

# **Agreement between the Government of the United Mexican States and the Government of the Republic of Haiti for the Promotion and reciprocal protection of investments**

The Government of the United Mexican States and the Government of the Republic of Haiti (hereinafter referred to as the contracting parties;

Desiring to intensify the economic cooperation for their mutual benefit;

Aim to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other contracting party;

Recognizing the need to promote and protect foreign investment in order to stimulate the flow of capital and productive economic prosperity;

Have agreed as follows:

## **Article 1.**

### Definitions

For the purposes of this Agreement, the term:

1. "Company" means any entity incorporated or organized in accordance with the applicable legislation, whether or not for profit and whether private or government owned, including any society, trusts, Association, sole property, firms, joint venture, cooperations or other association

2. "ICSID" means the International Centre for Settlement of Investment Disputes;

3. "ICSID Additional Facility Rules" means the Rules of the additional facility for the administration of proceedings by the secretariat of the ICSID on its reforms;

4. "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, reforms;

5. "investment" means any of the following assets that are under control of the investors of one Contracting Party and that are established or acquired in accordance with the laws and regulations of the other Contracting Party in whose territory the investment is made:

(a) An enterprise;

(b) Actions, social partners and other forms of participation in the capital of an enterprise;

(c) Debt instruments of an enterprise:

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

(ii) Where the original maturity of the debt instrument is at least three years,

But does not include a debt instrument of a Contracting Party or a state enterprise, regardless of original maturity date;

(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 (3) years,

But does not include a loan to a contracting party or a state enterprise, regardless of original maturity date

(e) Real estate or other tangible or intangible property acquired or used for the purpose of obtaining an economic benefit or for other business purposes;

(f) Participation of capital or other resources in the Territory of a Contracting Party to economic activity in that territory, in accordance with

(i) Contracts involving the presence of an investor's property in the territory of the other contracting party, including turnkey or construction, or concessions,

(ii) Contracts where remuneration depends substantially on the production, income or profits of an enterprise;

(g) Monetary claims or that involve the kinds of interests set out in subparagraphs (a) to (f) above, but does not include 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, such as trade financing, which are not concerning the loan covered by the dispositions under subparagraph (d) above;

(h) Intellectual Property Rights including, but not limited, to rights and related rights, patents, industrial designs, knowledge ("know-how"), trademarks, trade secrets and business, trade names, geographical indications and layout designs (topographies) of integrated circuits; rights as defined in plant varieties; or referred to in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) at the World Trade Organization;

6. "investor of a Contracting Party" means:

(a) a natural person who has the nationality of a Contracting Party in accordance with its applicable law; or

(b) a company which is constituted or otherwise organised in accordance with the legislation of a Contracting Party and having substantive business operations in the territory of that Contracting Party, that has made an investment in the territory of the other Contracting party

7. "New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted at the United Nations framework at New York on 10 June 1958;

8. "UNCITRAL arbitration regulation" means the Arbitration Rules of the United Nations Commission for International Trade Law adopted by the General Assembly of the United Nations, on 15 December 1976

9. "State enterprise" means an enterprise owned or controlled through ownership interests, by a contracting party, and

10. "territory" means:

(a) With respect to the United Mexican States (also referred to as "Mexico"), the Territory of the United Mexican States including maritime areas adjacent to the territorial sea of the respective State i.e the exclusive economic zone and the continental shelf within which it exercises sovereign rights or jurisdiction over such areas in accordance with international law; and

(b) With respect to the Republic of Haiti, the territory of the Republic of Haiti that includes:

(i) In the western part of the island of Haiti and islands adjacent to the coast, the Tortue, Ile á Vache caye them, mites, Grande caye other islands and the territorial sea;

(ii) Identified this by the Dominican Republic, in the North Atlantic Ocean, and South West and the Caribbean Sea;

(iii) And territorial sea and the exclusive economic zone, and the air space over the portion of land and sea.

## **Article 2. Admission of Investments**

1. Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its laws and regulations.

2. For greater certainty, the present agreement does not cover government procurement; subsidies or grants provided by a party or a state enterprise, including government support, collateral loans and insurance.

### **Article 3. Promotion and Facilitation of Investments**

Contracting parties shall endeavour to cooperate with the aim of promoting and facilitating the investment flows between their territories.

