Agreement between the Government of the United Mexican States and the Government of the State of Kuwait on the Promotion and Reciprocal Protection of Investments

The Government of the United Mexican States and the Government of the State of Kuwait, hereinafter referred to as "the Contracting Parties";

DESIRiNG to intensify the economic cooperation for their mutual benefit;

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 of fostering the flow of productive capital and economic prosperity;

Have agreed as follows

Chapter ONE. GENERAL PROVISIONS

Article 1. Definitions

For the purposes of this Agreement, the term:

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

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

3. "ICSID Additional Fadlity Rules" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the ICSID;

4. "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of other States, adopted in Washington on March 18, 1965, as may be amended;

5. "investment" means the following assets owned or controlled directly or indirectly by investors of one Contracting Party and established or aequired in aeeordanee with the laws and regulations of the other Contraeting Party in whose territory the investment is made:

(a) an enterprise;

(b) shares, stocks and other forms of equity participation in an enterprise;

(c) a debt seeurity of an enterprise:

(1) where the enterprise is an affiliate of the investor, or

(2) where the original maturity of the debt security is at least three (3) 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:

(1) where the enterprise is an affllate of the investor, or

(2) where the original maturity of the loan is at least three (3) years,

but does not include a loan, regardless of original maturity, to a Contracting Party or to a State enterprise;

(e) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economie benefit or other business purposes;

(f) interests arising from the commitment of capital or other resources in the territory of a Contracting Party to economic activity in such territory, such as under:

(1) 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

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

(g) claims to money involving the kind of interests set out in subparagraphs (a) to (f) above, but no claims to money that arise solely from:

(1) commercial contraets 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

(2) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d) above;

(h) intellectual property rights.

6. "investor of a Contracting Party" means:

(a) the Government of that Contracting Party;

(b) a natural person having the nationality of a Contracting Party in accordance with its applicable laws, or

(c) 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 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 al the United Nations in New York on June 10, 1958, as may be amended;

8. "UNCITRAL Arbitration Rules" means the Arbitration Rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976;

9. "State enterprise" means an enterprise chat is owned, or controlled through ownership interests, by a Contracting Party, and

10. "territory" means:

(a) with respeel to the United Mexican States (also referred to as "Mexico"):

(1) the states of the Federation and the Federal District;

(2) the islands, including the reefs and keys in adjacent seas;

(3) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean;

(4) the continental shelf and the submarine shelf of such islands, keys and reefs;

(5) the waters of the territorial seas, in accordance with international law, and its interior maritime waters;

(6) the air space located aboye the national territory, in accordance with international law, and

(7) any areas beyond the territorial sea of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea, as may be amended, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources, and

(b) with respect to the State of Kuwait the territory means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated under the laws of the

State of Kuwait, as an area over which the State of Kuwait may exercise sovereign rights or jurisdiction.

11. "without delay" means the period of time after which all necessary transfer formalities are completed, and it shall commence on the day on which the request for transfer has been submitted and may on no account exceed two (2) months.

Article 2. Admission of Investment

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 TWO. PROTECTION OF INVESTMENT

Article 3. National Treatment and Most-Favored-Nation Treatment

1. Each Contracting Party shall accord to investors of the other Contraeting Party and their investments, treatment no less favorable than that it accords, in like circumstances, to its own investors and to investments of its own investors with respect to the management, maintenance, use, enjoyment or disposition of investments.

2. Each Contracting Party shall accord to investors of the other Contracting Party and investments to their 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 disposition of investments.

3. This article shall not be construed as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments, the benefit of any treatment, preference or privilege which may be granted by such Contracting Party by virtue of:

(a) any existing o 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;

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

Article 4. Minimum Standard of Treatment

1. Each Contracting Party shall accord to investments of investors of the other contracting party treatment in accordance with 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 treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of foreigners, and

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

Article 5. Compensation for Losses

Investors of a Contracting Party whose investments in the territory of the other Contracting Party suffer losses owíng to war, armed conflict, a state of national emergency, revolt, civil disturbances, insurrection, riot or any other similar event, shall be accorded, as regards the restitution, indemnification, compensation or other settlements, treatment no less favourable than the treatment the other Contractíng Party accords to its own investors or investors of any third State.

