

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF SWEDEN AND THE GOVERNMENT OF THE UNITED MEXICAN STATES CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Kingdom of Sweden and the Government of the United Mexican States,

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that the promotion and reciprocal protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

Have agreed as follows:

## **CHAPTER ONE: GENERAL PROVISIONS**

### **Article 1. Definitions**

For the purposes of this Agreement:

(1) "investment" shall mean any kind of asset owned or controlled, directly or indirectly, by an investor of one Contracting Party in the territory of the other Contracting Party, and shall include in particular, though not exclusively:

- (a) An enterprise, constituted or organised under the laws of the latter Contracting Party;
- (b) Shares and other kinds of interest in an enterprise;
- (c) Claims to money, to other assets or to any performance having an economic value except for:
  - (i) Claims to money that arise solely from commercial contracts for the sale of goods or services;
  - (ii) The extension of a credit in connection with a commercial transaction, such as trade financing;
  - (iii) Credits with a maturity of less than three years,

By a natural or legal person in the territory of a Contracting Party to a natural or legal person in the territory of the other Contracting Party. However, the exceptions concerning credits with a maturity of less than three years and the extension of a credit in connection with a commercial transaction, such as trade financing, shall not apply to credits granted by an investor of a Contracting Party to an enterprise constituted or organised under the laws of the other Contracting Party, that is its investments.

- (d) Intellectual property rights, technical processes, trade names, know-how and goodwill;
- (e) 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 Contracting Party, including leasing, turnkey or construction contracts, or concessions, or
  - (ii) Contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;
- (f) Any other movable and immovable property, acquired or used for economic benefit or other business purposes, as well as any other property rights, such as mortgages, liens, pledges, usufructs, leases and similar rights.

A change in the form in which assets are invested does not affect their character as investments, provided that the result of such a change is covered by the definition of investment. Returns of an investment shall be given the same treatment and protection as an investment.

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

(2) "investor" shall mean with regard of a Contracting Party:

(a) Any natural person who is a national of a Contracting Party in accordance with the laws of that Contracting Party; and

(b) Legal persons constituted under the laws of that Contracting Party, making an investment in the territory of the other Contracting Party.

(3) "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, include profit, interest, capital gains, dividends, royalties or fees.

(4) "territory" shall mean the land territory, the internal water and the territorial sea of each Contracting Party as well as the exclusive economic zone, the seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

## **Article 2. Promotion and Protection of Investments**

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

(2) Each Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of a natural person, examine in good faith and give sympathetic consideration to requests by investors of the other Contracting Party and key personnel who are employed by such investors including family members, to enter, leave and remain in its territory for the purpose of carrying out activities connected with the making or the management, use, enjoyment or disposal of an investment.

(3) Investment by investors of a Contracting Party shall at all times be accorded fair and equitable treatment in accordance with the relevant international standards under International Law. Neither Contracting Party shall impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments.

## **Article 3. National and Most Favoured Nation Treatment of Investments**

(1) Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of third States, whichever is the more favourable.

(2) Notwithstanding the provisions of paragraph (1) of this Article, a Contracting Party shall not be obliged to extend to investors of the other Contracting Party and their investments the benefits of any treatment, preference or privilege which are extended, on account of membership of or association with a customs union, a common market or a free trade area, to investors of a third state and their investments.

(3) 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 of an investor of the other Contracting Party, 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) On payment of compensation in accordance with paragraphs 2 and 3.

(2) Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known before the date of expropriation. 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.

(3) Compensation shall be paid without delay, be fully realisable and freely transferable. In the event that the payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position no less favourable than the position in which it would have been had the compensation been paid immediately on the date of expropriation, including interest at a commercially reasonable rate from the date of expropriation until the date of payment.

## **Article 5. Compensation for Losses**

Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall be transferable without delay in a freely convertible currency.

## **Article 6. Transfers**

(1) Each Contracting Party shall allow, without delay, the transfer in a freely convertible currency of payments in connection with an investment, such as:

- (a) The returns;
- (b) The proceeds from a total or partial sale or liquidation of an investment;
- (c) Payments made under contract including a loan agreement;
- (d) Compensation under Articles 4 and 5; and
- (e) Earnings and other remuneration of personnel engaged from abroad working in connection with an investment.

(2) Any transfer referred to in this Agreement shall be effected at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for conversion of currencies into Special Drawing Rights.

(3) Notwithstanding paragraph (1) above, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures:

- (a) To protect the rights of creditors;
- (b) Relating to or ensuring compliance with laws and regulations:
  - (i) On the issuing, trading and dealing in securities, futures and derivatives,
  - (ii) Concerning reports or records of transfers, or
- (c) In connection with criminal offences and orders or judgements in adjudicatory proceedings.

However, such measures and their application shall not be used as a means of avoiding the Contracting Party's commitments or obligations under this Agreement.