This cooperation may include:

1. Proportionate information to its investors on the measures of the other contracting party to promote investment in its territory and information on the investment regime of the other contracting party.
2. The establishment of links between the Centre of Research and Training, Specialized agencies and business organizations of the Contracting Parties, Promote technology transfer and knowledge exchange on entrepreneurship, management, research and management of the centres, production and quality standards;
3. Periodic investment missions, supporting joint business councils and other cooperation activities to promote investment;
4. Facilitate information on investment of a contracting party in the territory of the other contracting party
5. Protect confidential information in compliance with the obligations set forth in this chapter.

### **Article 4. National Treatment and Most Favoured Nation Treatment**

1. Each Contracting Party shall accord to investors of the other Contracting Party and their investments treatment no less favourable than that accorded in like circumstances to its own to investors and investments of its own investors with respect to the management, maintenance, use, enjoyment or disposal of investments.
2. Each Contracting Party shall accord to investors of the other Contracting Party and their investments treatment no less favourable than that accorded in like circumstances to investors and to investments of investors of any third State as regards the management, maintenance, use, enjoyment or disposal of investments.
3. For greater certainty, without prejudice to any other bilateral investment agreement which the contracting parties have signed with other States before or after the Entry into Force of this Agreement, the most favoured nation treatment shall not apply to matters or judicial proceedings.
4. This article shall not be construed as to oblige one contracting party to extend to investors of the other contracting party and to their investments, the benefit of any treatment, preference or privilege which may be extended by virtue of that Contracting Party by:
  - a) Any regional economic integration organization, free trade area, customs union, monetary union or other similar integration existing or future, of which one of the contracting parties is or becomes a party;
  - b) Any right or obligation of a contracting party under an international agreement or arrangement wholly or partially related to taxation. In the event of inconsistency between this Agreement and any international agreement or arrangement taxation, the latter shall prevail.

### **Article 5. Minimum Standard of Treatment**

1. Each Contracting Party shall accord to investments of investors as of the other contracting party treatment pursuant to the customary International Law including fair and equitable treatment and full protection and security.
2. For greater certainty:
  - a) The concepts of Fair and Equitable Treatment and full protection and security do not require additional treatment to that required under the minimum standard of treatment of aliens own of customary international law;
  - b) and beyond the territory, and a determination that there is another provision of this has breached agreement, or of a separate international agreement does not establish that there has been a violation of this article.

### **Article 6. Compensation for Losses**

Investors of one Contracting Party whose investments in the territory of the other contracting party suffer losses owing to war, armed conflict, a national state of emergency, revolt, insurrection or any other similar event shall be accorded, with respect to measures such as restitution, indemnification, compensation or other settlement, a treatment no less favourable

than the treatment accorded by the other contracting party to its own investors or of any third State.

## **Article 7. Expropriation and Compensation**

1. Neither Contracting Party shall expropriate or nationalize an investment, either directly or indirectly through measures equivalent to expropriation or nationalization (expropriation), except:

- a) For a public purpose;
- b) On a non-discriminatory basis;
- c) In accordance with the due process, and
- d) Through the compensation in accordance with the following paragraph 2

2. The compensation shall:

b) Be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place. The fair market value shall not reflect any change in value because the intended expropriation had become publicly known in advance.

Valuation criteria shall include going concern value, including asset value declared tax value of tangible property as well as other criteria that are relevant to determine fair market value

- b) Be paid without delay;
- c) Include interest at a reasonable rate for that currency from the date of expropriation until the date of payment, and
- d) Be completely realizable and be freely transferable.

## **Article 8. Transfers**

1. Each Contracting Party shall permit all transfers relating to an investment of an investor of the other contracting party be made freely and without delay. Transfers shall be made in a freely convertible currency at the rate of exchange prevailing on the date of transfer. Such transfers shall include:

- (a) returns, profits, dividends, interests, capital gains, payment of royalties, management fees;
- (b) payments of fees or other technical assistance resulting from the investment products derived from the sale of all or part of the investment or from the partial or complete liquidation of the investment;
- (c) Payments in accordance with a contract of which is a party to an investor or investment including its payments in accordance with a loan agreement;
- (d) Payments arising from the compensation for losses or expropriation, and
- (e) Payments pursuant to Chapter IV, Section first

2. Notwithstanding paragraph 1, a Contracting Party may prevent a transfer through the equitable and non-discriminatory application in good faith of its laws relating to:

- (a) Bankruptcy or insolvency or the protection of the rights of creditors;
- (b) Issuance, trading or operations;
- (c) Criminal or administrative offences;
- (d) Reports of transfers of currency or other monetary instruments; or
- (e) Guarantee of compliance with judgments in contentious proceedings.

