (1) *Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be subjected to nationalisation, expropriation or any other measure having similar effects (hereinafter “expropriation”) except for reasons of public purpose in accordance with the law, on a non-discriminatory basis and against fair and equitable compensation.*
- (2) *It is understood that:*
 - (a) *Indirect expropriation results from a measure or series of measures of a Contracting Party having an equivalent effect to direct expropriation without formal transfer of title or outright seizure;*

³ Treaties: India-Nepal BIT, 2011

⁴ Treaties: India-Colombia BIT, 2009

- (b) *The determination of whether a measure or series of measures of a Contracting Party constitute indirect expropriation requires a case-by-case, fact-based inquiry considering among other factors:*
 - (i) *the economic impact of the measure or series of measures, however, the sole fact of a measure or series of measures having adverse effects on the economic value of an investment does not imply that an indirect expropriation has occurred;*
 - (ii) *the extent to which the measures are discriminatory either in scope or in application with respect to an investor or a company* of a Party;*
 - (iii) *the extent to which the measure or series of measures interfere with distinct, reasonable investment-backed expectations concerning the investment;*
 - (iv) *the character and intent of the measure 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.*
- (c) *Non-discriminatory regulatory measures by a Contracting Party that are designed and applied to protect legitimate public welfare objectives including the protection of health, safety and environment do not constitute expropriation or nationalization; except in rare circumstances, where those measures are so severe that they cannot be reasonably viewed as having been adopted and applied in good faith for achieving their objectives.*
- (d) *Actions and awards by judicial bodies of a Contracting 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.

- (3) The compensation shall be equivalent to the fair 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 commercially reasonable rate until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.*
- (4) The affected investor shall have the right to, in conformity with the laws of the Contracting Party that makes the expropriation, the prompt review, by a judicial or other independent authority of that Contracting Party, of its case, in order to decide if the expropriation and assessment of its investment have been adopted pursuant to the principles established in this Article.*
- (5) Where** a Contracting Party expropriates the assets of a company that is constituted in its territory according to its laws*** in force and in which investors of the other Contracting Party participate, it shall ensure that the provisions of this Article are applied in such a way that it guarantees such investors a fair and equitable compensation.*

For additional clauses, please see notes below#.

Notes

* In case of Colombia, the words “a company” should be replaced with “an entity”.

** In case of Colombia, the word “where” has been replaced by “When”.

*** In case of Colombia, the word “laws” should be replaced with “legislation”.

In case of Colombia, additional clauses read as follows:

- (6) Any establishment of a monopoly by either Contracting Party shall conform to the obligations set out in this Article.*
- (7) The Contracting Parties confirm that the issuance of compulsory licenses granted in accordance with the TRIPS Agreement of the WTO is not covered under the provisions set out in this Article.*

B3. India-Slovenia⁵ and India-Austria⁶ BITs

1. *Investments of investors of either Contracting Party shall not be expropriated in the territory of the other Contracting Party except for a public purpose, on a non-discriminatory basis in accordance with the law and against compensation.:*
2. *Such compensation shall be equivalent to the fair market value of the investment, immediately prior to or at the time when the decision for expropriation was announced or became publicly known, whichever is the earlier, and be determined in accordance with generally recognised principles of valuation. The compensation shall be paid without undue delay and shall include interest at the commercial rate established on a market basis from the date of actual expropriation until the date of payment. The amount of compensation shall be effectively realizable, freely convertible and allowed to be freely transferred.*
3. *Where a Contracting Party expropriates the assets of a company which is considered as a company of that Contracting party pursuant to paragraph (2) of Article 1 of the present Agreement and in which an investor of the other Contracting party owns shares, it shall apply the provisions of paragraphs (1) and (2)* so as to ensure due compensation to the investor.*
4. *The investor shall be entitled to have the legality of the expropriation reviewed by the competent authorities of the Contracting Party having induced the expropriation.*
5. *The investor affected shall have, without prejudice to the provisions of Article 11** of this Agreement, the right, under the law of the Contracting Party making the expropriation, to review, by judicial or other independent authority of that Party, of valuation of his or its investment and the provisions of payments of compensation in*

⁵ Treaties: India-Slovenia BIT, 2011

⁶ Treaties: India-Austria BIT, 1999

accordance with the principles set out in this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.

Notes

* In case of Austria, this clause should be read without “and (2)”.

** In case of Austria, “11” should be replaced with “9”.

B4. India-Lithuania BIT⁷

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 non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market compensation value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is earlier, and shall be made without unreasonable delay, be effectively realizable and be freely transferable. The compensation shall include interest on the LIBOR basis from the date of expropriation until the date of full payment.*
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 this paragraph. The Contracting Party making the expropriation shall make every possible endeavour to ensure that such review is carried out promptly.*

⁷ Treaties: India-Lithuania BIT, 2011

3. *Where a Contracting Party expropriates the assets of an entity 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 or have other form of participation, 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 or who are participating in the other forms in the entity.*

B5. India-Seychelles⁸, India-Congo⁹, India-Latvia¹⁰, India-Mozambique¹¹, India-Bangladesh¹², India-Senegal¹³, India-Myanmar¹⁴, India-Brunei¹⁵, India-Iceland¹⁶, India-Libya¹⁷, India-Trinidad and Tobago¹⁸, India-Jordan¹⁹, India-China²⁰, Bosnia and Herzegovina²¹, India-Bahrain²², India-Sudan²³, India-Armenia²⁴, India-Djibouti²⁵, India-Ghana²⁶, India-Cyprus²⁷,

⁸ Treaties: India-Seychelles BIT, 2010

⁹ Treaties: India-Democratic Republic of Congo BIT, 2010

¹⁰ Treaties: India-Latvia BIT, 2010

¹¹ Treaties: India-Mozambique BIT, 2009

¹² Treaties: India-Bangladesh BIT, 2009

¹³ Treaties: India-Senegal BIT, 2008

¹⁴ Treaties: India-Myanmar BIT, 2008

¹⁵ Treaties: India-Brunei BIT, 2008

¹⁶ Treaties: India-Iceland BIT, 2007

¹⁷ Treaties: India-Libya BIT, 2007

¹⁸ Treaties: India-Trinidad and Tobago BIT, 2007

¹⁹ Treaties: India-Jordan BIT, 2006

²⁰ Treaties: India-China BIT, 2006

²¹ Treaties: India-Bosnia and Herzegovina BIT, 2006

²² Treaties: India-Bahrain BIT, 2004

²³ Treaties: India-Sudan BIT, 2003

²⁴ Treaties: India-Armenia BIT, 2003

²⁵ Treaties: India-Djibouti BIT, 2003

²⁶ Treaties: India-Ghana BIT, 2002

²⁷ Treaties: India-Cyprus BIT, 2002

India-Ukraine²⁸, India-Croatia²⁹, India-Mongolia³⁰,
 India-Lao³¹, India-Thailand³², India-Philippines³³,
 India-Argentina³⁴, India-Indonesia³⁵, India-Zimbabwe³⁶,
 India-Bulgaria³⁷, India-Romania³⁸, India-Belgo-
 Luxembourg Economic Union³⁹, India-Kyrgyzstan⁴⁰,
 India-Egypt⁴¹, India-Switzerland⁴², India-Oman⁴³,
 India-Vietnam⁴⁴, India-Sri Lanka⁴⁵, India-Kazakhstan⁴⁶,
 India-Czech Republic⁴⁷, India-Poland⁴⁸, India-Israel⁴⁹,
 India-Tajikistan⁵⁰ and India-Turkmenistan⁵¹ BITs

(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

²⁸ Treaties: India-Ukraine BIT, 2001

²⁹ Treaties: India-Croatia BIT, 2001

³⁰ Treaties: India-Mongolia BIT, 2001

³¹ Treaties: India-Lao People's Democratic Republic BIT, 2000

³² Treaties: India-Thailand BIT, 2000

³³ Treaties: India-Philippines BIT, 2000

³⁴ Treaties: India-Argentina BIT, 1999

³⁵ Treaties: India-Indonesia BIT, 1999

³⁶ Treaties: India-Zimbabwe BIT, 1999

³⁷ Treaties: India-Bulgaria BIT, 1998

³⁸ Treaties: India-Romania BIT, 1997

³⁹ Treaties: India-Belgo-Luxembourg Economic Union BIT, 1997

⁴⁰ Treaties: India- Kyrgyz Republic BIT, 1997

⁴¹ Treaties: India-Egypt BIT, 1997

⁴² Treaties: India-Switzerland BIT, 1997

⁴³ Treaties: India-Oman BIT, 1997

⁴⁴ Treaties: India-Vietnam BIT, 1997

⁴⁵ Treaties: India-Sri Lanka BIT, 1997

⁴⁶ Treaties: India-Kazakhstan BIT, 1996

⁴⁷ Treaties: India-Czech Republic BIT, 1996

⁴⁸ Treaties: India-Poland BIT, 1996

⁴⁹ Treaties: India-Israel BIT, 1996

⁵⁰ Treaties: India-Tajikistan BIT, 1995

⁵¹ Treaties: India-Turkmenistan BIT, 1995

accordance with law on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the genuine 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 genuine 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 this paragraph. 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.*

For Additional Clauses, Explanations and Footnotes, please see below the Notes.

Notes

* In case of Senegal, clause (1) reads as follows:

- (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 its laws on a non-discriminatory 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 normal commercial rate until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable on the basis of the exchange rate applicable on the date of transfer in accordance with exchange rules in force. For greater certainty, this paragraph shall be interpreted in accordance with Annexure A, which shall form an integral part of this Agreement.

****** In case of Brunei, clause (1) reads as follows:

- (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 non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the fair 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 freely transferable in accordance with Article 7. Where the market value cannot be ascertained properly the compensation shall be determined in accordance with internationally recognised accounting principles.*

******* In case of Armenia, clause (1) reads as follows:

- (1) *Investments of investors of either Contracting Party shall not be alienated, nationalised, expropriated or subjected to measures having effect equivalent to alienation, nationalisation or expropriation (hereinafter referred to as "alienation") in the territory of the other Contracting Party except for a public purpose, in non-discriminatory manner, under due process of law and against payment of compensation according to the host country legislation. Such compensation shall amount to the genuine value of the investment alienated immediately before the alienation or before the impending alienation 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.*

In case of Philippines, clause (1) reads as follows:

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 non-discriminatory basis. Such measure shall be accompanied by provisions for payment of fair and equitable compensation without undue delay. Such compensation shall amount to the genuine 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.*

In case of Zimbabwe, clause (1) is split in two clauses and reads as follows:

- (1) *Investments of investors of either Contracting Party shall not be expropriated, nationalized, or subjected to measure having effect equivalent to expropriation or nationalization in the territory of the other Contracting Party except for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation.*
- (2) *Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or impending expropriation, nationalization or other comparable measure becomes publicly known, whichever is the earlier. Such compensation shall be paid without unreasonable delay and shall carry the usual commercial interest until the date of payment and shall be effectively realisable and be freely transferable.*

In case of Bulgaria, clause (1) reads as follows:

- (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 non-discriminatory 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 the rate applicable in the territory of that Contracting Party until the date of payment. shall be made without unreasonable delay, be effectively realizable and be freely transferable.

@ In case of Israel, clause (1) reads as follows:

(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 non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the genuine 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, unless a rate has been determined by law in which case such rate shall apply until the date of payment, shall be made without unreasonable delay, be effectively realisable and be freely transferable.*

@@ In case of Egypt, the word “purpose” should be replaced with “interest”.

@@@ In case of Argentina, the words “and effective” should be added here. In case of Switzerland, this para should be read without the words “fair and equitable”.

\$ In case of Latvia and Indonesia, the word “genuine” should be replaced by “fair market”. In case of Bangladesh, Myanmar and Trinidad and Tobago, Jordan, Switzerland and Sri Lanka, the word “genuine” should be replaced by “market”.

In case of Cyprus, the word “genuine” should be replaced by “fair”.

In case of Thailand, the word “market” should be added here.

In case of Czech Republic, this clause should be read without the word “genuine”.

\$\$ In case of Latvia and Argentina, the words “a fair and equitable genuine” be replaced by “normal market”.

In case of Mozambique, Myanmar, Iceland, Libya, Jordan, China, Bahrain, Sudan, Djibouti, Ghana, Ukraine, Croatia, Mongolia, Lao, Thailand, Romania, Kyrgyzstan, Egypt, Oman, Vietnam, Sri Lanka, Kazakstan, Czech Republic, Poland, Tajikistan and Turkmenistan, the sentence “a fair and equitable genuine” should be read without the word “genuine”.

In case of Bangladesh, the words “a fair and equitable genuine” should be replaced by

“prevailing normal market”.

In case of Trinidad and Tobago and Bosnia and Herzegovina, the words *“a fair and equitable genuine”* should be replaced by *“the normal commercial”*.

In case of Cyprus, the words *“a fair and equitable genuine”* should be replaced with *“the prevailing market”*.

In case of Indonesia the words *“fair and equitable genuine”* be replaced with *“prevailing”*.

In case of Belgo-Luxembourg Economic Union, the words *“a fair and equitable genuine”* should be replaced with *“an appropriate commercial”*.

In case of Switzerland, the words *“a fair and equitable genuine”* should be replaced with *“the appropriate”*.

\$\$\$ In case of Bosnia and Herzegovina, the words *“for current transactions from the date of expropriation”* should be added in between the words *“rate”* and *“until”*.

In case of Indonesia, the words *“as agreed upon by both parties”* should be added here.

& In case of Trinidad and Tobago, the word *“unreasonable”* should be replaced by *“undue”*.

&& In case of Argentina the words *“without unreasonable delay”* be replaced with *“expeditiously”*.

&&& In case of Mongolia, the words *“he convertible”* should be added here. Probably, it should be *“be convertible”*, but the text of BIT available in public domain reads, *“he convertible”*.

% In case of Czech Republic, the words *“in a freely convertible currency”* should be added at the end of this clause.

%% In case of Armenia, the word *“expropriation”* should be replaced with *“alienation”*.

%%% In case of Sudan, this line should be read without the words *“or other independent”*.

^ In case of Latvia, Bahrain and Thailand, the word *“Contracting”* should be added here.

^^ In case of Latvia, Senegal, Trinidad and Tobago, China, Ghana, Cyprus, Croatia, Mongolia, Lao, Zimbabwe, Bulgaria and Czech Republic, the word *“paragraph”* should be replaced with *“Article”*.

In case of Libya and Sudan, the words *“this paragraph”* should be replaced with *“the paragraph (1) above”*.

In case of Libya and Bosnia and Herzegovina and Oman, the words *“this paragraph”* should be replaced with *“in paragraph (1) of this Article”*.

In case of Thailand, the words *“this paragraph”* should be replaced with *“the paragraph (1)”*.