(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 the International Monetary Fund standards. These restrictions would be imposed on an equitable, non-discriminatory and good faith basis.

## **Article 7. Subrogation**

(1) If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee against non-

commercial risks it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the subrogation of the former Contracting Party or its designated agency to any such rights or title.

(2) Unless agreed otherwise in writing by the Contracting Parties, in case of a dispute, only the investor or a privately owned legal person to which the Contracting Party, its designated agency or the investor has assigned its rights may initiate, or participate in proceedings before a national tribunal or submit the case to international arbitration in accordance with the provisions of Chapter II, Section I.

## CHAPTER TWO: DISPUTE SETTLEMENT

### SECTION I

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

### **Article 8. Scope and Standing**

(1) This Section of the Agreement establishes rules under which an investor of one Contracting Party may submit a dispute with the other Contracting Party to international arbitration.

(2) An investor of a Contracting Party may submit to arbitration, either on its own behalf or on behalf of an enterprise constituted or organized under the laws of the other Contracting Party being an investment of such an investor, a claim arising out of an alleged breach of an obligation under this Agreement by the latter Contracting Party which causes loss or damage to the investor or its investment.

(3) An investor of one Contracting Party may not allege that the Contracting Party has breached an obligation under this Agreement both in arbitration and in proceedings before a national court or administrative tribunal of the latter Contracting Party. Where an enterprise constituted or organized under the laws of a Contracting Party being an investment of an investor of the other Contracting Party, alleges in proceedings before a national 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 this Agreement.

(4) An enterprise that is an investment may not make a claim under this Section.

(5) Only claims arising out of events which occurred after the entry into force of this Agreement may be submitted to arbitration.

(6) An investor may submit a claim to arbitration only if it, and when it acts on behalf of an enterprise constituted or organised under the laws of the other Contracting Party being an investment of such an investor, both the investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court 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 the 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.

(7) Where a disputing Contracting Party has deprived a disputing investor of control of an enterprise a waiver from the enterprise under paragraph 6 shall not be required.

### **Article 9. Means of Settlement, Time Periods and Notification**

(1) Disputes shall if possible be settled by consultations or negotiations.

(2) If the dispute can not be settled according to paragraph (1) and provided that six months have elapsed from the date on which the investor through written notice to the Contracting Party raised the dispute, and written notice of his intention to submit a claim to arbitration has been given at least 60 days in advance, but not later than 4 years from the date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute, the investor may choose to submit the dispute for resolution in accordance with this Article to:

i) The International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention on Settlement of Investment Disputes between States and nationals of other States ("the ICSID Convention"), if the Contracting Party of the Investor and the disputing Contracting Party are both parties to the ICSID Convention;

ii) The Centre under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, if the Contracting Party of the investor or the disputing Contracting Party, but not both, is party to the ICSID

Convention;

iii) An ad hoc arbitration tribunal established under the current Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

iv) The International Chamber of Commerce, by an ad hoc tribunal under its rules of arbitration.

(3) The notice referred to in paragraph 2, shall specify:

a) The name and address of the disputing investor and, where a claim is made by an investor of a 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.

(4) The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

## **Article 10. Place of Arbitration**

Any arbitration shall be held in a State that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on June 10, 1958 (the "New York Convention"). Claims submitted to arbitration shall be considered to arise out of a commercial relationship or transaction for the purpose of Article 1 of the New York Convention.

## **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 Section.

## **Article 12. Written Agreement of the Disputing Parties to International Arbitration**

The consent given by a Contracting Party in Article 11 together with either the written submission of the dispute to arbitration by the investor pursuant to Article 10 or the investor's advance written consent to such submission, shall constitute the written consent and the written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the ICSID Convention, the ICSID Additional Facility Rules, Article 1 of the UNCITRAL Arbitration Rules, the Rules of Arbitration of the ICC, and Article II of the New York Convention.

The consent includes the assumption of jurisdiction over the dispute by a tribunal constituted under Article 14 on consolidated proceedings for multiple claims.

## **Article 13. 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 have experience in international law and investment matters.

(3) If an arbitral tribunal has not been constituted within 90 days from the date the claim was submitted to arbitration, on request of any of the parties to the dispute, the member or members not yet appointed shall be nominated by an appointing authority. For arbitration under Article 9 paragraph i) to iii) the appointing authority shall be the Secretary-General of ICSID and for arbitration under Article 9 paragraph iv) the appointing authority shall be the International Court of Arbitration of the ICC. The chairman of the arbitral tribunal shall not be a national of either of the Contracting Parties.

## **Article 14. Consolidation of Multiple Claims**

(1) In the event an investor submits a claim on behalf of an enterprise being its investment, and simultaneously, another investor or other investors participating in the same enterprise but not controlling it, submit claims on their behalf as a consequence of the same breach of the Agreement; or, when two or more claims are submitted to arbitration in separate proceedings arising from common legal or factual issues, the Contracting Party, party to the dispute, may request that all or

part of the claims be submitted for consolidated consideration by a separate arbitral tribunal established under this Article.