Article 6. Expropriation and Compensation

1. Neither Contracting Party mayexpropríate 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.

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 íntended expropriation had become publicly known earlier.

Valuation criteria shall include the going concern value, asset value, including declared tax value of tangible property, and other critería, as appropriate, to determine the fair market value;

(b) be paid without delay;

(c) include interest at a commereially reasonable rate for the curreney in which payment is made, from the date of expropriation until the date of actual payment, and

(d) be fully realizable and freely transferable.

Article 7. Transfers

1. Each Contraeting Party shall permit all transfers related to an investment of an investor of the other Contracting Party be made freely and without delay. Transfers shall be made in a freely usable eurreney at the market rate of exehange prevailing on the date of transfer. Such transfers shall include:

(a) profits, dividends, interests, capital gains, royalty payments, management fees, technical assistanee and other fees or 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;

(e) 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 losses or expropriation, and

(e) payments pursuant to Chapter Three, Section One.

2. Notwithstanding paragraph 1 above, a Contracting Party may prevent a transfer through the equitable, non-diseriminatory and good faith application of its laws in the following cases:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities;

(c) criminal or administrative violations;

(d) reports of transfers of currency or other monetary instruments, or

(e) ensuring the satisfaction of judgments in adjudicatory proceedings.

3. In case of a serious balance of payments difficulty or of a threat thereof, a Contracting Party may temporarily restrict transfers provided that such a Contracting Party implements measures or a program in accordance with the Articles of Agreement of the International Monetary Fund and that do not exceed those necessary to deal with the circumstances described in this paragraph. These restrictions should be imposed on an equitable, non-discriminatory and in a good faith basis, and be notified once applied to the other Contracting Party.

Article 8. Subrogation

1. If a Contracting Party or its designated agency has granted a financial guarantee against non-commercial risks with respect to an investment made 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, claim, privilege or actions. The Contracting Party or its designaled agency shall not assert greater rights than those of the person or entity from whom such rights were received.

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 Three.

Chapter THREE. DISPUTE SETTLEMENT

Section One. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

Article 9. 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 Two entailing loss or damage.

Article 10. Notice of Intent and Consultations

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

2. With a view to settling the claim amieably, the disputing investor shall deliver to the disputing Contracting Party written notice of its intention to submit a claim to arbitration at least six (6) months before the claim is submitted. Sueh notice shall specify:

(a) the name and address of the disputing investor and, where a claim is made by an investor on behalf of an enterprise according to Article 11, the name and address of the enterprise;

(b) the provisions of Chapter Two alleged to have been breaehed;

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

(d) the kind of investment involved pursuant to the definition set out in Article 1, and

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

3. The notice of intent referred to in paragraph 2 of this Article shall be delivered:

(a) In the case of the United Mexidan States, at the Office of the Legal Council for International Trade (Dirección General de Consultoría Jurídica de Comercio Internacional) of the Ministry of Economy or its successor, and

(b) In the case of the State of Kuwait, at the Ministry of Justice, or its successor.

4. The disputing investor shall submit the written notice of intent in Spanish, Arabic, or English language, as applicable. The corresponding translation, made by an expert, shall be included in case such notiee of intent Is submitted in any language other than the official language of the Contracting Party that receives the notice of intent.

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

(a) passport or any other official document of nationality, where the investor is a natural person, or the applicable 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 on behalf of an enterprise of the other Contracting Party that is a legal person that the investor owns or controls:

(1) the applicable document of incorporation or organization of the enterprise under the law of the disputing Contracting Party, and

(2) the document evidencing that the disputing investor owns or controls the enterprise.

If that is the case, power of attorney or the document whereby a person is duly authorized to act on behalf of the disputing investor shall also be submitted.

The documentation shall comply with the legal formalities applicable under the law of the Contracting Party that receives the notice of intent.