- In case of Philippines and Egypt, the word “*above*” should be added after the word “*paragraph*”.
- ^^^ In case of Brunei, the word “*promptly*” should be replaced with “*without unreasonable delay*”.
- In case of Philippines, the word “*promptly*” should be replaced with “*expeditiously*”.
- In case of Argentina, this clause should be read without the words “*his or*”.
- In case of Switzerland, this clause should be read without the words “*or its*”.
- ~ In case of Bangladesh, clause (2) reads as follows:
- (2) *A national or company of either Party that asserts that all or part of its investment in the territory of the other Party has been expropriated shall have a right under the law of the Contracting Party making the expropriation to prompt review by the appropriate judicial or administrative authorities of other party to determine whether any such expropriation has occurred and, if so, whether such expropriation and any compensation thereof, conforms to the principles set out in paragraph (1).*
- ~~ In case of Zimbabwe, this clause should be read without the word “*paragraph (1)*”.
- ~~~ In case of Czech Republic. this clause should be read only till “*compensation in respect of their investment*”.
- ! In case of Switzerland, clause (3) reads as follows:
- (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, to the extent necessary, ensure that compensation according to paragraph (1) of this Article will be made available to such investors.*
- !! In case of Israel, the Article should be read without clause (3).

Additional Clauses, Explanations and Footnotes

In case of Brunei, additional clause reads as follows:

- (4) *The interpretation and/or implementation of this Article shall be in conformity with the annexed Protocol.*

In case of Iceland, footnote reads as follows:

For greater certainty, the Article on Expropriation shall be interpreted in accordance with the side letter annexed to this Agreement.

In case of Jordan, footnote reads as follows:

For greater certainty, Article 5 shall be interpreted in accordance with Annexure-A on the clarification of indirect expropriation.

In case of China, footnote reads as follows:

For better understanding of this Article, it shall be interpreted as per the shared understanding in the Protocol annexed to this Agreement.

In case of Armenia, explanation reads as follows:

Explanation: For the purpose of this Agreement, the word ‘alienation’ shall have the same meaning as ‘expropriation’ or ‘nationalisation’.

In case of Thailand, additional clause reads as follows:

- (4) *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 in freely usable currencies.*

B6. India-Syria BIT⁵²

1. *Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereafter referred to as "expropriation") in the territory of the other Contracting Party except for public purpose in accordance with law on a non - discriminatory 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 becomes public knowledge, whichever is the earlier. It shall include interest*

⁵² Treaties: India-Syria BIT, 2008

at a fair and equitable rate from the actual date of expropriation until the date of payment, and shall be 1 For the purpose of this Agreement, the term “expropriation” in this article shall be interpreted in accordance with Annex on interpretation of this article made without unreasonable delay, be effectively realizable and be freely transferable.*

- 2. The investor affected shall have the 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 of the valuation of his or its investment in accordance with the principles set out in this paragraph. 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 the share of the investors of the other Contracting Party in such a company.*

Annex

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 environmental concerns, do not constitute expropriation or nationalization.*
- 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.*

B7. India-North Macedonia BIT⁵³

- (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 non-discriminatory 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. The compensation shall include interest calculated on the annual LIBOR basis from the date of expropriation to the date of payment. The amount of compensation shall be settled in the convertible currency, it shall be freely transferable and paid without undue delay.*
- (2) *The investor affected shall have right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other competent 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 this paragraph. 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 legal person which is established, 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.*

⁵³ Treaties: India-North Macedonia BIT, 2008

Notes

Country name “the Republic of Macedonia” was changed to “the Republic of North Macedonia” in 2019.

B8. India-Uruguay BIT⁵⁴

1. *Investments of investors of either Contracting Party shall not be subjected to nationalised, expropriated or having measures in the territory of the other Contracting Party has an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation), with the exception of cases involving a public purpose in accordance with laws based on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall correspond to the market value of the expropriated investment immediately before the expropriation or before the impending expropriation was publicly known as that has first been verified. The compensation shall include interest at a fair and equitable rate until the date of payment, in a currency conversion of free, and shall be paid without undue delay. It shall be effectively realizable and freely transferable.*
2. *The Investor affected shall have a right, under the laws of the Contracting Party who carry out the expropriation, a review by judicial or other independent authority of that Contracting Party and to their investments are evaluated in accordance with the principles set out in this paragraph. The contracting party making the expropriation shall carry out their best efforts to ensure that such review is carried out promptly. Once the Competent Authority adopt its final decision, the investor shall not be entitled to submit claims according to article 9.*
3. *If one of the Contracting Parties expropriate the assets of a company incorporated according to its laws in force in any part of its own*

⁵⁴ Treaties: India-Uruguay BIT, 2008

territory, and in which investors of the other contracting party own shares, it shall ensure that the provisions of paragraph (1) of this article, to the extent necessary to ensure fair and equitable compensation to such investors of the other Contracting Party, owners of those shares.

(for greater certainty, on article "" expropriation shall be interpreted in accordance with annex I)*

B9. India-Ethiopia BIT⁵⁵

- (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 or interest, with due process of law, on a non-discriminatory 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. It shall, however, include interest at a fair and equitable rate until the date of payment and shall be made without unreasonable delay, be effectively realizable and freely transferable.*
- (2) The investor affected shall have right, under the laws 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 this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.*

⁵⁵ Treaties: India-Ethiopia BIT, 2007

B10. India-Mexico BIT⁵⁶

1. *Neither Contracting Party may expropriate or nationalize an investment either directly or indirectly through measures tantamount to expropriation or nationalization (hereinafter referred to as “expropriation”), except:*
 - (a) *for a public purpose;*
 - (b) *on a non-discriminatory basis;*
 - (c) *in accordance with due process of law; and*
 - (d) *on payment of compensation in accordance with paragraph 2 below.*
2. *Compensation shall:*
 - (a) *be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value because the intended expropriation had become publicly known earlier.*

Valuation criteria shall include, without implying the exclusive validity of any single criteria, the going concern value, asset value, including declared tax value of tangible property, and other criteria, as appropriate, to determine the fair market value;
 - (b) *be paid without delay;*
 - (c) *include interest at a commercially reasonable rate from the date of expropriation until the date of actual payment; and*
 - (d) *be fully realizable and freely transferable.*
3. *An investor whose investment is expropriated shall have the right to a prompt review of its case by a court or by any other competent and independent authority, pursuant to the laws of the concerned*

⁵⁶ Treaties: India-Mexico BIT, 2007

Contracting Party, and to an assessment of such investment in accordance with the provisions set forth in this Article.

B11. India-Greece BIT⁵⁷

1. *Investments and returns of investors of either Contracting Party in the territory of the other Contracting Party, shall not be expropriated, nationalized, or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization (hereinafter referred to as "expropriation"), except in public interest, under due process of law, on a non discriminatory basis and against payment of compensation. Such compensation shall amount to the market value of the investment affected immediately before the actual measure was taken or became public knowledge, whichever is the earlier, it shall include interest from the date of expropriation until the date of payment at a normal commercial rate, it shall be paid without undue delay and shall be effectively realizable and freely transferable in a freely convertible currency.*
2. *The provision of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is constituted under the laws in force in any part of its own territory and in which investors of the other Contracting party own shares.*

B12. India-Slovakia BIT⁵⁸

1. *Investments of investors of one Contracting Party shall not be nationalized, expropriated or otherwise subjected to any other measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the*

⁵⁷ Treaties: India-Greece BIT, 2007

⁵⁸ Treaties: India-Slovak Republic BIT, 2006

territory of the other Contracting Party except for public purpose and against prompt, adequate and effective compensation. The expropriation shall be carried out on a non-discriminatory basis in accordance with legal procedures. Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at the applicable commercial rate from the date of expropriation until the date of payment and shall be effectively realizable. Compensation shall be made in a freely convertible currency.

- 2. In both expropriations and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.*
- 3. Investors of one Contracting Party affected by expropriation shall have a right to prompt review by a judicial or other independent authority (which cannot be an executive or legislative authority/power) of the other Contracting Party, of their case and of the valuation of their investments in accordance with the principles set out in this Article.*
- 4. Where a Contracting Party expropriates the assets of a company, which is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party own shares, debentures or other forms of participation, the provisions of this Article shall be applied.*

B13. India-Saudi Arabia BIT⁵⁹

- 1. Investments by investors of either Contracting Party shall not be expropriated, nationalized, or subjected to any other measures, the effects of which would be tantamount to expropriation or*

⁵⁹ Treaties: India-Saudi Arabia BIT, 2006

nationalization by the other Contracting Party except for the public benefit of the Contracting Party and against speedy, fair and equitable compensation, provided that these measures are not discriminatory and in accordance with domestic laws of general application. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or impending expropriation, nationalization or comparable measure has become publicly known, whichever is earlier. The compensation shall be paid without undue delay and shall carry a rate of return determined on the basis of the market prevailing rate of return until the time of payment; it shall be effectively realizable and freely transferable. Provision shall be made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

2. *To determine whether an action or series of actions is tantamount to expropriation (indirect expropriation), a case-by-case fact based inquiry shall be made in accordance with the provisions of this agreement and the principles of customary international law, and shall consider, inter alia, the economic impact, the purpose and context of such action and the extent to which it interferes with distinct, reasonable investment backed expectations. The mere fact that an action or series of actions by a Contracting Party has an adverse effect on the economic value of an investment, standing alone, would not establish that an indirect expropriation has occurred. Also any action of a Contracting Party taken as a part of normal business activities would not, by itself, constitute an indirect expropriation unless the prima facie intention to create adverse impact on the economic value of the investment is apparent.*

3. *This Article shall not be construed to prevent a Contracting Party from taking a regulatory action, for the public benefit of that Contracting Party on a non-discriminatory basis, to protect legitimate public welfare objectives, such as health, safety, and the environment.*

B14. India-Hungary BIT⁶⁰

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 the laws of the Contracting Party making the expropriation, on a non-discriminatory basis and against fair 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 rate from the date of expropriation until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable in a freely convertible currency.*
2. *The investor affected shall have a right, in accordance with the laws of the Contracting Party making the expropriation to review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.*
3. *The provisions of paragraph 1 of this Article shall also apply 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*

⁶⁰ Treaties: India-Hungary BIT, 2003

own territory, and in which investors of the other Contracting Party own shares.

B15. India-Serbia BIT⁶¹

- (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 non-discriminatory 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 market rate until the date of payment, shall be made without unreasonable delay, effectively realizable and be freely transferable in convertible currency.*
- (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 this article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.*

B16. India-Belarus BIT⁶²

- 1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect*

⁶¹ Treaties: India-Serbia BIT, 2003

⁶² Treaties: India-Belarus BIT, 2002

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 non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest calculated on the libor basis until the date of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

- 2. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to review, by a Judicial or other independent authority of that Contracting 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) above. 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 legal person 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.*

B17. India-Finland BIT⁶³

- (1) Investments by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalised,*

⁶³ Treaties: India-Finland BIT, 2002

expropriated or subjected to measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as “expropriation”) unless the measures are taken for a public purpose, authorised by the laws of that Contracting Party, on a non-discriminatory basis and against effective and adequate compensation without undue delay.

- (2) Such compensation shall amount to the fair market value of the investment expropriated at the time immediately before the date of expropriation or before the impending measures of expropriation became public knowledge, whichever is earlier. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of actual payment.*
- (3) An investor whose investment is expropriated may, under the laws of the Contracting Party making the expropriation, seek review of expropriation measures by a judicial or other independent authority of that Contracting Party. The Contracting Party taking the measures of expropriation, shall make every endeavour to ensure that such review is carried out promptly.*

B18. India-Taiwan BIT⁶⁴

- 1. Investments of investors of one territory in the other territory shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation (hereinafter referred to as “expropriation”) except for a public purpose in accordance with law on a non-discriminatory basis and against fair and equitable compensation. Such compensation shall amount to the genuine 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*

⁶⁴ Treaties: India-Taiwan BIT, 2002

a fair and equitable rate until the date of payment, shall be made without undue delay, be effectively realizable, and be freely transferable.

2. *The investor affected shall have a right, under the laws of the territory where the expropriation has been made, to review, by a judicial or other independent authority of that territory of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.*

B19. Definition in India-Yemen BIT⁶⁵

Investments made by the investors of either Contracting Party shall not be subject to any measures of expropriation, nationalization, or any other measures having similar effect as expropriation or nationalization in the territory of the other Contracting Party, except for a public purpose, on non-discriminatory basis and under due process of the law and against a 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 earlier, and shall include fair value until the date of payment, shall be made without unreasonable delay, be effectively realisable and be freely transferable. The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to review, by a judicial or other independent authority of that Party.

⁶⁵ Treaties: India-Yemen BIT, 2002

B20. India-Sweden BIT⁶⁶

- 1) *Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except in the public interest in accordance with law on a nondiscriminatory basis and against compensation which shall be equivalent to the fair market value of the expropriated investment immediately before the date on which such expropriation became publicly known. shall be made expeditiously, be effectively realizable and be freely transferable.*
- 2) *Without prejudice to the investors rights under Article 9 of this Agreement, the investor affected shall have a 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 investment in accordance with the principles set out in this Paragraph, 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 Paragraphs 1) and 2) of this Article are applied in the same manner to provide compensation in respect of the investment of such investors of the other Contracting Party who are owners of those shares.*

⁶⁶ Treaties: India-Sweden BIT, 2000

B21. India-Portugal BIT⁶⁷

- 1- *Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subject to any other measure with effects equivalent to expropriation or nationalization (hereinafter referred to as expropriation) except by virtue of law, for a public purpose, on a non-discriminatory basis and against prompt compensation.*
- 2- *Such compensation shall amount to the market value of the expropriated investments immediately before the expropriation became publicly known. The compensation shall be paid without undue delay, shall include interest at normal market rate from the date of expropriation until the date of payment and shall be effectively realisable.*
- 3- *The investor whose investments are expropriated, shall have the right under the law of expropriating Contracting Party to prompt review by a judicial or other competent authority of that Contracting Party of his or its case and of valuation of his or its investments in accordance with the principles set out in this article.*

B22. India-Uzbekistan BIT⁶⁸

1. *Contracting Parties shall not undertake directly or indirectly actions on expropriation, nationalisation or other actions, having equal character and effect, relating to investments of investors of the state of the other Contracting Party, except measures taken for a public purpose, under its legislation on a non-discriminatory basis and against compensation.*
2. *The contracting Party, which expropriates investments, due to circumstances, indicated in paragraph 1 of the present Article, shall*

⁶⁷ Treaties: India-Portugal BIT, 2000

⁶⁸ Treaties: India-Uzbekistan BIT, 1999

provide to investors of the state of the other Contracting Party 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 earlier, and shall include interests on the amount of compensation at market rate from the date of expropriation till the date of payment, shall be made without unreasonable delay, be effectively realisable and be freely convertible and transferable. Transfer without unreasonable delay is considered to be the period normally necessary for fulfillment of formalities related to transfer.

3. *The investor affected that have a right, under the law of the Contracting Party making the expropriation, to review, by judicial or other independent authority of that Contracting Party. of his or its case and of the valuation of his or its investment. The Contracting Party making the expropriation shall make every endeavour to ensure that such review Is carried out promptly.*
4. *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 state of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs 1 and 2 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.*

B23. India-Qatar BIT⁶⁹

- (1) *The investment shall not be subject, either directly or indirectly, to any act of expropriation or nationalisation or to any other procedure of similar effect, unless it is intended for public interest*

⁶⁹ Treaties: India-Qatar BIT, 1999

and without discrimination against fair and equitable compensation paid in accordance with the legal procedures and general principles of the type of treatment stipulated in paragraph (2) of this Article.

- (2) The said compensation shall be equivalent to the real market value for the expropriated investment at the time of its expropriation or its declaration and shall be estimated in accordance with a normal economic situation prevailing prior to any threat of expropriation. The compensation due shall be paid without unreasonable delay and shall enjoy free transfer, and it shall include interest at a fair and equitable rate; however, it shall not be less than the prevailing six month LIBOR-rate of interest or equivalent, from the date of expropriation until the date of payment.*
- (3) Without prejudice to the rights of the investor under Article (8) of this Agreement, he 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 the valuation of his or its compensation in accordance with the principles set out in this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.*
- (4) 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.*

B24. India-Australia BIT⁷⁰

1. *Neither Contracting Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") the investments of investors of the other Contracting Party except for a public purpose, on a non-discriminatory basis, in accordance with its laws and against fair and equitable compensation.*
2. *The compensation referred to in paragraph 1 of this Article shall be computed on the basis of the market value of the investment immediately before the expropriation or impending expropriation became public knowledge. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account the capital invested, depreciation, capital already repatriated, replacement value, and other relevant factors.*
3. *The compensation shall be paid without undue delay, shall include interest at a normal market rate from the date the measures were taken to the date of payment and shall be freely transferable between the territories of the Contracting Parties. The compensation shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in any other freely convertible currency.*
4. *An investor whose investment is expropriated may, under the law of the Contracting Party making the expropriation, seek review of the expropriation measures by a judicial or other independent authority of that Party, as appropriate. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.*

⁷⁰ Treaties: India-Australia BIT, 1999

5. *Where a Contracting Party expropriates a company, investments in a company or 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 this Article are applied to the extent necessary to ensure compensation in respect of their investments to such investors of the other Contracting Party who are owners of those shares.*

B25. India-Morocco BIT⁷¹

1. *Measures of nationalisation, expropriation or any other measure having an equivalent effect, hereinafter referred to as an expropriation, that might be taken by one of the Contracting Parties against investments of the investors of the other Contracting Party must be neither discriminatory nor taken other than for a public purpose.*
2. *The Contracting Party taking such measures shall give a fair and equitable compensation. Such compensation shall amount to the market value of the investment expropriated on the date of expropriation or when expropriation become public knowledge, whichever is earlier.*
3. *The amount of the said compensation shall be effectively realizable, and shall be paid without delay. In case of a late payment, interest at a normal commercial rate shall be calculated from the due date until the date of payment Compensation shall be paid to investors in convertible currency and be freely transferable.*

⁷¹ Treaties: India-Morocco BIT, 1999

B26. India-Turkey BIT⁷²

1. *Investments shall not be expropriated, nationalized or subject. directly or indirectly, to measures of similar effect (hereinafter referred to as "expropriation") except for a public purpose, in a non-discriminatory manner. with the payment of fair and equitable compensation and in accordance laws in force and the general principles of treatment provided for in Article II of this Agreement.*
2. *Compensation shall be equivalent to the real market value of the expropriated investment before the expropriatory action was taken or became public knowledge. This shall include interest at a prevailing rate until the date of payment . Compensation shall be. paid without delay, be effectively realizable and be freely transferable as described in paragraph 2 Article IV*

B27. India-Mauritius BIT⁷³

- (1) *Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation except for public purposes, under due process of law, on a non-discriminatory 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 and shall be effectively realizable and be freely transferable.*

⁷² Treaties: India-Turkey BIT, 1998

⁷³ Treaties: India-Mauritius BIT, 1998

- (2) *The investor affected by the expropriation 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 this paragraph.*
- (3) *Where a Contracting Party expropriates, nationalises or takes measures having effect equivalent to nationalisation or expropriation against the assets of a company which is incorporated or constituted under the laws 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 as specified therein to such investors of the other Contracting Party who are owners of those shares.*

B28. India-Spain BIT⁷⁴

1. *Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having equivalent effect to nationalisation or expropriation (hereinafter referred to as “expropriation”) except for public Interest, pursuant to the law, on a non-discriminatory basis and against the payment of fair and equitable compensation.*
2. *Such compensation shall amount to the fair market value of the expropriated investment Immediately before the expropriatory measure was taken or before the impending expropriation became public knowledge, whichever is the earlier. Compensation shall include interest at a normal market rate from the date of expropriation until the date of payment, shall be paid without undue*

⁷⁴ Treaties: India-Spain BIT, 1997

delay, shall be effectively realizable and be freely convertible and transferable.

3. *The investor affected shall have the right, under the law of the Contracting Party making the expropriation, to review by a judicial authority or other competent and independent authority of that Contracting Party, of its case to determine whether such expropriation, the valuation of its Investment and the payment of compensation conform to the principles set out in this Article. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.*
4. *Where a Contracting Party expropriates the assets of a company which Is incorporated or constituted under the law in force in any party of its own territory, and in which Investors of the other Contracting Party own shares, it shall ensure that the provisions of this Article are applied so as to guarantee fair and equitable compensation in respect of their Investment to such investors of the other Contracting Party who are owners of those shares.*

B29. India-France BIT⁷⁵

- (1) *Neither Contracting Party shall take any measure of expropriation or nationalisation or any other measures having the effect of dispossession, direct or indirect, of investors of the other Contracting Party of their investments in its area, except in the public interest and provided that these measures are not discriminatory or contrary to a specific obligation entered into by Contracting Party not to take a measure of dispossession.*
- (2) *Any measure of dispossession which might be taken shall give rise to adequate and reasonably prompt compensation, the amount of which shall be equal to the real value of the investments concerned and shall be set, indicating conditions of payment, in accordance*

⁷⁵ Treaties: India-France BIT, 1997

with the normal economic situation prevailing prior to any threat of dispossession. This compensation shall be effectively realisable, and shall then be paid without delay. Until the date of payment, it shall produce interest calculated at the appropriate market rate of interest.

- (3) *The investor affected shall have a right, under the law of the Contracting Party taking the measure of dispossession, 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 this paragraph. The Contracting Party taking the measure of dispossession shall make every endeavour to ensure that such review is carried out promptly.*

B30. India-Korea BIT⁷⁶

1. *Investments of investors of one Contracting Party shall not be rationalised, expropriated or otherwise subjected to any other measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except where this is done for a public purpose authorities by laws of that Contracting Party, on a non-discriminatory basis, in accordance with its laws and against compensation that is adequate, effective and paid without undue delay.*
2. *Such compensation shall amount to the fair market value of the expropriated investments immediately before expropriation was taken or before impending expropriation became public knowledge, whichever is the earlier, shall include interest at a fair and equitable commercial rate from the date of expropriation until the date of payment and shall be made without undue delay, be effectively realisable and be freely transfereable.*

⁷⁶ Treaties: India-Republic of Korea BIT, 1996

3. *Investors of one Contracting Party affected by expropriation shall have a right to prompt review by a judicial or other independent authority of the other Contracting Party, of their case and of the valuation of their investments in accordance with the principles set out in this Article.*
4. *Where a Contracting Party expropriates assets of a company incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party have made investments by way of owning shares or other forms of participation, the provisions of this Articles shall apply.*

B31. India-Italy BIT⁷⁷

1. *Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to any measures having an equivalent effect in the territory of the other Contracting Party except for any non discriminatory measure of general application which Governments normally take for the purpose of regulating economic activity in their territories, or any public purpose authorized by laws of that Party on a non discriminatory basis, handed down by the competent authorities, and against compensation which shall be expeditious, full and effectively realizable without undue delay, and shall be freely convertible and transferable.*
2. *The just compensation shall be equivalent to the genuine market value of the investment immediately prior to the moment in which the decision to nationalize or expropriate is announced or made public. Whenever that value cannot be readily ascertained, the compensation shall be determined in accordance with general internationally recognized criteria of evaluation, such as the capital*

⁷⁷ Treaties: India-Italy BIT, 1995

invested, depreciation, capital already repatriated, replacement value, and other relevant factors.

- 3. The affected investor shall have a right, under the law of the Contracting Party making the expropriation, to seek review, by a judicial or other independent authority of that Party, of his or its case and of valuation of his or its investment in accordance with the principles set out in this paragraph. The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.*
- 4. 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 guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.*
- 5. Compensation shall include interest calculated on a six-month LIBOR basis accruing from the date of nationalization or expropriation to the date of payment.*
- 6. The provisions of paragraph 1 of this Article shall also apply to profits accruing to an investment and, in the event of winding-up, the proceeds of liquidation.*
- 7. The investor of a contracting Party, acting in the territory of the other Contracting Party, shall not be granted any right, in respect of repossession of an expropriated asset, which is not granted to the investor of the other Contracting party under the same circumstances.*

B32. India-Netherlands BIT⁷⁸

- 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 in the public interest in accordance with law, on a non-discriminatory basis and against compensation. Such compensation shall represent the genuine value of the investments effected, shall include interest at a normal market rate until the date of payment, shall be effectively realizable without undue delay, and shall be freely convertible and transferable.*
- 2) *The investor affected shall have a right to review, under the laws of the Contracting Party making the expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its investment, and of the payment of compensation, in accordance with the principles set out in paragraph (1). The Contracting Party making the expropriation shall make every endeavour to ensure that such review is carried out promptly.*

B33. India-Denmark BIT⁷⁹

- (1) *Investments of investors of each Contracting Party shall not be nationalized, 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 authorised by and carried out in accordance with its laws, on a non-discriminatory basis and against fair and equitable compensation.*

⁷⁸ Treaties: India-Netherlands BIT, 1995

⁷⁹ Treaties: India-Denmark BIT, 1995

- (2) *Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known in such a way as to affect the value of the investment. Compensation shall be paid without undue delay and include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.*
- (3) *The investor affected shall have a right to prompt review under the law of the Contracting Party making the expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its investment, and of the payment of compensation, in accordance with the principles set out in paragraph 1 of this Article.*
- (4) *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 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.*

B34. India-Malaysia BIT⁸⁰

- I. *Neither Contracting Party shall take any measures of expropriation or nationalization or measures having effect equivalent to nationalization or expropriation (hereinafter referred to as expropriation”) against the investments of an investor of the other Contracting Party except under the following conditions:*

⁸⁰ Treaties: India-Malaysia BIT, 1995

- (a) *the measures are taken for a lawful or public purpose in accordance with law;*
 - (b) *the measures are non-discriminatory;*
 - (c) *the measures are accompanied by provisions for the payment of adequate and effective compensation without undue delay. Such compensation shall amount to the market value of the investments affected immediately before the measure of dispossession became public knowledge, and it shall be freely transferable in freely usable currencies. Any unreasonable delay in payment of compensation shall carry' an interest at prevailing commercial rate as agreed upon by both parties unless such rate is prescribed by law.*
- 2. *The investor affected shall have a 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 this paragraph. 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.*

B35. India-Germany BIT⁸¹

- (1) *Investments of investors of either Contracting Party shall not be expropriated, nationalised or subjected to measures having effect equivalent to nationalisation or expropriation in the territory of the other Contracting Party except in public interest. authorised by the laws of that Party, on a non-discriminatory basis and against compensation which shall be equivalent to the value of the expropriated or nationalised investment immediately before the date on which such expropriation or nationalisation became publicly known. Such compensation shall be effectively realisable without undue delay and shall be freely convertible and transferable. Interest shall be paid in a fair and equitable manner for the period between the date of expropriation or nationalisation and the date of actual payment of compensation.*
- (2) *An investor whose investment is expropriated or nationalised may, under the laws of the Contracting Party making the expropriation or nationalisation. seek review of expropriation or nationalisation measures by a judicial or other independent authority of that Contracting Party.*
- (3) *Where a Contracting Party expropriates the assets of a company in its own territory, in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs 1 and 2 of this Article are applied in the same manner to provide compensation in respect of the investment of such investors of the other Contracting Party who are owners of those shares.*

⁸¹ Treaties: India-Germany BIT, 1995

B36. India-Russia BIT⁸²

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 State of the other Contracting Party except for a public purpose in accordance with the laws and regulations of the State of the latter Contracting Party, on a non-discriminatory basis, and against compensation.*
2. *The compensation provided for in paragraph 1 of this Article shall be equivalent to the market value of the investment Immediately before the date on which the actual or impending expropriation becomes public knowledge. The compensation shall be paid without undue delay. It shall carry interest from the date of expropriation until the date of payment at the commercial rate established on a market basis.*
3. *The investor whose investments have been expropriated shall have a right under the laws and regulations of the Contracting Party making the expropriation for a review of his case of expropriation by a judicial or other independent authority of the State of that Contracting Party.*

B37. India-United Kingdom BIT⁸³

- (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 related to the internal requirements for regulating economic activity on a non-*

⁸² Treaties: India-Russia BIT, 1994

⁸³ Treaties: India-United Kingdom of Great Britain and Northern Ireland BIT, 1994

discriminatory basis and against fair, and equitable compensation. Such compensation shall amount to the genuine 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 a 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 this paragraph. 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 guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.*

Appendix C

Fair and Equitable Treatment (FET)

in Pre-2015 BITs of India

C1. India-UAE BIT¹

1. *Each Contracting Party shall, at all times, ensure Investments made in its territory by Investors of the other Contracting Party, fair and equitable treatment. Such treatment shall not be less favorable than that which it accords to Investments of its own investors or investors of any third Party, whichever is the most favorable.*

[...]

3. *Notwithstanding the provisions of any bilateral investment treaties that the Contracting Parties have signed with other countries before or after the entry into force of this Agreement, this Article shall not apply to procedural or jurisdictional matters.*
4. *However, the provisions of this Article shall not be construed to oblige one Contracting Party to extend to the Investors of the other Contracting Party the benefits of any treatment, preference or privilege resulting from:*
 - a) *any customs union, economic union, free trade area, monetary union or other form of regional economic arrangement or other similar international agreement, to*

¹ Treaties: India-UAE BIT, 2013

which either of the Contracting Parties, is or may become a party, or

b) any international or regional agreement or any other matter relating wholly or mainly to taxation.

5. *A Contracting Party shall not discriminate against Investments by Investors of the other Contracting Party in favour of Investments by its own investors or investors of a third Party in respect of the purchase of materials, energy, fuel or of means of production, transport or operation of any kind or restrict the marketing of products inside or outside its territory.*

C2. India-Nepal², India-Seychelles³, India-Congo⁴, India-Latvia⁵, India-Mozambique⁶, India-Bangladesh⁷, India-Myanmar⁸, India-North Macedonia^{9*}, India-Uruguay¹⁰, India-Ethiopia¹¹, India-Libya¹², India-Jordan¹³, India-China¹⁴, India-Bosnia¹⁵, India-Bahrain¹⁶, India-Sudan¹⁷, India-Armenia¹⁸, India-Djibouti¹⁹, India-Belarus²⁰, India-Yemen²¹,

² Treaties: India-Nepal BIT, 2011

³ Treaties: India-Seychelles BIT, 2010

⁴ Treaties: India-Democratic Republic of Congo BIT, 2010

⁵ Treaties: India-Latvia BIT, 2010

⁶ Treaties: India-Mozambique BIT, 2009

⁷ Treaties: India-Bangladesh BIT, 2009

⁸ Treaties: India-Myanmar BIT, 2008

⁹ Treaties: India-North Macedonia BIT, 2008

¹⁰ Treaties: India-Uruguay BIT, 2008

¹¹ Treaties: India-Ethiopia BIT, 2007

¹² Treaties: India-Libya BIT, 2007

¹³ Treaties: India-Jordan BIT, 2006

¹⁴ Treaties: India-China BIT, 2006

¹⁵ Treaties: India-Bosnia and Herzegovina BIT, 2006

¹⁶ Treaties: India-Bahrain BIT, 2004

¹⁷ Treaties: India-Sudan BIT, 2003

¹⁸ Treaties: India-Armenia BIT, 2003

¹⁹ Treaties: India-Djibouti BIT, 2003

²⁰ Treaties: India-Belarus BIT, 2002

²¹ Treaties: India-Yemen BIT, 2002

India-Ghana²², India-Cyprus²³, India-Ukraine²⁴,
India-Mongolia²⁵, India-Lao²⁶, India-Qatar²⁷,
India-Indonesia²⁸, India-Zimbabwe²⁹, India-Bulgaria³⁰,
India-Romania³¹, India-Belgo-Luxembourg Economic
Union³², India-Kyrgyzstan³³, India-Egypt³⁴, India-Oman³⁵,
India-Vietnam³⁶, India-Sri Lanka³⁷, India-Kazakhstan³⁸,
India-Poland³⁹, India-Israel⁴⁰ and India-Turkmenistan⁴¹
BITs

(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.*

For additional clauses please see Notes below. *** # ##

Notes

* Country name “the Republic of Macedonia” was changed to “the Republic of North Macedonia” in 2019.

²² Treaties: India-Ghana BIT, 2002

²³ Treaties: India-Cyprus BIT, 2002

²⁴ Treaties: India-Ukraine BIT, 2001

²⁵ Treaties: India-Mongolia BIT, 2001

²⁶ Treaties: India-Lao People’s Democratic Republic BIT, 2000

²⁷ Treaties: India-Qatar BIT, 1999

²⁸ Treaties: India-Indonesia BIT, 1999

²⁹ Treaties: India-Zimbabwe BIT, 1999

³⁰ Treaties: India-Bulgaria BIT, 1998

³¹ Treaties: India-Romania BIT, 1997

³² Treaties: India-Belgo-Luxembourg Economic Union BIT, 1997

³³ Treaties: India-Kyrgyzstan BIT, 1997

³⁴ Treaties: India-Egypt BIT, 1997

³⁵ Treaties: India-Oman BIT, 1997

³⁶ Treaties: India-Vietnam BIT, 1997

³⁷ Treaties: India-Sri Lanka BIT, 1997

³⁸ Treaties: India-Kazakhstan BIT, 1996

³⁹ Treaties: India-Poland BIT, 1996

⁴⁰ Treaties: India-Israel BIT, 1996

⁴¹ Treaties: India-Turkmenistan BIT, 1995

- ** In case of Uruguay, the starting words “*Investments and returns of*” should be replaced with “*Returns of investments and*”.

In case of Uruguay, additional clause reads as follows:

3. *The provisions of paragraphs 1 and 2 above shall not entail any obligation, for one contracting party to extend to the investors of the other, the treatment of any benefit or privilege, preference by virtue of any nature:*
 - (a) *Customs union or any similar international agreement, existing or future, which is or may become a party, or*
 - (b) *Any matter relating wholly or mainly to taxation.*

- *** In case of Latvia, additional clause reads as follows:

- (3) *A Contracting Party shall, subject to its laws, accord within its territory protection and security to investments and shall not impair the management, maintenance, use, enjoyment or disposal of investments.*

- # In case of North Macedonia, additional clause reads as follows:

- (2) *Each Contracting Party shall protect within its territory, investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, sale and disposal of such investments.*

- ## In case of Indonesia, additional clause reads as follows:

- l. *Investments made by investors of either Contracting Party in the territory of the other Contracting Party, shall receive treatment which is fair and equitable and not less favourable than that accorded to investments made by investors of any third State.*

C3. India-Slovenia BIT⁴²

2. *Each Contracting Party shall accord at all times fair and equitable treatment to investments by investors of the other Contracting Party.*

