

# **AGREEMENT ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE KINGDOM OF SPAIN AND THE UNITED MEXICAN STATES**

The United Mexican States and the Kingdom of Spain, hereinafter referred to as the contracting parties, "

Desiring to intensify economic cooperation in the mutual benefit of both countries;

Proponiéndose create favourable conditions for investments by investors of either Contracting Party in the territory of the other party; and

Recognizing that the promotion and protection of investments under this Agreement stimulate initiatives in this field,

Have agreed as follows:

## **Article I. Definitions**

For the purposes of this Agreement,

1. "investors" means:

a) Natural persons having the nationality of a Contracting Party according to its legislation and investments in the territory of the other contracting party;

b) Companies, legal entities, including companies, associations; subsidiaries of companies, corporations and other organizations, which are duly constituted or otherwise organized under the law of that Contracting Party and having their headquarters in the territory of that same Contracting Party.

2. "investment" shall mean assets of every kind, such as property and rights of any nature and, in particular, though not exclusively, the following:

a) Titles, stocks, debentures and any other forms of participation in companies;

b) Rights derived from any contributions with the aim of creating economic value, including loans for that purpose;

c) Movable and immovable property, and usufructs pledges, mortgages or other tangible or intangible property acquired or used for other economic activities or business purposes;

d) Industrial and Intellectual Property Rights including, inter alia, patents, utility models, industrial designs or services, trade names, trademarks, copyrights, industrial secrets and goodwill;

e) Rights or interests arising from the provision of capital or other resources in the territory of a contracting party to economic activity in the territory of the other Contracting Party as a result of the award of a contract or concession.

Are considered as investments in the territory of a Contracting Party by companies of that same Contracting Party which are effectively controlled by investors of the other contracting party.

Without prejudice to the rights and obligations, this definition excludes a payment obligation or a credit granted by the State or a State enterprise and monetary claims derived exclusively 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 granting of credit in connection with a commercial transaction, which is less than three years, such as the financing of trade.

3. The term "income refers to the investment returns from an investment and includes in particular, though not exclusively, capital gains, dividends, interests, dividends, royalties and fees.

4. The term " territory means the land territory and territorial sea of each Contracting Party as well as the exclusive economic zone and the continental shelf extends beyond the limits of the territorial waters of each of the Contracting Parties on which they are or may be in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration and exploitation and preservation of natural resources.

## **Article II. Promotion and Acceptance**

1. Each Contracting Party shall promote access in its territory for investments of investors of the other Contracting Party and shall admit according to its laws in force.

2. This Agreement shall also apply to investments made before its entry into force by investors of one Contracting Party in accordance with the laws of the other Contracting Party in the territory of the latter.

3. With the aim of significantly increase reciprocal investment flows, the Contracting Parties shall develop documents for the promotion of investment and shall disclose detailed information on:

a) Investment opportunities;

b) The laws, regulations or measures which directly or indirectly affect foreign investment including, inter alia, exchange rate regimes and of a fiscal nature; and

c) The conduct of foreign investment in their respective territories.

## **Article III. Protection**

1. Each Contracting Party shall accord full protection and security to investments made by investors of the other contracting party, in accordance with international law and shall not hinder by legal or unfounded discriminatory, management, maintenance, use, enjoyment, extension and sale or, where appropriate, the liquidation of such investments.

2. Each Contracting Party shall, within the framework of its laws, shall grant the necessary permits in connection with such investments and with the carrying out of licensing of employment contracts, manufacture, technical assistance, commercial, financial and administrative.

3. Each Contracting Party shall, within the framework of its laws, and whenever necessary, the necessary authorizations concerning the activities of consultants and experts appointed by investors of the other contracting party.

## **Article IV. Treatment**

1. Each Contracting Party shall in its territory a fair and equitable treatment, in accordance with international law, to investments made by investors of the other contracting party.

