

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE GOVERNMENT OF THE REPUBLIC OF ICELAND ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE UNITED MEXICAN STATES and THE GOVERNMENT OF THE REPUBLIC OF ICELAND, hereinafter referred to as "the Contracting Parties",

DESIRING to intensify economic cooperation to the mutual benefit of both countries;

INTENDING 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 investments with the aim to foster their economic prosperity;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

(1) 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) A legal person, including corporations, commercial companies or other companies or associations, having a main office in the territory of one Contracting Party, incorporated or constituted and operating in accordance with the laws and regulations of that Contracting Party;

Making or having made an investment in the other Contracting Party's territory.

(2) The term "Investment" means:

Every kind of asset established, acquired or used by an investor from one Contracting Party, in order to achieve an economic objective in the territory of the other Contracting Party, in accordance with the laws and regulations of the latter Contracting Party, such as:

- (a) Movable and immovable property, acquired or used for economic purposes, as well as any other rights in rem, such as mortgages, liens, pledges, usufruct and similar rights;
- (b) An enterprise constituted or organised under the applicable law of a Contracting Party;
- (c) Shares, stocks and other forms of equity participation in an enterprise and rights derived therefrom;
- (d) 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 a state enterprise;

- (e) 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;

(f) Rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(g) Copyrights, industrial property rights, technical processes and trade names;

(h) Rights conferred by law or contract such as concessions, licenses, authorisations or permits to undertake an economic activity;

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 (e); or

(j) Any other claims to money,

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

A payment obligation from, or the granting of a credit to a Contracting State or a state enterprise is not considered an investment.

Any alteration on the form in which assets are invested does not affect their character as investments, provided that such alteration is included in the aforesaid definition and do not contradict the laws and regulations of the Contracting Party in which territory the investment was made.

(3) The term "returns" means the amounts yielded by an investment and, in particular, includes profits, interests, capital gains, dividends, royalties, licences and other fees.

(4) The term "territory" means the territory of each Contracting Party and includes the maritime areas adjacent to the coast of the State concerned, i.e. the territorial sea, the exclusive economic zone and the continental shelf, to the extent to which that Contracting Party may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2. Admission of Investments

(1) Each Contracting Party shall admit the entry and the expansion of investments made by investors of the other Contracting Party, in accordance with its laws and regulations.

(2) Each Contracting Party shall, within the framework of its legislation, give a sympathetic consideration to applications for necessary permits in connection with investments in its territory, including authorisations for engaging top managerial and technical personnel of their choice from abroad.

Article 3. Treatment of Investments

(1) Investments of investors of each Contracting Party shall at all times be accorded treatment in accordance with international law, including fair and equitable treatment and full protection and security in the territory of the other Contracting Party.

(2) Each Contracting Party shall in its territory accord investments of investors of the other Contracting Party treatment not less favourable than that which it accords, in like circumstances, to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

(3) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords, in like circumstances, to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

(4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union, a common market or a similar regional organisation, it shall not be obliged to accord such advantages to investors or investments of investors of the other Contracting Party.

(5) The provisions of paragraphs (2) and (3) of this Article shall not be applicable to tax measures. Nothing in this Agreement shall affect the rights and obligations of either Contracting Party derived from any tax convention. In the event of any inconsistency between the provisions of this Agreement and any tax convention, the provisions of the latter shall prevail.

Article 4. Expropriation and Compensation

(1) Neither Contracting Party shall expropriate or nationalise an investment either directly or indirectly through measures tantamount to expropriation or nationalisation (hereinafter referred to as "expropriation"), except:

- (a) For a public purpose;
- (b) On a non-discriminatory basis;
- (c) In accordance with due process of law; and
- (d) Accompanied by payment of compensation in accordance with paragraph (2) below.

(2) Compensation shall:

- (a) Be paid without delay;
- (b) Be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred;
- (c) Include interest from the date of expropriation until the date of actual payment; and
- (d) Be fully realisable and freely transferable.

(3) The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier. Furthermore, the valuation criteria shall include the going concern value, asset value, including declared tax value of tangible property, and other criteria, as appropriate, to determine the fair market value.