Article 11. 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 set forth in Chapter Two, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor of a Contracting Party, on behalf of an enterprise legally constituted pursuant to the laws of the other Contracting Party, that is a legal person such investor owns or controls directly or indirectly, may submit to arbitration a claim that the other Contracting Party has breached an obligation set forth in Chapter Two, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

3. A disputing investor may submit the clairn to arbitration under:

(a) the ICSID Convention, provided that both the disputing Contracting Party and the Contracting Party of the investor are parties to the ICSID Convention;

(b) the ICSID Additional Faeility 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

(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 accordanee with the procedures set forth in this Seetion, 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 proeedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach of Chapter Two, 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) consent to arbitration in accordance with the procedures set forth in this Section, and

(b) waive their right to initiate or continue before any administrative tribunal or court under the laws of a Contracting Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach under Chapter Two, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the laws of the disputing Contracting Party.

6. 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.

7. The applicable arbitration rules shail govern the arbitration except to the extent modified by this Section.

8. A dispute may be submitted to arbitration provided that the disputing investor has delivered to the disputing Contracting Party its notice of intent referred to in Article 10 no later than three (3) years from the date that either the investor or the enterprise of the other Contracting Party that is a legal person that the investor owns or controls, first acquired or should have first acquired knowledge of the events which gave rise to the dispute.

9. If the investor, or an enterprise that an investor owns or controls, submits the dispute referred to in paragraphs 1 or 2 above to the Contracting Party's competent judicial or administrative courts, the same dispute may not be submitted to arbitration as provided in this Section.

Article 12. Contracting Party Consent

1. Each Contracting Party gives its unconditionally consent to the submission of a dispute to international arbitration in accordance with this Section.

2. The consent under paragraph 1 above and the submission of a claim to arbitration by the disputing investor shall satisfy the requirements of:

(a) Chapter Two of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute, and

(b) Article 2 of the New York Convention for an "agreement in writing"

Article 13. Constitution of the Arbitral Tribunal

1. Unless the disputing parties otherwise agree, the arbitral tribunal shall be composed by three arbitrators. Each disputing party shall appoint one arbitrator and the disputing parties shall agree upon a third arbitrator, who shall be the chairman of the arbitral tribunal.

2. If an arbitral tribunal has not been established within ninety (90) days from the date on which the claim was submitted to arbitration, either because a disputing party failed to appoint an arbitrator or because the disputing parties failed to agree upon the chairman, the 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 14. Consolidation

1. The Secretary-General of ICSID may establish a consolidation tribunal under the UNCITRAL Arbitration Rules, which shall conduct its proceedings in accordance with such rules, except as modified by this Section.

2. In the interest of a fair and efficient resolution, and unless the interests of any disputing party are seriously harmed, a tribunal established under this Article may consolidate the proceedings when:

(a) two or more investors in relation with the same investment submit a claim to arbitration under this Section, or

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

3. Upon request of a disputing party, a tribunal established under Article 11, awaiting the determination of the consolidation tribunal in accordance with paragraph 4 below, may suspend the proceedings that it had initiated.

4. A tribunal established under this Article, after hearing the disputing parties, may determine:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims,or

(b) assume jurisdiction over, and hear and determine one or more of the claims, provided thal in doing so it would contribute to the settlement of the other c1aimsl

5. A tribunal established under Article 11 shall not have jurisdiction to decide a claim, or part of a claim, over which a tribunal established under this Article has assumed jurisdiclion.

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 Ihe disputing Contracting Party or the disputing investors to be included in the consolidation process;

(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 to any disputing investor to the proceedings sought to be consolidated.

8. Within sixty (60) days of receipt of the request, the Secretary-General of ICSID may establish a tribunal comprised 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 prevent the disputing investors and the disputing Contracting Party from appointing the members of the tribunal by a special agreement.

9. Where a disputing investor has submitted a claim to arbitration under Article 11 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 aboye, and shall specify in the request:

(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. A disputing investor referred to in paragraph 9 above shall deliver a copy of its request to the disputing parties named in a request under paragraph 6 above.

Article 15. Place of Arbitration

Upon request of any disputing party, an arbitration under this Section shall be held in a State that is party to the New York Convention. Only for the purposes of Article 1 of the New York Convention, claims submitled to arbitration under this Section shallbe considered to have arisen out of a commercial relationship or transaction.

Article 16. 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 contraet, indemnification or other compensation for all or part of its alleged damages.

Article 17. Applicable Law

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

2. An interpretation jointly forrnulated and agreed upon by the Contracting Parties with regard to any provision of this Agreement shall be binding on any tribunal established thereunder.

Article 18. Finality 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 thereof.