2. This treatment shall not be less favourable than that accorded in similar circumstances by each contracting party to investments made in its territory by investors of any third State.

3. This treatment shall not apply, however, to privileges which either Contracting Party accords to investors of a third State by virtue of its participation or association with any existing or future free trade area, customs union, common market, economic and monetary unions or under any other international agreement.

4. The treatment granted under the present article shall not extend to deductions and tax exemptions or other similar privileges granted by either contracting party to investors of third States by virtue of an agreement for the avoidance of double taxation or any other arrangement relating to taxation.

5. Within the limits of its national legislation and procedures, each Contracting Party shall apply to investments of investors of the other Contracting Party A treatment no less favourable than that accorded to its own investors.

## **Article V. Nationalization and Expropriation**

1. The expropriation or nationalization or any other measures having similar effects (hereinafter expropriation) that may be taken by the authorities of one Contracting Party in its territory against investments of investors of the other Contracting

Party, shall be applied only for reasons of public interest, in accordance with the laws, in no case shall be non-discriminatory and upon payment of compensation to the investor or its successor or legal successor in accordance with paragraphs 2 and 3 of this artículo.párrafos 2 and 3 of this article.

2. The compensation shall be equivalent to the market value of the expropriated investment immediately before it from the time when the expropriation was taken or announced or was issued, whichever occurs first. valuation criteria shall be determined in accordance with the legislation applicable in the territory of the host contracting party of the investment.

3. The compensation shall be paid without delay in the convertible and freely transferable.

## **Article VI. Losses**

Investors of one Contracting Party whose investments or returns of investments in the territory of the other contracting party suffer losses owing to war or other armed conflict, a national state of emergency, revolt or riot or other similar circumstances, shall be accorded restitution, indemnification, compensation or other settlement, a treatment no less favourable than that which it accords to its own investors to investors or of any third State. any payments made under this article shall be effected without delay in the convertible and freely transferable.

## **Article VII. Transfers**

1. Each Contracting Party shall, in accordance with its laws, to investors of the other contracting party, with regard to investments in its territory, the free transfer of payments relating to the same and, in particular, though not exclusively, the following:

- a) The investment income as defined in Article I; article I;
- b) The compensation referred to in Article V; article V;
- c) The compensation referred to in article VI; article VI;
- d) The proceeds from the sale or the total or partial liquidation of investments;
- e) The amounts required for the repayment of loans related to an investment;
- f) The amounts necessary for the maintenance and development of the investment;
- g) Salaries, wages and other remunerations received by the nationals of one Contracting Party, by its work or services conducted in the other contracting party in connection with an investment.

2. The Contracting Party accepting the investment shall facilitate the investor of the other contracting party foreign currency market access in a non-discriminatory manner, in order to acquire the necessary for currency transfers under this article.

3. The transfers referred to in the present Agreement shall be made in freely convertible currency at the rate of exchange applicable on the date of transfer and under the tax obligations laid down by the legislation in force in the host contracting party of the investment.

4. The Contracting Parties undertake to facilitate the procedures for making such transfers without delay or restrictions in accordance with the practices of international financial centres. in particular, they shall not exceed three months from the date on which the investor has duly submitted applications necessary for the transfer until the date on which the transfer is made. each Contracting Party undertakes to fulfil the necessary formalities for the purchase of currency as to their effective transfer abroad prior to the above conclusion.

5. Contracting Parties shall accord to the transfers referred to in this article a treatment no less favourable than that accorded to investors of any third State.

6. In case of a fundamental imbalance balance of payments, a Contracting Party may establish temporary controls on currency transactions, provided that shall implement measures or a programme in accordance with the generally accepted international standards. these restrictions shall be for a limited period of a fair, non-discriminatory and in good faith.

## **Article VIII. More Favourable Conditions**

1. If the provisions of law of either Contracting Party or obligations under international law than this agreement, current or future between the contracting parties result in a general or special rules under which must be accorded to investments of

investors of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over the present Agreement, as is more favourable.