3. In case of a fundamental imbalance in the balance of payments or a threat thereof, a Contracting Party may temporarily restrict transfers provided that such a contracting party incorporate measures or a programme in accordance with the articles of the agreement of the International Monetary Fund, and that the measures shall not exceed those necessary to deal with the circumstances set out in this paragraph. These restrictions should be imposed on an equitable, non-discriminatory basis and in good faith, and shall be notified to the other contracting party.

## **Article 9. Subrogation**

1. If a Contracting Party or the entity designated by it has granted a financial guarantee against non-commercial risks with regard to an investment by one of its investors in the territory of the other contracting party, and makes a payment under such guarantee, or exercises its rights as subrogee, the latter Contracting Party shall recognize the subrogation of any right, title or claim, privilege or actions. The Contracting Party or its designated agency shall not assert greater rights than those of the person or entity from whom such rights were received.

2. In the event of any dispute arise, the Contracting Party or its designated agency which has been subrogated in the rights of the investor may not initiate or participate in proceedings before a national court, nor submit the dispute to international arbitration in accordance with chapter IV.

## **Article 10. Denial of Benefits**

The Contracting Parties may decide jointly in consultation to deny the benefits of this agreement to a company of the other Contracting Party and to its investments, if a natural person or a company of a non-Contracting Party owns or controls such enterprise.

## **Section I. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

### **Article 11. Scope**

This section shall apply to disputes between a Contracting Party and an investor of the other Contracting Party arising out of an alleged breach of an obligation under chapter III that has resulted in a loss or damage.

### **Article 12. Notification of Intention and Consultations**

1. The Parties involved shall endeavour first to solve the dispute amicably through consultation or negotiation.
2. The combatant investor shall notify in writing to the combatant contracting party its intention to submit a claim to arbitration at least six months before the claim is submitted. The notice shall specify:
  - a) The name and address of the combatant investor and, when the claim is made by an investor on behalf of an enterprise, pursuant to article 13, the name and address of the enterprise;
  - b) The provisions of chapter III alleged to have been breached;
  - c) The legal and factual issues surrounding the claim;
  - d) The kind of investment involved in compliance with the definition established in article 1 and the relief sought and the approximate amount of damages claimed.
3. Additionally, the notification should be submitted; in accordance with the annex 12

### **Article 13. Submission of a Claim**

1. An investor of a Contracting Party may submit to arbitration a claim that the other contracting party has breached an obligation established in chapter III and that the investor has incurred loss or damage by virtue of that breach or as a result of the latter
2. An investor of a Contracting Party on behalf of an enterprise legally constituted in accordance with the legislation the other Contracting Party that is a legal person that the investor owns or controls, may submit to arbitration a claim that the other contracting party has breached an obligation under chapter III and that the enterprise has incurred loss or damage by virtue of that breach or as a result of the latter.
3. A contending investor may submit the claim to arbitration in accordance with:
  - (a) the ICSID Convention provided that both the contracting party litigants as a contracting party of the investor are parties to the ICSID Convention;

(b) the ICSID Additional Facility Rules), if the contending contracting party or the contracting party of the investor, but not both, is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) any other arbitration rules if the parties involved so agree.

4. A contending investor may submit a claim to arbitration only if:

(a) the Investor expresses its consent to arbitration in accordance with the procedures forth in this section, and

(b) If the investor submits a claim for international arbitration regarding loss or damage of an enterprise that is a legal person that investor owns or control; in such a case the case cannot be submitted before any administrative tribunal or court under the domestic law of that Contracting Party, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing contracting party.

5. A disputing investor may submit a claim to arbitration on behalf of an enterprise of the other Contracting Party that is a legal person that the investor owns or controls, only if both the investor and the Enterprise:

(a) Express their consent to arbitration in accordance with the procedures set forth in this section; and

(b) waive their right to initiate or continue any proceedings before an administrative tribunal or court under the law of a contracting party or other dispute settlement procedures with respect to the measure of a contending Contracting Party that is alleged to be a breach of Chapter III, except for proceedings in which it is requested precautionary measures of suspensive effect, declaratory or special, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing contracting party.

