

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The People's Republic of China and the United Mexican States, hereinafter referred to as "the Contracting Parties",

INTENDING to create favorable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that the reciprocal encouragement, promotion and protection of such investment will be conducive to stimulating business initiative of the investors and will increase prosperity in both States;

DESIRING to intensify the cooperation of both States on the basis of equality and mutual benefits;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement, the term:

"investor of a Contracting Party" means:

- (a) A natural person having the nationality 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;

"enterprise" means any entity constituted or organized under the applicable law, whether or not for profit, and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

"investment" means the assets owned or controlled by investors of a Contracting Party and acquired in accordance with the laws and regulations of the other Contracting Party, listed below:

- (a) An enterprise;
- (b) An equity security of an enterprise;
- (c) A 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) An interest in an enterprise that entitles the owner to share an income or profits of the enterprise;

(f) An interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d) above; subparagraph (c) or (d) above;

(g) Real estate or other property, tangible or intangible, acquired or used for business purposes; and

(h) 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, or concessions, or

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

But investment does not mean,

(i) 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, or subparagraph (d) above, or

(j) Any other claims to money,

That do not involve the kinds of interests set out in subparagraphs (a) through (h) above;

"territory" means:

(a) In respect of the People's Republic of China, the territory of the People's Republic of China including the territorial sea and air space above it, as well as any area beyond its territorial sea within which the People's Republic of China has sovereign rights of explorations and exploitations of resources of the seabed and its subsoil and superjacent water resources in accordance with Chinese law and international law;<sup>11</sup>

(b) In respect of the United Mexican States, the territory of the United Mexican States including the maritime areas adjacent to its coast, i.e. territorial sea, the exclusive economic zone and the continental shelf, to the extent to which the United Mexican States may exercise sovereign rights or jurisdiction in those areas according to international law. i.e. territorial sea, the exclusive economic zone and the continental shelf, to the extent to which the United Mexican States may exercise sovereign rights or jurisdiction in those areas according to international law.

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

Each Contracting Party shall admit the entry of investments made by investors of the other Contracting Party pursuant to its applicable laws and regulations.

Chapter II: Protection to Investment

## **Article 3. National Treatment**

1. Without prejudice to its laws and regulations at the time the investment is made, each Contracting Party shall accord to investors of the other Contracting Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the operation, management, maintenance, use, enjoyment or disposal of investments.

2. Without prejudice to its laws and regulations at the time the investment is made, each Contracting Party shall accord to investments of investors of the other Contracting Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the operation, management, maintenance, use, enjoyment or disposal of investments.

## **Article 4. Most Favored Nation Treatment**

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

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

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

1. Each Contracting Party shall accord to investments of investors of the other Contracting Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, this Article prescribes the international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Contracting Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidence of State practice and opinio juris. 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. opinio juris. 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.

## **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, a state of national emergency, insurrection, riot or other similar events in the territory of the latter Contracting Party, shall be accorded by such Contracting Party, as regards any restitution, indemnification, compensation and other settlements, treatment no less favorable than that accorded to the investors of its own or any third State, whichever is more favorable to the investor concerned.

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

1. Neither Contracting Party may expropriate or nationalize an investment either directly or indirectly through measures tantamount to expropriation or nationalization ("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. 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;

(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. Without prejudice to the provisions set forth in Chapter III Section One, 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 authority, pursuant to the applicable laws of the corresponding Contracting Party, and to an assessment of such investment in accordance with the provisions set forth in this Article. Section One, 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 authority, pursuant to the applicable laws of the corresponding Contracting Party, and to an assessment of such investment in accordance with the provisions set forth in this Article.