2. More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

## **Article IX. Subrogacion**

If a Contracting Party or an entity designated by it has provided any financial guarantee on non-commercial risks in connection with an investment made by its investors in the territory of the other Contracting Party and from the first time that the contracting party or its designated agency has made a payment under the first guarantee granted by the contracting party or its designated entity shall direct beneficiaries of any payments to which the investor could be secured. in the event of a dispute, the investor may initiate or participate in proceedings before national courts or tribunals of international arbitration in accordance with the provisions of article XI of this Agreement.

## **Article X. Disputes between the Contracting Parties**

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall be settled as far as possible, by mutual agreement.

2. If the dispute cannot be settled in this way within six months from the beginning of negotiations, the dispute shall be submitted, at the request of either of the two contracting parties to an arbitration tribunal.

3. The arbitration tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a national of a third State as Chairman. the arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other contracting party of its intention to submit the dispute to an arbitration tribunal.

4. If one of the Contracting Parties has not appointed its arbitrator within the deadline, the other Contracting Party may invite the President of the International Court of Justice to make the appointment. if the two arbitrators cannot reach an agreement on the appointment of the third arbitrator within the prescribed period, either Contracting Party may invite the President of the International Court of Justice to make the appointment.

5. If in the cases referred to in paragraph 4 of this article, the President of the International Court of Justice cannot discharge the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. if the Vice-President cannot discharge the said function or is a national of either Contracting Party, the appointment shall be made by the most senior member of the said Court who is not a national of any party  
contratantes.párrafo 4 of this article, the President of the International Court of Justice cannot discharge the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. if the Vice-President cannot discharge the said function or is a national of either Contracting Party, the appointment shall be made by the most senior member of the said Court who is not a national of either of the Contracting Parties.

6. The arbitration tribunal shall deliver its opinion on the basis of respect for the law, to the rules contained in this Agreement or in other agreements in force between the contracting parties and on the universally recognized principles of international law.

7. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

8. The tribunal shall reach its decision by a majority of votes and it shall be final and binding on both contracting parties.

9. Each Contracting Party shall bear the costs of the arbitrator appointed by it and its representation in the arbitral proceedings. the other expenses, including the President, shall be borne in equal parts by both contracting parties.

## **Article XI. Disputes between One Contracting Party and Investors of the other Contracting Party**

1. Any dispute concerning an investment which may arise between a Contracting Party and an investor of the other Contracting Party with respect to matters governed by this Agreement shall be notified in writing, including detailed information by the investor Contracting Party to the recipient of the investment. to the extent possible, the parties to the dispute seek to settle the dispute by means of a friendly settlement.

2. If the dispute cannot be settled in this way within six months from the date of the written notification mentioned in

paragraph 1 shall be subject to the dispute settlement mechanism provided in the appendix to the present acuerdo.párrafo 1, shall be subject to the dispute settlement mechanism provided in the appendix to the present Agreement.

## **Article XII. Entry Into Force, Extension and Termination**

1. This Agreement shall enter into force on the day on which the contracting parties have notified each other that their respective constitutional formalities required for the Entry into Force of international agreements have been completed. it shall remain in force for an initial period of ten years and shall be renewable, by tacit renewal, for periods of two consecutive years.
2. Each Contracting Party may denounce this Agreement by a written notification and at least six months before the date of expiry.
3. In the event of a complaint, the present Agreement shall continue to apply to investments made before it occurs, for a period of ten years.