Article 5. Compensation for Losses

Each Contracting Party shall accord to the investors of the other Contracting Party, with respect to the investments that suffer losses in its territory due to armed conflicts or civil disturbance, treatment, as regards any valuable consideration, not less favourable than the treatment accorded to its own investors or to investors of any third State.

Article 6. Transfers

(1) Each Contracting Party shall permit all transfers related to an investment of an investor of the other Contracting Party in its territory, to be made freely and without delay. Such transfers shall include, in particular:

- (a) Profits, dividends, interests, capital gains, royalty payments, management fees, technical assistance and other fees and other amounts derived from the investment;
- (b) Proceeds from the sale of all or any part of the investment, or from the partial or complete liquidation of the investment;
- (c) Payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
- (d) Payments arising from the compensation for expropriation; and
- (e) Payments pursuant to the application of provisions relating to the settlement of disputes.

(2) Transfers shall be made at the market rate of exchange prevailing on the date of transfer.

(3) Notwithstanding paragraphs (1) and (2) above, a Contracting Party may prevent a transfer through the equitable, non-discriminatory and in 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 violations; or

(d) Ensuring the satisfaction of judgments in adjudicatory proceedings.

(4) In case of serious balance of payments difficulties or the threat thereof, each Contracting Party may temporarily restrict transfers provided that such a Contracting Party implements measures or a programme in accordance with internationally recognized standards. These restrictions should be imposed on an equitable, non-discriminatory and in good faith basis.

Article 7. Subrogation

If a Contracting Party or its designated Agency has granted a financial guarantee against non-commercial risks concerning an investment by one of its investors in the territory of the other Contracting Party, the Contracting Party or its designated Agency becomes the direct beneficiary of any kind of payment due to the investor from the moment in which it has covered the investor's presumed loss. In case of a dispute, only the investor may initiate, or participate in, proceedings before a national tribunal or submit the case to international arbitration in accordance with the provisions of Chapter Two of this Agreement.

Article 8. Other Obligations

Each Contracting Party shall observe any other obligation it has assumed in writing, with regard to investments in its territory by investors of the other Contracting Party. However, disputes arising from such obligations shall be settled only under the terms of the contracts underlying the obligations.

Chapter Two: Dispute Settlement

Part One: Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

Article 9. Means of Settlement

This Part applies to disputes between a Contracting Party and an investor of the other Contracting Party derived from an alleged breach of an obligation under this Agreement. Disputes should, if possible, be settled by negotiation or consultation. If it is not so settled within six months, the investor may choose to submit it for resolution:

- (a) To any competent court or administrative tribunal of the Contracting Party accepting the investment;
- (b) In accordance with any applicable previously agreed dispute settlement procedure; or
- (c) By arbitration in accordance with Article 10.

Article 10. 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 under this Agreement and that the investor has incurred loss or damage by reason of, or arising out of, that breach. Likewise, an investor of a Contracting Party, on behalf of an enterprise of the other Contracting Party that is a juridical person that the investor owns or controls, may submit to arbitration a claim that the other Contracting Party has breached an obligation under this Agreement and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach. An investment may not make a claim under this Part.

(2) Provided that neither the investor concerned nor the enterprise of the other Contracting Party that is a juridical person that such an investor owns or controls, has submitted the dispute for resolution under Article 9 (a) or (b), the investor may submit the dispute for settlement by binding arbitration after six months have elapsed since the events giving rise to the claim. Article 9 (a) or (b), the investor may submit the dispute for settlement by binding arbitration after six months have elapsed since the events giving rise to the claim.

(3) A disputing investor may submit the claim to arbitration under:

- (a) The Convention on the Settlement of Investment Disputes between States and Nationals of other States (ICSID Convention), provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the Convention;
- (b) The International Centre for Settlement of Investment Disputes (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; or
- (c) The United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. United Nations Commission on

International Trade Law (UNCITRAL) Arbitration Rules.

(4) A disputing investor may submit a claim to arbitration only if:

(a) The investor consents to arbitration in accordance with the procedures set out in this Agreement; and

(b) The investor and, where the claim is for loss or damage to an interest in an enterprise of the other Contracting Party that is a juridical person that the investor owns or controls, the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law 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 this Agreement, 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 juridical person that the investor owns or controls, only if both the investor and the enterprise:

(a) Consent to arbitration in accordance with the procedures set out in this Agreement; and

(b) Waive their right to initiate or continue before any administrative tribunal or court under the law of a Contracting Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach under this Agreement, 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 Party.

