

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE UNITED MEXICAN STATES

AND

THE GOVERNMENT OF THE KINGDOM OF DENMARK

CONCERNING THE PROMOTION AND

RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Government of the United Mexican States and the Government of the Kingdom of Denmark, hereinafter referred to as the Contracting Parties,

DESIRING to create favourable conditions for investments in both States and to intensify the co-operation between private enterprises in both States with a view to stimulating the productive use of resources,

RECOGNIZING that a fair and equitable treatment of investments on a reciprocal basis will serve this aim,

HAVE AGREED as follows:

CHAPTER ONE: GENERAL PROVISIONS

Article 1

Definitions

For the purpose of this Agreement,

(1) The term "investment" means every kind of asset invested in accordance with the laws and regulations of the Contracting Party in which territory the investment is made, and it shall only cover those investments which are created for the purpose of establishing lasting economic relations with an undertaking such as investments which give the possibility of exercising an effective influence on the management thereof. Investments shall include in particular, but not exclusively:

- a) tangible and intangible, movable and immovable property, acquired or used for economic purposes, as well as any other rights such as leases, mortgages, liens, pledges, guarantees and any other similar rights,
- b) a company or business enterprise, or shares, stock or other forms of participation in a company or business enterprise,
- c) returns reinvested,
- d) 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 or 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 an investor 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 company of the other Contracting Party that is owned or controlled by the former investor.

- e) industrial and intellectual property rights, including copyrights, patents, trade names, technology, trademarks, goodwill, know-how and any other similar rights,
- f) concessions or other rights conferred by law or under contract.

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) A change in the form in which assets are invested, does not affect their character as investments provided that such a change is included in the aforesaid definition.
- (3) "Returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gains, dividends, royalties or fees.
- (4) Returns, and in case of reinvestment amounts yielded from the investment, shall be given the same protection as the investment in accordance with the provisions of this Agreement.
- (5) "Investor" means with regard to each Contracting Party:
 - a) Natural persons having status as nationals of either Contracting Party according to its law.
 - b) Any entity constituted or organised in accordance with, and recognized as a legal person by the law of that Contracting Party and which has its seat in the territory of that Contracting Party, such as corporations, firms, associations, development finance institutions, foundations or similar entities, whether or not their activities are directed at profit.
- (6) The term "territory" means the territory of each Contracting Party and includes maritime areas adjacent to the territorial waters of the State concerned, i.e. 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

Promotion and Protection of Investments

- (1) Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its law and encourage such investments, including representative offices.
- (2) Investments of investors of each Contracting Party shall at all times enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by arbitrary or discriminatory

measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

- (3) Each Contracting Party shall observe any other obligation in writing it has assumed with regard to investments in its territory by investors of the other Contracting Party. Disputes arising from such obligations shall be settled in accordance with the terms of the contract.

Article 3

Treatment of Investments

- (1) Each Contracting Party shall accord to investors of another Contracting Party and to their investments, fair and equitable treatment.
- (2) Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party treatment not less favourable than that accorded to investments by its own investors or by investors of any third State, whichever is the more favourable.
- (3) Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment not less favourable than that accorded to its own investors or to investors of any third State, whichever is the more favourable.

Article 4

Exceptions

The provisions of this Agreement relative to the granting of treatment not less favourable than that accorded to the investors of each Contracting Party or of any third State 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:

- a) membership of any existing or future Regional Economic Integration Organisation, Free Trade Area or Customs Union of which one of the Contracting Parties is or may become a party, or
- b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5

Expropriation and Compensation

- (1) Investments of investors of each Contracting Party shall not be nationalized, expropriated or subjected to measures tantamount to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for expropriations made in the public interest, on a basis of non-discrimination, carried out under due process of law, and accompanied by payment of compensation in accordance with paragraphs 2 and 3 below.
- (2) Compensation shall:
 - a) be paid without delay. In the event that the payment of compensation is delayed, such compensation shall be paid in an amount calculated in a freely convertible currency.
 - b) 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 occurring because the expropriation had become known in such a way as to affect the value of the investment.

Valuation criteria shall include, inter alia, going concern value, the capital invested, replacement value, appreciation, current returns and goodwill. Any other appropriate valuation criteria may be considered to determine the fair market value.
 - c) include interest at a commercial rate established on a market basis for the currency of payment from the date of expropriation until the date of actual payment.
 - d) be fully realisable and freely transferable.
- (3) Due process of law includes the right of an investor of a Contracting Party which claims to be affected by expropriation by the other Contracting Party to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and independent authority of the latter Contracting Party.

Article 6

Transfer of Capital and Returns

- (1) Each Contracting Party shall, with respect to investments in its territory by investors of the other Contracting Party, allow the free transfer into and out of its territory of:
 - a) the initial capital and any additional capital for the maintenance and development of an investment;
 - b) the invested capital or the proceeds from the sale or liquidation of all or any part of an investment;
 - c) interests, dividends, profits and other returns realized;
 - d) payments made for the reimbursement of the credits for investments, and interests due;
 - e) royalties or fees;
 - f) unspent earnings and other remunerations of personnel engaged from abroad working in connection with an investment;
 - g) compensation, restitution, indemnification or other settlement pursuant to Article 5.
- (2) Transfers of payments under section 1 of this Article shall be effected without delay and in a freely convertible currency.
- (3) Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred.
- (4) Notwithstanding paragraphs 1 to 3 of this Article, a Contracting Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of measures:
 - a) in case of bankruptcy, insolvency or other legal actions taken 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.
- (5) In case of serious balance of payments difficulties or the threat thereof, each Contracting Party may temporarily, but only for a period not exceeding twelve months, restrict transfers of proceeds from the sale or liquidation of all or any part of an investment. These restrictions would be imposed on an equitable, non-discriminatory and in good faith basis.

Article 7

Subrogation

- (1) If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance against a non-commercial risk given in respect of an investment by an investor of one Contracting Party in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment of any right 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 to the same extent as the investor.
- (2) However, in case of a dispute, only the investor or a privately owned legal person to which the Contracting Party or its designated agency 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 Article 8 of this Agreement.

CHAPTER TWO: SETTLEMENT OF DISPUTES

PART ONE: SETTLEMENT OF DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

Article 8

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 of one Contracting Party owned or controlled by a national of the other Contracting Party (hereinafter “foreign owned enterprise”), may not submit a claim to arbitration under this part.
- (2) If an investor of a Contracting Party or a foreign owned enterprise initiates proceedings before a national tribunal, the dispute may only be submitted to arbitration under this part if the competent national tribunal has not rendered judgement in the first instance on the merits of the case. The foregoing does not apply to administrative proceedings before the administrative authorities executing the measure that is alleged to be a breach.
- (3) In case an investor of a Contracting Party submits a claim to arbitration, neither the investor nor the foreign owned enterprise 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 Party.

Article 9

Means of Settlement, Time Periods

- (1) A dispute should, if possible, be settled by negotiation or consultation. If it is not so settled, the investor may choose to submit it for resolution either:
 - a) to the competent courts or administrative tribunals of the Contracting Party to the dispute, or
 - b) in accordance with any applicable previously agreed dispute settlement procedure, or

- c) in accordance with this Article to either:
- i) the International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention of the Settlement of Investment Disputes between States and nationals of other States ("the ICSID Convention"), if both Contracting Parties are parties to the ICSID Convention, or
 - ii) the Centre under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, if only one Contracting Party is a party to the ICSID Convention, or
 - iii) an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL").
- (2) The applicable arbitration rules in paragraph 1, c) of this Article 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) of this Article, 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, written notice of his intention to submit a claim to arbitration at least sixty days in advance, but not later than four years from the date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute.

Article 10

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 11
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 these two members shall agree upon a third member as their chairman.
- (2) 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 the elected members 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, at 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 12

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 on behalf of a foreign owned enterprise that he owns or controls and, simultaneously, another investor or other investors participating in the same investment, but not controlling it, 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 it determines that the interests of any party to the dispute are harmed.

Article 13

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 (the New York Convention). Claims submitted to arbitration under this Part shall be considered to arise out of a commercial relationship or transaction for purpose of Article 1 of the New York Convention.

Article 14

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 by the investor pursuant to an indemnity, guarantee or insurance contract.

Article 15

Applicable Law

A tribunal established under this Part shall decide the dispute in accordance with this Agreement and applicable rules and principles of International Law.

Article 16

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 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.

PART TWO: SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

Article 17

Disputes between the Contracting Parties

- (1) If any dispute arises between the Contracting Parties concerning the interpretation and application of this Agreement, the Contracting Parties shall, as far as possible, try to settle any such dispute through negotiations.
- (2) If such a dispute cannot be settled within six months from the beginning of the dispute, it shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal.
- (3) Such an arbitral tribunal shall be constituted for each individual case in the following way:
 - a) Within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State, who on approval by the Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.
 - b) If within any of the periods specified 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 any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, is also prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
 - c) The arbitral tribunal shall apply the provisions of this Agreement, and the principles of International Law. It shall reach its decision by a majority of votes. The arbitral tribunal determines its own procedure.
 - d) The decisions of the tribunal are final and binding upon the Contracting Parties to the dispute.

- e) Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.
- f) 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:
 - i) declare 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;
 - ii) request that the other Contracting Party abide by or comply with the final award.

CHAPTER THREE: FINAL PROVISIONS

Article 18

Consultations

Each Contracting Party may propose to the other Party to consult on any matter affecting the application of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 19

Applicability of this Agreement

The provisions of this Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party prior to or after the entry into force of the Agreement. It shall, however, not be applicable to divergencies or disputes which have arisen prior to its entry into force.

Article 20

Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter in force when the Contracting Parties have notified each other that the constitutional requirement for the entry into force have been fulfilled.

Article 21

Territorial Extension

This Agreement shall not apply to the Faroe Islands and Greenland.

The provisions of this Agreement may be extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 22

Entry into Force

The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty days after the date of that last notification.

Article 23

Duration and Termination

- (1) This Agreement shall remain in force for a period of ten years. It shall remain in force thereafter until either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after the date of notification.
- (2) 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 12 shall remain in force for a further period of ten years from that date.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Mexico City on April 13, 2000 in the Spanish, Danish and English languages, all texts being equally authentic.

In the case of divergence of interpretation, the English text shall prevail.

For the Government of
the United Mexican States

For the Government of
the Kingdom of Denmark