⁴² Treaties: India-Slovenia BIT, 2011

3. *Each Contracting Party shall subject to its laws, accord within its territory, protection and security to investments and shall not impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.*

C4. India-Lithuania BIT⁴³

2. *Each Contracting Party shall accord fair and equitable treatment, full protection and security to all investments made by the investors of the other Contracting Party on a non discriminatory basis.*

C5. India-Colombia BIT⁴⁴

2. *Each Contracting Party shall protect within its territory investments made in accordance with its law by investors of the other Contracting Party and shall not impair with discriminatory measures the management, maintenance, use, enjoyment, sale or disposition of such investments.*
3. *Each Party shall accord to investments of investors of the other Contracting Party fair and equitable treatment and full protection and security in its territory.*
4. *For greater certainty,*
 - a. *"Fair and equitable treatment" includes the prohibition against denial of justice in criminal, civil, or administrative proceedings in accordance with the principle of due process.*
 - b. *The "Full protection and security" standard does not imply, in any case, a better treatment to that accorded to nationals*

⁴³ Treaties: India-Lithuania BIT, 2011

⁴⁴ Treaties: India-Colombia BIT, 2009

of the Contracting Party where the investment has been made.

- c. *A determination that there has been a breach of another provision of this Agreement or another international agreement does not imply that the minimum standard of treatment of aliens has been breached.*

C6. India-Senegal BIT⁴⁵

- (2) *The investments of investors of each Contracting Party shall always be treated fairly and equitably and shall enjoy full protection and security in the territory of the other Contracting Party, in accordance with its laws and regulations. No Contracting Party shall impede, in any way, the management, preservation, use, increase or disposal of such investments through discriminatory measures*

C7. India-Syria⁴⁶, India-Iceland⁴⁷, India-Greece⁴⁸, India-Hungary⁴⁹, India-Serbia⁵⁰ and India-Argentina⁵¹ BITs

- 2. *Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate* ** protection and security in the territory of the other Contracting Party.*

⁴⁵ Treaties: India-Senegal BIT, 2008

⁴⁶ Treaties: India-Syrian Arab Republic BIT, 2008

⁴⁷ Treaties: India-Iceland BIT, 2007

⁴⁸ Treaties: India-Hellenic Republic BIT, 2007

⁴⁹ Treaties: India-Hungary BIT, 2003

⁵⁰ Treaties: India-Serbia BIT, 2003

⁵¹ Treaties: India-Argentina BIT, 1999

Notes:

- * In case of Iceland, Greece, Hungary and Serbia, the word “adequate” in the above clause should be replaced with “full”.
- ** In case of Argentina, the word “adequate” in the above clause should be replaced with “full legal”.

C8. India-Brunei⁵² and India-Czech Republic⁵³ BITs

- (2) *Investments and returns of investors of each Contracting Party shall at all times be accorded fair, equitable and non-discriminatory treatment* and enjoy full legal protection and security in the territory of the other Contracting Party.*

Notes:

- * In case of Czech Republic, the above clause should be read without the words “and non-discriminatory treatment”.

C9. India-Mexico BIT⁵⁴

1. *Each Contracting Party shall accord to investments of investors of the other Contracting Party fair and equitable treatment and full protection and security.*
2. *Each Contracting Party shall not deny justice to investments of investors of the other Contracting Party.*
3. *For greater certainty:*
 - (a) *the obligations set forth in paragraphs 1 and 2 above do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens; and*

⁵² Treaties: India-Brunei Darussalam BIT, 2008

⁵³ Treaties: India-Czech Republic BIT, 1996

⁵⁴ Treaties: India-United Mexican States BIT, 2007

- (b) *a determination that there has been a breach of another provision of this Agreement, or of a separate international Agreement, does not establish that there has been a breach of this Article.*

C10. India-Trinidad and Tobago BIT⁵⁵

- (2) *Investments and returns on investments by investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party.*
- (3) *Returns on investments and in the event of their re-investment, the returns there from shall enjoy the Same protection as the investments.*

C11. India-Slovakia⁵⁶, India-Netherlands⁵⁷, India-Malaysia⁵⁸ and Russia⁵⁹ BITs

2. *Investment of investors of either* Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection** and security in the territory of the other Contracting*** Party.#*

⁵⁵ Treaties: India-Trinidad and Tobago BIT, 2007

⁵⁶ Treaties: India-Slovak Republic BIT, 2006

⁵⁷ Treaties: India-Netherlands BIT, 1995

⁵⁸ Treaties: India-Malaysia BIT, 1995

⁵⁹ Treaties: India-Russian Federation BIT, 1994

Notes:

- * In case of Netherlands and Malaysia, the word “*either*” should be replaced with “*each*” in the above clause.
- ** In case of Malaysia, the words “*and adequate*” should be added before the word “*protection*” in the above clause.
- *** In case of Russia, the words “*of the State*” be added before the words “*of the other Contracting*” in the last line of the above clause.
- # In case of Russia, additional clause reads as follows:
 - 3. *The provisions of this Agreement shall not preclude the application by either Contracting Party of measures necessary to safeguard its essential security interest, or to the prevention of diseases and pests in animals or plants.*

C12. India-Saudi Arabia BIT⁶⁰

1. *Each Contracting Party shall as far as possible promote investments by investors of the other Contracting Party in its territory and admit such investments in accordance with its laws and regulations. Each Contracting Party shall in any case accord such investments fair and equitable treatment.*
2. *Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall not in any way impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.*

⁶⁰ Treaties: India-Saudi Arabia BIT, 2006

C13. India-Finland BIT⁶¹

- (3) *Investments and returns of investments of investors of one Contracting Party shall at all times enjoy fair and equitable treatment and full protection and security in the territory of the other Contracting Party. The latter Contracting Party shall in no way by unreasonable or discriminatory measures impair the management, maintenance, use, enjoyment or disposal of such investments.*
- (4) *Neither Contracting Party shall impose on investments by investors of the other Contracting Party, measures the effect of which would be arbitrary or unreasonable.*
- (5) *Laws, regulations, procedures and judicial decisions of general application as well as international agreements which Contracting Parties have entered into and which may affect the operation of this Agreement shall continue to be made public.*
- (6) *Nothing in this Agreement requires a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosures of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular enterprises.*

C14. India-Taiwan BIT⁶²

1. *Investment of investors of one territory in the other territory and the returns thereon shall at all times be accorded fair and equitable treatment and full protection. The management, maintenance, use, enjoyment or disposal of investments shall in no way be impaired*

⁶¹ Treaties: India-Finland BIT, 2002

⁶² Treaties: India-Taiwan BIT, 2002

by unreasonable or discriminatory measures in the territory receiving investments. (sic)

2. *Investments by (sic)*
3. *In addition, investors of one territory shall be accorded treatment in the other territory no less favourable than that accorded to investors of any other third territory/country.*
4. *The provisions of paragraph 2 and 3 above shall not be construed so as to oblige the authorities of either territory to extend to the investors of the other territory the benefit of any treatment, preference or privilege resulting from:*
 - (a) *any existing or future customs unions or any similar international agreement/arrangement to which it is or may become a party; or*
 - (b) *any matter pertaining wholly or mainly to taxation.*

C15. India-Kuwait BIT⁶³

- 1 *Each Contracting State shall at all time ensure investments and associated activities, made in its territory by investors of the other Contracting State, fair and equitable treatment. Such treatment shall not be less favourable than that which it accords in like situations to investments of its own investors or investors of any third state, whichever is the most favourable*

[...]

3. *However, the provisions of this Article shall not be construed so as to oblige one Contracting State to extend to the investors of the other Contracting State the benefits of any treatment, preference or privilege resulting from:*

⁶³ Treaties: India-Kuwait BIT, 2001

- (a) *any customs union, economic union, free trade area, monetary union, or other form of regional economic arrangement for other similar international agreement, to which either of the Contracting States, is or may become a party, or*
 - (b) *any international or regional agreement or similar arrangement relating wholly or mainly to taxation.*
- 4. *A Contracting State shall not discriminate against investments by investors of the other Contracting State in favour of investments by its own investors or investors of a third state in respect of the purchase of materials, energy, fuel or of means of production, transport or operation of any kind or restrict the marketing of products inside or outside its territory.*

C16. India-Croatia BIT⁶⁴

- (2) *Investments and returns, including reinvested 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.*

C17. India-Thailand BIT⁶⁵

- (2) *Investments and returns of investors of each Contracting Party in the territory of the other Contracting Party shall at all times be accorded fair and equitable treatment including protection and security under the laws of the other Contracting Party.*

⁶⁴ Treaties: India-Croatia BIT, 2001

⁶⁵ Treaties: India-Thailand BIT, 2000

C18. India-Sweden BIT⁶⁶

- 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 and shall enjoy full protection and security under this Agreement.*

C19. India-Portugal BIT⁶⁷

- I- *Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and admit such investments into its territory in accordance with its laws and regulations. It shall accord such investments fair and equitable treatment.*
- 2- *Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.*

C20. India-Philippines BIT⁶⁸

Article III

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 IV

1. *Each Contracting Party shall accord fair and equitable treatment to investments made by investors of the other Contracting Party in its territory.*

⁶⁶ Treaties: India-Sweden BIT, 2000

⁶⁷ Treaties: India-Portugal BIT, 2000

⁶⁸ Treaties: India-Philippines BIT, 2000

[...]

4. *The provisions of paragraphs 1,2 and 3 above shall not be construed so as to oblige the other 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 union, common market, free trade area, or regional economic organization or measures leading to the formation of a customs union or free trade area or similar international agreement to which it is or may become a party; or*
 - b. *any matter pertaining wholly or mainly or taxation.*

C21. India-Austria BIT⁶⁹

- (1) *Each Contracting Party shall in its territory promote, as far as possible, investments of investors of the other Contracting Party, admit such investments in accordance with its legislation and in any case accord such investments fair and equitable treatment.*
- (2) *Investments admitted according to Article 1 paragraph (1) of this Agreement and their returns shall enjoy the full protection of the present Agreement. The same applies without prejudice to the regulations of paragraph (1) also for their returns in case of reinvestment of such returns. Any change of the form in which assets are invested or reinvested including extension, alteration or transformation, made in accordance with the legislation of the host Contracting Party, shall not affect their character as investment.*

⁶⁹ Treaties: India-Austria BIT, 1999

C22. India-Uzbekistan BIT⁷⁰

2. *Each Contracting Party shall accord to investments as well as to investors in respect of such investments at all time fair and equitable treatment and full protection and security in its territory.*

[...]

4. *Each Contracting Party shall in accordance with its laws render assistance to the investors of the other Contracting Party, whose investments were admitted in its territory, for obtaining the required clearances and permissions.*

C23. India-Australia BIT⁷¹

2. *Investments or investors of each Contracting Party shall at all times be accorded fair and equitable treatment.*
3. *A Contracting Party shall, subject to its laws, accord within its territory protection and security to investments and shall not impair the management, maintenance, use, enjoyment or disposal of investments.*

C24. India-Morocco BIT⁷²

2. *Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security of the other Contracting Party.*

[...]

⁷⁰ Treaties: India-Uzbekistan BIT, 1999

⁷¹ Treaties: India-Australia BIT, 1999

⁷² Treaties: India-Morocco BIT, 1999

4. *Returns on investments. in case of their reinvestment in accordance with the law in force in each of the Contracting Parties. shall enjoy the same protection accorded to the initial investment.*

C25. India-Mauritius BIT⁷³

- (1) *Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments in its territory by investors of the Other Contracting Party.*

C26. India-Spain BIT⁷⁴

1. *Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security.*
2. *Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the operation, management, maintenance, use, enjoyment, sale, and if it is the case, the liquidation of such investments.*

⁷³ Treaties: India-Mauritius BIT, 1998

⁷⁴ Treaties: India-Spain BIT, 1997

C27. India-France BIT⁷⁵

- (1) *The investments made by investors of one Contracting Party shall enjoy full and complete protection and safety in the area of the other Contracting Party.*
- (2) *Each Contracting Party shall extend fair and equitable treatment in accordance with internationally established principles to investments made by investors of the other Contracting Party in its area and shall permit the full exercise of this right in principle and in practice. In particular, though not exclusively, each Contracting Party shall extend fair and equitable treatment to the domestic transportation of goods or persons directly connected with an investment and to their international transportation, subject to bilateral or international agreements governing such transport which are in force between the Contracting Parties.*
- (3) *Nationals authorised to work in the area of one Contracting Party shall not be prevented by that Contracting Party from availing of facilities relevant to the exercise of their professional activities.*

C28. India-Switzerland BIT⁷⁶

- (2) *Investments of investors of each Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party and shall at all times be accorded fair and equitable treatment.*

⁷⁵ Treaties: India-France BIT, 1997

⁷⁶ Treaties: India-Switzerland BIT, 1997

C29. India-Korea⁷⁷ and India-UK⁷⁸ BITs

Article 2

2. *Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.*

Article 3*

1. *Each Contracting Party shall in its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.*
2. *Each Contracting Party shall in its territory accord to investments of investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investors concerned.*

[...]

4. *The provisions of paragraph 1, 2 and 3 of this Article shall not be construed so as to oblige one contracting Party to extend to investors of the other Contracting party the benefit of any treatment, preference or privilege resulting from any international agreement or any domestic legislation relating wholly or mainly to taxation.*

Notes:

- * In case of UK, Article 3 should be excluded completely.

⁷⁷ Treaties: India-Republic of Korea BIT, 1996

⁷⁸ Treaties: India-United Kingdom of Great Britain and Northern Ireland BIT, 1994

C30. India-Tajikistan BIT⁷⁹

- (2) *Investments and returns of investors a Contracting Party shall at all times be accord and equitable treatment in the territory of the Contracting Party.*

C31. India-Italy BIT⁸⁰

2. *Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other contracting Party and shall in no way be subject to unjustified or discriminatory measures.*

C32. India-Denmark BIT⁸¹

- (1) *Each Contracting Party shall in its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which in no case shall be less favourable than that accorded to the investments of its own investors or to investors of any third state, whichever is the more favourable from the point of view of the investor.*

C33. India-Germany BIT⁸²

- (2) *Each Contracting Party shall accord to investments as well as to investors in respect of such investments at all times fair and equitable treatment and full protection and security in its territory.*

⁷⁹ Treaties: India-Tajikistan BIT, 1995

⁸⁰ Treaties: India-Italy BIT, 1995

⁸¹ Treaties: India-Denmark BIT, 1995

⁸² Treaties: India-Germany BIT, 1995

- (3) *Neither Contracting Party shall place any constraints on the international movement of goods or persons directly connected with an investment being transported subject to bilateral or international agreements governing such transports, which are in force between the Contracting Parties.*

Appendix D

Most Favoured Nation Treatment

(MFN)

in Pre-2015 BITs of India

D1. India-UAE BIT¹

2. *Each Contracting Party shall accord to Investors of the other Contracting Party as regards compensation, transfers, management, use, enjoyment or disposal of their Investments treatment no less favorable than that which it accords to Investments by its own investors or by investors of any third Party, whichever is the most favorable..*
3. *Notwithstanding the provisions of any bilateral investment treaties that the Contracting Parties have signed with other countries before or after the entry into force of this Agreement, this Article shall not apply to procedural or jurisdictional matters.*

D2. India-Nepal², India-Lithuania³, India-Seychelles⁴, India-Congo⁵, India-Latvia⁶, India-Mozambique⁷,

¹ Treaties: India-UAE BIT, 2013

² Treaties: India-Nepal BIT, 2011

³ Treaties: India-Lithuania BIT, 2011

⁴ Treaties: India-Seychelles BIT, 2010

⁵ Treaties: India-Democratic Republic of Congo BIT, 2010

⁶ Treaties: India-Latvia BIT, 2010

⁷ Treaties: India-Mozambique BIT, 2009

India-Myanmar⁸, India-North Macedonia^{9*}, India-Libya¹⁰,
India-Jordan¹¹, India-China¹², India-Sudan¹³,
India-Armenia¹⁴, India-Djibouti¹⁵, India-Belarus¹⁶,
India-Yemen¹⁷, India-Ghana¹⁸, India-Ukraine¹⁹,
India-Croatia²⁰, India-Mongolia²¹, India-Sweden²²,
India-Uzbekistan²³, India-Qatar²⁴, India-Zimbabwe²⁵,
India-Bulgaria²⁶, India-Mauritius²⁷, India-Romania²⁸,
India-Kyrgyzstan²⁹, India-Egypt³⁰, India-Oman³¹,
India-Vietnam³², India-Sri Lanka³³, India-Kazakhstan³⁴,
India-Poland³⁵, India-Tajikistan³⁶ and

⁸ Treaties: India-Myanmar BIT, 2008

⁹ Treaties: India-North Macedonia BIT, 2008

¹⁰ Treaties: India-Libya BIT, 2007

¹¹ Treaties: India-Jordan BIT, 2006

¹² Treaties: India-China BIT, 2006

¹³ Treaties: India-Sudan BIT, 2003

¹⁴ Treaties: India-Armenia BIT, 2003

¹⁵ Treaties: India-Djibouti BIT, 2003

¹⁶ Treaties: India-Belarus BIT, 2002

¹⁷ Treaties: India-Yemen BIT, 2002

¹⁸ Treaties: India-Ghana BIT, 2002

¹⁹ Treaties: India-Ukraine BIT, 2001

²⁰ Treaties: India-Croatia BIT, 2001

²¹ Treaties: India-Mongolia BIT, 2001

²² Treaties: India-Sweden BIT, 2000

²³ Treaties: India-Uzbekistan BIT, 1999

²⁴ Treaties: India-Qatar BIT, 1999

²⁵ Treaties: India-Zimbabwe BIT, 1999

²⁶ Treaties: India-Bulgaria BIT, 1998

²⁷ Treaties: India-Mauritius BIT, 1998

²⁸ Treaties: India-Romania BIT, 1997

²⁹ Treaties: India-Kyrgyzstan BIT, 1997

³⁰ Treaties: India-Egypt BIT, 1997

³¹ Treaties: India-Oman BIT, 1997

³² Treaties: India-Vietnam BIT, 1997

³³ Treaties: India-Sri Lanka BIT, 1997

³⁴ Treaties: India-Kazakhstan BIT, 1996

³⁵ Treaties: India-Poland BIT, 1996

³⁶ Treaties: India-Tajikistan BIT, 1995

India-Turkmenistan³⁷ BITs

- (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 (1) 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: \$ \$ \$ \$ \$ \$*
 - (i) *any existing or future customs unions or similar international agreement to which it& is or may become a party; && && % %% or*
 - (ii) *any matter pertaining wholly or mainly to taxation.%% ^ ^ ^
^ ^ ^ ~*

Notes

- * Country name “the Republic of Macedonia” was changed to “the Republic of North Macedonia” in 2019.
- ** In case of Seychelles, Congo, Latvia, Mozambique, Myanmar, North Macedonia, Sudan, Armenia, Djibouti, Qatar, Zimbabwe, Mauritius and Kyrgyzstan, the last sentence of clause (1) with words “own investors” should be read without the word “investors”.
- *** In case of Tajikistan, the words “any third” should be read as “an” at the end of clause (1).
- # In case of Latvia, the words “whichever is more favourable” should be added at the end of clause (1).
- ## In case of Croatia, the words “whichever is more favourable to the investor concerned” be added at the end of clause (1).

³⁷ Treaties: India-Turkmenistan BIT, 1995

In case of Vietnam, clause (1) reads as follows:

- (1) *Each Contracting Party shall accord in accordance with its laws and regulations 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 to investments of investors of any third State.*

@ In case of Mauritius, “paragraphs (1) and (2) above” should be replaced with “paragraphs (2) and (3)”.

@@ In case of Bulgaria and Mauritius, the word “one” should be replaced with “either”.

@@@ In case of China, Bulgaria and Mauritius, the words “Contracting Party” should be added here.

\$ In case of Lithuania, clause (3) reads as follows:

3. *The provisions of the paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege accorded to the investors of any third State by virtue of:*
- a) *any existing or future customs union, common market, free trade area, other forms of regional economic cooperation or similar international arrangements to which either Contracting Party is or may become a party; or*
 - b) *any existing or future agreements relating to avoidance of double taxation or any other matters relating to taxation.*

\$\$ In case of Latvia, clause (3) reads as follows:

- (3) *The provisions of paragraph (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and to their investments and returns on investments the present or future benefit of any treatment, preference or privilege resulting from:*
- (a) *any membership in a free trade area, customs union, monetary union, common market and any international agreement resulting in similar arrangements, or*
 - (b) *any international agreement or arrangement or, domestic legislation relating wholly or mainly to taxation.*

\$\$\$ In case of Qatar, clause (3) reads as follows:

(3) *The provisions stipulated in the above paras shall not be construed to allow the investors of the Contracting Party to enjoy the privileges granted by either Contracting Party to the investors of a third State by virtue of its participation in any of the following:*

(a) *Agreements relating to any existing or future customs unions, free trade zones, regional economic Organisations or similar international agreements;*

(b) *Matters relating wholly or mainly to taxation.*

& In case of Belarus, the word “it” should be replaced with “*either of the Contracting Parties*”.

&& In case of Armenia, sub-clause (i) of clause (3) reads as follows:

(a) *any existing or future free trade area, customs unions, monetary union or similar international agreement or other forms of regional cooperation to which one of the Contracting Parties is or may become a party, or*

&&& In case of Yemen, Ghana, Croatia, Mongolia and Bulgaria, sub-clause (i) of clause (3) reads as follows:

(a) *any existing or future customs unions, free trade area, economic communities or similar international agreement to which it is or may become a party, or*

% In case of Romania, sub-clause (i) of clause (3) reads as follows:

(a) *any existing or future economic or customs union, a free trade area, regional economic organisation or similar international agreement to which it is or may become a party, or*

%% In case of Egypt, sub-clause (i) of clause (3) reads as follows:

(a) *Any existing or future customs union or free trade area, external tariff area, a common market, a monetary union or similar international agreement to which it is or may become a party, or*

%%% In case of North Macedonia, sub-clauses (i) and (ii) of clause (3) reads as follows:

a) *its membership of, or association with any existing or future economic, monetary or customs union, common market, free trade area or similar international agreement to which it is or may become a party, or*

- b) *any matter relating wholly or mainly to taxation, including the agreements for avoidance of double taxation.*
- ^ In case of Sweden, sub-clauses (i) and (ii) of clause (3) reads as follows
 - (a) *any existing or future customs union, common market or free trade area or similar international agreement to which it is or may become a party, or*
 - b) *any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.*
- ^^ In case of Mauritius, sub-clauses (i) and (ii) of clause (3) reads as follows:
 - (a) *any customs unions, free trade area, common market or any similar international agreement or interim arrangement leading up to such customs unions, free trade area, or common market of which either of the Contracting Parties is a member; or*
 - b) *any international agreement or any matter relating wholly or mainly to taxation.*
- ^^^ In case of Mozambique, sub-clause (ii) of clause (3) reads as follows:
 - (b) *any agreement or matter related to taxation.*
- ~ In case of China, sub-clause (ii) of clause (3) reads as follows:
 - (b) *any matter pertaining wholly or mainly to taxation. Such taxation matters shall be governed by the Agreement between the Republic of India and the People's Republic of China for Avoidance of Double taxation of 18-7-1994.*

D3. India-Slovenia³⁸ and India-Austria³⁹ BITs

- l. *Each Contracting Party shall accord to investments of investors of the other Contracting Party, treatment no less favourable than that accorded to investments of its own investors or investments of investors of any third State.*

³⁸ Treaties: India-Slovenia BIT, 2011

³⁹ Treaties: India-Austria BIT, 1999

2. *Each Contracting Party shall accord to investors of the other Contracting Party, as regards management, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State as regards their investments, whichever is more favourable.*
3. *The provisions of paragraphs (1) and (2)* shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the present or future benefit of any treatment, preference or privilege resulting from:*
 - (a) *any present or future customs union, monetary union**, common market, free trade area or membership in an economic community or a similar international agreement.*
 - (b) *any matter, including international agreements, pertaining wholly or mainly to taxation.*

Notes

* In case of Austria, the words “paragraphs (1) and (2)” should be replaced with “paragraph (1)” in this clause.

** In case of Austria, this clause should be read without the words “monetary union”.

D4. India-Colombia BIT⁴⁰

1. *Each Contracting Party shall accord in its territory to the investments of investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment, sale or disposition of the investment made in its territory, a treatment that shall not be less favourable than that it accords, in like circumstances, to the investments of its own investors or to the investments of investors of any other third State.*
2. *Each Contracting Party shall accord in its territory to the investors of the other Contracting Party, as regards the management,*

⁴⁰ Treaties: India-Colombia BIT, 2009

maintenance, use, enjoyment, sale or disposition of the investment made in its territory, a treatment that shall not be less favourable than that it accords, in like circumstances, to the investors of any third State.

3. *The most favourable treatment to be granted in like circumstances referred to in this Agreement does not encompass mechanisms for the settlement of investment disputes, such as those contained in Articles 9 (Settlement of Disputes between One Contracting Party and an Investor of the Other Contracting Party) and 10 (Settlement of Disputes between the Contracting Parties) of this Agreement, which are provided for in the treaties or international investment agreements.*
4. *The provisions of this Agreement according a treatment no less favourable than that accorded to investments of investors or to investors of any of the Contracting Parties or of any third state shall not be construed so as to oblige one Contracting Party to extend to investments of investors or to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:*
 - (a) *Any existing or future free trade area, customs union, common market, economic or monetary union, or any other regional or bilateral economic agreement having the effect of setting up a free trade area or similar international agreement or arrangement to which it is or may become a party.*
 - (b) *Any matter pertaining wholly or mainly to taxation including an agreement for the Avoidance of Double Taxation.*

D5. India-Bangladesh BIT⁴¹

- (1) *Each Contracting Party shall accord to investments of investors of the other Contracting Party and to the return in respect of their investments, treatment which shall not be less favourable than that accorded either to investments of its own or investments of investors of any third State.*
- (2) *In addition, each Contracting Party shall accord to investors of the other Contracting Party, treatment which shall not be less favourable than that accorded to investors of any third State.*
- (3) *The provisions of paragraphs (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party 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.*

D6. India-Senegal BIT⁴²

- (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 or investments of investors of any third State.*
- (2) *Each Contracting Party shall accord to investors of the other Contracting Party as regards management, use, enjoyment or disposal of their investments, treatment which shall not be less favourable than that which it accords to its own investors or to*

⁴¹ Treaties: India-Bangladesh BIT, 2009

⁴² Treaties: India-Senegal BIT, 2008

investors of any third State as regards their investments, whichever is more favourable.

- (3) *The provisions of paragraphs (1) 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 resulting from:*
- (a) *any existing or future customs unions or free trade agreement or common market or similar international agreements to which it is or may become a party, or*
 - (b) *any matter pertaining wholly or mainly to taxation including any agreement on the avoidance of double taxation.*

D7. India-Syria BIT⁴³

1. *Admitted Investments of investors of one Contracting Party effected within the territory of the other Contracting Party in accordance with the laws and regulations of the latter, shall receive in the other Contracting Party treatment not less favorable than that accorded to its own investors or to 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 investment, treatment which shall not be less favorable than that accorded to investors of any third state*
3. *If a Contracting Party accords special advantages to investors of any third state by virtue of an agreement establishing a free trade area, a customs union, a common market or a similar regional organization or by virtue of an agreement on the avoidance of double taxation or any matter pertaining wholly or mainly to taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.*

⁴³ Treaties: India-Syrian Arab Republic BIT, 2008

D8. India-Brunei BIT⁴⁴

- (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 or investments of investors of any third State.*
- (2) *In addition, each Contracting Party shall, at all times, 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 (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party, the benefit of any treatment, preference or privilege resulting from:*
 - (a) *any existing or future customs unions or a free trade area or a common market or similar international agreement to which it is or may become a party; or*
 - (b) *any matter pertaining wholly or mainly to taxation.*

D9. India-Uruguay BIT⁴⁵

1. *Each Contracting Party shall accord to investments of investors of the other Contracting Party A treatment no less favourable than that accorded to investments of its own investors or investments of investors of third countries.*
2. *In addition, each Contracting Party shall accord to investors of the other contracting party, including in respect of their returns on investments, a treatment no less favourable than that accorded to investors of third countries.*

⁴⁴ Treaties: India-Brunei Darussalam BIT, 2008

⁴⁵ Treaties: India-Uruguay BIT, 2008

3. *The provisions of paragraphs 1 and 2 above shall not entail any obligation, for one contracting party to extend to the investors of the other, the treatment of any benefit or privilege, preference by virtue of any nature;*
- (a) *Customs unions or similar international agreement, existing or future, which is or may become a party; or*
- (b) *Any matter relating wholly or mainly to taxation.*

D10. India-Ethiopia BIT⁴⁶

- (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 to investments made by 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 (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:*
- (i) *any existing or future customs unions, free trade area, economic communities or similar international agreement to which it is or may become a party; or*
- (ii) *any matter pertaining wholly or mainly to taxation.*

⁴⁶ Treaties: India-Ethiopia BIT, 2007

D11. India-Iceland BIT⁴⁷

- (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 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) If either Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union, a common market or a similar regional organisation, it shall not be obliged to accord such advantages to investors or investments of investors of the other Contracting Party.*
- (4) The provisions of paragraphs (1) and (2) of this Article shall not be applicable to tax measures. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party derived from any tax convention. In the event of any inconsistency between the provisions of this Agreement and any tax convention, the provisions of the latter shall prevail.*

D12. India-Mexico BIT⁴⁸

- 1. Each Contracting Party shall accord to investors of the other Contracting Party treatment no less favourable than that it accords, in like circumstances, to investors of any third State with respect to the management, maintenance, use, enjoyment or disposal of investments.*

⁴⁷ Treaties: India-Iceland BIT, 2007

⁴⁸ Treaties: India-Mexico BIT, 2007

2. *Each Contracting Party shall accord to investments of investors of the other Contracting Party treatment no less favourable than that it accords, in like circumstances, to investments of investors of any third State with respect to the management, maintenance, use, enjoyment or disposal of investments.*

D13. India-Greece BIT⁴⁹

1. *Each Contracting Party shall accord to investments, including returns, made in its territory by investors of the other Contracting Party, treatment not less favourable than that which it accords to investments of its own investors or to investments of investors of any third State, whichever, is more favourable.*
2. *Each Contracting Party shall accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments in its territory, treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.*
3. *The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:*
 - (a) *its participation in any existing or future customs union, economic union, regional economic integration agreement or similar international agreement, or*
 - (b) *any international agreement or any other matter relating wholly or mainly to taxation.*

⁴⁹ Treaties: India-Greece BIT, 2007

D14. India-Trinidad and Tobago BIT⁵⁰

- (1) *Each Contracting Party shall accord to investments or returns of investors of the other Contracting Party treatment which shall not be less favourable than that accorded either to investments or returns of its own investors or investments or returns of investors of any third State.*
- (2) *In addition, each Contracting Party shall accord, in its territory, to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which shall not be less favourable than that which it accords to its investors or to investors of any third State.*
- (3) *The provisions of paragraphs (1) 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 including double taxation avoidance agreements.*

D15. India-Slovakia BIT⁵¹

1. *Each Contracting Party shall in its territory accord to investments and returns of investors of the other Contracting Party treatment, which is fair and equitable and not less favourable than that, which it in like circumstances accords to investments and returns of its*

⁵⁰ Treaties: India-Trinidad and Tobago BIT, 2007

⁵¹ Treaties: India-Slovakia BIT, 2006

own investors or to investments and returns of investors of any third State, whichever is more favourable.

2. *Each Contracting Party shall in its territory accord to investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that, which it in like circumstances accords to investors of any third State.*
3. *The provisions of paragraphs (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefits of any treatment, preference or privilege, resulting from:*
 - a) *any existing or future customs, economic and monetary union or a common market or a free trade area or a regional economic organization or similar international agreement to which it is or may become a party; or*
 - b) *any obligation which is binding on that Contracting Party by virtue of its membership to the above mentioned customs union, economic and monetary union or common market, or*
 - c) *any matter pertaining wholly or mainly to taxation.*

D16. India-Bosnia and Herzegovina BIT⁵²

1. *Each Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments and returns of its own investors or investments and returns of investors of any third State, whichever is more favourable.*
2. *Each Contracting Party shall accord in its territory to investors of the other Contracting Party, as regards the expansion (to the extent the laws of the Contracting Party concerned permit), management,*

⁵² Treaties: India-Bosnia and Herzegovina BIT, 2006

maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

3. *The provisions of paragraphs 1 and 2 above shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege accorded to investors of any third State resulting from:*
 - a) *any existing or future customs union, free trade area, economic union or similar international agreement to which it is or may become a party, or*
 - b) *agreements on avoidance of double taxation or any other international arrangements pertaining wholly or mainly to taxation.*

D17. India-Saudi Arabia BIT⁵³

1. *Each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of investors of any third State.*
2. *In accordance with its laws and regulations, each Contracting Party shall grant investments once admitted and investment returns of the investors of the other Contracting Party a treatment not less favourable than that accorded to investments and investment returns of its investors.*
3. *Each Contracting Party shall accord the investors of the other Contracting Party with regard to the management, maintenance, use, enjoyment or disposal of investments or with any other activity associated with investments in its territory, treatment not less*

⁵³ Treaties: India-Saudi Arabia BIT, 2006

favourable than the treatment it accords to its investors or to the investors of a third State,.

4. *The provisions in paragraph 1 and 3 of this Article shall not, however, relate to any treatment, preference or privilege granted by either Contracting Party to the investors of a third State by virtue of its membership of, or association with, a customs union, an economic union, a common market or a free trade area.*
5. *The treatment granted under this Article shall not relate to matters regarding taxation.*

D18. India-Bahrain⁵⁴ and India-Cyprus⁵⁵ BITs

- (1) *Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State*.*
- (2) *Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to a treatment less favourable than that which it accords to** investors of any third State.*
- (3) *The provisions of paragraphs (1) 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 union, free trade area or regional cooperation organisation or similar international*

⁵⁴ Treaties: India-Bahrain BIT, 2004

⁵⁵ Treaties: India-Cyprus BIT, 2002

agreement to which either of the Contracting Parties is or may become a party, or

- (b) *any international agreement or arrangement, or any domestic legislation, relating wholly or mainly to taxation.*^{***}

Notes

* In case of Cyprus, the words “*whichever is more favourable*” should be added at the end of this paragraph.

** In case of Cyprus, the words “*its own investors or to*” should be added here.

*** In case of Cyprus, sub-clauses (a) and (b) of clause 3 read as follows:

- (a) *any existing or future customs unions, free trade area, economic communities or similar international agreement to which it is or may become a party, or*
- (b) *any matter pertaining wholly or mainly to taxation.*

D19. India-Hungary BIT⁵⁶

1. *Each Contracting Party shall accord to investments and returns 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 to investments of investors of any third State.*
2. *Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or of any third State, whichever is more favourable.*
3. *The provisions of paragraph 1 and 2 of this Article 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*

⁵⁶ Treaties: India-Hungary BIT, 2003

privilege which may be extended by the former Contracting Party by virtue of:

- /a/ Any customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of cooperation to which either of the Contracting Parties is or may become a party;*
- /b/ Any matter pertaining wholly or mainly to taxation.*

D20. India-Serbia BIT⁵⁷

- (1) Each Contracting Party shall accord to investments and returns of investors of the other Contracting Party, treatment which shall not be less favourable than that accorded either to investments and returns of its own investors or to investments and returns of investors of any third State.*
- (2) Each Contracting Party shall accord to the investments of investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of an investment, treatment which shall not be less favourable than that which it accords to investments of its own investors or investments of investors of any third State.*
- (3) The provisions of paragraphs (1) 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) The customs union, free trade zone, monetary union or similar international Agreement establishing such unions or other forms of regional co-operation to which either of the Contracting Parties is or may become a party, or**

⁵⁷ Treaties: India-Serbia BIT, 2003

- (b) *Any bilateral or international agreement relating wholly or partially to taxation.*

D21. India-Finland BIT⁵⁸

- (1) *Each Contracting Party shall in its territory accord to investments by investors of the other Contracting Party treatment no less favourable than that which it accords to investments of its own investors or to investments made by investors of any third State, whichever, according to the investor, is more favourable.*
- (2) *Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, a fair and equitable treatment which in no case shall be less favourable than that accorded to investments of its own investors or investors of any third State, whichever, according to the investor, is more favourable.*
- (3) *The provisions of paragraphs (1) and (2) of this Article do not apply to any present or future benefits, treatments, preferences or privileges which a Contracting Party accords to investors of a third State by virtue of its participation in or of its association with a free trade area, a customs union, a common market, an economic and monetary union or other similar regional economic integration agreement or any matter pertaining wholly or mainly to taxation.*

D22. India-Taiwan BIT⁵⁹

2. *Investments by (sic)*

⁵⁸ Treaties: India-Finland BIT, 2002

⁵⁹ Treaties: India-Taiwan BIT, 2002

3. *In addition, investors of one territory shall be accorded treatment in the other territory no less favourable than that accorded to investors of any other third territory/country.*
4. *The provisions of paragraph 2 and 3 above shall not be construed so as to oblige the authorities of either territory to extend to the investors of the other territory the benefit of any treatment, preference or privilege resulting from:*
 - (a) *any existing or future customs unions or any similar international agreement/arrangement to which it is or may become a party; or*
 - (b) *any matter pertaining wholly or mainly to taxation.*

D23. India-Kuwait BIT⁶⁰

- 1 *Each Contracting State shall at all time ensure investments and associated activities, made in its territory by investors of the other Contracting State, fair and equitable treatment. Such treatment shall not be less favourable than that which it accords in like situations to investments of its own investors or investors of any third state, whichever is the most favourable.*
2. *Each Contracting State shall accord to investors of the other Contracting State as regards compensation, transfers, management, use, enjoyment, acquisition or disposal of their investments treatment no less favourable than that which it accords to investments by its own investors or by investors of any third state, whichever is the most favourable.*