## **Article 8. Transfers**

1. Without prejudice to any applicable formalities pursuant to its laws and regulations, each Contracting Party shall guarantee to an investor of the other Contracting Party that all payments related to an investment in its territory may be freely transferred into and out of its territory without delay. Such transfers shall include, but not be limited to:

- (a) Amounts necessary for establishing, maintaining or expanding the investment;
- (b) Profits, interests, dividends, capital gains, royalties and other fees in connection with intellectual and industrial property rights;
- (c) Payments made under a contract including those pursuant to a loan agreement;
- (d) Proceeds from the total or partial sale or liquidation of the investment;
- (e) Earnings and remuneration of nationals of the other Contracting Party who work in connection with an investment;
- (f) Any compensation owned to an investor by virtue of Article 6 and 7 ; and Article 6 and 7 ; and
- (g) Payments pursuant to the settlement of a dispute under Chapter III Section One. Section One.

2. Neither Contracting Party shall prevent transfers from being made without delay in freely convertible currencies as classified by the International Monetary Fund at the market exchange rate prevailing on the date of transfer unless otherwise provided in this Article.

3. A Contracting Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) Bankruptcy, insolvency or the protection of the rights of creditors;
- (b) Issuing, trading or dealing in securities;
- (c) Criminal or administrative offenses;
- (d) Reports of transfers of currency or other monetary instruments; or
- (e) Ensuring the satisfaction of judgments in adjudicatory proceedings.

4. The formalities referred to in paragraph 1 above: paragraph 1 above:

- (a) Shall in no case be more restrictive than those required at the time of entry into force of this Agreement;
- (b) Shall in no case impose new restrictions than those imposed at the time of entry into force of this Agreement; and
- (c) Shall not be used as a means of avoiding the Contracting Party's commitments and obligations under this Article.

5. In case of a serious balance of payments difficulty or of a threat thereof, each Contracting Party may temporarily restrict transfers provided that such a Contracting Party implements measures or a program in accordance with international standards. These restrictions should be imposed on an equitable, non-discriminatory and in good faith basis.

## **Article 9. Subrogation**

1. If a Contracting Party or its designated agency has granted a financial guarantee against non-commercial risks, and makes a payment under such guarantee, or acts under its rights as subrogee with respect to an investment made by one of its investors in the territory of the other Contracting Party, that other Contracting Party shall recognize the subrogation of any right, title, claim, privilege or actions existing or that might occur. The Contracting Party or its designated agency, as subrogees, may not have rights beyond those the original investor had.

2. In case a dispute arises, the Contracting Party which has been subrogated in the rights of the investor may not initiate or participate in proceedings before a national tribunal, nor submit the case to international arbitration in accordance with the provisions of Chapter III. Chapter III.

## **Article 10. Exceptions**

Articles 3 and 4 shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefits of any treatment, preference or privilege which may be granted by

such Contracting Party by virtue of:

(a) Any existing or future regional economic integration organization, free trade area, customs union, monetary union or any other similar integration arrangement, of which one of the Contracting Parties is or may become a party; or

(b) Any rights and obligations of a Contracting Party resulting from an international agreement or arrangement or any domestic legislation relating wholly or mainly to taxation. In the event of any inconsistency between this Agreement and any other tax-related international agreement or arrangement, the latter shall prevail.

Chapter III: Dispute Settlement

Section One: Settlement of Disputes between a Contracting Party and an Investor of the Other Contracting Party

## **Article 11. Purpose**

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 entailing loss or damage.

## **Article 12. Notice of Intent and Consultation**

1. The disputing parties should first attempt to settle a claim through consultation or negotiation.

2. With a view to settling the claim amicably, the disputing investor shall deliver to the disputing Contracting Party written notice of its intention to submit a claim to arbitration at least six months before the claim is submitted.<sup>2</sup> Such notice shall specify:<sup>2</sup> Such notice shall specify:

(a) The name and domicile of the disputing investor and, where a claim is made by an investor for loss or damage to an enterprise, the name and domicile of the enterprise;

(b) The provisions of Chapter II alleged to have been breached and other relevant provisions; Chapter II alleged to have been breached and other relevant provisions;

(c) The issues and the factual and legal basis of the claim; and

(d) The relief sought and the approximate amount of damages claimed.