6. The consent and waiver required by this article shall be in writing, be delivered to the contending contracting party and included in the submission of a claim to arbitration.

7. The applicable arbitration rules shall govern the arbitration except to the extent modified by this section.

8. A dispute may be submitted to arbitration provided that the expiry of a period not exceeding three (3) years from the date on which the investor or enterprise of the other contracting party combatant that is a legal person that owns the investor or under its control, had for the first time or should have first acquired knowledge of the events which gave rise to the dispute.

9. A claim shall be deemed submitted to arbitration in accordance with this section when:

(a) The request for arbitration under paragraph (3) of article 36 of the ICSID Convention has been Registered by the Secretary-General;

(b) The (request) notice of arbitration in accordance with the article 4 of Schedule C of the ICSID Additional Facility Rules has been registered by the Secretary-General;

(c) The notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Contracting Party, or

(d) The notice of arbitration given under any other arbitration rules is received by the disputing Contracting Party.

10. If an investor or an enterprise owned or controlled by the investor submits the controversy referred to in paragraphs 1 or 2 above before a competent Court or Administrative Tribunal of the Contracting Party, the same dispute shall not be submitted to arbitration as set out in this section.

## **Article 14. Consent of the Contracting Party**

1. Each Contracting Party consents to the submission of a dispute to international arbitration in accordance with this section.

2. The consent and the submission of a claim to arbitration by the investor combatant shall comply with the requirements set out in:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules on the written consent of the Parties, and

(b) Article 2 (ii) of the New York Convention on the "agreement in writing".

## **Article 15. Constitution of the Arbitral Tribunal**

1. Unless the parties agree otherwise, the arbitral tribunal shall be composed of three arbitrators. Each Party shall appoint an arbitrator and litigants warring parties shall appoint by common agreement the third arbitrator who shall be the presidente of the arbitral tribunal.
2. Arbitrators shall have expertise or experience in International Law, international trade or international investment rules, or in the settlement of disputes arising under international trade or international investment agreements.
3. An arbitrator shall be independent and not be affiliated with or take instructions from either of the Contracting Parties or warring parties
4. If an arbitral tribunal has not been constituted within ninety (90) days from the date on which the claim was submitted to arbitration, either because a contending party does not appoint its arbitrator or the parties have not reached an agreement on the appointment of the Chairman of the Tribunal; the Secretary-General of ICSID, at the request of any of the Parties in conflict, shall be asked to appoint the arbitrator or arbitrators not yet appointed. However, the Secretary-General of ICSID, when appointing the President of the Tribunal, shall ensure that he or she is not a national of either of the Contracting Parties.

## **Article 16. Consolidation**

1. The Secretary-General of ICSID shall establish a consolidation tribunal in accordance with the UNCITRAL Arbitration Rules, leading its proceedings in accordance with those rules, except as provided in this section.
2. In the interest of fair and efficient resolution except and unless the interests of any of the Parties in conflict would be seriously affected, a tribunal established in accordance with this article may consolidate the proceedings when:
  - (a) Two or more investors relating to the same investment may submit a claim to arbitration under this section, or
  - (b) Two or more claims arising from common considerations of fact or law may be submitted to arbitration.
3. At the request of a disputing party, a tribunal established in accordance with article 15 awaiting the determination of the consolidation tribunal in accordance with paragraph 4 below, may provide suspending proceedings that had been initiated.
4. A tribunal established in accordance with this article, having heard previously warring parties may determine to:
  - (a) Assume jurisdiction over, and to carry out and solve jointly, all or part of the claims; or
  - (b) Assume jurisdiction over, and to carry out and resolve one or more of the claims, provided that this will contribute to the settlement of the other claims.
5. A tribunal established in accordance with article 15 shall lack jurisdiction to hear and decide a claim or a part thereof, over which a tribunal has assumed jurisdiction.
6. A disputing party that intends consolidation of a claim under this Article may request to the Secretary- General of ICSID the establishment of a tribunal, and shall specify in its request:
  - (a) The name of the contracting party of the investor or the contending parties to be included in the process of cumulation;
  - (b) The nature of the order sought; and
  - (c) The grounds on which the order is sought.
7. A disputing Party shall deliver a copy of its request to the disputing Contracting Party or any other litigant investor litigants against which the order is sought.
8. Within a period of sixty (60) days from the date of receipt of the request of ICSID, the Secretary-General shall establish a tribunal composed of three arbitrators. One shall be a national of the disputing Contracting Party, and one shall be a national of the Contracting Party of the disputing investors; the third, the presiding arbitrator, shall be a national of a non-Contracting Party. Nothing in this paragraph shall preclude the investor and the contracting party from appointing the members of the tribunal by a special agreement.
9. Where an disputing investor has submitted a claim to arbitration in accordance with article 13 and has not been named in a request made under paragraph 6 above, a disputing investor or the disputing contracting party, as appropriate, may make