3. *However, the provisions of this Article shall not be construed so as to oblige one Contracting State to extend to the investors of the other Contracting State the benefits of any treatment, preference or privilege resulting from:*

⁶⁰ Treaties: India-Kuwait BIT, 2001

- (a) *any customs union, economic union, free trade area, monetary union, or other form of regional economic arrangement for other similar international agreement, to which either of the Contracting States, is or may become a party, or*
 - (b) *any international or regional agreement or similar arrangement relating wholly or mainly to taxation.*
- 4. *A Contracting State shall not discriminate against investments by investors of the other Contracting State in favour of investments by its own investors or investors of a third state in respect of the purchase of materials, energy, fuel or of means of production, transport or operation of any kind or restrict the marketing of products inside or outside its territory.*

D24. India-Lao BIT⁶¹

- (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) *Each Contracting Party shall in its territory accord to investments of investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investors concerned.*
- (3) *The provisions of paragraphs (1) and (2) above shall not be construed so as to oblige one Contracting Party to extend to the*

⁶¹ Treaties: India-Lao People's Democratic Republic BIT, 2000

investors of the other the benefit of any treatment, preference or privilege resulting from:

- (a) any existing or future customs unions, free trade area, economic communities or similar international agreement to which it is or may become a party, or*
- (b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.*

D25. India-Thailand BIT⁶²

ARTICLE 4

TREATMENT OF INVESTMENT

- (1) Investments of investors of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall receive treatment which is fair and equitable and not less favourable than that accorded in respect of the investments and returns of the investors of the latter Contracting Party or of any third State.*
- (2) Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than that which it accords to the investors of any third State.*

ARTICLE 5

EXCEPTIONS

The provisions of Article 4 shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

⁶² Treaties: India-Thailand BIT, 2000

- (a) *any existing or future customs union or similar international agreement to which it is or may become a party, or*
- (b) *any matter pertaining wholly or mainly to taxation*

D26. India-Portugal BIT⁶³

- I- Each Contracting Party shall accord to investments of investors of the other Contracting Party in the territory of the first 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 this article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:*
 - a) Any existing or future free, trade area, customs union, common market or other similar international agreements including other forms of regional economic cooperation to which either of the Contracting Parties is or may become a Party; and*
 - b) Any matter pertaining wholly or mainly to taxation.*

⁶³ Treaties: India-Portugal BIT, 2000

D27. India-Philippines BIT⁶⁴

2. *Each Contracting Party shall accord admitted investments of the investors of the other Contracting Party in its territory a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of any third country, whichever is more favourable.*
3. *In addition, each Contracting Party shall accord to investors of the other Contracting Party, treatment which shall not be less favourable than that accorded to investors of any third State.*
4. *The provisions of paragraphs 1,2 and 3 above shall not be construed so as to oblige the other 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 union, common market, free trade area, or regional economic organization or measures leading to the formation of a customs union or free trade area or similar international agreement to which it is or may become a party; or*
 - b. *any matter pertaining wholly or mainly or taxation.*

D28. India-Argentina BIT⁶⁵

- (1) *Each Contracting Party, once it has admitted in its territory investments of investors of the other Contracting Party, shall accord to investments treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State.*

⁶⁴ Treaties: India-Philippines BIT, 2000

⁶⁵ Treaties: India-Argentina BIT, 1999

- (2) *Each Contracting Party shall in its territory subject investors of the other Contracting Party, as regards, the management, maintenance, use, enjoyment or disposal of their investment or returns, to treatment not less favourable than that which it accords to investors of any third State. V*
- (3) *The provisions of paragraphs 1 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 free trade area, customs union, common market or similar regional agreement to which either of the Contracting Parties is or may become a party, or*
 - (b) *Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation, or*
 - (c) *Any bilateral agreement providing for concessional financing concluded by either Contracting Party with a third country.*

D29. India-Australia BIT⁶⁶

1. *Each Contracting Party shall, subject to its laws, regulations and investment policies, grant to investments made in its territory by investors of the other Contracting Party treatment no less favourable than that which it accords to investments of its own investors.*
2. *A Contracting Party shall at all times treat investments in its own territory on a basis no less favourable than that accorded to investments of investors of any third country.*

⁶⁶ Treaties: India-Australia BIT, 1999

3. *In addition each Contracting Party shall accord to investors of the other Contracting Party treatment, with respect to the management, maintenance, use, enjoyment or disposal of investments, which shall not be less favourable than that accorded to investors of any third state.*
4. *This Article shall not require a Contracting Party to extend to investments any treatment, preference or privilege resulting from:*
 - (a) *any customs union, economic union, free trade area or regional economic integration agreement to which the Contracting Party belongs; or*
 - (b) *the provisions of a double taxation agreement with a third country; or*
 - (c) *any legislation relating wholly or mainly to taxation.*

D30. India-Morocco BIT⁶⁷

- I. *Each Contracting Party shall in its territory accord to investments of investors of the other Contracting Party treatment no less favourable than that it accords to investments of its own investors or investors of any third State, whichever is the most favourable.*
other Contracting Party...enjoyment or disposal of their investments treatment no less favourable than that it accords to its own investors or investors of any third State, whichever is the most favourable.*
3. *The provisions in this Agreement relative to the grant of treatment no less favourable than that accorded to the investors of either Contracting Party or any third State 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:*

⁶⁷ Treaties: India-Morocco BIT, 1999

- a) *any economic or custom union or a free trade area or a common market, or any similar international agreement or any form of regional economic organisation to which either of the Contracting Parties is or may become a party;*
- b) *matters relating wholly or mainly to taxation, which shall be governed by a separate bilateral Agreement on taxation issues.*

Notes

* Some text is missing here in the BIT available in public domain.

D31. India-Indonesia BIT⁶⁸

- 1. *Investments made by investors of either Contracting Party in the territory of the other Contracting Party, shall receive treatment which is fair and equitable and not less favourable than that accorded to investments made by investors of any third State.*
- 2. *The provisions of this Agreement relating to the granting of treatment not less favourable than that accorded to the investors of any third State 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 union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Party is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or*

⁶⁸ Treaties: India-Indonesia BIT, 1999

- (b) *any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.*
- 3. *Each Contracting Party shall, subject to its laws and regulations, accord to investment of investors of the other Contracting Party treatment no less favourable than that which is accorded to investments of its investors.*

D32. India-Turkey BIT⁶⁹

- 1. *Each Party shall encourage and create favourable conditions for investors of the other Party to make investments in its territory, and treat such investments on a basis no less favourable than that accorded in similar situations to investments of investors of any third country, within the framework of its laws and regulations.*
- 2. *Each Party shall accord to these investments, once established, treatment no less favourable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favourable.*

[...]

- 4. *The provisions of this Article shall not be construed so as to oblige one Party to extend the investors of the other Party the benefit of any treatment, preference or privilege which the former Party may grant to:*
 - (a) *a customs union, free trade zone, monetary union or similar international agreement establishing such unions or other forms of international cooperation to which either of the Parties is or may become a party or*
 - (b) *any arrangement or international agreement relating wholly or partially to taxation.*

⁶⁹ Treaties: India-Turkey BIT, 1998

D33. India-Belgo-Luxembourg BIT⁷⁰

1. *Each Contracting Party shall accord to investments of investors of the other Contracting Party national treatment or most-favoured-nation treatment, whichever is more favourable to the investor concerned.*
2. *In addition, each Contracting Party shall accord to investors of the other contracting Party, including in respect of returns on their investments most-favoured-nation treatment.*
3. *The provisions of paragraphs (1) 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 union, a free trade zone, a common market or similar international agreement to which it is or may become a party, or*
 - (b) *any matter pertaining wholly or mainly to taxation*

D34. India-Spain BIT⁷¹

1. *Each Contracting Party shall in its territory accord to investments or returns of investors of the other Contracting Party, treatment no less favourable than that which it accords to the Investments or returns of its own investors or to investments or returns of investors of any third State, whichever Is more favourable to the investor concerned.*
2. *In addition, each Contracting Party shall accord to investors of the other Contracting Party treatment which shall not be less favourable than that accorded to investors of any third State.*

⁷⁰ Treaties: India-Belgo-Luxembourg Economic Union BIT, 1997

⁷¹ Treaties: India-Spain BIT, 1997

3. *The Provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State 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 union or similar international agreement to which either of the Contracting Parties is or may become a party, or*
 - (b) *any arrangement or international agreement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.*

D35. India-France BIT⁷²

- (1) *Each Contracting Party shall accord to investments of investors of the other Contracting Party, including their operation, management, maintenance, use, enjoyment or disposal by such investors, treatment which shall not be less favourable than that accorded to investments of its investors, or than the most favourable treatment accorded to investments of investors of any third country, whichever is more favourable.*
- (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) *This treatment shall not include the privileges granted by one Contracting Party to nationals or investors of a third party State by virtue of its participation or association in a free trade zone,*

⁷² Treaties: India-France BIT, 1997

customs union, common market or any other form of regional economic organization.

- (4) *The provisions of this article do not apply to tax matters.*

D36. India-Switzerland BIT⁷³

- (1) *Each Contracting Party shall in its territory accord to investments of investors of the other Contracting Party treatment not less favourable than that which it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable. Such treatment shall in particular apply to the operation, management, maintenance, use, enjoyment or disposal of such investments.*
- (2) *If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.*
- (3) *Neither Contracting Party shall be obliged to apply in matters of taxation the provisions of paragraph (1) of this Article. Reference is however made in this connection to the Agreement between the Republic of India and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, done at New Delhi on November 2, 1994.*

⁷³ Treaties: India-Switzerland BIT, 1997

D37. India-Czech Republic⁷⁴ and India-Israel⁷⁵ BITs

- (1) *Each Contracting Party shall accord to investments of investors of the other Contracting Party, including their operation, management, maintenance, use, enjoyment or disposal by such investors, treatment which shall not be less favourable than that accorded either to investments of its own investors or to investment 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 1 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 customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional cooperation to which either of the Contracting Parties is or may become a party;**
 - (b) *any matter pertaining wholly or mainly to taxation.*

Notes

* In case of Israel, sub-clause (a) of clause (3) reads as follows:

- (a) *any existing or future customs union, free trade area agreement or similar international agreement to which it is or may become a party, or*

⁷⁴ Treaties: India- Czech Republic BIT, 1996

⁷⁵ Treaties: India-Israel BIT, 1996

D38. India-Korea BIT⁷⁶

1. *Each Contracting Party shall in its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.*
2. *Each Contracting Party shall in its territory accord to investments of investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investors concerned.*
3. *In addition each Contracting Party shall accord to investors of the other Contracting Party treatment which shall not be less favourable than that accorded to investors of any third State.*
4. *The provisions of paragraph 1, 2 and 3 of this Article shall not be construed so as to oblige one contracting Party to extend to investors of the other Contracting party the benefit of any treatment, preference or privilege resulting from any international agreement or any domestic legislation relating wholly or mainly to taxation.*

D39. India-Italy BIT⁷⁷**ARTICLE 3 - PROMOTION AND PROTECTION OF INVESTMENTS**

⁷⁶ Treaties: India-Republic of Korea BIT, 1996

⁷⁷ Treaties: India-Italy BIT, 1995

3. *Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party, according to its laws and regulations or specific investment agreements, is more favourable than that provided under this agreement, the most favourable treatment shall apply with respect to that specific investments.*

*ARTICLE 4 - NATIONAL TREATMENT AND MOST FAVOURED NATION
CLAUSE*

1. *Each contracting Party shall accord to investments of investors of the other Contracting Party, including their operation, management, maintenance, use, enjoyment or disposal by such investors, treatment which shall -not be less favourable than that - accorded either to investments of its own investors or to 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 paragraph 1 and 2 shall not apply to advantages which either Contracting Party accords to its own investors or to investors of third States by virtue of an agreement, legislation, or arrangements consequent to such legislation regarding matters of taxation, including an agreement on the avoidance of double taxation and cross border trade.*
4. *The Contracting Parties shall accord, in respect of activities relating to the procurement, sale and transport of raw and processed materials, energy, fuels and production means, as well as any related operation under this Agreement, treatment no less favourable than that accorded to investments of its own investors or investors of a third Country.*

D40. India-Netherlands BIT⁷⁸

- 2) *Each Contracting Party shall accord to such investments, including their operation, management, maintenance, use, enjoyment or disposal by such investors, treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.*
- 3) *The provisions of paragraphs 1 and 2 in respect of the grant of most favoured nation treatment shall not apply to privileges which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.*
- 4) *The provisions of paragraphs 1 and 2 in respect of the grant of national treatment and most favoured nation treatment shall also not apply in respect of any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation or arrangements consequent to such legislation relating wholly or mainly to taxation.*

D41. India-Denmark BIT⁷⁹

- (1) *Each Contracting Party shall in its territory accord to investments made by investors of the other Contracting Party fair and equitable treatment which in no case shall be less favourable than that accorded to the investments of its own investors or to investors of any third state, whichever is the more favourable from the point of view of the investor.*
- (2) *Each Contracting Party shall in its territory accord to investments or investors of the other Contracting Party, as regards their*

⁷⁸ Treaties: India-Netherlands BIT, 1995

⁷⁹ Treaties: India-Denmark BIT, 1995

management, maintenance, use, enjoyment or disposal of their investment, fair and equitable treatment which in no case shall be less favourable than that accorded to investments of its own investors or to investors of any third State, whichever of these standards is the more favourable from the point of view of the investor.

- (3) *In addition each Contracting Party shall accord to investors of the other Contracting Party treatment which shall not be less favourable than that accorded to investors of any third state.*

D42. India-Malaysia BIT⁸⁰

1. *Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall receive treatment which is fair and equitable, and not less favourable than that accorded to investments made by investors of any third state.*
2. *The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of any third State 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 union or free trade area or a common market or a monetary union or similar international agreement or other forms of regional cooperation to which either of the Contracting Party is or may become a party; or the adoption of an agreement designed to lead to the formation or extension of such a union or area within a reasonable length of time; or*

⁸⁰ Treaties: India-Malaysia BIT, 1995

- (b) *any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.*
- 3. *Each Contracting Party shall, subject to its own laws, regulations and national policies, accord to investments of investors of the other Contracting Party treatment no less favourable than that which is accorded to investments of its own investors.*

D43. India-Germany BIT⁸¹

- (1) *Each Contracting Party shall accord to investments of investors of the other Contracting Party, including their operation, management, maintenance, use, enjoyment or disposal by such investors, treatment which shall not be less favourable than that accorded either to investments of its own investors or to investments of investors of any third State.*
- (2) *The provisions of paragraph 1 shall not relate to privileges which either Contracting Party accords to investors of third States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.*
- (3) *The provisions of paragraph 1 shall also not relate to advantages which either Contracting Party accords to its own investors or to investors of third States by virtue of an agreement, legislation, or arrangements consequent to such legislation regarding matters of taxation, including an agreement on the avoidance of double taxation.*

⁸¹ Treaties: India-Germany BIT, 1995

D44. India-Russia BIT⁸²

1. *Each Contracting Party shall grant to investments made in the territory of its State by investors of the other Contracting Party treatment no less favourable than that which it accords to investments of its own investors or to Investments of Investors of any third State. The same treatment shall also be granted with respect to the management, maintenance, use, enjoyment or disposal of investments.*
2. *Each Contracting Party reserves the right to make or maintain exceptions from national treatment granted in accordance with paragraph 1 of this Article, in accordance with the laws and regulations of its State. However, any new exception shall not apply to investments made in the territory of Its State by investors of the other Contracting Party before the entry Into force of such exception.*
3. *The most favoured nation treatment granted in accordance with paragraph 1 of this Article shall not apply to advantages and privileges which:*
 - a. *Any of the Contracting Parties is providing or may provide in future in connection with its participation In a common market, free trade area, a customs union or economic union;*
 - b. *The Russian Federation Is providing or may provide In future by virtue of agreements with the States that constituted the former Union of Soviet Socialist Republics.*

⁸² Treaties: India-Russia BIT, 1994

D45. India-UK BIT⁸³

- (1) *Each Contracting Party shall accord to investments of investors of the other Contracting Party, including their operation, management, maintenance, use, enjoyment or disposal by such investors, treatment which shall not be less favourable than that accorded either to investments of its own investors or to 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 this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State 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 union or similar international agreement to which either of the Contracting Parties is or may become a party, or*
 - (b) *any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.*

⁸³ Treaties: India-United Kingdom of Great Britain and Northern Ireland BIT, 1994

Appendix E

Investor State Dispute Settlement

(ISDS)

in Pre-2015 BITs of India

E1. India-UAE BIT¹

1. *Disputes arising between a Contracting Party and an Investor of the other Contracting Party in respect of an Investment under this Agreement shall be governed by this Article.*
2. *In the context of Republic of India, this Article shall cover Measures underlying a dispute taken by the Central Government and/or the state governments while exercising their executive powers in accordance with the Constitution of India.*
3. *In the context of the United Arab Emirates, this Article shall cover Measures underlying a dispute taken by the Federal Government and/or the Local Governments of the member Emirates while exercising their executive powers.*
4. *Any dispute arising between a Contracting Party and an investor of the other Contracting Party in respect of an Investment under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. For the purpose of*

¹ Treaties: India-UAE BIT, 2013

this provision, a Notice of Dispute ("Notice of Dispute") shall be served by the investor containing the following:

- a) The name and the address of the disputing Investor where a claim is made by an Investor of a Contracting Party in respect of an Investment made in the territory of the other Contracting Party;*
 - b) The relevant provisions of this Agreement alleged to have been breached;*
 - c) The issues and the factual basis for the claim; and*
 - d) The relief sought and the approximate amount of damages claimed.*
- 5. If such dispute cannot be settled amicably within a period of six months from the date of receipt of Notice of Dispute, the dispute may be submitted to one of the following dispute settlement mechanisms:*
- a) the International Center for Settlement of Investment Disputes ("the Center"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (the "Washington Convention"), if both Contracting Parties are parties to the Washington Convention; or*
 - b) an arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), in force at the time of the commencement of the dispute; or*
 - c) the competent court of the Contracting Party in the territory of which the Investment is made.*

Once the Investor has submitted the dispute under any of the procedures stipulated under sub-clause (a) to (c) of clause (5) of this Article, that choice shall be final and binding on that Investor.

6. *If the Investor concerned chooses to submit the dispute to international arbitration as per sub-clause (a) or (b) of clause (5) of this Article, it shall give the other Contracting Party at least ninety (90) days advance written notice of its intention to submit the dispute to arbitration.*
7. *In case the dispute is submitted to an arbitral tribunal established under the Arbitration Rules of UNCITRAL in force at the time of the commencement of the dispute under sub-clause (b) of clause (5) of this Article, it shall be subject to the following modifications:*
 - a) *The arbitral tribunal shall be comprised of three arbitrators with relevant expertise, one arbitrator appointed by each of the disputing parties and the third, who shall be the Chairman, appointed by agreement of the co-arbitrators. The parties shall appoint their respective arbitrators within sixty (60) days from the expiry of ninety (90) day notice period referred to under clause (6) of this Article. The third arbitrator shall not be a national of either Contracting Party or a national of a country with which either Contracting Party does not have diplomatic or consular relations.*
 - b) *If the third arbitrator has not been appointed within sixty (60) days from the date both parties have appointed their respective arbitrators, the appointing authority under this Article shall be in the following order:*
 - (i) *the President; or*
 - (ii) *the Vice-President; or*
 - (iii) *the next most senior Judge of the International Court of Justice.*

The appointing authority under this sub-clause shall not be a national of either Contracting Party or a national of a country with which either Contracting Party does not have diplomatic or consular relations.

- c) *The arbitral tribunal shall state the basis and reasons of its award.*
 - d) *The arbitral tribunal shall reach its award based upon the provisions of this Agreement and the relevant domestic laws of the Contracting Party where the Investment is made. In reaching its decision, the arbitral tribunal shall accord a high level of deference to the relevant domestic laws and policies of the Contracting Party where the investment is made.*
 - e) *The tribunal shall reach its decision by a majority of votes. The award shall be final and binding on both parties.*
 - f) *The parties to the arbitration shall share the costs of the arbitration, including the arbitrator fees, expenses, allowances and other costs in equal proportion. Each party shall bear the cost of its representation in the arbitral proceedings.*
8. *This Article shall not be applied in the following situations:*
- a) *If there is a written contract or agreement between a Contracting Party and an Investor, the dispute shall only be resolved in accordance with the procedure specified in that contract or agreement; or*
 - b) *If more than five (5) years have elapsed from the date on which the investor first acquired, or ought to have with reasonable diligence first acquired, knowledge of the Measure underlying the dispute in question and the knowledge that the Investment had incurred substantial loss or damage as a result of such Measure.*

**E2. India-Nepal², India-Seychelles³, India-Congo⁴,
India-Mozambique⁵, India-Myanmar⁶, India-Iceland⁷,
India-Libya⁸, India-Bahrain⁹, India-Sudan¹⁰,
India-Armenia¹¹, India-Djibouti¹², India-Belarus¹³,
India-Yemen¹⁴, India-Ghana¹⁵, India-Cyprus¹⁶,
India-Ukraine¹⁷, India-Mongolia¹⁸, India-Thailand¹⁹,
India-Uzbekistan²⁰, India-Kyrgyzstan²¹, India-Egypt²²,
India-Oman²³, India-Vietnam²⁴, India-Sri Lanka²⁵,**

² Treaties: India-Nepal BIT, 2011

³ Treaties: India-Seychelles BIT, 2010

⁴ Treaties: India-Democratic Republic of Congo BIT, 2010

⁵ Treaties: India-Mozambique BIT, 2009

⁶ Treaties: India-Myanmar BIT, 2008

⁷ Treaties: India-Iceland BIT, 2007

⁸ Treaties: India-Libya BIT, 2007

⁹ Treaties: India-Bahrain BIT, 2004

¹⁰ Treaties: India-Sudan BIT, 2003

¹¹ Treaties: India-Armenia BIT, 2003

¹² Treaties: India-Djibouti BIT, 2003

¹³ Treaties: India-Belarus BIT, 2002

¹⁴ Treaties: India-Yemen BIT, 2002

¹⁵ Treaties: India-Ghana BIT, 2002

¹⁶ Treaties: India-Cyprus BIT, 2002

¹⁷ Treaties: India-Ukraine BIT, 2001

¹⁸ Treaties: India-Mongolia BIT, 2001

¹⁹ Treaties: India-Thailand BIT, 2000

²⁰ Treaties: India-Uzbekistan BIT, 1999

²¹ Treaties: India-Kyrgyzstan BIT, 1997

²² Treaties: India-Egypt BIT, 1997

²³ Treaties: India-Oman BIT, 1997

²⁴ Treaties: India-Vietnam BIT, 1997

²⁵ Treaties: India-Sri Lanka BIT, 1997

**India-Kazakhstan²⁶, India-Poland²⁷, India-Tajikistan²⁸,
India-Turkmenistan²⁹ and India-Malaysia³⁰ BITs**

- (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***:*
 - (i) *for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's# competent judicial, arbitral## or administrative bodies; or*
 - (ii) *to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law###.*
- (3) *Should@ the parties fail to agree 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:*
 - (i) *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 both parties to the dispute consent@@@ in writing to submit the dispute to the*

²⁶ Treaties: India-Kazakhstan BIT, 1996

²⁷ Treaties: India-Poland BIT, 1996

²⁸ Treaties: India-Tajikistan BIT, 1995

²⁹ Treaties: India-Turkmenistan BIT, 1995

³⁰ Treaties: India-Malaysia BIT, 1995

International Centre for the Settlement of Investment Disputes such a dispute shall be referred to the Centre; or

(ii) *If both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings^{\$}; or*

(iii) *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:*

(a) *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;*

(b) *The parties shall appoint their respective arbitrators within two months;*

(c) *The arbitral award shall be made in accordance with the provisions of this Agreement and shall be binding on the parties to the dispute; and^{\$\$\$}*

(d) *The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party[&].*

For additional clauses please see Notes below^{&& &&&}.

Notes

* In case of Uzbekistan, the words “*of the former*” should be replaced with “*made by the investor*”.

** In case of Uzbekistan, this clause should be read without the words “*between the parties to the dispute*”.

*** In case of Iceland, Cyprus and Malaysia, this clause should be read without the words “*if both parties agree*”.

In case of Uzbekistan, the words “*that Contracting Party’s*” should be replaced with “*its*”.

- ## In case of Belarus, Thailand, Uzbekistan, Kyrgyzstan, Egypt, Oman, Sri Lanka, Kazakstan, Poland, Tajikistan, Turkmenistan and Malaysia, this sub-clause should be read without the word “*arbitral*”.
- ### In case of Iceland, the words “*if both parties agree*” should be added at the end of this sub-clause.
In case of Poland, the abbreviation “*UNCITRAL*” should be added at the end of this sub-clause.
- @ In case of Belarus, the word “*Should*” should be replaced with “*Where*” in this clause.
- @@ In case of Belarus, the words “*opened for signature at Washington on 18 March*” should be added here.
- @@@ In case of Seychelles, Congo, Mozambique, Myanmar, Iceland, Libya, Bahrain, Sudan, Armenia, Djibouti, Belarus, Yemen, Ghana, Cyprus, Ukraine, Mongolia, Thailand, Uzbekistan, Kyrgyzstan, Egypt, Oman, Vietnam, Sri Lanka, Kazakstan, Poland, Tajikistan, Turkmenistan and Malaysia, the words “*both parties to the dispute consent*” should be replaced with “*the investor consents*”.
- \$ In case of Thailand, the words “*of ICSID*” should be added here in this sub-clause.
- \$\$ In case of Turkmenistan, the words “*to an ad hoc arbitral tribunal by either party to*” should be replaced with “*Resolve*”.
- \$\$\$ In case of Ukraine, Thailand, Oman, Sri Lanka, Kazakstan, Poland, Tajikistan, Turkmenistan and Malaysia, this Article should be read without the words “*and shall be binding on the parties to the dispute; and*”.
- & In case of Yemen, Ghana and Mongolia, this Article should be read without this sub-sub-clause (d).
- && In case of Mozambique, additional clause reads as follows:
(4) *Any dispute arising out of action taken under Article 12 (Applicable Laws) and all pre-establishment disputes shall be excluded from the purview of international arbitration.*
- &&& In case of Cyprus, additional sub-clauses of clause (3) read as follows:
(d) *The dispute may be submitted to the Arbitration Institute of the Arbitral Tribunal of the Chamber of Commerce in Stockholm; or*
(e) *to the Arbitral Tribunal of the International Chamber of Commerce in Paris.*

E3. India-Slovenia BIT³¹

1. *Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment shall be settled amicably through negotiations.*
2. *If such a dispute cannot be settled within a period of four (4) months from the date of request for settlement, either of the parties to the dispute, may submit the dispute to:*
 - (a) *the competent court, arbitral or administrative tribunal of the Contracting Party; only if the investor agrees, or*
 - (b) *conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL); or*
 - (c) *arbitration established under:*
 - (i) *the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or*
 - (ii) *the rules of the International Centre for the Settlement of Investment Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington, D. C., on March 18, 1965, provided that both the Contracting Parties are parties to the said Convention; or*
 - (iii) *the ICSID Rules governing the Additional Facility for the Administration of Proceedings, provided that in case conciliation proceedings under (b) above are*

³¹ Treaties: India-Slovenia BIT, 2011

terminated other than by signing of a settlement agreement, recourse to arbitration may be taken.

- (d) *any other form of arbitration agreed upon by the parties to the dispute.*
3. *A legal person which is constituted or organised under the law of the Contracting Party, party to the dispute, and which, before a dispute between it and that Contracting Party arises, is controlled by investors of the other Contracting party, shall for the purpose of Article 25(2)(b) of the ICSID Convention be treated as a ‘national of another Contracting State’ and shall for the purpose of Article 1(6) of the Additional Facility Rules be treated as a ‘national of another State’.*
4. *A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.*
5. *Neither Contracting Party shall give diplomatic protection or bring an international claim in respect of any dispute referred to arbitration under this Article, unless the other Contracting Party shall have failed to abide by or comply with the award rendered in such a dispute.*
6. *The award shall be final and binding on both parties to the dispute and shall be recognised and enforced in accordance with internal and international law.*

E4. India-Lithuania BIT³²

1. *Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former*

³² Treaties: India-Lithuania BIT, 2011

under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. In the event of a dispute the Contracting Party in whose territory the investment was made shall be notified in writing by the investor.

2. *In case of any such dispute which has not been amicably settled within a period of six months from the date of the written notification under paragraph 1, the investor may choose to submit the dispute for settlement:*
 - A) *to the relevant courts or competent tribunals or administrative bodies of the Contracting Party in whose territory the investment was made; or*
 - B) *to International conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL); or*
 - C) *to arbitration in accordance with the following:*
 - i) *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 (ICSID) and the investor consents in writing to submit the dispute to the ICSID, such a dispute shall be referred to the ICSID; or*
 - ii) *In the event that one of the Contracting Parties has not adhered to the above-mentioned Convention, the dispute may be resolved in accordance with ICSID rules governing the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings; or*
 - iii) *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:*

- a) *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.*
 - b) *The third arbitrator shall not be a national of either Contracting Party.*
 - c) *The parties shall appoint their respective arbitrators within two months.*
3. *The choice made by the investor to submit a dispute either under paragraph 2 (A) or (B) or (C) of this Article shall be final.*
4. *The awards of arbitration shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay any such award, recognised in accordance with the laws and regulations of the respective Contracting Party, and shall provide for the effective enforcement of such awards in its territory.*

E5. India-Latvia BIT³³

- (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) *If the dispute has not been settled within six months from the date on which it was raised in writing, the dispute may, at the choice of investor, be submitted:*
- (a) *to the competent courts of the Contracting Party in whose territory the investment is made; or*
 - (b) *to arbitration under the International Centre for Settlement of Investment Disputes between States and Nationals of other*

³³ Treaties: India-Latvia BIT, 2010

- States, opened for signature at Washington on 18th March, 1965 (hereinafter referred to as the “Centre”) provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention; or*
- (c) to arbitration under the Additional Facility of the Centre, provided that either the disputing Contracting Party or the Contracting Party of the investor is a party to the ICSID Convention; or*
 - (d) to any ad-hoc arbitration tribunal which unless otherwise agreed on by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) with 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.*
 - (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.*
- (3) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*
 - (4) The arbitration award shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award.*
 - (5) If either Party submits a dispute for resolution under paragraph 2(a), it shall be precluded from invoking the procedure under paragraph 2(b), 2(c) or 2(d) and vice-versa.*

- (6) *Neither of the Contracting Parties, which is a Party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other Party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.*

E6. India-Colombia BIT³⁴

1. *Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment under this Agreement shall or in connection to the interpretation or application of this Agreement, shall as far as possible be settled amicably between the parties to the dispute. Every dispute shall be notified in writing including detailed information by the investor to the Contracting party that receives the investment (Notice of the Dispute).*
2. *Such a dispute shall be submitted for settlement to the competent non-judicial administrative bodies, if established, under the law of the Contracting Party.*

*[...]**

7. *Each Contracting Party hereby gives in advance its irrevocable consent to the submission of a dispute to any of the arbitral proceedings established in paragraph 3.c. of this Article.*
8. *Arbitral awards shall be final and binding on the disputing parties.*
9. *An investor may not file a request for arbitration if more than three years have elapsed since the date the investor had knowledge or should have had knowledge of the alleged violation of this Agreement, as well as of the alleged losses and damages.*

³⁴ Treaties: India-Colombia BIT, 2009

10. *The dispute settlement mechanisms provided in this Agreement will be based on the provisions of the present Agreement, the national law of the Contracting Party in whose territory the investment has been made, including the rules related to conflict of laws, on the general principles of law and international law.*
11. *The tribunal shall consider whether the claim of the claimant is frivolous and shall provide the disputing parties a reasonable opportunity for comments. In the event of a frivolous claim the tribunal shall award costs against the claimant.*
12. *The tribunal shall not be competent to rule on the legality of the measure as a matter of domestic law.*
13. *The presentation of the notice of intent and other documents to a Party will be done in the place designated by that Party in Annex I. (Presentation of Documents Regarding Article 9).*
14. *The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*

Notes

- * Some text seems to be missing from the text of BIT available on public domain.

E7. India-Bangladesh BIT³⁵

- (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*

³⁵ Treaties: India-Bangladesh BIT, 2009

*Party's competent judicial, arbitral or administrative bodies;
or*

- (b) to the international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law.*
- (3) Should the Parties fail to agree 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) If both parties to the dispute so agree, under the International Centre for the Settlement of Investment Disputes Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings governed by Additional Facility Rules, 1979; or*
 - (c) 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.*
- (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.*
- (4) Neither Contracting Party shall pursue through diplomatic channels any dispute submitted to a body or conciliation forum under paragraph(2), or referred to arbitration under paragraph (3) until the proceedings have terminated and a contracting Party has failed to abide by or to comply with the award or decision rendered by such body or conciliation Forum or Arbitration Forum.*

E8. India-Senegal BIT³⁶

- (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 Party's competent judicial, arbitral or administrative bodies;*
 - or*

³⁶ Treaties: India-Senegal BIT, 2008

- (b) *to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law.*
- (3) *Should the Parties fail to agree 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 (the Center) such a dispute shall be referred to the Centre; or*
 - (b) *If both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings of the Center; or*
 - (c) *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.*
- (4) *In respect of arbitration proceedings under paragraph 3 (c) of this Article the following shall apply:*
 - (i) *The Arbitral Tribunal shall consist of three arbitrators. Each party shall appoint an arbitrator within two months from the date when one of the parties to the dispute informs in writing the other of its intention to submit the dispute to arbitration. The two arbitrators, so appointed, shall within two months from the date of their appointment, by mutual agreement appoint a third arbitrator, the Chairman, who shall be a national of a third State.*

- (ii) *If the necessary appointments are not made within the period specified in paragraph (4) (i), either party may request the President, Vice-President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party to make the necessary appointment of arbitrators.*
- (iii) *The arbitral award shall be made in accordance with the provisions of this Agreement and shall be binding on the parties to the dispute.*
- (iv) *The arbitral tribunal shall state the basis of its decision and give reasons.*
- (v) *Each party shall bear the cost of its arbitrator and its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs of the arbitration proceedings shall be borne equally by the parties concerned, unless otherwise decided by the Tribunal.*

E9. India-Syria BIT³⁷

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 to:*
 - a. *The competent courts, arbitral or administrative bodies of the Contracting Party in whose territory the investments has been made; or*

³⁷ Treaties: India-Syrian Arab Republic BIT, 2008

- b. International conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law, if accepted by the disputing parties;*
- 3. Should the parties fail to agree 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, as follows:*
 - a. the International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of the other States opened for signature at Washington, on March 18 1965, in case both Contracting Parties have become members of this Convention; or*
 - b. the International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility of Rules), if one of the Contracting Parties is not a contracting state of the ICSID Convention; or*
 - c. an ad hoc arbitral tribunal which, unless otherwise agreed upon by the Parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). The Arbitration procedure shall be as follows:*
 - The parties shall appoint their respective arbitrators within two months.*
 - The third arbitrator, who is not a national of either Contracting Party, shall be appointed by the disputing parties.*
 - If the parties fail to appoint the third arbitrator within two months, the appointing authority under Article 7*

of the UNCITRAL 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.

4. *The choice made as per sub paragraphs (a) or (b) or (c) of paragraph (3) herein above is final.*
5. *The arbitral tribunal shall decide the dispute in accordance with the national laws of the Contracting Party in whose territory the investment has been made, the provisions of this Agreement and the applicable rules and principles of international law. The awards of arbitration shall be final and binding on both parties to the dispute. Each Contracting Party shall carry out without delay any such award and such award shall be enforced in accordance with domestic law.*

E10. India-Brunei BIT³⁸

- (1) *Disputes concerning investments between one Contracting Party and an investor of the other Contracting Party 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 Party's competent judicial, arbitral or administrative bodies;*