## **Article 13. Arbitration: Scope and Standing and Time Periods**

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, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.<sup>3</sup> Chapter II, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.<sup>3</sup>

2. An investment may not make a claim under this Section.

3. A disputing investor may submit the 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; ICSID Convention, provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention;

(b) The ICSID Additional Facility Rules, provided that either the disputing Contracting Party or the Contracting Party of the investor, but not both, is a party to the ICSID Convention; ICSID Additional Facility Rules, provided that either the disputing 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 UNCITRAL Arbitration Rules; or

(d) Any other arbitration rules, if the disputing parties so 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 forth in this Section; and

(b) The investor and, where the claim is for loss or damage to an interest of an enterprise of the other Contracting Party that is a legal person 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 of Chapter II, except for proceedings for injunctive, declaratory or other similar relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Contracting Party. Chapter II, except for proceedings for injunctive, declaratory or other similar relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Contracting Party.

5. The consent and waiver referred to in this Article shall be in writing, delivered to the disputing Contracting Party and included in the submission of a claim to arbitration.<sup>44</sup>

6. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

7. Without prejudice to Article 12, a dispute may be submitted not later than three (3) years from the date that the investor first acquired or should have first acquired knowledge of the events which gave rise to the dispute. Article 12, a dispute may be submitted not later than three (3) years from the date that the investor first acquired or should have first acquired knowledge of the events which gave rise to the dispute.

8. The Contracting Parties recognize that under this Article, minority non-controlling investors have standing to submit only a claim for direct loss or damage to their own legal interest as investors.

## **Article 14. 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 Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute. paragraph 1 above and the submission of a claim to arbitration by the disputing investor shall satisfy the requirements of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute.

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

1. Unless the parties to the dispute agree otherwise, the arbitral tribunal shall be composed by 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. paragraph 1 above shall have experience in international law and investment matters.

3. If an arbitral tribunal has not been established within ninety (90) days from the date in 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 Secretary-General of ICSID, upon request of any of the disputing parties, shall be asked to appoint, at his own discretion, the arbitrator or arbitrators not yet appointed. Nevertheless, the Secretary-General of ICSID, when appointing the chairman, shall assure that he or she is a national of neither of the Contracting Parties.

## **Article 16. Consolidation**

When a consolidation tribunal, with the Secretary-General of ICSID acting as its appointing authority, is satisfied that the claims submitted before two or more tribunals under Article 15 have a question of fact or law in common, such consolidation tribunal may, in the interests of a fair and efficient resolution of the claims, consolidate the proceedings in accordance with the agreement of all disputing parties sought to be covered.

## **Article 17. Place of Arbitration**

Any arbitration under this Section shall, upon request of any disputing party, be held in a State that is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

## **Article 18. Indemnification**

In an arbitration under this Section, a disputing Contracting Party shall not assert as a defense, 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 19. Applicable Law**

1. A tribunal established in accordance with this Section shall decide the submitted issues in dispute in accordance with this Agreement and the 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 20. 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. Where a claim is submitted to arbitration for loss or damages to 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 will be publicly accessible, 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 pursuant to this Article, and shall facilitate the enforcement of any award rendered within a proceeding in which it is a party.

7. 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: ICSID Convention:

(i) One hundred and twenty (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 selected by the disputing parties: ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or any other arbitration rules selected by the disputing parties:

(i) Three (3) months have elapsed from the date in 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.

## **Article 21. Interim Measures of Protection**

An Arbitral Tribunal may recommend 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 a recommendation 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 recommend attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 13.

Section Two: Settlement of Disputes between the Contracting Parties

## **Article 22. Scope**

1. This Section applies to the settlement of disputes between the Contracting Parties arising from the interpretation or application of the provisions of this Agreement.
2. A Contracting Party may not initiate proceedings in accordance with this Section with regard to a dispute concerning the violation of the rights of an investor, unless the other Contracting Party fails to abide by or comply with a final award rendered in a dispute that such investor may have submitted pursuant to Section One. In this case, an Arbitral Tribunal established in conformity with this Section may render, upon request of the Contracting Party whose investor was part in the dispute:Section One. In this case, an Arbitral Tribunal established in conformity with this Section may render, upon request of the Contracting Party whose investor was part in the dispute:
  - (a) A statement that the failure to abide by or comply with the final award is inconsistent with the obligations set forth in this Agreement; and
  - (b) A recommendation that the other Contracting Party abide by or comply with the final award.