(6) A consent and waiver required by this Article shall be in writing, be delivered to the disputing Contracting Party and be 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 Part.

(8) A dispute may be submitted to arbitration provided that the investor has delivered to the Contracting Party, party to the dispute, written notice of his intention to submit a claim to arbitration at least 90 days in advance, but not later than 3 years from the date that either the investor or the enterprise of the other Contracting Party that is a juridical person that the investor owns or controls, first acquired or should have acquired knowledge of the events which gave rise to the dispute.

(9) The notice referred to in paragraph (8), shall specify:

(a) The name and address of the disputing investor and, where a claim is made by an investor of a Contracting Party on behalf of an enterprise, the name and address of the enterprise;

(b) The provisions of this Agreement alleged to have been breached and any other relevant provisions;

(c) The issues and the factual basis for the claim; and

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

Article 11. Contracting Party Consent

Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with this Part.

Article 12. Formation of the Arbitral Tribunal

(1) Unless the parties to the dispute agree otherwise, the arbitral tribunal shall comprise three members. Each party to the dispute shall appoint one member and the disputing parties shall agree upon a third member as their chairman.

(2) Members of arbitral tribunals shall be independent and impartial in their work and have experience in international law and investment matters.

(3) If an arbitral tribunal has not been constituted within ninety days from the date the claim was submitted to arbitration, either because a party to the dispute failed to appoint a member or failed to agree upon a chairman, the Secretary-General of ICSID, on the request of any of the parties to the dispute, shall be asked to appoint, in his discretion, the member or members not yet appointed. Nevertheless, the Secretary-General of ICSID, on appointing a chairman, shall assure that the chairman is a national of neither of the Contracting Parties.

Article 13. Consolidation

(1) A tribunal of consolidation established under this Article shall be installed under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Part. UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Part.

(2) Proceedings will be consolidated:

(a) When two or more investors in relation with the same investment submit a claim to arbitration under this Agreement; or

(b) When two or more claims are submitted to arbitration arising from common legal and factual issues.

(3) The tribunal of consolidation will decide the jurisdiction of the claims and will jointly review such claims, unless it determines that the interests of any party to the dispute are seriously harmed.

Article 14. Place of Arbitration

Any arbitration under this Part shall, at the request of any party to the dispute, be held in a state that is party of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Claims submitted to arbitration under this Part shall be considered to arise out of a commercial relationship or transaction for the purposes of Article 1 of the New York Convention.

Article 15. Indemnification

A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged losses or damages has been received or will be received pursuant to an indemnity, guarantee or insurance contract.

Article 16. Applicable Law

(1) A tribunal established under this Part 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 by the Contracting Parties of a provision of this Agreement shall be binding on any tribunal established under this Part.

Article 17. Awards and Enforcement

(1) Arbitration awards may provide the following forms of relief:

(a) A declaration that the Contracting Party has failed to comply with its obligations under this Agreement;

(b) Pecuniary compensation;

(c) Restitution in kind in appropriate cases, provided that the Contracting Party may pay pecuniary compensation in lieu thereof where restitution is not practicable; and in lieu thereof where restitution is not practicable; and

(d) With the agreement of the parties to the dispute, any other form of relief.

(2) Where a claim is made by an investor of a Contracting Party on behalf of an enterprise of the other Contracting Party, pursuant to paragraph (1) of Article 10:

(a) An award of restitution in kind shall provide that restitution be made to the enterprise;

(b) An award of pecuniary compensation shall provide that the sum be paid to the enterprise;

(c) An award of any other form of relief shall provide that it be given to the enterprise; and

(d) 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) Arbitration awards shall be final and binding only upon the parties to the dispute and only with respect to the particular case.