(2) The Contracting Party, party to the dispute, shall deliver the request to each investor party to the proceedings sought to be consolidated.

(3) 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 Section. The members of the Arbitral Tribunal shall be appointed by the Secretary-General of ICSID.

(4) The arbitral tribunal shall assume jurisdiction over all or part of the disputes and the other arbitral proceedings shall be stayed or adjourned, as appropriate if, after considering the views of the parties, it decides that to do so would best serve the interest of fair and efficient resolution of the disputes and that the disputes fall within the scope of this Article.

(5) At the request of the Contracting Party, party to the dispute, the arbitral tribunal established under this Article may decide, on the same basis and with the same effect as under paragraph 4, whether to assume jurisdiction over all or part of a dispute falling within the scope of this Article which is submitted to arbitration after the initiation of consolidation proceedings.

## **Article 15. Indemnification**

A Contracting Party, party to the dispute, 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. Nonetheless, the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.

## **Article 16. Applicable Law**

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

## **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, which shall include interest from the time the loss or damage was incurred until the time of payment;
- c) Restitution in kind in appropriate cases, provided that the Contracting Party may pay compensation 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) Arbitration awards shall be final and binding only upon the parties to the dispute and only with respect to the particular case.

(3) The applicable arbitration rules apply to the publication of an award.

(4) An arbitral tribunal shall not order a Contracting Party to pay punitive damages.

(5) Each Contracting Party shall, carry out without delay any award made pursuant to this Article issued in proceedings to which it is a party and shall, in its territory, make provision for the effective enforcement of such awards.

## **Article 18. Exclusions**

The dispute settlement provisions of this Section shall not apply to the resolutions adopted by a Contracting Party which, in accordance with its legislation, and for national security reasons, prohibit or restrict the acquisition by investors of the other Contracting Party of an investment in the territory of the former Contracting Party, owned or controlled by its nationals.

### SECTION II

#### SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

## **Article 19. Disputes between the Contracting Parties**

- (1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Governments of the two Contracting Parties.
- (2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitral tribunal.
- (3) The arbitral tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party, has advised the other Contracting Party of its wish to submit the dispute to an arbitral tribunal.
- (4) If the time limits referred to in paragraph (3) of this Article have not been complied with, 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.
- (5) If the President of the International Court of Justice is prevented from discharging the function provided for in paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.
- (6) The arbitral tribunal shall decide disputes on the basis of the provisions of this Agreement and applicable rules and principles of international law.
- (7) The arbitral tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitral tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.
- (8) A Contracting Party, party to the dispute, shall not initiate proceedings under this Article for a dispute regarding the infringement of rights of an investor which that investor has submitted or has agreed to submit to proceedings under Chapter II, Section I, unless the Contracting Party, party to the dispute, has failed to abide by or comply with an award rendered by such a tribunal. 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 Party abide by or comply with the final award.

### CHAPTER THREE: FINAL PROVISIONS

## **Article 20. Application of the Agreement**

This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment arising out of events which occurred, or any claim concerning an investment which was settled, before its entry into force.

## **Article 21. Entry Into Force, Duration and Termination**

- (1) The Contracting Parties shall notify each other when the constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.
- (2) This Agreement shall remain in force for a period of ten years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 20 shall remain in force for a further period of ten years from that date.

In witness whereof the undersigned, duly authorised to this effect, have signed this Agreement.

Done at.....on.....in duplicate in the Swedish, the Spanish and the English languages, the three texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of Sweden

For the Government of the United Mexican States

On signing the Agreement concerning the promotion and reciprocal protection of investments between the Kingdom of Sweden and the Government of the United Mexican States, the undersigned plenipotentiaries have, in addition, agreed on the following provisions which shall be regarded as an integral part of the said Agreement.

Ad Article 1, paragraph 1

The exclusion of certain items from the definition of the term "investment" is without prejudice to other rights and obligations connected with such items.

Ad Article 1 paragraph (1)(a)

1. For the purpose of Article 4, all assets of an enterprise that is an investment shall be taken into account when the valuation of the enterprise is made for the purpose of establishing the compensation in case of an expropriation.

2. With regard to the ownership or control of an enterprise, "own or control" means that the enterprise is:

(i) "owned" by an investor of a Contracting Party, if more than 50 per cent of the equity interest in it is beneficially owned by such an investor; or

(ii) "controlled" by an investor of a Contracting Party, if such an investor has the majority of the voting rights in such an enterprise, attached to its shares.

In witness whereof the undersigned, duly authorised to this effect, have signed this Agreement.

Done at.....on.....in duplicate in the Swedish, the Spanish and the English languages, the three texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of Sweden

For the Government of the United Mexican States