or
 - (b) *to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law.*

³⁸ Treaties: India-Brunei Darussalam BIT, 2008

- (3) *Should the parties fail to agree 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 shall, upon the request of either party to the dispute, 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) *if both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or*
 - (c) *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 parties to the dispute shall appoint their respective arbitrators within two (2) months from the date when one of the parties to the dispute informs the other of its intention to submit the dispute to arbitration. The two arbitrators thus appointed shall, by mutual agreement, choose the third arbitrator who will act as the residing arbitrator of the tribunal. The third arbitrator shall be appointed within two (2) months from the date of the appointment of the last of the two arbitrators. The third arbitrator shall not be a national of either Contracting Party;*

- (ii) *if within the periods specified in sub-paragraph (c)(i) of this Article, the necessary appointments have not been made, either party to the dispute may invite the President of the International Court of Justice to make the 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;*
- (iii) *the arbitral award shall be made in accordance with the provisions of this Agreement and shall be final and binding on the parties to the dispute;*
- (iv) *the arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*

E11. India-North Macedonia BIT^{39*}

- (1) *Disputes between one of the Contracting Parties and an investor of the other Contracting Party shall be notified in writing, including detailed information, by the investor to the Contracting Party in whose territory the investment was made.*
- (2) *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.*

³⁹ Treaties: India-North Macedonia BIT, 2008

- (3) *Any such dispute which has not been amicably settled within a period of six months from the date of the written notification, may be submitted:*
- (a) *for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, arbitral or administrative bodies; or*
 - (b) *to International conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law, if both parties agree; or*
 - (c) *to the International Centre for the Settlement of Investment Disputes (ICSID), 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 the other States, 1965; or*
 - (d) *to an "ad hoc" arbitral tribunal established in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), 1976, subject to the following:*
 - *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.*
 - *The parties shall appoint their respective arbitrators within two months.*
 - *The arbitral tribunal shall state the basis of its decision and give reasons upon a request of either party.*
- (4) *The arbitration award shall be based on:*

- a) *The provisions of this Agreement;*
 - b) *The national law of the Contracting Party in whose territory the investment was made;*
 - c) *The rules and the universally accepted principles of international law.*
- (5) *The arbitral award shall be final and binding for the parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national law.*

Notes

- * Country name “the Republic of Macedonia” was changed to “the Republic of North Macedonia” in 2019.

E12. India-Uruguay BIT⁴⁰

- (1) *Any dispute between an investor of one Contracting Party and the other contracting party in connection with an investment of the former under this Agreement shall be settled as far as possible, amicably through negotiations between the parties to the dispute.*
- (2) *If a dispute cannot be settled amicably within six (6) from the date when it was raised by either party may be submitted for resolution;*
- (a) *In accordance with the laws of the Contracting Party accepting the investment before competent judicial, arbitral or administrative authorities of that Contracting Party; or*
 - (b) *Under international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law.*
- (3) *If either party has recourse to the procedures mentioned in paragraphs 2 (a) or 2 (b), this shall include the preclusion of subsequently adopting another form of reparation. However, in the*

⁴⁰ Treaties: India-Uruguay BIT, 2008

framework of the procedure referred to in Paragraph 2 (b), if the conciliation ends without the conclusion of an agreement to resolve the matter, 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 parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States and the 1965 investor consents in writing to the submission of the dispute to the International Centre for the settlement of disputes shall be referred to the Centre; or*
- (b) If both parties to the dispute so agree, in accordance with the procedures relating to the additional facility for the administration of fact-finding or conciliation and arbitration;*
- (c) Before 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 judge of the International Court of justice, provided more seniority who is not a national of either the Contracting Parties. The third arbitrator shall not be a national of the Contracting Parties.;*
 - (ii) The Parties shall appoint their respective arbitrators within two months.*
- (4) The arbitral tribunal shall reach its decision in application of the provisions of this Agreement and, if necessary, in accordance with the laws of the Contracting Party, which is a party to the dispute including its rules on the Conflict of Laws, as well as any specific*

agreement on investment in question in accordance with the principles of the international law.

- (5) The arbitrators' decisions shall be final and binding on both parties to the dispute.*
- (6) Neither Contracting Party shall conduct an international claim concerning a dispute has been submitted to the procedures of this article unless the other contracting party has failed to comply with the ruling of the arbitral award or the judicial authorities of the latter Contracting party has breached an international standard, including the denial of justice or the provisions of this Agreement.*
- (7) The arbitral tribunal shall state the basis of its decision and explain if so requested by any of the Parties.*

E13. India-Ethiopia BIT⁴¹

- (1) Any dispute between one of the Contracting Parties and an Investor of the other Contracting Party concerning an investment of the Investor in the territory of the former Contracting Party shall, as far as possible, be settled amicably between the parties concerned.*
- (2) If the dispute has not been settled within a period of six months from the date either party to the dispute requested amicable settlement, the dispute may be submitted for settlement to:*
 - (a) the competent court of the Contracting Party in the territory of which the investment has been made; or*
 - (b) an international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL).*
- (3) If the parties fail to agree on the dispute settlement procedures as per para 2 above, it may be referred to:*

⁴¹ Treaties: India-Ethiopia BIT, 2007

- (a) *the International Center for Settlement of Investments Disputes (ICSID) established pursuant to the Convention on the Settlement of Investment disputes between States and Nationals of other states, opened for signature, at Washington, on March 18, 1965, if both Contracting Parties are members of this Convention and the investor consents to submit the dispute to the Center; or*
- (b) *the International Center for Settlement of Investment Disputes under the Rules Governing Additional Facility for the Administration of Proceedings by the Secretariat of the Center (Additional Facility Rules); or*
- (c) *an international ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (IUNCITRAL).*
- (4) *The arbitral awards shall be final and binding on both parties to the dispute and shall be made in accordance with the provisions of this Agreement.*
- (5) *Any disputes arising out of action taken under Article 12 (applicable Laws) and all pre-establishment disputes shall be excluded from the purview of international arbitration.*

E14. India-Mexico BIT⁴²

ARTICLE 11

Means of Settlement

1. *This Section shall apply to disputes between a Contracting Party and an investor of the other Contracting Party arising from an alleged breach of an obligation set forth in Chapter II of this Agreement. Any dispute should, if possible, be settled by*

⁴² Treaties: India-Mexico BIT, 2007

consultation. If it is not so settled within six months, the investor may choose to submit it for resolution:

- (a) to any court or administrative tribunal of the disputing Contracting Party, or*
 - (b) by arbitration in accordance with this Section.*
2. *If the investor, or an enterprise that an investor owns or controls, submits the dispute referred to in paragraph 1 above to any court or administrative tribunal of the disputing Contracting Party, the same dispute may not be submitted to international arbitration as provided in this Section.*

ARTICLE 12

Notice of Intent, Consultation and Submission of a Claim to Arbitration

1. *An investor of a Contracting Party may submit to arbitration a claim that the other Contracting Party has breached an obligation set forth in Chapter II of this Agreement, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.*
2. *An investor of a Contracting Party, on behalf of an enterprise legally incorporated pursuant to the laws of the other Contracting Party, that is a legal person such investor owns or controls, may submit to arbitration a claim that the other Contracting Party has breached an obligation set forth in Chapter II of this Agreement, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.*
3. *Before a disputing investor submits a claim to arbitration, the disputing parties shall first hold consultations in an attempt to settle that claim amicably. Consultations shall be held upon submission of the notice of intent to submit the claim to arbitration. The place of consultation shall be the capital of the disputing Contracting Party, unless the disputing parties otherwise agree.*
4. *A disputing investor may submit a claim to arbitration only if:*

- (a) *the investor consents to arbitration in accordance with the procedures set out in this Section;*
- (b) *the investor has delivered to the Contracting Party written notice of its intention to submit a claim to arbitration at least 180 days prior to submitting the claim. Such notice shall specify:*
 - (i) *the name and address of the investor, and where the claim is made on behalf of an enterprise, the name and address of the enterprise;*
 - (ii) *the provisions of this Agreement alleged to have been breached and any other relevant provisions;*
 - (iii) *the factual and legal basis for the claim;*
 - (iv) *the relief sought and the amount of damages claimed;*
and
 - (v) *evidence establishing that it is an investor of the other Contracting Party and, when a claim is submitted on behalf of an enterprise, evidence that it owns or controls such enterprise;*
- (c) *no more than three years have elapsed from the date on which the investor, or the enterprise that an investor owns or controls, first acquired, or should have acquired knowledge of the alleged breach and knowledge that the investor or the enterprise has incurred loss or damage thereby;*
- (d) *the investor and, where the claim is for loss or damage to an interest of an enterprise that the investor owns or controls, the enterprise waive their right to initiate or continue before any administrative tribunal or court under the laws of a Contracting Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach under Chapter II, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of*

damages, before an administrative tribunal or court under the laws of the disputing Contracting Party;

- (e) where the claim is made by a disputing investor on behalf of an enterprise, both the investor and the enterprise shall consent and submit the waiver under subparagraphs (a) and (d) above; and*
 - (f) the consent and waiver referred to in subparagraphs (a), (d) and (e) above shall be in writing, delivered to the disputing Contracting Party and included in the submission of a claim to arbitration.*
- 5. A disputing investor who meets the conditions set forth in paragraph 4 above may submit a claim to arbitration under:*
- (a) the ICSID Convention, provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention;*
 - (b) the UNCITRAL Rules of Arbitration; or*
 - (c) any other arbitration rules, including the ICSID Additional Facility Rules, if both disputing parties so agree.*

ARTICLE 13

Contracting Party Consent

- 1. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with this Section.*
- 2. The consent under paragraph 1 above and the submission of a claim to arbitration by the disputing investor shall satisfy the requirements of:*
 - (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre); and*
 - (b) Article II of the New York Convention for an “agreement in writing”.*

ARTICLE 14***Establishment of the Arbitral Tribunal***

1. *Unless the parties to the dispute agree otherwise, the arbitral tribunal shall be composed of three arbitrators. Each party to the dispute shall appoint one arbitrator and the disputing parties shall agree upon a third arbitrator who shall be the Chairman of the arbitral tribunal.*
2. *The arbitrators referred to in paragraph 1 above shall have experience in international law and investment matters.*
3. *If an arbitral tribunal has not been established within ninety days from the date on which the claim was submitted to arbitration, either because a disputing party failed to appoint an arbitrator or because the disputing parties failed to agree upon the Chairman, 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, upon request of either disputing party, shall appoint, at his own discretion, the arbitrator or arbitrators not yet appointed. Nevertheless, the President, the Vice-President or the next senior Judge of the International Court of Justice, when appointing the Chairman, shall ensure that he or she is a national of neither of the Contracting Parties.*

ARTICLE 15***Consolidation***

1. *In accordance with the procedures set forth in this Article, 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, may establish a consolidation tribunal in accordance with the UNCITRAL Rules of Arbitration and shall conduct the proceedings in accordance with such Rules, except as modified by this Section.*
2. *In the interest of a fair and efficient resolution, and unless the interests of any party to the dispute are seriously prejudiced, a*

tribunal established under this Article may consolidate the proceedings when:

- (a) two or more investors in relation with the same investment submit a claim to arbitration under this Agreement; or*
 - (b) two or more claims arising from common legal or factual issues are submitted to arbitration.*
3. *Upon request of a disputing party, a tribunal established under Article 14 of this Agreement, pending the determination of the consolidation tribunal in accordance with paragraph 4 below, may suspend the proceedings that it had initiated.*
4. *A tribunal established under this Article, after hearing the disputing parties, may:*
- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;*
 - (b) assume jurisdiction over, and hear and determine one or more of the claims, provided that in doing so it would contribute to the settlement of the other claims.*
5. *A tribunal established under Article 14 of this Agreement shall lack jurisdiction to hear and determine a claim, or a part thereof, over which a consolidation tribunal has assumed jurisdiction.*
6. *A disputing party that intends consolidation of a claim under this Article, may request the President, the Vice-President or the next senior Judge of the International Court of Justice the establishment of a tribunal, and shall specify in its request:*
- (a) the name and address of the disputing Contracting Party or the disputing investors to be included in the consolidation process;*
 - (b) the nature of the consolidation request sought; and*
 - (c) the grounds on which the request is sought.*

7. *A disputing party shall deliver a copy of its request to the other disputing party or to any other disputing investor to the proceedings sought to be consolidated.*
8. *Within the sixty days after receipt of the request, the President, the Vice-President or the next senior Judge of the International Court of Justice shall establish a tribunal after having heard the views of the disputing parties. The tribunal shall be composed of three arbitrators. One arbitrator shall be a national of the disputing Contracting Party; the other arbitrator shall be a national of the Contracting Party whose investors are parties to the dispute. The third arbitrator, who shall be the Chairman of the arbitral tribunal, shall be a national of neither of the Contracting Parties.*
9. *Where a disputing investor has submitted a claim to arbitration under Article 12 of this Agreement but has not been mentioned in the consolidation request, the disputing investor or the disputing Contracting Party may request in writing the consolidation tribunal that the disputing investor be included in any order made under paragraph 2 above, and shall specify in the referred request:*
 - (a) *the name and address of the disputing investors;*
 - (b) *the nature of the consolidation request sought; and*
 - (c) *the grounds on which the request is sought.*
10. *A disputing investor referred to in paragraph 9 above shall deliver a copy of its request to the other disputing parties with a request pursuant to paragraph 6 above.*

ARTICLE 16

Place of Arbitration

Unless the disputing parties have agreed upon the place of arbitration, such place shall be determined by the tribunal. Any arbitration under this Section shall be held in a State that is party to the New York Convention. For the purposes of Article 1 of the New York Convention, claims submitted

to arbitration under this Agreement shall be considered to have arisen out of a commercial relationship or transaction.

ARTICLE 17

Indemnification

In an arbitration under this Section, a disputing Contracting Party shall not assert as a defence, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

ARTICLE 18

Applicable Law

1. *A tribunal established in accordance with this Section shall decide the submitted issues in a dispute in accordance with this Agreement and other applicable rules and principles of international law.*
2. *An interpretation jointly formulated and agreed upon by the Contracting Parties with regard to any provision of this Agreement shall be binding on any tribunal established under this Section.*

ARTICLE 19

Awards and Enforcement of Awards

1. *Unless the disputing parties agree otherwise, an award which provides that a Contracting Party has breached its obligations pursuant to this Agreement may only award, separately or in combination:*
 - (a) *monetary damages and any applicable interest; or*
 - (b) *restitution in kind, provided that the Contracting Party may pay pecuniary compensation in lieu of restitution.*
2. *When a claim is submitted to arbitration on behalf of an enterprise:*
 - (a) *an award of restitution in kind shall provide that restitution be made to the enterprise;*

- (b) *an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and*
 - (c) *the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.*
- 3. *Arbitral awards shall be final and binding solely between the disputing parties and with respect to the particular case.*
- 4. *The arbitral award shall be made public, unless the disputing parties agree otherwise.*
- 5. *A tribunal may not award punitive damages.*
- 6. *Each Contracting Party shall, within its territory, adopt all necessary measures for the effective enforcement of awards issued under this Section, and shall facilitate the enforcement of any award rendered within a proceeding to which it is a party.*
- 7. *A disputing investor may seek enforcement of an arbitral award under the ICSID Convention or the New York Convention if both Contracting Parties are parties to such treaties.*
- 8. *A disputing party may not seek enforcement of a final award until:*
 - (a) *in the case of a final award rendered under the ICSID Convention:*
 - (i) *120 days have elapsed from the date in which 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, the UNCITRAL Arbitration Rules, or any other Arbitration Rules:*
 - (i) *three months have elapsed from the date on which 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.*

9. *A Contracting Party may not initiate proceedings in accordance with Section Two with regard to a dispute under this Section, unless the other Contracting Party fails to abide by or comply with a final award rendered in a dispute submitted pursuant to this Section.*

ARTICLE 20

Interim Measures of Protection

An arbitral tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the arbitral tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the arbitral tribunal's jurisdiction. An arbitral tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 12 of this Agreement. For purposes of this paragraph, an order includes a recommendation.

E15. India-Greece BIT⁴³

1. *Disputes between an investor of a Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement, in relation to an investment of the former, shall, if possible, be settled by the disputing parties in an amicable way.*
2. *If such disputes cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute for resolution, either:*

⁴³ Treaties: India-Hellenic Republic BIT, 2007

- a) *to the competent courts of the Contracting Party in the territory of which the investment has been made, or*
 - b) *to international arbitration.*
3. *Where the dispute is referred to international arbitration the investor concerned may submit the dispute to:*
 - a) *the International Centre for Settlement of Investment Disputes, under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D.C. on 18th March, 1965, for arbitration or conciliation if both Contracting Parties are parties to the said Convention or*
 - b) *to the International Centre for the Settlement of Investment Disputes for arbitration or conciliation under its Additional Facility Rules or*
 - c) *an ad hoc arbitral tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).*
4. *The arbitral tribunal shall decide the dispute in accordance with the provisions of this Agreement and the applicable rules and principles of international law. The awards of arbitration shall be final and binding on both parties to the dispute. Each Contracting Party shall carry out without delay any such award and shall provide in its territory for the enforcement of such award, which shall then be enforced in accordance with domestic law.*
5. *During arbitration proceedings or the enforcement of the award, the Contracting Party involved in the dispute shall not raise objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.*

E16. India-Trinidad and Tobago BIT⁴⁴

- (1) *Any investment dispute 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 the parties to the dispute agree, be submitted:*
 - (a) *to any competent judicial, arbitral or administrative body of the Contracting Party that is a party to the dispute; 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 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 international arbitration. Where the dispute is referred to international arbitration, either party may submit the dispute to:*
 - (a) *the International Centre for the Settlement of Investment Disputes if both the Contracting Party of the Investor and the other Contracting Party are 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 Centre; or*
 - (b) *the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings, if both parties to the dispute so agree; or*
 - (c) *an ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:*

⁴⁴ Treaties: India-Trinidad and Tobago BIT, 2007

- (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.*
 - (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 final and binding for the parties in dispute. Each Contracting Party shall carry out without delay, the terms of any such award.*
 - (iv) *The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*
- (4) *In any proceeding involving an investment dispute, a Contracting Party shall not assert as a defence that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.*

E17. India-Jordan BIT⁴⁵

- (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:*

⁴⁵ Treaties: India-Hashemite Kingdom of Jordan BIT, 2006

- (a) *for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's 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.*

E18. India-China BIT⁴⁶

- (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 to the dispute agree, be submitted:*
 - (a) *for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, arbitral or administrative bodies if available; 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 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*

⁴⁶ Treaties: India-China BIT, 2006

the Settlement of Investment Disputes, such a dispute shall be referred to the Centre; or

- (b) If both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings of ICSID; or*
- (c) 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.*
 - (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.*
 - (iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*
- (4) The Contracting Party involved in the dispute may require the investor concerned to exhaust the domestic review procedure before the dispute is submitted for international conciliation under Article 9(2) (b) or arbitration under Article 9(3).*

E19. India-Slovakia BIT⁴⁷

1. *Any dispute between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled by the parties to the dispute in an amicable way.*
2. *If the dispute cannot be settled within six (6) months from the date on which the dispute has been notified by either party, it shall be submitted upon request and choice of the investor:*
 - a) *to the International Centre for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of other States in case both Contracting Parties are parties to this Convention, or*
 - b) *to an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), or*
 - c) *the local competent court of the Contracting Party which is a party to the dispute.*
3. *The award shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.*
4. *Any dispute arising out of action taken under Article 13 and all pre-establishment disputes shall be excluded from purview of international arbitration.*

⁴⁷ Treaties: India-Slovakia BIT, 2006

E20. India-Bosnia and Herzegovina BIT⁴⁸

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, from the date on which either party to the dispute requested amicable settlement, if investor concerned agrees, may be submitted:*
 - a) *for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's 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 investor choose not to invoke the 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:*
 - 3.1 *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 (hereinafter referred to as: "ICSID Convention") and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes (hereinafter referred to*

⁴⁸ Treaties: India-Bosnia and Herzegovina BIT, 2006

*as: “Centre”), such a dispute shall be referred to the Centre;
or*

3.2 if both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact- Finding Proceedings; or

3.3 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 (UNCITRAL), subject to the following modifications:

a) the appointing authority under Article 7 of the UNCITRAL 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.

b) the parties shall appoint their respective arbitrators within two months from the date of notification by one party to the other party of its intention to submit the dispute to the UNCITRAL arbitration.

c) the arbitration award shall be made in accordance with:

- the provisions of this Agreement,*
- laws and rules of the Contracting Party in whose territory the investment has been made,*

and shall be binding on both parties in dispute.

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

4. A company which is incorporated or constituted under the laws in force in the territory of one Contracting Party and in which before such dispute arises the majority of shares are owned by investors of the other Contracting Party, shall for the purpose of Article 25 (2)

- (b) of the ICSID Convention be treated as the company of the other Contracting Party.*
5. *Neither Contracting Party shall pursue through the diplomatic channels any dispute referred to the Centre unless:*
- a) the Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by the Centre, decides that the dispute is not within the jurisdiction of the Centre; or*
 - b) the other Contracting Party fails to abide by or to comply with any award rendered by an arbitral tribunal.*
6. *During the arbitral or execution proceedings neither Contracting Party shall assert as a defence, objection, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received by investor who is a contending party, pursuant to an insurance or guarantee contract against political risks.*

E21. India-Saudi Arabia BIT⁴⁹

1. *Dispute concerning investments between a Contracting Party and an investor of the other Contracting Party, in connection with these investments in the territory of the former Contracting Party, should be amicably settled as far as possible.*
2. *If the dispute cannot be settled in the way prescribed in paragraph (1) of this Article within six months from the date when the request for the settlement has been submitted, it shall be at the request of the investor filed to the competent court of law, tribunals or judicial authorities constituted under law of the Contracting Party in whose territory the investment was made, or filed for arbitration under the*

⁴⁹ Treaties: India-Saudi Arabia BIT, 2006

Convention of 18 March, 1965 on the Settlement of Investment Disputes between States and Nationals of other States or in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law of 1976. If the investor chooses to file for arbitration, the Contracting Party shall agree to the settlement by arbitration and not to request the exhaustion of local settlement procedures.

3. *If the dispute is submitted in accordance with paragraph (2) to the competent Court of Law, tribunals or judicial authorities constituted under law of the Contracting Party, the investor cannot at the same time seek international arbitration, and the ruling made by the court, tribunals or judicial authorities constituted under law, as the case may be, shall be binding and shall not be subject to any appeal or remedy other than those provided for in the law of the Contracting Party.*
4. *In the event that an investor chooses to submit the dispute for resolution to international arbitration the arbitration procedure shall be as follows:*
 - a) *The investor of a Contracting Party is entitled to submit its dispute with the host Contracting Party to the International Center for the Settlement of Investment Disputes, if the latter Contracting Party is a party to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965; or*
 - b) *To be submitted to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the UNCITRAL of 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.

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

5. *The award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said Convention or under the UNCITRAL Rules. The award shall be enforced in accordance with domestic law.*

E22. India-Hungary BIT⁵⁰

1. *Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment on the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties in dispute.*
2. *Any such dispute which has not been amicably settled within a period of six months may be submitted:*
 - /a/ at the choice of the investor for resolution, in accordance with the laws of the Contracting Party in whose territory the investment has been made to that Contracting Party's competent judicial, arbitral or administrative bodies; or*
 - /b/ if both parties to the dispute so agree and both Contracting Parties are 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*

⁵⁰ Treaties: India-Hungary BIT, 2003

/c/ 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.
- (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.

E23. India-Serbia BIT⁵¹

- (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 be submitted:
 - (a) for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, arbitral or administrative bodies;
 - or

⁵¹ Treaties: India-Serbia BIT, 2003

- (b) *to International conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL).*
- (3) *Should the Parties fail to agree 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 opened for signature at Washington D.C. on 18th March 1965 (ICSID Convention), 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) *If both parties to the dispute so agree, under the Additional Facility rules of the ICSID Convention for the Administration of Conciliation, Arbitration and Fact-Finding proceedings; or*
 - (c) *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 (UNCITRAL) 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.*

- (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 . The award shall be final and binding on both parties to the dispute and shall be enforced in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.*
- (iv) *The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*

E24. India-Finland BIT⁵²

- (1) *Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment under this Agreement shall, as far as possible, be settled amicably.*
- (2) *If such a dispute cannot be settled amicably within a period of three months from the date at which either party to the dispute requested amicable settlement, the investor that is party to the dispute may submit the dispute for resolution as follows:*
 - (a) *to the competent courts, judicial or administrative bodies of the Contracting Party that is party to the dispute, or with the consent of the Contracting Party to its arbitral bodies; or*
 - (b) *to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (hereinafter referred to as “UNCITRAL”).; or*
- (3) *should the options in paragraph (2) of this Article not be exercised. or where the conciliation proceedings under paragraph (2)(b) of this Article are terminated other than by signing of a settlement*

⁵² Treaties: India-Finland BIT, 2002

agreement, the dispute may be referred to international arbitration according to the following provisions:

- (a) to the International Centre for Settlement of Investment Disputes (hereinafter referred to as 'the Centre'), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965 when both Contracting Parties become parties to the said Convention, subject to the investors written consent; or*
- (b) to the Centre under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre subject to the consent of both parties to the dispute; or*
- (c) to an ad hoc arbitral tribunal which unless otherwise agreed to by the parties to the dispute, is to be established under the Arbitration Rules of UNCITRAL, subject to the following modifications:*
 - (i) The appointing authority under Article 7 of the said 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 or is not otherwise prevented from discharging this task. The third arbitrator must not be a national of either Contracting Party.*
 - (ii) The parties to the dispute shall appoint their respective arbitrators within two months.*
 - (iii) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party to the dispute.*
 - (iv) The arbitral award shall be made in accordance with the provisions of this Agreement.*

- (4) *At no stage of a dispute, shall a Contracting Party which is a party to the dispute object to the investor from raising a dispute under this Article on the ground that it, being the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.*
- (5) *The arbitral award shall be final and binding and the parties to the dispute shall abide and comply with the terms of the award. The award shall be enforced in accordance with national law of the Contracting Party where the investment has been made.*

E25. India-Taiwan BIT⁵³

Article 8

Settlement of Disputes between an Investor and Authorities of a Territory

1. *Any dispute between an investor of a territory and the authorities of the other territory 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 three months from the date when such dispute arose may, if both the parties agree, be submitted to the competent judicial, arbitral or administrative bodies of the territory which has admitted the investment, for resolution in accordance with the laws of that territory.*
3. *Should the parties fail to agree on a dispute settlement procedure provided under paragraph 2 above, either party may refer the dispute for arbitration to:*
 - (a) *an ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on*

⁵³ Treaties: India-Taiwan BIT, 2002

International Trade Law, 1976, subject to the following modifications:

- (i) The parties shall appoint their respective arbitrators within two months.*
- (ii) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party to the dispute.*
- (b) If the parties to the dispute failed to establish an arbitral tribunal as referred to in paragraph (a) above within six months from the day when a request in writing for such arbitration is made by either party to the dispute, such dispute shall then be referred to the Court of Arbitration of the International Chamber of Commerce for arbitration.*

The award shall be binding on the parties to the dispute.

The authorities of both territories shall undertake to abide by the awards and shall execute the arbitral awards.

Article 9

Applicable Laws

- 1. Except as otherwise provided in this Agreement, all investments will be governed by the laws in force in the territory in which such investments are made.*
- 2. The authorities of the territory which has admitted investments are, however, not precluded from taking any action for the protection of its essential security interest or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non-discriminatory basis.*

Article 10

Application of other Rules

If the provisions of the law of either territory or obligations under international law existing at present or established hereafter between the

two territories in addition to the guarantees under this Agreement, whether general or specific, entitling investments and returns of investors of the other territory to treatment more favourable than is envisaged by the present Agreement, such rules shall to the extent that they are more favourable prevail over the guarantees mentioned in this Agreement.

Article 11

Scope of the Agreement

This Agreement shall apply to all investments, whether made before or after the date of entry into force of the Agreement, but shall not apply to any dispute which arise before entry into force of this Agreement.

E26. India-Kuwait BIT⁵⁴

1. *Disputes arising between a Contracting State and an investor of the other Contracting State in respect of an investment, under this Agreement, of the latter in the territory of the former shall, as far as possible, be settled amicably.*
2. *If such disputes cannot be settled within a period of six months from the date at which either party to the dispute requested amicable settlement, the dispute shall be submitted for resolution, at the choice of the investor party to the dispute, either*
 - (a) *in accordance with any applicable. previously agreed dispute settlement procedures: or*
 - (b) *to the competent judicial or administrative bodies of the host Contracting State: or*
 - (c) *to international arbitration in accordance with the following paragraphs of this Article.*

⁵⁴ Treaties: India-Kuwait BIT, 2001

3. *In the event that an investor chooses to submit the dispute for resolution to international arbitration, the investor shall further provide its consent in writing for the dispute to be submitted to*
 - (a) *The International Centre for Settlement of Investment Disputes (“the Centre”), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (the “Washington Convention”), if both Contracting States are parties to the Washington Convention; or*
 - (b) *an arbitral tribunal established under the Arbitration Rules of the United Nations Commission on international Trade Law (UNCITRAL), subject to the following modifications:*
 - (1) *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 or Justice, who is not a national of either Contracting State. The third arbitrator shall not be a national of either Contracting State.*
 - (2) *The parties to the dispute shall appoint their respective arbitrators within two months.*
 - (3) *The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*
 - (c) *an arbitral tribunal constituted pursuant to the arbitration rules of any other arbitral institution mutually agreed upon between the parties to the dispute.*
4. *An investor, notwithstanding that it may have submitted a dispute to binding international arbitration under paragraphs 2 and 3 above, may in accordance with applicable laws and regulations and prior to the commencement of the actual arbitral proceedings and without prejudice to such proceedings, seek interim injunctive relief, not involving the payment of damages, before the judicial or*

administrative tribunals of the Contracting State that is a party to the dispute, for the preservation of its rights and interests.

5. *Each Contracting State hereby gives its unconditional consent to the submission of an investment dispute for settlement by binding arbitration in accordance with the choice of the investor under paragraph 3(a) and (b) or the mutual agreement of both parties to the dispute under paragraph 3(c).*
6.
 - (a) *The consent given in paragraph 5, together with the consent given under paragraph 3, shall satisfy the requirement for written agreement of the parties to a dispute for the purposes of each of, Chapter II of the Washington Convention. Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1953 (the “New York Convention”), and Article 1 of the UNCITRAL Arbitration Rules.*
 - (b) *Any arbitration under this Article shall, as may be mutually agreed by the parties to the dispute, be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.*
 - (c) *Neither Contracting State shall give diplomatic protection or bring an international claim, in respect of any dispute referred to arbitration unless the other Contracting State shall have failed to abide by and comply with the award rendered in such dispute. However, diplomatic protection for the purposes of this sub-paragraph (c) shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.*
7. *An arbitral tribunal established under this Article shall decide the issues in dispute in accordance with this Agreement and such rules of law as may be agreed by the parties to the dispute. In the absence of such agreement, it shall apply the law of the Contracting State*

- which is party to the dispute. including its rules on conflict of laws. and applicable rules of international law.*
8. *An investor other than a natural person which has the nationality of a Contracting State to the dispute on the date of the consent in writing referred to in paragraph (6) and which, before a dispute between it and that Contracting State arises, is controlled by investors of the other Contracting State, shall for the purpose of Article 25(2)(b) of the Washington Convention be treated as a “national of another Contracting State”.*
 9. *The awards of arbitration, which may include an award of interest, shall be final and binding on the parties to the dispute. Each Contracting State shall carry out without delay any such award and shall make provision for the effective enforcement in its territory of such awards.*
 10. *In a dispute relating to an investment, a Contracting State shall not assert, as a defence, its sovereign immunity. Any counterclaim or right of set-off may not be based on the fact that the investor concerned has received or will receive, pursuant to an insurance or .guarantee contract, indemnification or other compensation for all or part of any alleged loss.*

E27. India-Croatia BIT⁵⁵

- (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 be submitted:*

⁵⁵ Treaties: India-Croatia BIT, 2001

- (a) *for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, arbitral or similar bodies; or*
- (b) *to an international conciliation under the Conciliation Rules of the United Nations Commission on international Trade Law.*

If the dispute cannot be settled in accordance with the dispute settlement procedures provided under paragraph 2 of this Article, 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, opened for signature in Washington on 18 March 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) *If both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding proceedings; or*
- (c) *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 of 1976, as amended.*

E28. India-Lao BIT⁵⁶

- (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.*

⁵⁶ Treaties: India-Lao BIT, 2000

- (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 Party's competent judicial, arbitral or administrative bodies;*
or
 - (b) *to the International conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law.*
- (3) *Should the Parties fail to agree 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.*

E29. India-Sweden BIT⁵⁷

- 1) *Any dispute between an Investor of one Contracting Party and the other Contracting Party in relation to an investment of the former*

⁵⁷ Treaties: India-Sweden BIT, 2000

under this Agreement shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

2) *If such a dispute has not been amicably settled within a period of six months the Investor that is party to the dispute may submit the dispute for resolution according to the following options:*

- (a) to the courts or administrative tribunals of the Contracting Party that is party to the dispute; or*
- (b) in accordance with any applicable, previously agreed dispute-settlement procedure; or*
- (c) to international conciliation under the Rules of the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL").*