- (4) The final award will only be published with the written consent of both parties to the dispute.
- (5) An arbitral tribunal shall not order a Contracting Party to pay punitive damages.
- (6) Each Contracting Party shall, in its territory, make provision for the effective enforcement of awards made pursuant to this Article and shall carry out without delay any such award issued in a proceeding to which it is party.
- (7) An investor may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention, if both Contracting Parties are parties to such instruments.
- (8) A disputing party may not seek enforcement of a final award until:
- (a) In the case of a final award made under the ICSID Convention:
- (i) One hundred and twenty days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or
- (ii) Revision or annulment proceedings have been completed; and
- (b) In the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
- (i) Three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
- (ii) A court has dismissed an application to revise, set aside or annul the award and there is no further appeal, or
- (iii) A court has allowed an application to revise, set aside or annul the award and the proceeding has been completed and there is no further appeal.
- (9) If a disputing Contracting Party fails to abide by or comply with a final award, on delivery of a request by a Contracting Party whose investor was a party to the arbitration, an arbitral tribunal under Part Two of this Chapter may be established. The requesting Contracting Party may seek in such proceedings:
- (a) A determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement, and
- (b) A recommendation that the Contracting Party abide by or comply with the final award.

Part Two: Settlement of Disputes between the Contracting Parties

Article 18. Scope, Consultations, Mediation and Conciliation

Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably or through consultations, mediation or conciliation.

Article 19. Initiation of Proceedings

- (1) At the request of either Contracting Party, a dispute concerning the interpretation or application of this Agreement may be submitted to an arbitral tribunal for decision not earlier than four months after such request has been notified to the other Contracting Party.
- (2) A Contracting Party shall not initiate proceedings under this Part for a dispute regarding the infringement of rights of an investor, unless the other Contracting Party has failed to abide by or comply with the award rendered in a dispute that an investor has submitted to proceedings under Part One of this Chapter. In that case, the arbitral tribunal established under this Part, on delivery of a request by a Contracting Party whose investor was a party to the dispute, may award:
- (a) A declaration that the failure to abide by or comply with the final award is in contravention of the obligations of the other Contracting Party under this Agreement; and
- (b) A recommendation that the other Contracting Party abide by or comply with the final award.

Article 20. Formation and Venue of the Arbitral Tribunal

- (1) Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member and these

two members shall agree upon a national of a third State as their chairman. Such members shall be appointed within two months from the date one Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two further months.

(2) If the periods specified in paragraph (1) are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or, in case of his inability, the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

(3) Members of an arbitral tribunal shall be independent and impartial in their work and have experience in international law and investment matters.

(4) The Venue of the arbitral tribunal shall be the country of residence of the chairman of the arbitral tribunal.

Article 21. Applicable Law

The arbitral tribunal will decide disputes in accordance with this Agreement and the applicable rules and principles of international law.

Article 22. Costs

Each Contracting Party shall pay the cost of its representation in the proceedings. The cost of the arbitral tribunal shall be paid for equally by the Contracting Parties, unless the tribunal directs that they be shared differently.

Chapter Three: Final Provisions

Article 23. Exclusions

The disputes settlement provisions of Chapter Two, shall not apply to the resolutions adopted by a Contracting Party which, for national security reasons, prohibit or restrict the acquisition of an investment in its territory, owned or controlled by its nationals, by investors of the other Contracting Party, according to the legislation of each Contracting Party.

Article 24. Application of the Agreement

This Agreement shall apply to investments of investors of one Contracting Party, prior to its entry into force, in accordance with the laws and regulations of the other Contracting Party in its territory. However, it shall not apply to disputes arising before the entry into force of this Agreement.

Article 25. Consultations

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

Article 26. Entry Into Force, Duration and Termination

(1) The Contracting Parties shall notify each other in writing on the compliance with their constitutional requirements 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 final notification, through the diplomatic channels used by both Contracting Parties to notify the fulfilment of the requirements referred to in paragraph (1).

(3) This Agreement shall remain in force for a period of ten (10) years, which shall be extended for equal periods of time, unless either of the Contracting Parties gives to the other Contracting Party written notice of its intention to terminate the Agreement, through diplomatic channels, with twelve (12) months in advance, after the initial period of ten (10) years has elapsed, or after this period, at any time.

(4) The termination of this Agreement shall not affect the investments made during its validity, and its provisions shall continue to be effective with respect to such investments for a period of ten (10) years after 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 in conformity with the procedures established in paragraph (2).

DONE at....., in....., in duplicate, in the Spanish, Icelandic and English languages, each text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the United Mexican States:

For the Government of the Republic of Iceland: