

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

The Government of the United Mexican States and the Government of the Hellenic Republic, hereinafter referred to as the "Contracting Parties",

DESIRING to intensify their economic cooperation to the mutual benefit of both States on a long term basis,

HAVING as their objective to create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that the promotion and protection of investments, on the basis of this Agreement, will stimulate the initiative in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1 . "Investment" means every kind of asset acquired or used for economic purposes and invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and, in particular though not exclusively, includes:

- a) Movable and immovable property and any rights in rem such as servitudes, usufructus, mortgages, liens or pledges;
- b) Shares in and stock of a company and any other form of participation in a company;
- c) Claims to money, to other assets and to any performance having an economic value, except for:
 - i) Claims to money that arise solely from commercial contracts for the sale of goods and services,
 - ii) The extension of credit in connection with a commercial transaction, such as trade financing,
 - iii) Credits with a maturity of less than three years, by an investor in the territory of a Contracting Party to a natural or legal person in the territory of the other Contracting Party. However, the exception concerning credits with a maturity of less than three years, shall not apply to credits granted by an investor of a Contracting Party to a legal person of the other Contracting Party that is an affiliate of that investor;
- d) Intellectual property rights;
- e) Rights, derived from a concession, conferred by any legal means;
- f) Returns.

A possible change in the form in which the investments have been made does not affect their character as investments, provided that such a change is included in the definition of 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 . "Returns" means the amounts yielded by an investment and, in particular though not exclusively, includes profits, interest, capital gains, dividends, royalties and fees.

3. "Investor" means with regard to either Contracting Party:

- a) Natural persons having the nationality of that Contracting Party in accordance with its law;
- b) Legal persons or other entities, including companies, corporations, business associations and partnerships, which are constituted or otherwise duly organised under the laws of that Contracting Party and having their principal place of business in its territory.

4. "Territory" means in respect of either Contracting Party, the territory under its sovereignty including the territorial sea, as well as maritime areas over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

Article 2. Scope of Application

This Agreement shall apply to investments in the territory of one Contracting Party, made in accordance with its laws and regulations, by investors of the other Contracting Party, prior to as well as after its entry into force. However, this Agreement shall not apply to disputes that arose before its entry into force.

Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.
2. Investments of investors of a Contracting Party shall, at all times, be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, use, enjoyment or disposal, in its territory, of investments by investors of the other Contracting Party, is not in any way impaired by arbitrary or discriminatory measures.

Article 4. Treatment of Investments

1. Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party, treatment not less favourable than that which it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable.
2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments in its territory, treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.
3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from its participation in any existing or future free trade area, customs union, economic union, regional economic integration agreement or similar international agreement.
4. The provisions of paragraphs 1 and 2 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 5. Expropriation

1. Neither Contracting Party shall expropriate or nationalise an investment made in its territory by an investor of the other Contracting Party, either directly or indirectly, through measures tantamount to expropriation or nationalisation (hereinafter referred to as "expropriation"), except: for a purpose which is in the public interest, in accordance with due process of law, on a non discriminatory basis and against compensation in accordance with paragraph 2, below.
2. Compensation shall:
 - a) Be paid without delay;
 - b) Be equivalent to the market value of the expropriated investment immediately before the expropriation occurred; the market value shall not reflect any change in value occurring because the 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 criteria, as appropriate, to determine the market value;

- c) Include interest from the date of expropriation until the date of actual payment, at a normal commercial rate;
- d) Be fully realisable and freely transferable.

Article 6. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, civil disturbance or other similar events in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable.

Article 7. Transfers

1 . Each Contracting Party shall guarantee the right that payments relating to an investment may be transferred. The transfers shall be effected without delay, in a freely convertible currency, at the market rate of exchange applicable on the date of transfer.

2 . Such transfers shall include, in particular though not exclusively:

- a) Capital and additional amounts to maintain or increase the investment;
- b) Returns;
- c) Funds in repayment of loans;
- d) Proceeds of sale or liquidation of the whole or any part of the investment;
- e) Compensation under Articles 5 and 6;
- f) Payments arising out of the settlement of a dispute.

3 . Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and in 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 administrative and adjudicatory proceedings,

Provided that 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 a 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's standards. These restrictions would be imposed on an equitable, non-discriminatory and in good faith basis.

Article 8. Subrogation

If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance against non-commercial risks, given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or claim to the same extent as its predecessor in title.

However, in case of a dispute, only the investor or a designated agency which is a legal entity of private law 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, Part 1.

Article 9. Scope and Standing

1 . This Part applies to disputes between a Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or its investment. A legal person that is an investment of an investor of the other Contracting Party may not submit a claim to arbitration under this Part.

2 . If an investor submits a claim to arbitration under this Part, neither he nor his investment that is a legal person may initiate or continue proceedings before a national tribunal, 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. If an investor or his investment that is a legal person initiates proceedings before a national tribunal, the investor may not submit a claim to arbitration under this Part.

Article 10. Means of Settlement, Time Periods

1 . Such a dispute should, if possible, be settled through consultations. If it is not so settled, the investor may choose to submit it for resolution:

a) To any competent courts or administrative tribunals of the Contracting Party, party to the dispute;

b) In accordance with any applicable previously agreed dispute settlement procedure, or

c) By arbitration in accordance with this Article under:

i) The Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington on 18 March 1965 (the "ICSID Convention"), if the Contracting Party of the investor and the Contracting Party, party to the dispute are both parties to the ICSID Convention;

ii) The Additional Facility Rules of the Centre for Settlement of Investment Disputes ("ICSID Additional Facility"), if the Contracting Party of the investor or the Contracting Party, party to the dispute, but not both, is a party to the ICSID Convention; or

iii) The Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL").

2 . The applicable arbitration rules shall govern the arbitration except to the extent modified by this Part.

3 . A dispute may be submitted for resolution pursuant to paragraph 1. c), provided that six months have elapsed since the events giving rise to the claim occurred and 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 before the actual claim to arbitration is submitted.

4 . The notice referred to in paragraph 3, 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 a legal person, the name and address of the legal person;

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, one member to be appointed by each of the parties to the dispute and a third, who shall be the chairman of the arbitral tribunal, to be appointed by agreement of the parties to the dispute.

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, 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 invited to appoint, in his discretion, the member or members not yet appointed. Nevertheless, the Secretary General of ICSID, when 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.

2 . Proceedings will be consolidated in the following cases:

a) When an investor submits a claim to arbitration on behalf of a legal person that is his investment and, simultaneously, another investor or other investors participating in the same legal person, submit claims on their own behalf as a consequence of the same breaches of 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 an investor asserts that his interests 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 to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958 (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 purpose of Article 1 of the New York Convention.

Article 15. Indemnification

A Contracting Party shall not assert as a defense, 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 generally acknowledged rules and principles of international law.

2 . An interpretation jointly formulated and agreed upon 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

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 final award will only be published if there is written agreement by both parties to the dispute.

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

5 . 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.

6 . 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.

7 . 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.

Article 18. Dispute Settlement

1 . Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by means of negotiation, through diplomatic channels.

2 . If the dispute cannot thus be settled within six months from the beginning of the negotiations, it shall, upon request of either Contracting Party be submitted to an arbitration tribunal.

3 . A Contracting Party shall not initiate proceedings under this Part for a dispute concerning the infringement of rights of an investor which that investor has submitted to proceedings under Part 1 of this Chapter, unless the other Contracting Party has failed to abide by or comply with the award rendered in these proceedings. 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.

4 . The arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as chairman. The arbitrators shall be appointed within three months and the chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

5 . If within the periods specified in paragraph 4 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the Court is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President or if he too is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the Court next in seniority, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

6 . The arbitration tribunal shall decide on the basis of respect of the law, including particularly this Agreement, as well as the generally acknowledged rules and principles of international law.

7 . Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties.

8 . Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the chairman as well as the other costs will be borne in equal parts by the Contracting Parties. The tribunal may, however, in its

decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties and this award shall be binding on both Contracting Parties.

Article 19. Application of other Rules

- 1 . If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement, contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall, to the extent that it is more favourable, prevail over this Agreement.
- 2 . Each Contracting Party shall observe any other obligation it may have entered into in writing with regard to a specific investment of an investor of the other Contracting Party. The disputes arising from such obligations shall be settled only under the terms and conditions of the respective contract.

Article 20. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time to be agreed upon through diplomatic channels.

Article 21. Entry Into Force, Duration, Termination

- 1 . This Agreement shall enter into force thirty days after the date on which the Contracting Parties have exchanged written notifications informing each other that the procedures required by their respective laws to this end have been completed. It shall remain in force for a period of ten years from that date.
- 2 . Unless notice of termination has been given by either Contracting Party at least one year before the date of expiry of its validity, this Agreement shall thereafter be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least one year before the date of expiry of its current period of validity.
- 3 . In respect of investments made prior to the date of termination of this Agreement, the foregoing Articles shall continue to be effective for a further period of ten years from that date.

Done in duplicate at Mexico City on November 30th, two thousand, in the Spanish, Greek and English languages, all texts being equally authentic. In case of divergence the English text shall prevail.

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES

Herminio Blanco Mendoza

Secretary of Trade and Industrial Development

FOR THE GOVERNMENT OF THE HELLENIC REPUBLIC

Dionisios Kodellas

Ambassador

On the signing of the Agreement between the Government of the Hellenic Republic and the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments, the undersigned representatives have, in addition, agreed on the following provisions, which shall constitute an integral part of the Agreement:

Ad Article 10, paragraph 3

A dispute between an investor and the United Mexican States may not be submitted for resolution pursuant to paragraph 1 (c), if more than 3 years have elapsed from the date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute.

Done in duplicate at Mexico City on November 30th, two thousand, in the Spanish, Greek and English languages, all texts being equally authentic. In case of divergence the English text shall prevail.

FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES

Herminio Blanco Mendoza

Secretary of Trade and Industrial Development

FOR THE GOVERNMENT OF THE HELLENIC REPUBLIC

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