## **Article 23. Consultations and Negotiations**

1. Either Contracting Party may request consultations on the interpretation or application of this Agreement.
2. If a dispute arises between the Contracting Parties on the interpretation or application of this Agreement, it shall, to the extent possible, be settled amicably through consultations and negotiation.
3. In the event the dispute is not settled through the means mentioned above within six (6) months from the date such negotiations or consultations were requested in writing, any Contracting Party may submit the dispute to an arbitral tribunal established in accordance with the provisions of this Section or, by agreement of both Contracting Parties, to any other international tribunal.

## **Article 24. Constitution of the Arbitral Tribunal**

1. Arbitration proceedings shall initiate upon written notice delivered by one Contracting Party (the requesting Contracting Party) to the other Contracting Party (the respondent Contracting Party) through diplomatic channels. Such notice shall contain a statement setting forth the legal and factual grounds of the claim, a summary of the development and results of the consultations and negotiations that took place pursuant to Article 23, the requesting Contracting Party's intention to initiate proceedings under this Section, and the name of the arbitrator appointed by such requesting Contracting Party.Article 23, the requesting Contracting Party's intention to initiate proceedings under this Section, and the name of the arbitrator appointed by such requesting Contracting Party.
2. Within thirty (30) days after the delivery of such notice, the respondent Contracting Party shall notify to the requesting Contracting Party the name of its appointed arbitrator.
3. Within thirty (30) days following the date in which the second arbitrator was appointed, the arbitrators appointed by the Contracting Parties shall appoint, by mutual agreement, a third arbitrator, who shall be the presiding arbitrator upon approval of the Contracting Parties. If the approval referred to in this paragraph has not been rendered within thirty (30) days following the date in which the third arbitrator was appointed, paragraph 4 below shall apply.paragraph 4 below shall apply.
4. If within the time limits provided for in paragraph 2 and 3 above, the required appointments have not been made or the required approvals have not been given, either Contracting Party may invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a citizen or a permanent resident of either Contracting Party, or he or she is otherwise unable to act, the Vice-President shall be invited to make the referred appointment(s). If the Vice-President is a citizen or a permanent resident of either Contracting Party, or he or she is unable to act, the member of the International Court of Justice next in seniority who is not a citizen nor a permanent resident of either Contracting Party shall be invited to make the necessary appointment(s).paragraph 2 and 3 above, the required appointments have not been made or the required approvals have not been given, either Contracting Party may invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a citizen or a permanent resident of either Contracting Party, or he or she is otherwise unable to act, the Vice-President shall be invited to make the referred appointment(s). If the Vice-President is a citizen or a permanent resident of either Contracting Party, or he or she is unable to act, the member of the International Court of Justice next in seniority who is not a citizen nor a permanent resident of either Contracting Party shall be invited to make the necessary appointment(s).



5. In case an arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as that prescribed for the appointment of the original arbitrator, and he or she shall have the same powers and duties that the original arbitrator had.

## **Article 25. Proceedings**

1. Once convened by the presiding arbitrator, the arbitral tribunal shall determine the seat of arbitration and the date of initiation of the arbitral process.
2. The arbitral tribunal shall decide all questions relating to its competence and, subject to any agreement between the Contracting Parties, determine its own procedure, taking into account the PCA Optional Rules.PCA Optional Rules.
3. At any stage of the proceedings and before it issues any resolution, the arbitral tribunal may propose to the Contracting Parties that the dispute be settled amicably.
4. At all times, the arbitral tribunal shall afford a fair hearing to the Contracting Parties.