For the United Mexican States

Herminio white Mendoza

Secretary of trade and industrial development

For the Kingdom of Spain

Slight APOLONIO Ruiz

State Secretary of Commerce

## **Appendix**

SETTLEMENT OF DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

### **Title One - DEFINITIONS**

For the purposes of this appendix:

Arbitration means the international arbitration mechanism contained in this appendix;

ICSID means the International Centre for Settlement of Investment Disputes;

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;

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;

Litigants investor means an investor that makes a claim under the terms of this Agreement;

The opposing side litigants means investor or the Contracting Party;

Warring parties litigant means the investor and the contracting party;

UNCITRAL Arbitration Rules means the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) adopted by the United Nations General Assembly on 15 December 1976;

NAFTA arbitration rules means the rules applicable to the dispute settlement mechanism provided for in section B of chapter XI of the Free Trade Agreement;

A tribunal means an arbitration tribunal established under Title III of this appendix;

Tribunal cumulation means an arbitration tribunal established under Title V of this appendix.

## **Title Two - SETTLEMENT OF DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY**

1. This appendix provides a mechanism for the settlement of investment disputes arising between an investor and a contracting party of the other contracting party after the Entry into Force of this Agreement and that both ensures equal treatment between investors of the Contracting Parties in accordance with the principle of international reciprocity, as the proper performance of the security and defence within a legal proceedings before an impartial tribunal.
2. The investor to initiate proceedings before any court or administrative tribunal with respect to measure the alleged breach of this Agreement, may not submit a claim under this appendix. an investor may not make a claim under this appendix on behalf of an enterprise, if the latter has initiated any proceedings before a judicial or administrative tribunal with respect to the alleged breach measure. this shall not apply to the exercise of administrative remedies before the authorities responsible for implementing the measure alleged violation, under the law of that Contracting Party.
3. A corporation incorporated under the laws of a Contracting Party may not submit a claim to the same arbitration against contracting party pursuant to this appendix.
4. An investor of a Contracting Party may, on their own account or on behalf of an enterprise owned or controlled, directly or indirectly, to submit a claim to arbitration founded on the other Contracting Party which has breached an obligation under this agreement, if the investor or its investment has suffered losses or damages under the violation or as a result of it.
5. An investor may not make a claim under this Agreement if more than three years have elapsed from the date on which the investor knew or should have had knowledge of the alleged breach and the loss or damage.
6. An investor that makes a claim under this appendix or whose representation in the enterprise shall submit the claim by an investor may not initiate proceedings before any court or administrative tribunal of the measure to alleged breach.

## **Title Three - REFERRAL TO ARBITRATION**

1. Provided that six months have elapsed since the events giving rise to the claim; the investor combatant notifies in writing within 90 days in advance of the contracting party of its intention to submit the claim to arbitration litigants, the investor may submit the claim to arbitration under:
  - a) The ICSID Convention provided that both parties are contracting parties to the Convention;
  - b) The rules of ICSID Additional Facility if one of the contracting parties, but not both, is a party to the ICSID Convention;
  - c) Of the UNCITRAL Arbitration Rules; or
  - d) The NAFTA arbitration rules, except as regards the appointment of arbitrators who shall be governed by the provisions of Title cuarto.título fourth.
2. The ICSID Convention or the above-mentioned rules shall govern the arbitration except to the extent modified by this appendix.

## **Title Four - NUMBER OF ARBITRATORS AND METHOD OF APPOINTMENT**

1. The Tribunal shall be composed of three arbitrators, unless the parties agree otherwise contending uneven number of arbitrators. each of the Parties involved shall appoint an arbitrator; the third arbitrator who shall be the Chair of the arbitral tribunal shall be appointed by mutual agreement of the Parties to the conflict.
2. The arbitrators to be designated under this appendix shall be experienced in International Law and investment.
3. Where a tribunal established under this appendix does not include within a period of 90 days from the date that the claim is submitted to arbitration, either because a contracting party fails to appoint an arbitrator or warring parties fail to agree on the designation of the Chairman of the arbitral tribunal, the Secretary-General of ICSID at the request of any of the Parties, at its discretion, shall appoint the arbitrator or arbitrators not yet appointed. however, in case of the appointment of the Chairman of the Tribunal, the Secretary-General of ICSID shall ensure that the Chairman shall not be a national of a Contracting Party or a national of the contracting party of the investor litigants.