a written request to the tribunal that the first disputing investor be included in an order made under paragraph 4 above and in the request shall specify:

- (a) The name and address of the disputing investor;
- (b) The nature of the order sought, and
- (c) The grounds on which the order is sought.

10. An disputing investor referred to in paragraph 9 above shall deliver a copy of its request to the parties to the conflict identified in a request in accordance with paragraph 6 above.

## **Article 17. The Arbitral Proceedings**

At the request of any contending party, an arbitration in accordance with this section will be held in a State that is a party to the New York Convention only for the purposes of article 1 of the New York Convention, it is considered that claims submitted to arbitration under this section of a commercial relationship or transaction.

## **Article 18. Compensation**

In an arbitration under this section, a disputing contracting party shall not use as a counterclaim, defense, right of setoff or for any other reason, 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 19. Applicable Law**

1. A tribunal established in accordance with this section shall decide the dispute to be submitted to it in accordance with this Agreement and applicable rules and principles of international law.

2. An interpretation jointly formulated and agreed between the Contracting Parties on a provision of this Agreement shall be binding on any tribunal established under this section.

## **Article 20. Finality and Enforcement of Awards**

1. Unless the parties agree otherwise, an arbitral award that determines that a contracting party has failed to fulfil its obligations under this Agreement may only award separately or in combination:

- (a) Monetary damages and any applicable interest; or
- (b) Restitution in kind, taking into account that the Contracting Party may pay pecuniary compensation in lieu thereof.

2. When a claim is submitted on behalf of an enterprise :

- (a) An award that accorded restitution in kind shall provide that restitution be made to the enterprise;
- (b) An award to accord monetary damages and any applicable interest shall provide that the total amount be paid to the enterprise; and
- (c) The award shall provide that it is made without prejudice to any right that any person has or might have, with respect to the remedy granted, in accordance with the applicable domestic law.

3. The arbitral awards shall be final and binding only between the disputing parties and only in respect of the particular case.

4. A Tribunal may not award punitive damages.

5. A disputing investor may seek enforcement of an arbitration award in accordance with the ICSID Convention or the New York Convention, if both parties are contracting parties to such treaties.

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

- (a) In the case of a final award rendered in accordance with the ICSID Convention:
  - (i) one hundred and twenty (120) days from the date the award was rendered and no disputing party have requested

revision or annulment of the same, or

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

(b) In the case of a final award rendered under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules or any other arbitration rules that disputing parties:

(i) Three (3) months from the date the award was rendered and no disputing party has initiated a review procedure, set aside or annul the award; or

(ii) A court has dismissed an application or allowed to review, disposal or annul the award and there is no further appeal.

7. A Contracting Party may not initiate proceedings in accordance with section II by an alleged breach in accordance with this section, unless the other contracting party fails to comply with the award rendered in a dispute that has submitted an investor under this section.

## **Article 21. Transparency of Arbitral Proceedings**

1. The written pleadings submitted by the parties in conflict to the Tribunal, the procedural orders, the decisions and awards issued by the Tribunal shall be available to the public with the exception of confidential information relative to confidential business information that is not in the public domain, describing, containing or otherwise disclosing trade secrets or scientific, technical or financial information, consistently treated as confidential information by the Party to which it relates, including but not limited to price, cost, strategic plans, marketing and market share data registries or financial and accounting information that is privileged protected against disclosure by law.

2. Within thirty 30 days of receiving the final award, the litigant party which considers that any written section done by the Tribunal or any procedural order, decision or award of the Tribunal who wish to remain protected information as confidential shall consult with the other party or parties litigant with the aim of reaching an agreement on the drafting of such information before making available to the public.