## **Article 26. Award**

1. The arbitral tribunal shall reach its decision by majority vote. The award shall be issued in writing and shall contain the applicable factual and legal findings. A signed award shall be delivered to each Contracting Party.
2. The award shall be final and binding on the Contracting Parties.

## **Article 27. Applicable Law**

A tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and with the applicable rules and principles of international law.

## **Article 28. Costs**

Each Contracting Party shall bear the costs of its appointed arbitrator and of any legal representation in the proceedings. The costs of the presiding arbitrator and of other expenses associated with the conduct of the arbitration shall be borne equally by the Contracting Parties, unless the arbitral tribunal decides that a higher proportion of costs be borne by one of the Contracting Parties.

Chapter IV: Final Provisions

## **Article 29. Application of the Agreement**

This Agreement shall apply to investments made after the entry into force of this Agreement by investors of one Contracting Party in the territory of the other Contracting Party, as well as to investments made in accordance with the applicable laws of the Contracting Parties and existing at the entry into force of this Agreement. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

## **Article 30. Consultations**

A Contracting Party may propose to the other Contracting Party to carry out consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed by the Contracting Parties.

## **Article 31. Denial of Benefits**

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

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

1. The Contracting Parties shall notify each other in writing the fulfilment of their domestic legal procedures in relation to

the approval and entry into force of this Agreement.

2. This Agreement shall enter into force thirty (30) days after the date of the latter notification carried out through the diplomatic channels used by both Contracting Parties to notify the fulfilment of the requirements referred to in paragraph 1 above.

3. This Agreement shall remain in force for a period of ten (10) years and thereafter shall be in force for an indefinite period of time, unless either of the Contracting Parties delivers through diplomatic channels to the other Contracting Party a written notice of its decision to terminate this Agreement, with twelve (12) months in advance.

4. With respect to investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of termination.

5. This Agreement may be modified by mutual consent of the Contracting Parties, and the agreed modification shall come into effect pursuant to the procedures set forth in paragraphs 1 and 2 above.

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES

1. The notice of intent referred to in Article 12 paragraph 2 shall be delivered:

In the case of the People's Republic of China, at the Ministry of Commerce; and

In the case of the United Mexican States, at the Ministry of Economy.

2. The disputing investor shall submit the written notice of intent referred to in Article 12 paragraph 2 in Spanish or in Chinese, as applicable, depending on the Contracting Party against which the claim is made. The corresponding translation, made by an expert, shall be included in case such notice of intent is submitted in any language other than the aforementioned.

3. In order to facilitate the process of consultation, the investor shall provide along with the notice of intent, copy of the following documentation:

(a) Passport or any other official document as evidence of nationality, where the investor is a natural person, or act of incorporation or any other document of incorporation or organization under the law of the non-disputing Contracting Party where the investor is an enterprise of such Contracting Party;

(b) Where an investor of a Contracting Party intends to submit a claim to arbitration for loss or damage to an enterprise of the other Contracting Party:

(i) Act of incorporation or any other document of incorporation or organization, under the applicable law of the disputing Contracting Party; and

(ii) Document proving that the disputing investor owns or controls the enterprise.

(c) Where applicable, power of attorney or the document proving that a person is duly authorized to act on behalf of the disputing investor.

An investor of a Contracting Party may not allege that the other Contracting Party has breached an obligation under Chapter II both in arbitration under Chapter III and in proceedings before a court or administrative tribunal of the latter Contracting Party. Where an enterprise of a Contracting Party that an investor of the other Contracting Party owns or controls alleges in proceedings before a court or administrative tribunal that the former Contracting Party has breached an obligation under this Agreement, the investor may not allege the breach in an arbitration under Chapter III.

An investor shall go through the domestic administrative review procedures as specified by the laws and regulations of the disputing Contracting Party before the submission to international arbitration in accordance with Chapter III, Section One.

If the domestic administrative review procedures are not complete within four (4) months after the date an application for the review is first filed, it shall be considered that the procedures are complete and the investor may proceed to an international arbitration. The investor may file an application for the review during the six (6) months consultation or negotiation period as provided in Article 12.