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

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

(b) an award of monetary damages and any applicable interest shall provide that the 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 may have, with respect to the remedy granted, under applicable domestic law.

3. Arbitral awards shall be final and binding solely between the disputing parties and with respect to the particular case.

4. The arbitral award shall be public, unless the disputing parties agree otherwise.

5. A tribunal may not award punitive damages.

6. A disputing investor may seek enforcement of an arbitral award under the ICSID Convention or the New York Convention if both Contracting Parties are parties to such treaties.

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:

(1) one hundred and twenty (120) days have elapsed from the date on which the award was rendered and no disputing party has requested revision or annulment of the award, or

(2) revision or annuiment 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 olher arbitration rules selected by the disputing parties:

(1) three (3) months have elapsed from the date on which the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(2) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

8. A Contracting Party may not initiate proceedings in accordance with Section Two by reason of an alleged breach under this Section, unless the olher Contracting Party fails to abide by or comply with a final award rendered in a dispute that such investor may have submitted pursuant to this Seclion.

Article 19. Interim Measures of Protection

1. An arbitral tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the arbitral tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the arbitral tribunal's jurisdiction.

2. An arbitral tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 11. For purposes of this paragraph, an order includes a recommendation.

Section Two. Settlement of Disputes between the Contracting Parties

Article 20. Scope

This Section applies to the settlement of disputes between the Contracting Parties arising from the interpretation or application of the provisions of this Agreement. The alleged breach of a Contracting Party's obligation under Chapter Two shall be settled as provided by Section One of this Chapter.

Article 21. Consultations and Negotiations

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

2. If a dispute arises between the Contracting Partíes 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 aboye within six (6) months from the date such negotiations or consultations were requested in writing, either Contracting Party may submit such dispute to an arbitral tribunal established in accordance with this Section or, by agreement of the Contracting Parties, to any other international tribunal.

Article 22. 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 pursuant to Article 21, the intention of the Contracting Party to initiate proceedings under this Section and the name of the arbitrator appointed by such requesting Contracting Party.

2. Within thirty (30) days after delivery of such notice, the respondent Contracting Party shall notify the requesting Contracting Party the name of its appointed arbitrator.

3. Within thirty (30) days following the date on 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 chairman of the arbitral tribunal upon approval of the Contracting Parties.

4. If within the time limits set forth in paragraphs 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 lhe 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 Conlracling Party, or he or she is otherwise unable to act, the Vice-President shall be invited lo make the said appointments. If the Vice-President is a citizen or a permanent resident of either Contracting Party, or he or she is otherwise unable to act, the Member of the International Court of Justice next in seniority who is not a citizen nor a permanent resident of eilher Contracting Party shall be invited to make the necessary appointments.

5. In case an arbitrator appointed under this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as 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 23. 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, determine its own procedure.

3. At any stage of the proceedings, 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 24. 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 25. Applicable Law

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

Article 26. Costs

Each Contracting Party shall bear the costs of its appointed arbitrator and of any legal representation in the proceedings. The costs of the chairman of the arbitral tribunal 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 FOUR. FINAL PROVISIONS

Article 27. Application of the Agreement

This Agreement shall apply to all investments made before or after its entry into force, but not to claims arising out of events which occurred, or to claims which had been settled, prior to that date.

Article 28. Consultations

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

Article 29. 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 30. Entry Into Force, Duration and Termination

1. The Contracting Parties shall notify each other in writing through diplomatic channels the fulfilment of 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 receipt of the latter two of the notifications referred to in paragraph 1 above.

3. This Agreement shall remain in force for a period of ten (10) years. Thereafter it shall continue in force until the expiration of twelve (12) months from the date on which either Contracting Party shall have given written notice of termination to the other Contracting Party.

4. This Agreement shall continue to be effective for a period of ten (10) years from the date of termination only with respect to investments made prior to such date.

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

Done in Mexico City, on this 22nd day of February 2013, corresponding to 12 Rabi Al-Akhir 1434 H, in to originals the Spanish, Arabic and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of the United Mexican States

Idelfonso Guajardo Villarreal

Minister of Economy

For the Government of the State of Kuwait

Sameeh Essa Johar Hayat

Ambassador of the State of Kuwait to the United Mexican States