3. If the parties are unable to reach an agreement on the proposed wording within other thirty (30) days shall, where they are not in agreement with the President of the Court, who shall decide on the matter immediately assigned any additional cost to arbitration as a result of the lack of agreement between the parties

4. If a disputing Party notifies the other disputing party or parties on the request of preserving in confidential any written information; in particular, procedural decisions or award within thirty (30) days of delivery of the final award, that party shall consent to make available to the public such procedural decision or award.

5. The notice of intent; the notice of arbitration shall be available to the public at any time.

## **Article 22. Provisional Measures of Protection**

1. An arbitral tribunal may order an interim measure of protection to preserve the rights of a opposing side or to ensure that the jurisdiction of the arbitral tribunal takes full effects, including an order to preserve evidence in the possession or control of a litigant party, or to protect the Tribunal jurisdiction.

2. A tribunal may not order the attachment or suspension of the application of the measure alleged to be a breach referred to in article 13 for purposes of this paragraph, an order includes a recommendation.

## **Section II. Dispute Settlement between Contracting Parties**

### **Article 23. Scope**

This section applies to the resolution of disputes between the Contracting parties arising from the interpretation or application of the provisions of this agreement. The alleged breach by a Contracting Party of an obligation under chapter III it shall be settled in accordance with section 1 of this chapter.

### **Article 24. Consultations and Negotiations**

1. Any Contracting Party may request consultations on the interpretation or application of this Agreement.

2. To the extent possible, the Contracting Parties shall endeavour amicably to resolve any dispute between them concerning

the interpretation or application of this Agreement through consultations and negotiations.

3. If a dispute cannot be settled through such means within a period of six (6) months from the negotiations or consultations were requested in writing, either Contracting Party may refer the dispute to an arbitral tribunal established in accordance with this section or by agreement of the Contracting Parties to another international tribunal.

## **Article 25. Constitution of the Arbitral Tribunal**

1. The arbitral proceedings initiated by written notice given by a contracting party (the requesting Contracting Party) to the other contracting party (the respondent Contracting Party through diplomatic channels) such notification shall include a statement of the legal and factual considerations underlying the claim, a summary of the development and the results of consultations and negotiations.

Pursuant to article 24 the intention of the Contracting Party Party to initiate proceedings under this section, as well as the name of the arbitrator appointed by such Contracting Party.

2. Within thirty (30) days after the delivery of such notification, the respondent Contracting Party shall notify the respondent Contracting Party the name of the arbitrator it has appointed.

3. Within thirty (30) days of the appointment of the second arbitrator, the arbitrators appointed by the Contracting Parties shall designate by common agreement the third arbitrator who will serve as the Chairman of the arbitral tribunal once approved by the contracting parties.

4. If within the periods referred to in paragraphs 2 and 3 above have not been made or the required approvals required appointments have not been made, either Contracting Party may request the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a citizen or permanent resident of one of the contracting parties or is unable to act, the Vice-President shall be invited to make the appointments referred. If the Vice-President is a citizen or permanent resident of one of the contracting parties or is unable to act, the member of the International Court of Justice to continue in hierarchy and who is not a citizen or permanent resident of one of the Contracting Parties shall be invited to make the appointments referred.

5. Where any arbitrator appointed under this article resigns or is unable to act as a successor arbitrator shall be appointed in accordance with the same procedure as prescribed for the appointment of the original arbitrator and shall have the same powers and duties of the original arbitrator.

## **Article 26. Proceedings**

1. Unless the Contracting Parties decide otherwise, the place of arbitration shall be determined by the Tribunal.

2. The arbitral tribunal shall decide all questions relating to its competence and subject to any agreement between the Contracting Parties shall determine its own procedure.

3. At any stage of the proceedings, the arbitral tribunal may propose to the parties that the dispute be settled amicably.

4. At any time, the arbitral tribunal shall ensure a fair hearing to the contracting parties.

## **Article 27. Award**

1. The arbitral tribunal shall reach its decision by a majority of votes. The award shall be made in writing and shall contain all the findings of fact and of law arising from. A copy of the award shall be signed and given to each Contracting Party.

2. The arbitral award shall be final and binding on the contracting parties.

## **Article 28. Applicable Law**

A tribunal established in accordance with this section shall decide the dispute to be submitted to it in accordance with this Agreement and applicable rules and principles of international law.