3. *Should the investor fail to exercise the options in paragraph 2 (a) and (b) of this Article or where the conciliation proceedings under Article 2 (c) of this paragraph are terminated other than by the signing of a settlement agreement, the dispute shall be referred to binding international arbitration according to the following provisions:*

- (a) to the International Centre of Settlement of Investment Disputes (hereinafter referred to as the Centre), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (hereinafter referred to as the ICSID Convention) when both Contracting Parties become parties to the said Convention, subject to the investors written consent; or*
- (b) to the Centre under the rules governing the Additional Facility for Administration of Proceedings by the Secretariat of the Centre (hereinafter referred to as "the Additional Facility Rules"), subject to the consent of both parties to the dispute; or*

- (c) *to an ad hoc arbitral tribunal established under the rules of UNCITRAL, subject to the following modifications or other modifications mutually agreed between the parties to the dispute;*

The appointing authority under Article 7 of the UNCITRAL Arbitration 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 parties to the dispute shall appoint their respective arbitrators within two months.

The arbitral award shall be made in accordance with the provisions of this Agreement.

The Arbitral Tribunal shall state the basis of its decision and give reasons upon request of either party to the dispute.

- 4) *Any arbitration under this Article shall be held in a State that is party to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958 (hereinafter referred to as "the New York Convention"). Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of article 1 of that Convention.*
- 5) *For the purpose of this Article and Article 25 (2) (b) of the ICSID Convention a Company which is incorporated or constituted under the law of one Contracting Party and which, before a dispute arises, was controlled by investors of the other Contracting Party shall be treated as a Company of the other Contracting Party.*
- 6) *In any proceedings involving an investment dispute, a Contracting Party shall not assert, as a defence, counterclaim, right of set-off or for any other reason, that indemnification or other compensation, in full, or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract against non-commercial risks.*

- 7) *Any arbitral award shall be final and binding upon the parties to the dispute. Each Contracting Party shall provide in its territory for the enforcement of such awards in accordance with its laws.*

E30. India-Portugal⁵⁸ and India-Spain⁵⁹ BITs

- 1- *Disputes that may arise between a Contracting Party and an investor of the other Contracting Party with regard to an investment under the present Agreement, shall be notified in writing including detailed information, by the investor to host Contracting Party of the investment. As far as possible, the Parties concerned shall endeavour to settle these differences amicably, through negotiations or conciliation.**
- 2- *If these disputes cannot be settled amicably within six months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted, at the choice of the investor, to:*
- a) *The competent judicial, administrative or arbitral bodies of the Contracting Party in whose territory the investment was made; or*
 - b) *To international arbitration.*
- 3- *In the case of international arbitration, the dispute maybe submitted as follows:*
- a) *To the International Center for the settlement of Investment Disputes, 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, opened for signature at Washington D. C. on 18th March 1965 (ICSID Convention); or*

⁵⁸ Treaties: India-Portugal BIT, 2000

⁵⁹ Treaties: India-Spain BIT, 1997

- b) *To the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings if both parties to the dispute so agree; or*
- c) *To an ad hoc arbitral tribunal in accordance with the arbitration rules of the United Nations Commission on International Trade Law, 1976, subject to the following modifications:*
 - i) *The arbitral tribunal shall consist of three arbitrators, one arbitrator each to be, appointed by the respective parties within two months and the third arbitrator to be elected by the above two arbitrators, who shall act as chairman of the tribunal. The third arbitrator shall be a national of a third State with which both Contracting Parties maintain diplomatic relations**;*
 - ii) *Should the two arbitrators fail to elect the third arbitrator, the parties to the dispute shall invite the President of the International Court of Justice if he is not a national of either of the Contracting Parties to the dispute, to appoint the third arbitrator. In case the President is a national of the two Contracting Parties or is otherwise prevented or unable to discharge this functions, the parties to dispute shall invite the Vice-President of the International Court of Justice for making the necessary appointment. If the Vice-President is also a national of either of the Contracting Parties or is prevented or unable to discharge his duties, the parties shall approach the next senior judge of this International Court of Justice, who is not a national of either Contracting Parties, for making the necessary, appointment.*

4-- *The arbitration shall be based on:*

- a) *The provisions of this agreement and of other agreements in force between the Contracting Parties;*
 - b) *The rules and the universally accepted principles of International Law;*
 - c) *The national law of the Contracting Party in whose territory the investment was made, including the rules relative to conflict of laws.*
- 5- *A Contracting Party shall not assert as a defence that indemnification or other compensation for all or part of the alleged damage has been received or will be received by the investor pursuant to a guarantee or insurance contract.*
- 6-- *Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the international arbitration.*

- 7- *The arbitral decisions shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the decisions in accordance with its national law.*

Notes

- * In case of Spain, clause (1) should be read without the words “*or conciliation*” at the end of the paragraph.
- ** In case of Spain, in sub-sub-clause (i) of sub-clause (c) of clause (3) the words in the last sentence “*be a national of a third State with which both Contracting Parties maintain diplomatic relations*” should be replaced with the words “*not be a national either of the parties to the dispute.*”
- *** In case of Spain, this article should be read without clause (6).

E31. India-Philippines⁶⁰ and India-Mauritius⁶¹ BITs

1. *Any disputes 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. *If such dispute cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of request for settlement, the investor may submit the dispute to:*
 - a) *the competent judicial, arbitral or administrative bodies of the Contracting Party for decision; or**
 - b) *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, of March 18, 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 Center; or*
 - c) *to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law; or*
 - d) *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 next Senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third*

⁶⁰ Treaties: India-Philippines BIT, 2000

⁶¹ Treaties: India-Mauritius BIT, 1998

arbitrator shall not be a national of either Contracting Party.

- 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 on the parties to the dispute.*
- iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*

- 3. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the arbitral tribunal.[#]*

Notes

* In case of Mauritius, sub-clause (a) of clause 2 reads as follows:

(a) arbitration in accordance to the law of the Contracting Party; or

** In case of Mauritius, in sub-clause (d) of clause 2 the words “*by either party to the dispute*” should be replaced with “*set up in accordance*”.

*** In case of Mauritius, in sub-sub-clause (i) of sub-clause (d) of clause 2 the word “*Arbitration*” should be added between the words “*the*” and “*Rules*”.

In case of Mauritius, clauses 3 and 4 read as follows:

(3) Where a dispute has been submitted for resolution under paragraph 2 (a), 2 (b), 2 (c) or 2 (d) above., the choice so exercised shall not be changed except with the consent of the Contracting Party which is party to the dispute.

(4) Notwithstanding anything contained in paragraph (2) above, the Contracting Party which is a party to the dispute shall have the option to submit the dispute for resolution to international arbitration in accordance with the procedure set out in paragraph 2(a) above.

E32. India-Austria BIT⁶²

- (1) *Any dispute under this Agreement between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former 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 three months from the date on which either party to the dispute requests an amicable settlement through negotiations may be, unless otherwise agreed between the parties to the dispute, submitted:*
 - (a) *for resolution, in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, arbitral or administrative bodies at the choice of the investor;*
 - (b) *to international conciliation under the Conciliation Rules of the United Nations Centre for International Trade Law (UNCITRAL), should the parties agree;*
- (3) *Should the parties to the dispute not exercise the options under paragraph (2) (a) or (b) of this Article or should the international conciliation proceedings be terminated other than by signing of the settlement agreement, the dispute may be referred to Arbitration by the investor 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 (Washington Convention) such a dispute shall be referred to the International Centre for the Settlement of Investment Disputes (ICSID); or*

⁶² Treaties: India-Austria BIT, 1999

- (b) *if both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or*
- (c) *if both parties to the dispute so agree, to any other international arbitral body; or*
- (d) *to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the UNCITRAL, 1976, subject to the following modifications:*
 - (i) *The appointing authority under Article 7 of the Rules shall be the President, the Vice-President or 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.*
 - (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 the general principles of International Law.*
 - (iv) *The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*
 - (v) *The arbitration shall take place in a State, party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention).*
- (4) *In case of arbitration provided for under paragraph (3), the Contracting Party shall not require the exhaustion of domestic administrative or judicial remedies unless proceedings have been initiated thereunder.*
- (5) *The arbitral award shall be final and binding on both parties to the dispute. Each Contracting Party shall execute them in accordance*

with its laws and in accordance with the New York Convention or the Washington Convention.

- (6) *A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received indemnity by virtue of a guarantee in respect of all or some of its losses.*

E33. India-Argentina BIT⁶³

- (1) *Any dispute which arises within the terms of this Agreement between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute or by conciliation under mutually agreed procedures.*
- (2) *If the dispute cannot thus be settled by negotiation within six months following the date on which the dispute has been raised by either party or the conciliation proceedings are terminated other than by signing of a settlement agreement, it may be submitted either:*
- (a) *For resolution in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial or administrative bodies; or*
- (b) *To international arbitration according to the provisions of paragraph 3.*

If the parties disagree on the choice of (a) or (b) above, the opinion of the investor shall prevail.

- (3) *Where an investor or a Contracting Party has submitted a dispute to the aforementioned competent judicial or administrative bodies of the Contracting Party where the investment has been made or to international arbitration, this choice shall be final.*

⁶³ Treaties: India-Argentina BIT, 1999

- (4) *If it is decided to refer the dispute to international arbitration, it shall be submitted:*
- (a) *To the International Centre for the Settlement of Investment Disputes (ICSID), having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signatures at Washington DC on 18 March 1965, provided that both Contracting Parties are parties to the said Convention, or*
 - (b) *In case paragraph (a) is not applicable, to the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings if both parties to the dispute so agree, or*
 - (c) *Under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) if within a period of three months following the decision to refer the dispute to arbitration there is no agreement on the selection of a forum under paragraphs (a) and (b).*
- (5) *The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law.*
- (6) *The arbitral decision shall be final and binding for the parties to dispute. Each Contracting Party shall execute them in accordance with its laws.*

E34. India-Qatar BIT⁶⁴

- (1) *Any dispute under the provisions of this Agreement, arising directly from an investment between either Contracting Party and an investor of the other Contracting Party shall be settled amicably among themselves.*
- (2) *If such dispute cannot be settled according to the provisions of paragraph (1) of this Article within six months from the date of request in writing for settlement, either party to the dispute may submit the dispute to:*
 - (a) *the competent court of the host Contracting Party for decision, if the investor so agrees; or*
 - (b) *the International Center for the Settlement of Investment Disputes established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, March 18, 1965 done in Washington, D.C., if this Convention is applicable to the Contracting Parties; or*
 - (c) *an adhoc arbitral tribunal.*

Either Party to the investment dispute who chooses one of the above mentioned ways of the settlement of dispute, can not choose the two other ways.

- (3) *The Ad Hoc Arbitral Tribunal specified under paragraph 2 (c) shall be established as follows:*
 - (a) *Each party to the dispute shall appoint one arbitrator, and the two arbitrators thus appointed, shall select by mutual agreement a third arbitrator, who must be a citizen of a third country. and who shall be appointed as Chairman of the Tribunal by the two parties. All the arbitrators must be appointed within two months from the date of notification by*

⁶⁴ Treaties: India-Qatar BIT, 1999

one party to the other party of its intention to submit the dispute to arbitration.

- (b) If the periods specified in paragraph in 3 (a) herein above have not been respected, either party, in the absence of any other agreement, shall invite the President, Vice-President or the next senior judge of the International Court of Justice who is not a national of either Contracting Party to make the necessary appointments.*
- (c) The Ad Hoc Arbitral Tribunal shall reach its decisions by a majority of votes. These decisions shall be final and legally binding upon the parties and shall be enforced in accordance with the domestic law of the Contracting Party to the dispute. The decisions shall be taken in conformity with the provisions this Agreement and the laws of the Contracting Party to the dispute.*
- (d) The Tribunal shall interpret its award and give reasons and basis of its decision at the request of either party. Unless otherwise agreed by the parties, the venue of Arbitration will be at the Hague (Netherlands).*

Subject to the above, the Tribunal shall follow the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL), 1976.

E35. India-Australia BIT⁶⁵

- 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.*

⁶⁵ Treaties: India-Australia BIT, 1999

2. *Any such dispute which has not been amicably settled 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 Party's competent judicial 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 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 both Parties to the dispute consent in writing to submit the dispute to the International Centre for Settlement of Investment Disputes such a dispute shall be referred to the Centre;*
 - (b) *if both Parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or*
 - (c) *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 provisions;*
 - (i) *The Arbitral Tribunal shall consists of three arbitrators. Each Party shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a third arbitrator, the Chairperson, who shall be a national of a third State. All arbitrators shall*

be appointed within two months from the date when one of the Parties to the dispute informs the other of its intention to submit the dispute to arbitration;

- (ii) If the necessary appointments are not made within the period specified in subparagraph (c)(i), either Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments;*
- (iii) The arbitral award shall be made in accordance with the provisions of this Agreement;*
- (iv) The tribunal shall reach its decision by a majority of votes;*
- (v) The decision of the arbitral tribunal shall be final and binding and the Parties shall abide by and comply with the terms of its award;*
- (vi) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either Party;*
- (vii) Each Party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairperson in discharging his or her arbitral function and the remaining costs of the tribunal shall be borne equally by the Parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties, and this award shall be binding on both Parties.*

4. *Once an action referred to in paragraphs 2 and 3 of this Article has been taken, neither Contracting Party shall pursue the dispute through diplomatic channels unless:*

- (a) the relevant judicial or administrative body, the Secretary General of the Centre, the arbitral authority or tribunal or the*

conciliation commission, as the case may be, has decided that it has no jurisdiction in relation to the dispute in question; or

- (b) the other Contracting Party has failed to abide by or comply with any judgement, award, order or other determination made by the body in question.*

E36. India-Morocco BIT⁶⁶

- I. Disputes between a Contracting Party and an investor of the other Contracting Party, in connection with investment , shall be settled. as far as possible amicably, by consultations and negotiations between the parties to the dispute.*
- 2. If these disputes cannot be settled in this way within six months following the date of a written notification, the dispute can be submitted, as the investor may choose:*
 - a) either to a competent court, arbitral or administrative tribunal of the Contracting Party in whose territory the investment was made, as the investor may choose;*
 - or:*
 - b)(i) to arbitration to the International Center for Settlement of Investment Disputes (ICSID) set up by the Convention on Settlement of Investment Disputes Between States and Nationals of other States opened for signature at Washington on March 18th, 1965, when both Contracting Parties are party to the said Convellion; ~*
 - or:*
 - b)(ii) as long as the above mentioned requirement is not fulfilled, to arbitration under the ICSID Additional Facility for the*

⁶⁶ Treaties: India-Morocco BIT, 1999

Administration of Conciliation, Arbitration and fact finding proceedings;

or:

b)(iii) to an ad-hoc arbitration 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 that the arbitral tribunal shall state the basis of its decision and give reasons upon the request of either Party.

c) The recourse to the arbitration provided in b(i), b(ii) and b)(iii) hereabove is subject to the mutual consent of the parties to the dispute.

d) Once a party to the dispute has submitted the dispute to a competent court of the Contracting Party in whose territory the investment was made or to international arbitration, that choice shall be final.

[...] investor who is the other party to the dispute has received, an indemnity covering wholly or partially his losses under an insurance contract.*

4. The arbitral tribunal shall base its decision on the national law of the Contracting Party involved in dispute in whose territory the investment was made, including the rules relative to conflict of law, the provisions of this Agreement, the provisions of particular agreements between the investor and the Contracting Party relative to investment.

5. The arbitration award shall be final and binding on all parties to the dispute. Each Contracting Party commits itself to execute the award according to its national law.

Notes

* Some text is missing here in the scanned copy of the original BIT available in public domain.

E37. India-Indonesia BIT⁶⁷

- I. *Any dispute between a Contracting Party and an investor of the other Contracting Party, concerning an investment of the latter in the territory of the former, be settled amicably through consultations and negotiations.*
2. *If such a dispute cannot be settled within a period of six months from the date of written notification of the dispute, the dispute shall, at the option of the investor concerned, be submitted either to the competent judicial, arbitral or administrative bodies of the Contracting Party which has admitted the investment for settlement in accordance with its laws and the provisions of this Agreement, or to international arbitration or conciliation. The option so exercised under this paragraph shall be final.*
3. *In case the dispute is submitted to arbitration or conciliation, the investor shall be entitled to refer the dispute to :*
 - (a) *The International Centre for the Settlement of Investment Disputes (ICSID) for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965, in case both Contracting Parties have become the parties to the Convention; or*
 - (b) *an ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), 1976, subject to the following modification:*
 - (i) *The appointing authority under Article 7 of the Rules shall be the Secretary General of the Permanent Court*

⁶⁷ Treaties: India-Indonesia BIT, 1999

of Arbitration at the Hague. The third arbitrator shall not be a national of either Contracting Party.

- (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.*
- (iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*
- (v) The arbitral award shall be final and binding on both the parties.*

E38. India-Zimbabwe BIT⁶⁸

- 1. Disputes between a Contracting Party and an investor of the other Contracting Party concerning an investment of such investor in the territory of the former Contracting Party shall as far as possible be settled amicably between the parties to the dispute.*
- 2. If any such dispute is not settled within six months from the date when it is raised by one of the parties to the dispute, either party to the dispute may submit such dispute:*
 - a) to the competent judicial, arbitral or other independent bodies of the host Contracting Party, if both the parties to the dispute agree;*
 - b) to arbitration under the Convention on Settlement of Investment Disputes between States and Nationals of other States of 18th March, 1965, if both the Contracting Parties are Parties to the 1965 Convention; or*
 - c) to an ad hoc arbitral tribunal by either party to the dispute in accordance with the Arbitration Rules of the United Nations*

⁶⁸ Treaties: India-Zimbabwe BIT, 1999

Commission on International Trade Law, L976, 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.*
 - 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'.*
 - iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*
- 3. The award rendered by the arbitral tribunal constituted under the 1965 Convention or under the UNCITRAL Rules shall be binding on the parties and shall not be subject to any appeal or remedy other than that provided for in the said Convention or the Rules. The award shall be enforceable with the domestic law of the Contracting Party in which the investment in question is situated.*
- 4. During arbitration proceedings or proceedings for the enforcement of an award, the Contracting Party involved in the dispute shall not raise the objection that the investor concerned has received compensation under an insurance contract in respect of all or part of his or its damage or losses.*

E39. India-Bulgaria BIT⁶⁹

- (1) Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment of the former*

⁶⁹ Treaties: India-Bulgaria BIT, 1998

under this Agreement shall, as far as possible , be settled amicably through negotiations between the parties to the dispute.

(2) *If such a dispute cannot be settled within six months from the date either Party to the dispute requested settlement through negotiations, the Parties to the dispute may by mutual consent submit the dispute to the competent court of the Contracting Party in whose territory the Investment was made. Alternatively, the dispute may be submitted by either Party to:*

(a) *the International Center for the Settlement of Investment Disputes (ICSID) set up by the Convention on Settlement of Investment Disputes between States and Nationals of other States done at Washington, March 18, 1965 in case both Contracting Parties are parties to the Convention. As long as this provision is not complied with, the dispute may be settled by mutual consent under the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact - Finding Proceedings; or*

(b) *an adhoc arbitral tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law, 1976 (UNCITRAL), 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.*

(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 on the parties to the dispute.*

- (iv) *The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*
- (3) *For the purpose of this Article, an investment dispute is defined as a dispute involving (a) the interpretation or application of an investment agreement between a Contracting Party and an investor of the other Contracting Party; (b) an alleged breach of any right conferred or created by this Agreement with respect of an investment.*
- (4) *The award shall be final and binding on the parties to the dispute.,*

E40. India-Turkey BIT⁷⁰

- I. *Disputes between one or the Parties and an investor of the other Party, in connection with his investment, shall be notified in writing, including a detailed information, by the investor to the host Party of the investment. As far as possible, the investor and the concerned Party shall endeavour to settle these disputes by consultations and negotiations in good faith.*
- 2. *If these disputes cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, may, at the choice of investor, unless otherwise mentioned hereafter, be submitted:*
 - (a) *for resolution, in accordance with the law of the Party which has admitted the investment to that Party's judicial, or other competent bodies; or*
 - (b) *to international arbitration by reference to;*
 - (i) *the International Center for Settlement of Investment Disputes (ICSID) according to the Convention on Settlement of Investment Disputes between States and*

⁷⁰ Treaties: India-Turkey BIT, 1998

Nationals of other States, in case both Parties become signatories to the Convention.

{ii) Additional Facility for the Administration of Conciliation, Arbitration and Fact - finding Proceedings, by mutual consent,

(iii) an ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL). subject to following modifications:

- 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 Party. The third Arbitrator shall not be a national of either Party.*
- the Parties shall appoint their respective arbitrators within two months.*
- the arbitral award shall be made in a accordance with the provisions of this Agreement.*
- the arbitral tribunal shall state the basis of decision and give reasons upon the request of either part.*

3. The arbitration awards shall be final and binding for all parties in dispute. Each Party commits itself to execute the award according to its national law.

E41. India-Romania BIT⁷¹

- (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) *If any such dispute cannot thus be settled within six months from the date on which the dispute was raised by one of the parties, it may be submitted:*
 - (a) *for resolution to competent judicial or arbitral bodies of the Contracting Party in whose territory the investment has been made upon request of the investor; or*
 - (b) *for international arbitration according to the provisions of paragraph (3) of this Article by either party to the dispute.*

Provided that where the investor has submitted the dispute to the competent judicial or arbitral bodies of the Contracting Party in whose territory the investment has been made, the choice once exercised shall be final.

- (3) *If the dispute is referred for international arbitration under paragraph (2) (b) above, the 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 opened for signature at Washington 18th March 1965 and the investor consents in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes (ICSID) such a dispute shall be referred to the ICSID; or*
 - (b) *when either or both Contracting Parties are not a party to the Convention and if both parties to the dispute so agree, the*

⁷¹ Treaties: India-Romania BIT, 1997

dispute shall be referred to the Additional Facility for the Administration of conciliation, Arbitration and Fact-Finding Proceedings of ICSID: or

- (c) to an adhoc 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.*
 - (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.*

E42. India-Belgo-Luxembourg BIT⁷²

- 1. Any Investment dispute between an investor of one Contracting Party and the other Contracting Party shall be notified in writing by either party to the dispute. The notification shall be accompanied by a sufficiently detailed memorandum.*

As far as possible the parties shall endeavour to settle the dispute through negotiations, if necessary by seeking expert advice from a third party or by conciliation.

⁷² Treaties: India--Belgo-Luxembourg Economic Union BIT, 1997

2. *In the absence of an amicable settlement, by direct agreement between the parties to the dispute or by conciliation, within six months from the notification, the dispute shall be submitted, at the option of the investor, either to the competent judicial or arbitral bodies of the State where the investment was made, or to international arbitration. Once the investor has expressed his choice, that choice is binding and final.*
3. *In case of international arbitration, the following procedure may be followed:*
 - (i) *if the State of the investor and the State where the investment was made are both parties to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, 1965, and if both parties to the dispute consent in writing to submit the dispute to the International Centre for the Settlement of Investment Disputes, the dispute shall be referred to the Centre;*
 - (ii) *if both parties to the dispute so agree, to the additional Facility Rules for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings;*
 - (iii) *if the dispute is not referred to the forums in clauses (i) and (ii) above, it shall be referred to an ad- hoc arbitral tribunal, set up according to the arbitration rules laid down by the United Nations Commission on International Trade Law (UNCITRAL). To that end, each Contracting Party agrees in advance and irrevocably to the settlement of any dispute by this type of ad hoc arbitration.*

The UNCITRAL rules shall apply subject to the following provisions:

- (a) *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.*

- (b) The parties shall appoint their respective arbitrators within two months.*
- (c) The arbitral award shall be made in accordance with the provisions of this Agreement.*
- (d) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*
- (4) At any stage of the arbitration proceedings or of the execution of an arbitral award, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant to an insurance policy or to the guarantee provided for in Article 8 of this Agreement.*
- (5) The arbitral award shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute the awards in accordance with its national legislation.*

E43. India-France BIT⁷³

- (1) Any dispute concerning the investments occurring between one Contracting Party and an investor of the other Contracting Party shall, if possible, be settled amicably between the two parties concerned.*
- (2) Any such dispute which has not been amicably settled within a period of six months from written notification of a claim may be submitted to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law, if the parties so agree.*
- (3) Notwithstanding paragraph 2. the dispute may be referred to arbitration at any time as follows:*

⁷³ Treaties: India--France BIT, 1997

- 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 open to signature in Washington on March 18, 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) *if the investor so decides, the dispute shall be referred to an ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law, as adopted by the General Assembly on December 15, 1976. In respect of such arbitral proceedings, the following shall apply;*
 - *the arbitral Tribunal shall consist of three arbitrators. Each party shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a third arbitrator, the Chairman, who shall be a national of a third State. The arbitrators shall be appointed within two months from the date when one of the parties to the dispute informs the other of its intention to submit the dispute to arbitration;*
 - *if the necessary appointments are not made within the period specified in the above paragraph, either party may request the Secretary General of the Permanent Court of Arbitration to make the necessary appointments;*
 - *the arbitral award shall be made in accordance with the provisions of this Agreement;*
 - *the tribunal shall reach its decision by a majority of votes;*

- *the decision of the arbitral tribunal shall be final and binding, and the parties shall abide by and comply with the terms of its award;*
- *the arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party;*
- *each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties. and this award shall be binding on both parties.*

E44. India-Switzerland BIT⁷⁴

- (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) *to the competent judicial or administrative bodies of the Contracting Party which has admitted the investment, in accordance with the law of that Contracting Party; or*
 - (b) *to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL), 1976.*

⁷⁴ Treaties: India--Switzerland BIT, 1997

- (3) *Should the parties fail to agree on a dispute settlement procedure provided under paragraph (2) of this article within a period of three months or where a dispute is referred to international conciliation but these proceedings are terminated other than by signing a settlement agreement, the dispute may be referred to Arbitration:*
- (a) *to the International Centre for the Settlement of Investment Disputes (ICSID), 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 if the investor consents in writing to do so; or*
 - (b) *under the Additional Facility of ICSID for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings, if both parties to the dispute so agree; or*
 - (c) *to an ad hoc arbitral tribunal by either party to the dispute which, unless otherwise agreed upon by the parties, shall be in accordance with the Arbitration Rules of UNCITRAL. These Rules shall be 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.*
 - (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*
 - (iv) *The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*

E45. India-Czech Republic BIT⁷⁵

(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 from the written notification of the claim may be submitted for resolution:*

in accordance with the law of the Contracting Party which has admitted the investment to that Contracting Party's competent judicial, administrative or arbitral bodies whose final decision shall be binding;

or alternatively to one of the following procedures:

(a) *to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law;*

(b) *to the International Centre for the Settlement of Investment Disputes 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;*

(c) *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 these 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*

⁷⁵ Treaties: India--Czech Republic BIT, 1996

arbitrator shall not be a national of either Contracting Party.

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

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

(3) The arbitral award shall be final and binding.

E46. India-Korea BIT⁷⁶

1. Any dispute between a Contracting Party and an investor of the other Contracting Party relating to an investment made under this Agreement including that concerning expropriation of investments shall, as far as possible, be settled

(a) amicably through 'negotiations between the parties to the dispute, or

(b) through recourse to any other local remedy, save that provided under paragraph 2 of this Article, available under the laws and regulations of the Contracting Party in the territory of which the investment has been made.

2. Any such dispute which has not been settled under paragraph 1 of this Article within a period of six months from written notification of a claim may, if both parties agree, be submitted for resolution, in accordance with the law of the Contracting Party which has admitted investment to that Contracting Party's competent judicial authority.

3. Should the parties fail to agree on a dispute settlement procedure provided under paragraph 2 of this Article, the dispute shall be

⁷⁶ Treaties: India-Republic of Korea BIT, 1996

referred to International Arbitration upon the request of either party. The Arbitration procedure shall be as follows :

- (a) to the International Centre for Settlement of Investment Disputes (ICSID), 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 National of other States, 1965;*
- (b) to the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or*
- (c) to an ad hoc arbitral tribunal 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.*
 - (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.*
 - (iv) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party.*
 - (v) Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining cost of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne*

by one of the two parties, and this award shall be binding on both parties.

E47. India-Israel BIT⁷⁷

- (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 Party's competent judicial or administrative bodies: or*
 - (b) to international conciliation.*
- (3) Should the Parties fail to agree 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 the following manner:*

⁷⁷ Treaties: India-Israel BIT, 1996

- (i) *the arbitral tribunal shall consist of three arbitrators. Each Party shall select an arbitrator. These two arbitrators shall appoint by the mutual agreement a Chairman who shall be a national of a third State which has diplomatic relations with the Governments of the parties to the dispute. The arbitrators shall be appointed within two months from the date on which one of the parties to the dispute informed the other of its intention to submit the disputes to arbitration;*
- (ii) *the arbitral award shall be made in accordance with the provisions of this Agreement, the relevant national laws including the rules on the conflict of laws of the Contracting Party where the investment dispute arises as well as the generally recognized principles of international law;*
- (iii) *If the necessary appointments are not made within the period specified in paragraph (3) (b) (i), either party may, in the absence of any other agreement, request the Secretary General of the Permanent Court of Arbitration to make the necessary appointments;*
- (iv) *the tribunal shall reach Its decision by a majority of votes;*
- (v) *the decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award. The award shall be enforced In accordance with national laws of the Contracting Party where the investment has' been made;*
- (vi) *the arbitral tribunal shall state the ,basis of its decision and state reasons upon the request of either party;*
- (vii) *each party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function*

and the remaining costs of the tribunal shall be borne equally by the parties concerned;

- (viii) during conciliation or arbitration proceedings or the enforcement of an award, the Contracting Party Involved In the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage. In this case the other Contracting Party will respect the award made in the arbitration or conciliation proceedings and shall not initiate fresh proceedings for the same matter as covered in the award.*

E48. India-Italy BIT⁷⁸

- 1. Any disputes which may arise between one of the Contracting Parties and the. investors of the other Contracting Party on investments under this Agreement, including disputes relating to the amount of compensation, shall, as far as possible, be settled amicably through negotiations between the Parties to the dispute. The Party intending to resolve such dispute through negotiations shall give notice to the other of its intentions.*
- 2. If the dispute cannot be thus resolved as provided in paragraph 1. of this Article within 6 months from the date of notice given thereunder, the investor may at his choice either submit the dispute for settlement to:*
 - a) the Contracting Party's Court having territorial jurisdiction;*
or
 - b) the International centre for Settlement of Investment Disputes, for the implementation of the Arbitration Procedures under the Washington Convention of 18 March,*

⁷⁸ Treaties: India-Italy BIT, 1995

1965, on the Settlement of Investment Disputes between States and Nationals of other States, as soon as both the Contracting Parties have acceded to it, or to the Additional facility for the Administration of Conciliation, Arbitration and Fact finding Proceedings, in case only one of the two Contracting Parties has joined the ICSID and if the Parties have so agreed . or

- c) an ad hoc Conciliation or Arbitration Tribunal, in compliance with the Conciliation or Arbitration Rules of the UN Commission on the International Trade Law (UNCITRAL).*

3. In respect of arbitration proceedings, the following shall apply:

- a) The Arbitration Tribunal shall consist of three arbitrators. Each Party shall select an arbitrator. These two arbitrators Shall appoint by mutual agreement a third arbitrator, the Chairman, who shall be a national of a third State. The arbitrators shall be appointed within two months from the date when one of the Parties to the dispute informs the other of its intention to submit the dispute to arbitration within the period of the six months mentioned earlier in paragraph 2 of this Article;*
- b) If the necessary appointments are not made within the specified period, either Party may, in the absence of any other agreement, request the President of the International court of Justice to make the necessary appointments;*
- c) The arbitral award shall be made in accordance with the provisions of this Agreement, as well as the principles of international law recognized by the two Contracting Parties. Such decision shall be binding on both Contracting Parties.*

The recognition and implementation of the arbitration decision in the territory of the Contracting Parties shall be governed by their respective national legislations, in

compliance with the relevant international Conventions they are parties to.

4. *Both Contracting Parties shall refrain from negotiating through diplomatic channels on any matter relating to any arbitration procedure or judicial procedures that may have been instituted until these procedures have .. been concluded, and if one of the Contracting Parties has failed to comply with the ruling of the Arbitration Tribunal or the judgment of the Court of Law within the terms prescribed by the ruling or the judgment, or any other terms that may derive from international or domestic law applicable to the case at issue.*

E49. India-Netherlands BIT⁷⁹

- 1) *Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. The party intending to resolve such dispute through negotiations shall give notice to the other of its intentions.*
- 2) *If the dispute cannot be thus resolved as provided in paragraph (1) of this Article within three months from the date of notice given thereunder, then the dispute may be referred to conciliation in accordance with the United Nations Commission on International Trade Law Rules of Conciliation 1980, if both parties to the dispute so agree.*
- 3) *If either party to the dispute does not agree to conciliation within one month of the reference or where it is so referred but conciliation proceedings are terminated other than by the signing of a settlement agreement, or if no reference is made to international conciliation, the dispute may be referred to arbitration as follows:*

⁷⁹ Treaties: India-Netherlands BIT, 1995

- (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 both parties to the dispute consent 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) *if both parties to the dispute so agree, under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings; or*
 - (c) *if the course of action at (a) and (b) above is not followed then the dispute shall be referred 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 if the investor so agrees.*
- 4) *In respect of arbitration proceedings under paragraph 3 (c) of this Article the following shall apply:*
 - i. *The Arbitral Tribunal shall consist of three arbitrators. Each party shall select an arbitrator. The arbitrators shall be appointed within two months from the date when one of the parties to the dispute informs the other of its intention to submit the dispute to arbitration. The two arbitrators shall within two months from then appoint by mutual agreement a third arbitrator, the Chairman, who shall be a national of a third State.*