## **Title Five - CONSOLIDATION OF PROCEEDINGS**

1. It may accumulate procedures in the following cases:
  - a) Where an investor combatant submit a claim on behalf of a company which is controlled, directly or indirectly, in parallel, and one or more investors that have participation in the same enterprise, but without the control of claims for own account

as a result of the infringement; or

b) Submitted to arbitration where two or more claims that arise in common issues of fact and law.

2. A party who seeks litigants determined cumulation, shall request the Secretary-General to establish a tribunal of ICSID and in the request shall specify:

a) The name of the Contracting Party or investors fighting against which the order is sought to obtain cumulation;

b) The nature of the order sought and cumulation;

c) The rationale underlying the request.

3. The Tribunal cumulation will be in accordance with the UNCITRAL Arbitration Rules and shall conduct as laid down in these rules, except as provided in this appendix.

4. The Tribunal shall decide on the jurisdiction of cumulation which will be subject to the claims and shall jointly such claims, except that determines that the interests of any of the parties involved.

5. If the Tribunal determines that cumulation procedures or claims submitted to arbitration under Title III raise issues of fact or law, the Tribunal, in the interest of fair and efficient resolution and, having heard warring parties may assume jurisdiction and Title III: resolving issues of fact or law, the Tribunal, in the interest of fair and efficient resolution and, having heard warring parties may assume jurisdiction and resolve:

a) All or part of the procedures jointly; or

b) One or more of the claims contained in these procedures, on the basis of which would contribute to the resolution of the others.

6. If the parties to the conflict chooses the mechanism described in subparagraph (d), paragraph 1 of title III, shall apply the rules for cumulation There are determined. however, the arbitrators shall be appointed pursuant to Title IV of this apéndice.inciso (d), paragraph 1 of title III, shall apply the rules for cumulation There are determined. however, the arbitrators shall be appointed pursuant to Title IV of this appendix.

#### **Title Six - APPLICABLE LAW**

1. Any tribunal established under this appendix shall decide the dispute to be submitted to it in accordance with the provisions of this Agreement and the applicable rules of international law.

2. The interpretation formulated by the contracting parties agree on a provision of this Agreement shall be binding on a tribunal established in accordance with the same procedure.

#### **Title Seven - FINAL AWARD**

1. Where a tribunal established under this appendix issuing an unfavourable award to one of the Contracting Parties, the Tribunal shall decide separately or jointly:

a) The payment of monetary damages and any applicable interest;

b) Restitution of property in which case the award shall provide that the Contracting Party may pay pecuniary damage, plus interest, in lieu of restitution.

2. Where an investor makes a claim on behalf of an enterprise:

a) The award granted monetary damages and any applicable provide that interest shall be the sum paid to the enterprise;

#### **Title Eight - ENFORCEMENT OF THE AWARD**

1. The award rendered by any Tribunal established pursuant to this Agreement shall be binding only for opposing parties and only in respect of the particular case.

2. The Parties involved shall abide by and comply with an award without delay.

3. The Contracting Party concerned shall provide for the enforcement of an award in its territory.

4. The Investor litigants may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention.

5. For the purposes of article I of the New York Convention, it shall be considered that the claim is submitted to arbitration under this appendix arises out of a commercial relationship or transaction.

**Title Nine - PAYMENTS PURSUANT TO CONTRACTS FOR SECURITY OR GUARANTEES**

In an arbitration under this Appendix, a contracting party not used as a defense, contra-reclamación, right of set-off or other litigant, that the investor has received or will receive pursuant to a contract of insurance or guarantee, indemnification or other compensation for all or part of the alleged damages.

**Title Ten - PUBLICATION OF AWARDS**

The final award shall be published only in the event that a written agreement between the parties to the conflict.