## **Article 29. Costs**

Each Contracting Party shall bear the costs of its appointed arbitrator and of its representation in the proceedings. The costs of the Chairman of the arbitral tribunal and other expenses associated with the arbitration shall be borne in equal parts by

the contracting parties unless the arbitral tribunal decides that a higher proportion of costs be borne by one of the Contracting Parties

## **Article IV. Final Provisions :**

### **Article 30. Implementation of the Agreement**

This Agreement shall apply to all investments made before or after its Entry into Force. However, do not apply to claims arising out of events which occurred or to which claims have been settled before that date.

### **Article 31. Consultations**

A Contracting Party may propose to the other contracting party for consultations regarding any matter relating to this Agreement. such consultations shall be conducted at venue and time agreed upon by the contracting parties.

### **Article 32. Entry Into Force , Duration and Termination**

1. Contracting Parties shall notify in written and through the diplomatic channel, on the fulfilment of their constitutional requirements in relation to the approval and Entry into Force Agreement.
2. This Agreement shall enter into force thirty (30) days after the date of receipt of the last of the notifications referred to paragraph 1.
3. This Agreement shall remain in force for 10 years. Thereafter it shall continue in force until the expiration of twelve (12) months from the date on which any contracting party notified in writing the other contracting party of its decision to terminate it.
4. This agreement shall remain in force for a period of each ten (10) years from the date of termination only with respect to investments made prior to that date.
5. This Agreement may be amended by mutual consent of the Contracting Parties, and the agreed modification shall enter into force in accordance with the procedures laid down in the Spanish and done in Cancún, Quintana Roo, Mexico the 07 May 2015 , in duplicate language, English, French and Spanish both texts are equally authentic.

The Government of the United Mexican States

Alfonso guajardo villerreal

Secretary of Economy

The Government of the Republic of Haiti

Contracting parties confirm their common understanding in that:

1. A measure or series of measures of a contracting party cannot constitute an expropriation unless it interferes with a right of property or with a tangible or intangible property interest of an investment.
2. Article 7 paragraph 1 addresses two situations the first is where an expropriation, direct investment is expropriated or nationalized otherwise directly through formal transfer of title or direct expropriation.
3. The second situation covers appropriations under article 7, paragraph 1. It is indirect expropriation measure or, where a series of measures of a contracting party having an equivalent effect to expropriation without the direct transfer form the direct title ownership or seizure.

The determination of whether a measure or series of measures of a contracting party in fact constitutes a specific situation, an indirect expropriation requires a case by case factual investigation; consider among other factors: the economic impact of the Government although the sole fact that a measure or series of measures of a Contracting party has an adverse effect on the economic value of an investment alone does not establish that has occurred an indirect expropriation; the extent to

which the Government action interferes with clear and reasonable expectations of investment; the type of action of the Government as the non-discriminatory measures of a contracting party that are designed and applied to protect legitimate public welfare objectives such as public health, safety, the protection and promotion of international and national labor rights, and the environment, do not constitute an indirect expropriation, provided that such measures are not used as a means to violate the provisions of disguised.

1. The notice of intent referred to article 12, paragraph 2 shall be send in the case of the United Mexican States, to the General Directorate of International Trade legal consultancy of the Ministry of Economy and in the case of the Republic of Haiti, to the Ministry of Trade and Industry.

2. The combatant investor shall submit a written notice of intent in English or in the case of Mexico in English, French and in the case of Haiti. a translation, made by a former translator shall be included in the case of the notice of intent to be made in a language other than those mentioned.

3. In order to facilitate the consultation process, the investor shall provide notice of intent, with the copy of the following documents: passport or other official document of nationality, if the investor is a natural person, or the applicable document of incorporation or organization is in accordance with the legislation of the non litigant contracting party, if the investor is an enterprise of that Contracting Party; where an investor of a Contracting Party intends to submit a claim to arbitration on behalf of an enterprise of the other Contracting Party that is a legal person from which investors have ownership or control the applicable document of incorporation or organization of the company in accordance with the legislation of the litigants contracting party, and the document certifying that the investor has litigants ownership or control of the enterprise; if that is the case, shall also be power of attorney or the document that a person is duly authorized to act on behalf of the investor litigants.

For greater certainty, when a claim is submitted to arbitration under article 13 it shall only be for recoverable loss or damage incurred by the applicant in his capacity of investors of a Party. The losses incurred by the claimant in any other capacity are not recoverable under article 13.

4. Written includes writing claims and any reduction and acting against certain listed charities, written submission or by one of the parties involved in the arbitration.