 - ii. *If the necessary appointments are not made within the period specified in paragraph (4)(i), either party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointments.*
 - iii. *The arbitral award shall be made in accordance with the provisions of this Agreement.*

- iv. *The tribunal shall reach its decision by a majority of votes.*
- v. *The decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award.*
- vi. *The arbitral tribunal shall state the basis of its decision and state reasons upon the request of either party.*
- vii. *Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties.*

E50. India-Denmark BIT⁸⁰

- (1) *Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment under this Agreement shall, as far as possible, be settled amicably.*
- (2) *If such dispute between an investor of one Contracting Party and the other Contracting Party continues to exist after a period of six months, the investor shall be entitled to submit the case either to the competent judicial or administrative bodies of the Contracting Party in whose territory the investment was made or to international conciliation or arbitration as follows:*
 - (a) *to international conciliation under the rules of the United Nations Commission on International Trade Law. If the conciliation proceedings are terminated other than by*

⁸⁰ Treaties: India-Denmark BIT, 1995

signing of a settlement agreement, the dispute may be referred to arbitration, either to

- (b) the International Centre for Settlement of Investment Disputes established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18th March 1965 (ICSID Convention), as soon as both Contracting Parties become Parties to this Convention. In the meantime the dispute may be submitted to the Additional Facility for the Administration of Conciliation, Arbitration and fact-finding Proceedings; or to*
- (c) an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law, 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.*
 - (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.*
- (3) The arbitral award shall be final and binding for the parties involved in the dispute, and shall be implemented according to national law.*

E51. India-Germany BIT⁸¹

- (1) *Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. The party intending to resolve such dispute through negotiations shall give notice to the other of its intentions.*
- (2) *If the dispute cannot be thus resolved as provided in paragraph 1 of this Article within six months from the date of notice given thereunder, then the dispute may be referred to conciliation in accordance with the United Nations Commission on International Trade Law Rules of Conciliation 1980, if both parties agree. If either party does not agree to conciliation or if conciliation fails, either party may refer such dispute to arbitration in accordance with the United Nations Commission on International Trade Law Rules on Arbitration, 1976, subject to the following provisions:*
 - (a) *in respect of conciliation proceedings, there shall be two conciliators, one each appointed by the respective parties;*
 - (b) *in respect of arbitration proceedings, the following shall apply:*
 - (i) *The arbitral tribunal shall consist of three arbitrators. Each party shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a Chairman who shall be a national of a third State which has diplomatic relations with the Governments of the parties to the dispute. The arbitrators shall be appointed within two months from the date on which one of the parties to the dispute informs the other of its intention to submit the dispute to arbitration;*

⁸¹ Treaties: India-Germany BIT, 1995

- (ii) *The arbitral award shall be made in accordance with the provisions of this Agreement, the relevant national laws including the rules on the conflict of laws of the Contracting Party where the investment dispute arises as well as the generally recognised principles of international law;*
- (iii) *If the necessary appointments are not made within the period specified in paragraph (2) (b) (i), either party may, in the absence of any other agreement, request the Secretary General of the International Centre for the Settlement of Investment Disputes to make the necessary appointments;*
- (iv) *The tribunal shall reach its decision by a majority of votes;*
- (v) *The decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award. The award shall be enforced in accordance with national laws of the Contracting Party where the investment has been made;*
- (vi) *The arbitral tribunal shall state the basis of its decision and state reasons upon the request of either party;*
- (vii) *Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings, The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties;*
- (viii) *During conciliation or arbitration proceedings or the enforcement of an award, the Contracting Party*

involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage, In this case the other Contracting Party will respect the award made in the arbitration or conciliation proceedings and shall not initiate fresh proceedings for the same matter as covered in the award.

E52. India-Russia BIT⁸²

1. *Disputes between an Investor of either Contracting Party and the other Contracting Party arising in relation to investments made in the territory of the State of the latter, concerning obligations under this Agreement, shall as far as possible be settled amicably including resort to, upon mutual agreement of the parties to the dispute, conciliation procedures under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL).*
2. *If a dispute cannot be settled in such a manner within six months from the date either party to the dispute requested In writing amicable settlement, unless otherwise agreed to by both parties, the investor concerned may submit the dispute to an ad-hoc International arbitration tribunal set up in accordance with the Arbitration Rules of UNCITRAL. In respect of such arbitration proceedings the following shall apply:*
 - a. *The arbitration tribunal shall consist of three arbitrators. Each party to the dispute shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a Chairman of the arbitration tribunal who shall be a citizen of a third State. The arbitrators shall be appointed within two months from the date when one of the parties to the dispute informs*

⁸² Treaties: India-Russia BIT, 1994

the other in writing of Its intention to submit the dispute to arbitration.

- b. If the necessary appointments are not made within the period specified in (a) above either party to the dispute may, In the absence of any other agreement, request the President of the International Court of Justice to make such appointments.*
- c. The arbitral award shall be made in accordance with the provisions of this Agreement.*
- d. Each party to the dispute shall bear the cost of its own arbitrator and its representation in the arbitration proceedings. The cost of the Chairman in discharging his functions and the remaining costs of the tribunal shall be borne equally by the parties to the dispute. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties.*

E53. India-UK BIT⁸³

- (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 dispute which has not been amicably settled within a period of six months from written notification of a claim may be submitted to international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law, if the parties to the dispute so agree.*
- (3) Where the dispute is not referred to international conciliation, or where it is so referred but conciliation proceedings are terminated*

⁸³ Treaties: India- United Kingdom of Great Britain and Northern Ireland BIT, 1994

other than by the signing of a settlement agreement, the dispute may be referred to arbitration 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) if both parties to the dispute so agree under the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings;*

or

- (c) 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. In respect of such arbitral proceedings, the following shall apply:*

- (i) The Arbitral Tribunal shall consist of three arbitrators. Each party shall select an arbitrator. These two arbitrators shall appoint by mutual agreement a third arbitrator, the Chairman, who shall be a national of a third State. The arbitrators shall be appointed within two months from the date when one of the parties to the dispute informs the other of its intention to submit the dispute to arbitration within the period of the six months mentioned earlier in paragraph (2) of this Article;*

- (ii) If the necessary appointments are not made within the period specified in sub-paragraph (c)(i), either party may, in the absence of any other agreement, request*

the President of the International Court of Justice to make the necessary appointment;

- (iii) The arbitral award shall be made in accordance with the provisions of this Agreement;*
- (iv) The tribunal shall reach its decision by a majority of votes;*
- (v) The decision of the arbitral tribunal shall be final and binding and the parties shall abide by and comply with the terms of its award;*
- (vi) The arbitral tribunal shall state the basis of its decision and give reasons upon the request of either party;*
- (vii) Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties.*

Appendix F

Definition of Investment and Investor

in Post-2015 BITs of India

F1. India-Brazil ICFT¹

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

- a) shares, stocks and other forms of equity instruments of the enterprise or in another enterprise;*
- b) debt instruments or securities of another enterprise;*
- c) licenses, authorizations, permits, concessions or similar rights conferred in accordance with the law of a Party;*
- d) loans to another enterprise;*
- e) intellectual property rights as defined or referenced to in the Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization {TRIPS}; and*
- f) movable or immovable property and related rights.*

¹ Treaties: India-Brazil ICFT, 2020

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

- i) an order or judgment sought or entered in any judicial, administrative or arbitral proceeding;*
- ii) debt securities issued by a Party or loans granted from a Party to the other Party, bonds, debentures, loans or other debt instruments of a State-owned enterprise of a Party that is considered to be public debt under the law of that Party;*
- iii) any expenditure incurred prior to the obtainment of all necessary licenses, permissions, clearances and permits required under the law of a Party;*
- iv) portfolio investments of the enterprise or in another enterprise;*
- v) claims to money that arise solely from commercial contracts for the sale of goods or services by a national or an enterprise in the territory of a Party to an enterprise in the territory of another Party;*
- vi) goodwill, brand value, market share or similar intangible rights;*
- vii) claims to money that arise solely from the extension of credit in connection with any commercial transaction; and*
- viii) any other claims to money that do not involve the kind of interests or operations as set out in the definition of investment in this Treaty.*

2.5 **"Investor"** means:

- a) any natural person of a Party that makes an investment in the territory of the other Party; or*
- b) any enterprise constituted and organized in accordance with the law of a Party, other than a branch, that has substantial business activities in the territory of that Party and that makes an investment in the territory of the other Party.*

F2. India-Kyrgyz BIT²

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

- (a) shares, stocks and other forms of equity instruments of the enterprise or in another enterprise;
- (b) a debt instrument or security of another enterprise;
- (c) a loan to another enterprise
 - (i) where the enterprise is an affiliate of the investor, or
 - (ii) where the original maturity of the loan is at least three years;
- (d) licenses, permits, authorisations or similar rights conferred in accordance with the law of a Party;
- (e) rights conferred by contracts of a long-term nature such as those to cultivate, extract or exploit natural resources in accordance with the law of a Party, or
- (f) intellectual property rights as listed in Article -1 of the TRIPs Agreement of World Trade Organisation; and
- (g) moveable or immovable property and related rights;
- (h) any other interests of the enterprise which involve substantial economic activity and out of which the enterprise derives significant financial value;

² Treaties: India-Kyrgyz BIT, 2019

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 subclause (a) herein.

F3. India-Taiwan BIT³

1.3 “**investment**” means an enterprise, directly or indirectly, owned or controlled in good faith by an investor in accordance with the law of the territory in which the investment is made, taken together with the assets of the enterprise, which 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 sufficient contribution to 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 the territory in which investment is made;
- (e) rights conferred by contracts, including turnkey, construction, management, production, revenue sharing, of a long term nature such as those to cultivate, extract or exploit natural resources in accordance with the law of the territory, or

³ Treaties: India-Taiwan BIT, 2018

- (f) *Intellectual property as provided in Article -1 of the Trade Related Aspects of Intellectual Property Rights (TRIPs), refers to all categories of intellectual property that are the subject of Sections¹ through 7 of Part II of the TRIPs Agreement; 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, indirect investment means an investment made by an investor through a legal entity of a territory of a non-Party, where such legal entity is substantially owned or controlled, directly by the investor.

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

- (i) *portfolio investments of the enterprise or in another enterprise; For greater certainty, portfolio investments means investment through capital instruments where such investment is less than 10 percent of the post issue paid-up capital on a fully diluted basis of a listed enterprise or less than 10 percent of the paid up value of each series of capital instruments of a listed enterprise;*
- (ii) *debt securities issued by an authority or an enterprise owned or controlled by an authority, or loans to an authority or an enterprise owned or controlled by an authority;*
- (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 where the investment is made;*
- (iv) *claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or*

enterprise in the territory to an enterprise in the other territory;

- (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; and*
- (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 Agreement.*

- 1.4 **“investor”** means a natural or juridical person of a territory, other than a branch or representative office, that has made an investment in the other territory;

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

- (a) a legal entity that is constituted, organised and operated under the law of the territory and that has substantial business activities in that territory; or*
- (b) a legal entity that is constituted, organised and operated under the laws of a territory and that is directly or indirectly owned or controlled by a natural person of that territory or by a legal entity mentioned under subparagraph (a) herein.*

F4. India-Belarus Treaty⁴

- 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, which have the characteristics of*

⁴ Treaties: India-Belarus Treaty, 2018

an investment such as the commitment of capital or other resources, certain duration, the expectation of gain or profit, the assumption of risk and contribution to 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;*
- b) a debt instrument or security;*
- c) a loan*
 - (i) where the debtor 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 which have any significant economic value, conferred in accordance with the law of a Party;*
- e) rights conferred by contracts of a long-term nature such as those to cultivate, extract or exploit natural resources in accordance with the law of a Party;*
- f) Intellectual Property Rights as recognized by the law of the Party where investments are made;*
- 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;*
- (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 interest or operations set out in the definition of investment in this Treaty.*

1.5. *For the purposes of paragraph 4 of this Article, "enterprise" means:*

- (i) *any legal person or entity constituted, organised and operated in compliance with the law of a Party including any company such as joint stock company, corporation, partnership, sole proprietorship, or other association; and*
- (ii) *a branch of any such entity established in the territory of a Party, if permitted by the law of such a Party and carrying out business activities there.*

1.6. *"investor" means:*

- (a) *a natural person, who is a national or citizen of a Party in accordance with its law. A natural person who is a dual national or citizen, in accordance with its law, 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. In no event the investor shall be a national of a Party in whose territory the investment is made; or

- (b) a legal entity, other than a branch or representative office, 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*
- (c) a legal entity, other than a branch or representative office, 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 (b) herein, that has made an investment in the territory of the other Party.*

The concept of substantial business activity shall require an overall examination of all the circumstances on a case-by-case basis.

Appendix G

Expropriation

in Post-2015 BITs of India

G1. India-Brazil ICFT¹

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

- a) for reasons of public purpose;¹*
- b) in a non-discriminatory manner;*
- c) on payment of effective and adequate² compensation, according to paragraph 6.2; and*
- d) in accordance with the due process of law.*

6.2 *Such compensation shall:*

- a) be paid without undue delay;*
- b) be at least equivalent to the fair market value of the expropriated investment, immediately before the expropriation takes place but not beyond thirty (30) days prior to the date of expropriation, plus interests at a rate determined according to market criteria, accrued since the expropriation date until the payment date, according to the legislation of the Host State;*

¹ Treaties: India-Brazil ICFT, 2020

- c) *not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value; and*
 - d) *be completely payable, freely exchanged into a convertible currency and freely transferable, according to Article 9.*
- 6.3 *For greater certainty, this Treaty only covers direct expropriation, which occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.*
- 6.4 *Non-discriminatory regulatory measures by a Party or measures or awards by judicial bodies of a Party that are designed and applied to protect legitimate public interest or public purpose objectives such as public health, safety and the environment shall not constitute expropriation under this Article.*

Note

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

G2. India-Kyrgyz BIT² and India-Belarus Treaty³

- 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 purpose³, 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*

² Treaties: India-Kyrgyz BIT, 2019

³ Treaties: India-Belarus Treaty, 2018

*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.*

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.*

3 *For the avoidance of doubt, where India is the expropriating Party, any measure of expropriation relating to land shall be for the purposes as set out in its Law relating to land acquisition and any questions as to “public purpose” and compensation shall be determined in accordance with the procedure specified in such Law.*

Notes

Following changes are applicable only in case of Belarus:

* Sub -clause 5.1 reads as follows:

5.1 *Neither Party may nationalize or expropriate an investment of an investor ("expropriation") of the other Party either directly or through measures having an effect equivalent to expropriation (indirectly), except for reasons of public purpose, in accordance with the due process of law and on payment of adequate compensation. For the avoidance of doubt, any measure of expropriation relating to land shall be for the purposes as set out in a law of a Party concerned 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. Such compensation shall at least be 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, and other criteria, as appropriate, to determine fair market value.*

** This clause should be read without the sentence *"The Parties confirm their shared understanding that:"*.

*** This sub-clause should be read without the words *"For the avoidance of doubt"*.

"In" should be replaced with *"While"*.

G3. India-Taiwan BIT⁴

5.1 *An investment of an investor of the other territory may not be nationalized or expropriated (hereinafter "**expropriate**") either directly or through measures having an effect equivalent to expropriation, except for reasons of public purpose, 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*

⁴ Treaties: India-Taiwan BIT, 2018

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 [Transfers].

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 the authorities of the territory 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 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 the authorities of the territory;*
- (iii) *the character of the measure or series of measures, notably their object, context and intent; and*
- (iv) *whether a measure by the authorities of the territory breaches a prior binding written commitment to the investor whether by contract, licence or other legal document.*

5.4 *For the avoidance of doubt, an action taken by the authorities of the territory in its commercial capacity shall not constitute expropriation or any other measure having similar effect.*

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

5.6 *In considering an alleged breach of this Article, an Arbitral 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.*

Appendix H

Treatment of Investments (TOI)

in Post-2015 BITs of India

H1. India-Brazil ICFT¹

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

- a) *denial of justice in any judicial or administrative proceedings;*
- b) *fundamental breach of due process;*
- c) *targeted discrimination, such as gender, race or religious belief;*
- d) *manifestly abusive treatment, such as coercion, duress and harassment; or*
- e) *discrimination in matters of law enforcement, including the provision of physical security.*

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

¹ Treaties: India-Brazil ICFT, 2020

- 4.3 *A determination that there has been a breach of another provision of this Treaty, or of a separate international agreement, does not establish that there has been a breach of this Article.*
- 4.4 *Subject to its laws and regulations and policies on the entry of foreign nationals, each Party shall provide the facilities and the necessary permissions for the entry, exit, residence and work of the investor of the other Party and any national of the other Party having a permanent or temporary relationship with the investment, including administrators, experts and technicians.*
- 4.5 *Existing investments shall not be affected by subsequent changes in admission requirements.*

H2. India-Kyrgyz BIT² and India-Belarus Treaty³

- 3.1 *No Party shall subject investments made by investors of the other Party to measures which constitute a violation of customary international law¹ * through:*
- (a) Denial of justice in any judicial or administrative proceedings; or*
 - (b) fundamental breach of due process: or*
 - (c) targeted discrimination on manifestly unjustified grounds, such as gender, race or religious belief; or*
 - (d) 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 which means ensuring foreign investors and*

² Treaties: India-Kyrgyz BIT, 2019

³ Treaties: India-Belarus Treaty, 2018

*their investments same level of physical security as provided to domestic investors and their investments and not to any other obligation whatsoever.***

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

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

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.*

Notes

Following modifications are applicable only in case of Belarus:

* This sub-clause should be read without the footnote.

** Sub-clause 3.2 should be read as follows:

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 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.*

*** "In" should be replaced with "While".

H3. India-Taiwan BIT⁴

- 3.1 *Investments made by investors shall not be subject to measures, by authorities of the territory in which the investment is made, which constitute a violation of customary international law through:*
- (a) *Denial of justice in any judicial or administrative proceedings; or*
 - (b) *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 *Investments of investors of the other territory and investors with respect to their investments shall be accorded full protection and security. For greater certainty, “full protection and security” only refers to the authorities of the territory of a Party’s obligations relating to physical security of investors and to investments made by the investors of the other territory and not to any other obligation whatsoever.*
- 3.3 *A determination that there has been a breach of another provision of this Agreement, 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, an Arbitral 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 Agreement.*

⁴ Treaties: India-Taiwan BIT, 2018

Appendix I
National Treatment / Non-Discrimination
/ Non-Discriminatory Treatment
in Post-2015 BITs of India

11. India-Brazil ICFT¹

- 5.1 *Without prejudice to the measures in force under its legislation on the date of entry into force of this Treaty, each Party shall accord to investors of the other Party or to investments by investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors or to investments by its own investors, with respect to management, conduct, operation, sale or other disposition of investments in its territory.*
- 5.2 *For greater certainty, the treatment accorded "in like circumstances" depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare or regulatory objectives.*
- 5.3 *For greater certainty, this Article shall not be interpreted as obliging the Parties to compensate for inherent competitive disadvantages which result from the foreign character of the investors and their investments.*

¹ Treaties: India-Brazil ICFT, 2020

I2. India-Kyrgyz BIT²

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.*

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*

I3. India-Taiwan BIT³

4.1 *Investor or investments made by investors of the other territory shall be accorded treatment no less favourable treatment than that accorded, in like circumstances, to its own investors or to investments by such investors with respect to the management,*

² Treaties: India-Kyrgyz BIT, 2019

³ Treaties: India-Taiwan BIT, 2018

conduct, operation, sale or other disposition of investments in a territory.

- 4.2 *The treatment accorded under Article 4.1 means, with respect to a Regional authority, treatment no less favourable than the treatment accorded, in like circumstances, by that Regional authority to investors, and to investments of investors, of the territory of which it forms a part.*

14. India-Belarus Treaty⁴

- 4.1 *Each Party shall apply to investors or to investments made by investors of the other Party, measures that accord no less favourable treatment than that it accords, in like circumstances, to its own investors and to investments by such investors, in a non-discriminatory manner, with respect to the management, conduct, operation, sale or other disposition of investments in its territory.*

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, and (c) the practical challenges of regulating the investment.

- 4.2 *The treatment accorded by a Party under paragraph 1 of this Article means, with respect to a Regional government, treatment no less favourable than the treatment accorded, in like circumstances, by that Regional government to investors, and to investments of investors, of the Party of which it forms a part.*

⁴ Treaties: India-Belarus Treaty, 2018

Appendix J

Investor State Dispute Settlement

(ISDS)

in Post-2015 BITs of India

J1. India-Brazil ICFT¹

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

18.2 The following rules apply to the aforementioned procedure:

- a) To initiate the procedure, the interested Party shall submit a written request to the other Party, identifying the specific measure in question, and informing the findings of fact and law underlying the submission. The Joint Committee shall meet within ninety (90) days from the date of the request;*
- b) The Joint Committee shall have one hundred and twenty (120) days from the date of the first meeting, extendable by mutual agreement, to evaluate the submission presented and to prepare a report;*
- c) The report of the Joint Committee shall include:*
 - i) Identification of the submitting Party;*

¹ Treaties: India-Brazil ICFT, 2020

- ii) *Description of the measure in question and the alleged breach of the Treaty; and*
 - iii) *Findings of the Joint Committee.*
 - d) *In the event that the dispute is not resolved upon the completion of the timeframes set forth in this Article, or there is non-participation of a Party in the meetings of the Joint Committee convened according to this Article, the dispute may be submitted to arbitration by a Party in accordance with Article 19* of the Treaty.*
- 18.3 *If the measure in question pertains to a specific investor, the following additional rules shall apply:*
- a) *the initial submission shall identify the affected investor;*
 - b) *representatives of the affected investor may be invited to appear before the Joint Committee; and*
 - c) *a Party may deny submission to the dispute prevention procedure matters pertaining to a specific investor which have been previously submitted by that investor to other dispute settlement mechanisms, unless those proceedings are withdrawn from other dispute settlement mechanisms.*
- 18.4 *Whenever relevant to the consideration of the measure in question, the Joint Committee may invite other interested stakeholders to appear before the Joint Committee and present their views on such measure.*
- 18.5 *The meetings of the Joint Committee and all documentation, as well as steps taken in the context of the mechanism established in this Article, shall remain confidential, except for the report submitted by the Joint Committee, subject to the law of each of the Parties.*

Notes

- * Article 19 relates to Disputes Between Parties (India and Brazil). Hence, the same is not reproduced here.

J2. India-Kyrgyz BIT²

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.*

² Treaties: India-Kyrgyz BIT, 2019

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

13.7 *For the purposes of this Chapter:*

- (i) *“Defending Party” means a Party against which a claim is made under this Article.*
- (ii) *“disputing party” means a Defending Party or a disputing investor.*
- (iii) *“disputing parties” means a disputing investor and a Defending Party.*
- (iv) *“disputing investor” means an investor of a Party that makes a claim against another Party on its behalf under this Article, and where relevant, includes an investor of a Party that makes a claim on behalf of the locally established enterprise:*
- (v) *“ICSID” means the International Centre for Settlement of Investment Disputes.*
- (vi) *“ICSID Additional Facility Rules” means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Dispute.*
- (vii) *“ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington on 18 March 1965.*
- (viii) *“New York Convention” means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958.*
- (ix) *“Non-disputing Party” means the Party to this Treaty which is not a party to a dispute under Chapter IV of this Treaty.*
- (x) *“UNCITRAL Arbitration Rules” means the arbitration rules of the United Nations Commission on International Trade Law.*

Article 14***Proceedings under different international agreements***

14.1 *Where claims are brought pursuant to this Chapter and another international agreement and:*

- (a) there is a potential for overlapping compensation; or*
- (b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Chapter,*

a Tribunal constituted under this Chapter shall, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to another international agreement are taken into account in its decision, order or award.

Article 15***Conditions Precedent to Submission of a Claim to Arbitration***

15.1 *In respect of a claim that the Defending Party has breached an obligation under Chapter II, other than an obligation under Article 9 or 10, a disputing investor must first submit its claim before the relevant domestic courts or administrative bodies of the Defending Party for the purpose of pursuing domestic remedies in respect of the same measure or similar factual matters for which a breach of this Treaty is claimed. Such claim before the relevant domestic courts or administrative bodies of the Defending Party must be submitted within one (1) year from the date on which the investor first acquired, or should have first acquired, knowledge of the measure in question and knowledge that the investment, or the investor with respect to its investment, had incurred loss or damage as a result.*

For greater certainty, in demonstrating compliance with the obligation to exhaust local remedies, the investor shall not assert that the obligation to exhaust local remedies does not apply or has

been met on the basis that the claim under this Treaty is by a different party or in respect of a different cause of action.

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

- 15.2 Where applicable, if, after exhausting all judicial and administrative remedies by domestic proceedings relating to the measure underlying the claim for at least a period of five years from the date on which the investor first acquired knowledge of the measure in question, no resolution has been reached satisfactory to the investor, the investor may commence a proceeding under this chapter by transmitting a notice of dispute (“**notice of dispute**”) to the Defending Party.*
- 15.3 The notice of dispute shall: specify the name and address of the disputing investor or the enterprise, where applicable; set out the factual basis of the claim, including the measures at issue; specify the provisions of the Treaty alleged to have been breached and any other relevant provisions; demonstrate compliance with Article 15.1 and 15.2, where applicable; specify the relief sought and the approximate amount of damages claimed; and furnish evidence establishing that the disputing investor is an investor of the other Party.*
- 15.4 For no less than six (6) months after receipt of the notice of dispute, the disputing parties shall use their best efforts to try to resolve the dispute amicably through meaningful consultation, negotiation or other third party procedures. In all such cases, the place of such consultation or negotiation or settlement shall be the capital city of the Defending Party.*

15.5 *In the event that the disputing parties cannot settle the dispute amicably, a disputing investor may submit a claim to arbitration pursuant to this Treaty, but only if the following additional conditions are satisfied:*

- (i) not more than six years have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the measure in question and knowledge that the disputing investor with respect to its investment, had incurred loss or damage as a result; or*
- (ii) where applicable, not more than twelve (12) months have elapsed from the conclusion of domestic proceedings pursuant to 15.1.*
- (iii) the disputing investor or the locally established enterprise have waived their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the Defending Party that is alleged to be a breach referred to in Article 13.2.*
- (iv) where the claim submitted by the disputing investor is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the disputing investor owns or controls, that enterprise has waived its right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the Defending Party that is alleged to be a breach referred to in Article 13.2.*
- (v) At least 90 days before submitting any claim to arbitration, the disputing investor has transmitted to the Defending Party a written notice of its intention to submit the claim to arbitration (“notice of arbitration”). The notice of arbitration shall:*

- a. *attach the notice of dispute and the record of its transmission to the Defending Party with the details thereof;*
- b. *provide the consent to arbitration by the disputing investor, or where applicable, by the locally established enterprise, in accordance with the procedures set out in this Treaty;*
- c. *provide the waiver as required under Article 15.5 (iii) or (iv), as applicable; provided that a waiver from the enterprise under Article 15.5 (iii) or (iv) shall not be required only where the Defending Party has deprived the disputing investor of control of an enterprise;*
- d. *specify the name of the arbitrator appointed by the disputing investor.*

Article 16

Submission of Claim to Arbitration

- 16.1 *A disputing investor who meets the conditions precedent provided for in Article 15 may submit the claim to arbitration under:*
- (a) *the ICSID Convention, provided that both the Parties full members of the Convention;*
 - (b) *the Additional Facility Rules of ICSID, provided that either Party, but not both, is a member of the ICSID Convention; or*
 - (c) *the UNCITRAL Arbitration Rules.*
- 16.2 *The applicable arbitration rules shall govern the arbitration except to the extent modified by this Chapter, and supplemented by any subsequent rules adopted by the Parties.*
- 16.3 *A claim is submitted to arbitration under this Chapter when:*
- (a) *the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention is received by the Secretary-General of ICSID;*

- (b) *the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General of ICSID; or*
 - (c) *the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the Defending Party.*
- 16.4 *Delivery of notice and other documents on a Party shall be made to the Designated Representative for each Party.*

Article 17

Consent to Arbitration

- 17.1 *Each Party consents to the submission of a claim to arbitration in accordance with the terms of this Agreement.*
- 17.2 *The consent given in Article 17.1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:*
- (a) *Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties; and*
 - (b) *Article II of the New York Convention for an agreement in writing.*

Article 18

Appointment of Arbitrators

- 18.1 *The arbitral Tribunal shall consist of three arbitrators with relevant expertise or experience in public international law, international trade and international investment law, or the resolution of disputes arising under international trade or international investment agreements. They shall be independent of, and not be affiliated with or take instructions from a disputing party or the government of a Party with regard to trade and investment matters. Arbitrators shall not take instructions from any organisation, government or disputing party with regard to matters related to the dispute.*

- 18.2 *One arbitrator shall be appointed by each of the disputing parties and the third arbitrator (“Presiding Arbitrator”) shall be appointed by agreement of the co-arbitrators and the disputing parties.*
- 18.3 *If a Tribunal has not been constituted within one hundred twenty days (120) days from the date that a Claim is submitted to arbitration under this Article, the appointing authority under this Article shall be the following:*
- a. *in case of an arbitration submitted under ICSID Convention or the ICSID Additional Facility Rules, the Secretary-General of ICSID;*
 - b. *in case of an arbitration submitted under the UNCITRAL Rules, the Secretary-General of the Permanent Court of Arbitration;*

Provided that if the appointing authority referred to is subparagraph (a) or (b) of Article 18.3 is a national of a Party, the appointing authority shall be in the following order: the President, the Vice-President or the next most senior Judge of the International Court of Justice who is not a national of either Party.

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

Article 19

Prevention of Conflict of Interest of Arbitrators and Challenges

- 19.1 *Every arbitrator appointed to resolve disputes under this Treaty shall during the entire arbitration proceedings be impartial, independent and free of any actual or potential conflict of interest.*
- 19.2 *Upon nomination and, if appointed, every arbitrator shall, on an ongoing basis, disclose in writing any circumstances that may, in the eyes of the disputing parties, give rise to doubts as to her/his independence, impartiality, or freedom from conflicts of interest. This includes any items listed in Article 19.10 and any other relevant circumstances pertaining to the subject matter of the dispute, and to*

existing or past, direct or indirect, financial, personal, business, or professional relationships with any of the parties, legal counsel, representatives, witnesses, or co-arbitrators. Such disclosure shall be made immediately upon the arbitrator acquiring knowledge of such circumstances, and shall be made to the co-arbitrators, the parties to the arbitration and the appointing authority, if any, making an appointment. Neither the ability of those individuals or entities to access this information independently, nor the availability of that information in the public domain, will relieve any arbitrator of his or her affirmative duty to make these disclosures. Doubts regarding whether disclosure is required shall be resolved in favour of such disclosure.

19.3 A disputing party may challenge an arbitrator appointed under this Treaty:

- (a) if facts or circumstances exist that may, in the eyes of the parties, give rise to justifiable doubts as to the arbitrator's independence, impartiality or freedom from conflicts of interest; or*
- (b) in the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of the arbitrator performing his or her functions,*

Provided that no such challenge may be initiated after fifteen days of that party: (i) learning of the relevant facts or circumstances through a disclosure made under Article 19.2 by the arbitrator, or (iii) otherwise becoming aware of the relevant facts or circumstances relevant to a challenge under Article 19.3, whichever is later.

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

- 19.5 *When an arbitrator has been challenged by a disputing party, all disputing parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.*
- 19.6 *If, within 15 days from the date of the notice of challenge the disputing parties do not agree to the challenge or the challenged arbitrator does not withdraw, the disputing party making the' challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority as specified under Article 18.3.*
- 19.7 *The appointing authority as specified under Article 18.3 shall accept the challenge made under Article 19.3 if, even in the absence of actual bias, there are circumstances that would give rise to justifiable doubts as to the arbitrator's lack of independence, impartiality, freedom from conflicts of interest, or ability to perform his or her role, in the eyes of an objective third party.*
- 19.8 *In any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in the Treaty and the arbitration rules that were applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a disputing party to the arbitration had failed to exercise its right to appoint or to participate in the appointment.*
- 19.9 *If an arbitrator is replaced, the proceedings may resume at the stage where the arbitrator who was replaced ceased to perform his or her functions unless otherwise agreed by the disputing parties.*

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

- a. The arbitrator or her/his associates or relatives have an interest in the outcome of the particular arbitration;*
- b. The arbitrator is or has been a legal representative/advisor of the appointing party or an affiliate of the appointing party in the preceding three (5) years prior to the commencement of arbitration;*
- c. The arbitrator is a lawyer in the same law firm as the counsel to one of the parties;*
- d. The arbitrator is acting concurrently with the lawyer or law firm of one of the parties in another dispute;*
- e. The arbitrator's law firm is currently rendering or has rendered services to one of the parties or to an affiliate of one of the parties out of which such law firm derives financial interest;*
- f. The arbitrator has received a full briefing of the merits or procedural aspects of the dispute from the appointing party or her/his counsel prior to her/his appointment;*
- g. The arbitrator is a manager, director or member of the governing body, or has a similar controlling influence by virtue of shareholding or otherwise in one of the parties;*
- h. The arbitrator has publicly advocated a fixed position regarding an issue on the case that is being arbitrated.*

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

Article 20**Conduct of Arbitral Proceedings**

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

Article 21**Dismissal of Frivolous Claims**

- 21.1 *Without prejudice to a Tribunal's authority to address other objections, a Tribunal shall address and decide as a preliminary question any objection by the Defending Party that a claim submitted by the investor is: (a) not within the scope of the Tribunal's jurisdiction, or (b) manifestly without legal merit or unfounded as a matter of law.*
- 21.2 *Such objection shall be submitted to the Tribunal as soon as possible after the Tribunal is constituted, and in no event later than the date the Tribunal fixes for the Defending Party to submit its counter-memorial (or, in the case of an amendment to the notice of*

arbitration, the date the Tribunal fixes for the Defending Party to submit its response to the amendment).

- 21.3 *On receipt of an objection under this Article, the Tribunal shall suspend any proceedings on the merits, establish' a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question and issue a decision or award on the objection, stating the grounds therefor. In deciding an objection under this Article, the Tribunal shall assume to be true claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof). The Tribunal may also consider any relevant facts not in dispute.*
- 21.4 *The Tribunal shall issue an award under this Article no later than 150 days after the date of the receipt of the request under Article 21.2. However, if a Defending Party requests a hearing, the Tribunal may take an additional 30 days to issue the decision or award.*
- 21.5 *The Defending Party does not waive any objection as to competence or any argument on the merits merely because the Defending Party did or did not raise an objection or make use of the expedited procedure set out this Article.*
- 21.6 *When it decides on a preliminary objection by a Defending Party under Article 21.2 or 21.3, the Tribunal may, if warranted, award to the prevailing Defending Party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the Tribunal shall consider whether either the claim by the disputing investor or the objection by the Defending Party was frivolous, and shall provide the disputing parties a reasonable opportunity to present its cases.*

Article 22

Transparency in arbitral proceedings

- 22.1 *Subject to applicable law regarding protection of confidential information, the Defending Party shall make available to the public the following documents relating to a dispute under this Chapter:*

- a. *the notice of dispute and the notice of arbitration;*
- b. *pleadings and other written submissions on jurisdiction and the merits submitted to the Tribunal, including submissions by a Non- disputing Party;*
- c. *Transcripts of hearings, where available; and*
- d. *decisions, orders and awards issued by the Tribunal.*

22.2 *Hearings for the presentation of evidence or for oral argument (“hearings”) shall be made public in accordance with the following provisions:*

- a. *Where there is a need to protect confidential information or protect the safety of participants in the proceedings, the Tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.*
- b. *The Tribunal shall make logistical arrangements to facilitate public access to hearings, including by organizing attendance through video links or such other means as it deems appropriate. However, the arbitral tribunal may, after consultation with the disputing parties, decide to hold all or part of the hearings in private where this becomes necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.*

22.3 *An award of a Tribunal rendered under this Article shall be publicly available, subject to the redaction of confidential information. Where a Defending Party determines that it is in the public interest to do so and notifies the Tribunal of that determination, all other documents submitted to, or issued by, the Tribunal shall also be publicly available, subject to the redaction of confidential information.*

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

Article 23***Burden of Proof and Governing Law***

- 23.1 *This Treaty shall be interpreted in the context of the high level of deference that international law accords to States with regard to their development and implementation of domestic policies.*
- 23.2 *The disputing investor at all times bears the burden of establishing: (a) jurisdiction; (b) the existence of an obligation under Chapter II of this Treaty, other than the obligation under Article 9 or 10; (c) a breach of such obligation; (d) that the investment, or the investor with respect to its investment, has suffered actual and non-speculative losses as a result of the breach; and (e) that those losses were foreseeable and directly caused by the breach.*
- 23.3 *The governing law for interpretation of this Treaty by a Tribunal constituted under this Article shall be: (a) this Treaty; (b) the general principles of public international law relating to the interpretation of treaties, including the presumption of consistency between international treaties to which the Parties are party; and (c) for matters relating to domestic law, the law of the Defending Party.*

Article 24***Joint Interpretations***

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

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

Article 25

Expert Reports

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

Article 26

Award

- 26.1 *An award shall include a judgement as to whether there has been a breach by the Defending Party of any rights conferred under this Treaty in respect of the disputing investor and its investment and the legal basis and the reasons for its decisions.*
- 26.2 *The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both disputing parties to the arbitration.*
- 26.3 *A tribunal can only award monetary compensation for a breach of the obligations under Chapter II of the Treaty. Monetary damages shall not be greater than the loss suffered by the investor or, as applicable, the locally established enterprise, reduced by any prior damages or compensation already provided by a Party. For the*

calculation of monetary damages, the Tribunal shall also reduce the damages to take into account any restitution of property or repeal or modification of the measure, or other mitigating factors.⁴

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

⁴ *Mitigating factors can include, current and past use of the investment, the history of its acquisition and purpose, compensation received by the investor from other sources, any unremedied harm or damage that the investor has caused to the environment or local community or other relevant considerations regarding the need to balance public interest and the interests of the investor.*

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 farther 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

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

Article 29

Appeals Facility

The Parties may by agreement or after the completion of their respective procedures regarding the enforcement of this Treaty may establish an institutional mechanism⁵ to develop an appellate body or similar mechanism to review awards rendered by tribunals under this chapter. Such appellate body or similar mechanism may be designed to provide coherence to the interpretation of provisions in this Treaty. In developing such a mechanism, the Parties may take into account the following issues, among others:

- a) the nature and composition of an appellate body or similar mechanism;

- b) *the scope and standard of review of such an appellate body;*
- c) *transparency of proceedings of the appellate body;*
- d) *the effect of decisions by an appellate body or similar mechanism;*
- e) *the relationship of review by an appellate body or similar mechanism to the arbitral rules that may be selected under Articles 20.1 of this Treaty; and*
- f) *the relationship of review by an appellate body or similar mechanism to existing domestic laws and international law on the enforcement of arbitral awards.*

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

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.*

J3. India-Taiwan BIT³

Article 13

Scope and Definitions

- 13.1 *Without prejudice to the rights and obligations of the authorities of the territories under Chapter V, this Chapter establishes a mechanism for the settlement of disputes between an investor and the authorities of the other territory.*
- 13.2 *This Chapter shall only apply to a dispute between the authorities of a territory and an investor of the other territory with respect to its investment, arising out of an alleged breach of an obligation of the authorities of the territory under Chapter II of this Agreement, other than the obligation under Articles 9 [Entry and Sojourn of Personnel] and 10 [Transparency] of this Agreement.*
- 13.3 *The Arbitral Tribunal constituted under this Chapter shall only decide claims in respect of a breach of this Agreement as set out in Chapter II, except under Articles 9 [Entry and Sojourn of Personnel] and 10 [Transparency], and not disputes arising solely from an alleged breach of a contract between the authorities of the territory 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, the Arbitral Tribunal constituted under this Chapter shall not have the jurisdiction to:*

³ Treaties: India-Taiwan BIT, 2018

- (i) *review the merits of a decision made by a judicial authority of the territory; or*
 - (ii) *accept any claim that is or has been subject of an arbitration under Chapter V.*
- 13.6 *A dispute between an investor and the authorities of the territory shall proceed sequentially in accordance with this Chapter.*
- 13.7 *For the purposes of this Chapter:*
- (a) ***“Defending Party”** means the authorities of the territory against which a claim is made under this Article.*
 - (b) ***“disputing party”** means a Defending Party or a disputing investor.*
 - (c) ***“disputing parties”** means a disputing investor and a Defending Party.*
 - (d) ***“disputing investor”** means an investor of a territory that makes a claim against the authorities of the other territory on its behalf under this Article, and where relevant, includes an investor of a territory that makes a claim on behalf of the locally established enterprise.*
 - (e) ***“Non-disputing Party”** means the authorities of the territory to this Agreement which is not a party to a dispute under Chapter IV of this Agreement.*
 - (f) ***“UNCITRAL Arbitration Rules”** means the arbitration rules of the United Nations Commission on International Trade Law.*
 - (g) ***“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.*
 - (h) ***“ICC Arbitration Rules”** means Rules of Arbitration of the International Chamber of Commerce, in force as from 1 January 2012 and as amended thereafter.*

- (i) “Non-disputing Party” means the Party to this Treaty which is not a party to a dispute under Chapter IV of this Treaty.

Article 14

Proceedings under different international agreements

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,

the Arbitral 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[Entry and Sojourn of Personnel] and 10[Transparency], a disputing investor may commence a proceeding under this Chapter by transmitting a written request for consultations and negotiations (“written request”) to the Defending Party.
- 15.2 The written request 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 Agreement alleged to have been breached and any other relevant provisions; specify the relief sought and the approximate amount of damages claimed; and furnish evidence establishing that the disputing investor is an investor of the territory of the other Party.

15.3 *For no less than six (6) months after receipt of the written request, 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 territory in which the investment is made.*

15.4 *In the event that the disputing parties cannot settle the dispute amicably, a disputing investor may submit a claim to arbitration pursuant to this Agreement, but only if the following additional conditions are satisfied:*

- (a) *a disputing investor must submit its claim before the relevant domestic courts or administrative bodies in the territory in which the investment is made for the purpose of pursuing domestic remedies in respect of the same measure or similar factual matters for which a breach of this Agreement is claimed. Such claim before the relevant domestic courts or administrative bodies mentioned above must be submitted within one (1) year and six (6) months 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 Agreement 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 Agreement is claimed by the investor.

- (b) Where applicable, if, after exhausting all judicial and administrative remedies relating to the measure underlying the claim for at least a period of four(4) 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.*
- (c) not more than five (5) years and six (6) months 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*
- (d) where applicable, not more than twelve (12) months have elapsed from the conclusion of domestic proceedings pursuant to subparagraph (b).*
- (e) 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 the territory 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.*
- (f) In case of indirect investment, a disputing investor may submit a claim under Chapter IV only if, both the disputing investor and the legal entity of any other territory through which the investment has been made, waive their right to initiate or continue any proceeding, including under any other Investment Agreement, with respect to the measure of the Defending Party that is alleged to be a breach referred to in Article 13.2. Such waivers shall be provided in writing to*

the Defending Party, by the disputing investor and the legal entity of any other territory through which the investment has been made.

- (g) In case of indirect investment, no claim may be submitted under this Chapter if the disputing investor or the legal entity of any other territory through which the investment has been made, submits or has submitted a claim with respect to the same measure or series of measures under any proceeding, including under any other Investment Agreement.*
- (h) where the claim submitted by the disputing investor is for loss or damage to an interest in an enterprise of the territory of the other Party that is a juridical person that the disputing investor owns or controls, that enterprise has waived its right to initiate or continue before any administrative tribunal or court under the law of the territory 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.*
- (i) 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:*

 - (i) attach the written request and the record of its transmission to the Defending Party with the details thereof;*
 - (ii) 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 Agreement;*
 - (iii) provide the waiver as required under Article 15.4 (e),(f), (g) or (h), as applicable; provided that a waiver*

from the enterprise under Article 15.5 (e),(f),(g) or (h) shall not be required only where the Defending Party has deprived the disputing investor of control of an enterprise;

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

Article 16

Submission of Claim to Arbitration

16.1 *A disputing investor who meets the conditions precedent provided for in Article 15 [Conditions Precedent to Submission of a Claim to Arbitration] may submit the claim to arbitration under:*

- (a) *the UNCITRAL Arbitration Rules; or*
- (b) *any other arbitration rules, including the ICC Arbitration Rules, if mutually agreed by the disputing parties.*

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 the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the Defending Party.:*

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

Article 17

Appointment of Arbitrators

17.1 *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 authorities of the territory of a Party with regard to trade and investment matters.*

Arbitrators shall not take instructions from any organisation, government, authorities of the territories or disputing party with regard to matters related to the dispute.

- 17.2 *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.*
- 17.3 *If the Arbitral 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 Secretary-General of the Permanent Court of Arbitration.*
- 17.4 *The appointing authority shall appoint in her/his discretion and after consultation with the disputing parties, the arbitrator or arbitrators not yet appointed.*

Article 18

Prevention of Conflict of Interest of Arbitrators and Challenges

- 18.1 *Every arbitrator appointed to resolve disputes under this Agreement shall during the entire arbitration proceedings be impartial, independent and free of any actual or potential conflict of interest.*
- 18.2 *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 18.10 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 disputing parties, 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, disputing parties and the appointing authority, if any, making an appointment. Neither the ability of those individuals or entities to access this information independently, nor the availability of that information in the public domain, will relieve any arbitrator of his or her affirmative duty to make these disclosures. Doubts regarding whether disclosure is required shall be resolved in favour of such disclosure.

18.3 A disputing party may challenge an arbitrator appointed under this Agreement:

- (a) if facts or circumstances exist that may, in the eyes of the disputing 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 18.2 by the arbitrator, or (iii) otherwise becoming aware of the relevant facts or circumstances relevant to a challenge under Article 18.3, whichever is later.

18.4 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 17.3. The notice of challenge shall state the reasons for the challenge.

18.5 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.

- 18.6 *If, within fifteen (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 17.3.*
- 18.7 *The appointing authority as specified under Article 17.3 shall accept the challenge made under Article 18.3 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.*
- 18.8 *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 Agreement 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.*
- 18.9 *If an arbitrator is replaced, the proceedings may resume from the stage where the arbitrator who was replaced ceased to perform his or her functions unless otherwise agreed by the disputing parties.*
- 18.10 *A justifiable doubt as to an arbitrator's independence or impartiality or freedom from conflicts of interest shall be deemed to exist on account of the following factors, including if:*
- a. *The arbitrator or her/his associates or relatives have an interest in the outcome of the particular arbitration;*
 - b. *The arbitrator is or has been a legal representative/advisor of the appointing party or an affiliate of the appointing party*

in the preceding three (5) years prior to the commencement of arbitration;

- c. The arbitrator is from the same law firm as the counsel to a disputing party;*
- d. The arbitrator is acting concurrently with the counsel or firm of a disputing party in another dispute;*
- e. The arbitrator's firm is currently rendering or has rendered services to a disputing party or to an affiliate of one of the parties out of which such firm derives financial interest;*
- f. The arbitrator has received a full briefing of the merits or procedural aspects of the dispute from the appointing party or her/his counsel prior to her/his appointment;*
- g. The arbitrator is a manager, director or member of the governing body, or has a similar controlling influence by virtue of shareholding or otherwise in a disputing party;*
- h. The arbitrator has publicly advocated a fixed position regarding an issue on the case that is being arbitrated.*

18.11 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 Agreement, 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 19

Conduct of Arbitral Proceedings

19.1 Unless the disputing parties agree otherwise, the Arbitral Tribunal shall hold the arbitration proceedings in the territory of a country that is a party to the New York Convention, selected in accordance with the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

- 19.2 *Unless otherwise agreed by the disputing parties, the Arbitral Tribunal may determine a place for meetings and hearings and the legal seat of arbitration. In doing so, the Arbitral 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 territory in which the investment is made.*
- 19.3 *When considering matters of evidence or production of documents, the Arbitral 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 the law of the territory in which the investment is made.*

Article 20

Dismissal of Frivolous Claims

- 20.1 *Without prejudice to the Arbitral Tribunal's authority to address other objections, the Arbitral Tribunal shall address and decide as a preliminary question any objection by the Defending Party that a claim submitted by the disputing investor is: (a) not within the scope of the Arbitral Tribunal's jurisdiction, or (b) manifestly without legal merit or unfounded as a matter of law.*
- 20.2 *Such objection shall be submitted to the Arbitral Tribunal as soon as possible after the Arbitral Tribunal is constituted, and in no event later than the date the Arbitral 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 Arbitral Tribunal fixes for the Defending Party to submit its response to the amendment).*
- 20.3 *On receipt of an objection under this Article, the Arbitral 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 therefore. In deciding an objection under this Article, the Arbitral Tribunal shall assume to be true disputing investor's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof). The Arbitral Tribunal may also consider any relevant facts not in dispute.

20.4 The Arbitral Tribunal shall issue an award under this Article no later than 150 days after the date of the receipt of the request under Article 20.2. However, if a Defending Party requests a hearing, the Arbitral Tribunal may take an additional thirty (30) days to issue the decision or award.

20.5 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.

20.6 When the Arbitral Tribunal decides on a preliminary objection by a Defending Party under Article 20.2 or 20.3, the Arbitral 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 Arbitral 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 21

Transparency in arbitral proceedings

21.1 Subject to applicable law regarding protection of confidential information, the Defending Party shall make available to the public the following documents relating to a dispute under this Chapter:

a. the written request and the notice of arbitration;

- b. *pleadings and other written submissions on jurisdiction and the merits submitted to the Arbitral Tribunal, including submissions by a Non-disputing Party;*
- c. *Transcripts of hearings, where available; and*
- d. *decisions, orders and awards issued by the Arbitral Tribunal.*

21.2 *Hearings for the presentation of evidence or for oral argument (“hearings”) shall be made public in accordance with the following provisions:*

- a. *Where there is a need to protect confidential information or protect the safety of participants in the proceedings, the Arbitral Tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.*
- b. *The Arbitral 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.*

21.3 *The award of the Arbitral 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 Arbitral Tribunal of that determination, all other documents submitted to, or issued by, the Arbitral Tribunal shall also be publicly available, subject to the redaction of confidential information.*

21.4 *The Non-disputing Party may make oral and written submissions to the Arbitral Tribunal regarding the interpretation of this Agreement.*

Article 22

Burden of Proof and Governing Law

- 22.1 *This Agreement 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.*
- 22.2 *The disputing investor bears the burden of establishing: (a) jurisdiction; (b) the existence of an obligation under Chapter II of this Agreement, other than the obligation under Article 9[Entry and Sojourn of Personnel] or 10 [Transparency]; (c) a breach of such obligation; (d) that the investment, or the investor with respect to its investment, has suffered actual and non-speculative losses as a result of the breach; and (e) that those losses were foreseeable and directly caused by the breach.*
- 22.3 *The governing law for interpretation of this Agreement by the Arbitral Tribunal constituted under this Chapter shall be: (a) this Agreement; (b) the general principles of public international law relating to the interpretation of agreements, including the presumption of consistency between international agreements to which the Parties are party; and (c) for matters relating to domestic law, the law of the territory of the Defending Party.*

Article 23

Joint Interpretations

- 23.1 *Interpretations of specific provisions and decisions on application of this Agreement issued subsequently by the Parties in accordance with this Agreement shall be binding on Arbitral Tribunals established under this Chapter upon issuance of such interpretations or decisions.*
- 23.2 *In accordance with the customary international law, other evidence of the Parties subsequent agreement and practice regarding interpretation or application of this Agreement shall constitute authoritative interpretations of this Agreement and must be taken into account by Arbitral Tribunals under this Chapter.*

23.3 *The Arbitral Tribunal may, on its own account or at the request of a Defending Party, request the joint interpretation of any provision of this Agreement that is subject of a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the Arbitral Tribunal within sixty (60) days of the request. Without prejudice to the rights of the Parties under Article 23.1 and 23.2, if the Parties fail to submit a decision to the Arbitral Tribunal within sixty (60) days, any interpretation issued individually by a Party shall be forwarded to the disputing parties and the Arbitral Tribunal, which may take into account such interpretation.*

Article 24

Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, and unless the disputing parties disapprove, the Arbitral 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 25

Award

- 25.1 *An award shall include a judgement as to whether there has been a breach by the Defending Party of any rights conferred under this Agreement in respect of the disputing investor and its investment and the legal basis and the reasons for its decisions.*
- 25.2 *The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both disputing parties.*
- 25.3 *The Arbitral Tribunal can only award monetary compensation for a breach of the obligations under Chapter II of the Agreement. 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 the authorities of the territory. For the calculation of monetary*

damages, the Arbitral 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.¹

25.4 The Arbitral Tribunal may not award punitive or moral damages or any injunctive relief against the authorities of the territory of either Party under any circumstance.

¹ *Mitigating factors can include, current and past use of the investment, the history of its acquisition and purpose, compensation received by the investor from other sources, any unremedied harm or damage that the investor has caused to the environment or local community or other relevant considerations regarding the need to balance public interest and the interests of the investor.*

Article 26

Finality and enforcement of awards

26.1 The award made by the Arbitral Tribunal shall have no binding force except between the disputing parties and in respect of the particular case and the Arbitral Tribunal must clearly state those limitations in the text of the award.

26.2 Subject to Article 26.3, a disputing party shall abide by and comply with an award without delay.

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

(a) 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

(b) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no farther appeal.

26.4. Authorities in each territory shall provide for the enforcement of an award in its territory in accordance with its law.

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

Article 27**Costs**

The disputing parties shall share the costs of the arbitration, with arbitrator fees, expenses, allowances and other administrative costs. The disputing parties shall also bear the cost of its representation in the arbitral proceedings. The Arbitral Tribunal may, however, in its discretion direct that the entire costs or a higher proportion of costs shall be borne by a disputing party and this determination shall be final and binding on both disputing parties.

Article 28**Appeals Facility**

The Parties may by agreement or after the completion of their respective procedures regarding the enforcement of this Agreement may establish an institutional mechanism to develop an appellate body or similar mechanism to review awards rendered by Arbitral Tribunals under this Chapter. Such appellate body or similar mechanism may be designed to provide coherence to the interpretation of provisions in this Agreement. In developing such a mechanism, the Parties may take into account the following issues, among others:

- a) the nature and composition of an appellate body or similar mechanism;*
- b) the scope and standard of review of such an appellate body;*
- c) transparency of proceedings of the appellate body or similar mechanism;*
- d) the effect of decisions by an appellate body or similar mechanism 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 16.1 of this Agreement; 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.*

J4. India-Belarus BIT⁴

Article 13

Scope

- 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 of the other Party and a Defending Party with respect to its investment, arising only out of an alleged breach of an obligation under Chapter II of this Treaty, other than the obligation under Article 9 and 10 of this Treaty.*
- 13.2 An arbitral tribunal ("Tribunal") constituted under this Chapter shall not decide 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.*
- 13.3 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.*
- 13.4 In addition to other limits on its jurisdiction, the 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.*

⁴ Treaties: India-Belarus BIT, 2018

- 13.5 *A dispute between an investor of the other Party and a Defending Party shall proceed sequentially in accordance with this Chapter.*

Article 14

Proceedings under Different International Agreements

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, the 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 11, 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 two (2) year(s) 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.

The requirement to exhaust local remedies shall not be applicable if the disputing investor can demonstrate that there are no available domestic legal remedies capable of reasonably providing 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 relevant judicial or 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; 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 paragraphs 1 and 2 of this Article, 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, unless otherwise agreed by the disputing parties.*
- 15.5 In the event that the disputing parties cannot settle the dispute amicably under paragraph 4 of this Article, 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 seven (7) 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 paragraph 1 of this Article;*
- (iii) 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:
 - a. attach the notice of dispute and the record of its transmission to the Defending Party with the details thereof;*
 - b. provide the consent to arbitration by the disputing investor, or where applicable, by the locally established enterprise, in accordance with the procedures set out in this Treaty;*
 - c. specify the name of the arbitrator appointed by the disputing investor.**

15.6. No arbitral proceedings shall be initiated under this Article if the disputing investor or the locally established enterprise continues proceedings before any administrative bodies or court or other dispute settlement procedures under the law of the Party, with respect to the measure of the Defending Party that is alleged to be a breach referred to in paragraph 1 of Article 13 of this Treaty.

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 are full members of the Convention;*
 - b) *the Additional Facility Rules of ICSID, provided that either Party, but not both, is a member of the ICSID Convention; or*
 - c) *the UNCITRAL Arbitration Rules.*
- 16.2 *The applicable arbitration rules shall govern the arbitration except to the extent modified by this Chapter, and supplemented by any subsequent rules adopted by the Parties.*
- 16.3 *A claim is submitted to arbitration under this Chapter when:*
- a) *the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention is received by the Secretary-General of ICSID;*
 - b) *the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary General of ICSID; or*
 - c) *the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the Defending Party.*
- 16.4 *Delivery of notice and other documents on a Party shall be made to the Designated Representative for each Party.*

Article 17***Consent to Arbitration***

- 17.1 *Each Party consents to the submission of a claim to arbitration in accordance with the terms of this Treaty.*
- 17.2 *The consent given in paragraph 1 of this Article and the submission by a disputing investor of a claim to arbitration satisfies 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 *Unless otherwise agreed by the disputing parties within 30 days from the date of receipt of the notice of arbitration, the Tribunal shall consist of three arbitrators with relevant expertise or experience in public international law, international trade and international investment law, or the resolution of disputes arising under international trade or international investment agreements.*
- 18.2 *The arbitrators 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.*
- 18.3 *One arbitrator shall be appointed by each of the disputing parties and the third arbitrator ("Presiding Arbitrator") shall be appointed by agreement of the eo-arbitrators and the disputing parties.*
- 18.4 *If the Tribunal has not been constituted within one hundred twenty (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) *case of an arbitration submitted under the UNCITRAL Arbitration Rules, the Secretary-General of the Permanent Court of Arbitration;*

Provided that if the appointing authority referred to in subparagraph (b) of paragraph 4 of this Article, 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.

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

18.6 *The Presiding Arbitrator of the Tribunal shall be a national of a State with which both Parties maintain diplomatic relations.*

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 this Article 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 counsels, 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 (15) days of that party:

- (i) learning of the relevant facts or circumstances through a disclosure made under paragraph 2 of this Article by the arbitrator, or*
- (ii) otherwise becoming aware of the relevant facts or circumstances relevant to a challenge under paragraph 3 of this Article, whichever is later.*

19.4 The notice of challenge shall be communicated to the other disputing party, to the arbitrator who is challenged, to the other arbitrators and to the appointing authority under paragraph 4 of Article 18. The notice of challenge shall state the reasons for the challenge.

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

19.6 If, within fifteen (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 thirty (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 paragraph 4 of Article 18.

- 19.7 The appointing authority as specified under paragraph 4 of Article 18 shall accept the challenge made under paragraph 3 of this Article 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 from the stage where the arbitrator who was replaced or ceased to perform his or her functions unless otherwise agreed by the disputing parties.*
- 19.10 A justifiable doubt as to an arbitrator's independence or impartiality or freedom from conflicts of interest shall be deemed to exist on account of the following factors, including if:*
- a) the arbitrator or her/his associates or relatives have an interest in the outcome of the particular arbitration;*
 - b) the arbitrator is or has been a legal representative or advisor of the appointing party or an affiliate of the appointing party*

in the preceding three (3) years prior to the commencement of arbitration;

- c) the arbitrator is a lawyer in the same law firm as the counsel to one of the parties;*
- d) the arbitrator is acting concurrently with the lawyer or law firm of one of the parties in another dispute;*
- e) the arbitrator's law firm is currently rendering or has rendered services to one of the parties or to an affiliate of one of the parties out of which such law firm derives financial interest;*
- f) the arbitrator has received a full briefing of the merits or procedural aspects of the dispute from the appointing party or her/his counsel prior to her/his appointment;*
- g) the arbitrator is a manager, director or member of the governing body, or has a similar controlling influence by virtue of shareholding or otherwise in one of the parties;*
- h) the arbitrator has publicly advocated a fixed position regarding an issue on the case that is being arbitrated.*

19.11 In the event that either or both Parties after completion of their respective procedures adopt a separate code of conduct for arbitrators to be applied in disputes arising out of this Treaty, the relevant parts of this Treaty, such as disclosure obligations, the independence and impartiality of arbitrators and confidentiality, shall be replaced or supplemented by mutual agreement of the Parties.

Article 20

Conduct of Arbitral Proceedings

20.1 Unless the disputing parties agree otherwise, the Tribunal shall hold the arbitration in the territory of a country that is a party to the New York Convention, selected in accordance with:

- a) *the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or*
 - b) *the UNCITRAL Arbitration Rules if the arbitration is under those Rules.*
- 20.2 *Unless otherwise agreed by the disputing parties, the Tribunal may determine 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.*
- 20.4 *The Non-disputing Party may make oral and written submissions to the Tribunal regarding the interpretation of this Treaty.*

Article 21

Dismissal of Frivolous Claims

- 21.1 *Without prejudice to the 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 thereof. 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 a decision or an award under this Article no later than 150 days after the date of the receipt of the request under paragraph 2 of this Article. However, if a Defending Party requests a hearing, the Tribunal may take an additional thirty (30) days to issue the decision or award.*
- 21.5 *The Defending Party does not waive its right to raise 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 in this Article.*
- 21.6 *When the Tribunal decides on a preliminary objection by a Defending Party under paragraphs 2 or 3 of this Article, the Tribunal may, if warranted, award to the prevailing Defending Party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the Tribunal shall consider whether either the claim by the disputing investor or the objection by the Defending Party was frivolous, and shall provide the disputing parties a reasonable opportunity to present its cases.*

Article 22

Transparency in Arbitral Proceedings

- 22.1 *Subject to applicable law regarding protection of confidential information, the Defending Party shall make available to the public the following documents relating to a dispute under this Chapter:*

- a) *the notice of dispute and the notice of arbitration;*
- b) *pleadings and other written submissions on jurisdiction and the merits submitted to the Tribunal, including submissions by a Non-disputing Party;*
- c) *transcripts of hearings, where available; and*
- d) *decisions, orders and awards issued by the Tribunal.*

22.2 *Hearings for the presentation of evidence or for oral argument ("hearings") shall be made public in accordance with the following provisions:*

- a) *where there is a need to protect confidential information or protect the safety of participants in the proceedings, the Tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.*
- b) *the Tribunal shall make logistical arrangements to facilitate public access to hearings, including by organizing attendance through video links or such other means as it deems appropriate. However, the arbitral tribunal may, after consultation with the disputing parties, decide to hold all or part of the hearings in private where this becomes necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.*

22.3 *An award of a Tribunal rendered under this Chapter shall be made 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.*

Article 23***Burden of Proof and Applicable 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 directly caused by the breach.*
- 23.3 *The applicable law for the Tribunal constituted under this Chapter 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 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 Treaty upon issuance of such interpretations or decisions.*
- 24.2 *In accordance with the Vienna Convention on the Law of Treaties, 1969 and customary international law, other evidence of the Parties subsequent agreement and practice regarding interpretation or application of this Treaty shall constitute authoritative interpretations of this Treaty and must be taken into account by tribunals under this Chapter.*
- 24.3 *The Tribunal may, on its own account or at the request of a Defending Party, request the joint interpretation of any provision of this Treaty*

that is subject of a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the Tribunal within sixty (60) days of the request. Without prejudice to the rights of the Parties under paragraphs 1 and 2 of this Article, if the Parties fail to submit a decision to the Tribunal within sixty (60) days, any interpretation issued individually by a Party shall be forwarded to the disputing parties and the Tribunal, which may take into account such interpretation.

Article 25

Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, and unless the disputing parties disapprove, the 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 Tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both disputing parties to the arbitration.*
- 26.3 The Tribunal can only award monetary compensation for a breach of the obligations under Chapter II of this 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. Mitigating factors can include, current and past use of the investment, the history of its acquisition and purpose, compensation received by the investor from other sources, any unremedied harm or damage that the investor has caused to the environment or local community or other relevant considerations regarding the need to balance public interest and the interests of the investor.

- 26.4 *The Tribunal shall not award punitive or moral damages or any injunctive relief against either of the Parties under any circumstance.*

Article 27

Finality and enforcement of awards

- 27.1 *An award made by the 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 paragraph 3 of this Article, 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) *one hundred twenty (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) *ninety (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 competent court has decided on 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 Chapter 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 their representation in the arbitral proceedings. The Tribunal may, however, in its discretion direct that the entire costs or a higher proportion of costs be borne by one of the two disputing parties and this determination shall be final and binding on both disputing parties.*

28.2 *The Tribunal may order security for costs at the proposal of the Defending Party. The Tribunal shall especially consider security for costs when there is a reason to believe:*

- a) *that the investor will be unable to pay, if ordered to do so, a reasonable part of attorney fees and other costs to the Contracting Party which is the party to the dispute; or*
- b) *that the investor has divested assets to avoid the consequences of the proceedings.*

Should the investor fail to pay the security for costs ordered by the tribunal, the Tribunal shall terminate the arbitral proceedings.

Article 29
Appeals Facility

The Parties may by agreement or after the completion of their respective procedures regarding the enforcement of this Treaty establish an institutional mechanism which may include an appellate mechanism for reviewing investor-state disputes established under a separate international agreement, to develop an appellate body or similar mechanism to review awards rendered by tribunals under this Chapter. Such appellate body or similar mechanism may be designed to provide coherence to the interpretation of provisions in this Treaty. In developing such a mechanism, the Parties may take into account the following issues, among others:

- a) the nature and composition of an appellate body or similar mechanism;*
- b) the scope and standard of review of such an appellate body;*
- c) transparency of proceedings of the appellate body;*
- d) the effect of decisions by an appellate body or similar mechanism;*
- e) the relationship of review by an appellate body or similar mechanism to the arbitral rules that may be selected under paragraph 1 of Article 20 of this Treaty; and*
- f) the relationship of review by an appellate body or similar mechanism to existing domestic law 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.

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