# AGREEMENT

# BETWEEN

# THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

# AND

# THE GOVERNMENT OF THE UNITED MEXICAN STATES

# FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("the HKSAR"), having been duly authorised to conclude this Agreement by the Central People's Government of the People's Republic of China, and the Government of the United Mexican States ("Mexico"), 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 a Contracting Party in the area of the other Contracting Party;

**Recognising** the need to promote and protect foreign investments with the aim of fostering the flow of capital, stimulating individual business initiative and increasing economic prosperity in both areas;

**Have agreed as follows:**

# CHAPTER I: GENERAL PROVISIONS

## ARTICLE 1

## Definitions

For the purposes of this Agreement, the term:

**"area"**:

(a) in respect of the HKSAR includes Hong Kong Island, Kowloon and the New Territories; and

(b) in respect of Mexico includes:

(i) the States of the Federation and Mexico City;

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

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

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

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

(vi) the space located above the national territory, in accordance with international law; and

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the *United Nations Convention on the Law of the Sea* done at Montego Bay on 10 December 1982, and its domestic law, Mexico may exercise sovereign rights or jurisdiction;

**"enterprise"** means any entity constituted or organised under applicable laws and regulations, whether or not for profit, and whether privately or

governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association; and a branch of any such entity;

**"forces"** means:

(a) in respect of the HKSAR, the armed forces of the People's Republic of China; and

(b) in respect of Mexico, the armed forces integrated by the National Army, the National Navy and the National Air Force;

**"freely usable currency"** means freely usable currency as defined under the *Articles of Agreement of the International Monetary Fund*;

**"Government enterprise"** means an enterprise that is owned, or controlled through ownership interests, by a Contracting Party;

**"intellectual property rights"** means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, rights in patents, rights in layout-designs (topographies) of integrated circuits, rights in plant varieties, and rights in undisclosed information, as defined and described in the TRIPS Agreement;

**"investment"** means the following assets owned or controlled by investors of a Contracting Party and established or acquired in accordance with the laws and regulations of the other Contracting Party in whose area the investment is made:

(a) an enterprise;

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

(c) a debt security of an enterprise

(i) where the enterprise is a subsidiary or affiliate of the investor, or

(ii) where the original maturity of the debt security is at least three years;

(d) a loan to an enterprise

(i) where the enterprise is a subsidiary or affiliate of the investor, or

(ii) where the original maturity of the loan is at least three years;

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

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

(i) contracts involving the presence of an investor's property in the area of the other Contracting Party, including turnkey or construction contracts, or concessions, or

(ii) 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 (a) to (f) above, but no claims to money that arise solely from

(i) commercial contracts for the sale of goods or services by a natural person or enterprise in the area of a Contracting Party to an enterprise in the area of the other Contracting Party, or

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

but investment does not include:

(a) a debt security, regardless of original maturity, of a Contracting Party (including its Central Bank or monetary authority) or of a Government enterprise; or

(b) a loan, regardless of original maturity, to a Contracting Party (including its Central Bank or monetary authority) or to a Government enterprise;

**"investor"** means:

(a) in respect of the HKSAR:

(i) a natural person of the HKSAR; or

(ii) an enterprise constituted or organised under the laws and regulations of the HKSAR and engaged in substantive business operations in the area of the HKSAR;

having made an investment in the area of Mexico; and

(b) in respect of Mexico:

(i) a natural person of Mexico; or

(ii) an enterprise constituted or organised under the laws and regulations of Mexico and engaged in substantive business operations in the area of Mexico;

having made an investment in the area of the HKSAR;

**"measure"** includes a law, regulation, procedure, requirement or practice;

**"natural person"** means:

(a) in respect of the HKSAR, a permanent resident of the HKSAR; and

(b) in respect of Mexico, a national of Mexico;

"**New York Convention**" means the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, adopted at the United Nations in New York on 10 June 1958;

**"Secretary-General"** means the Secretary-General of the Permanent Court of Arbitration established by the *Conventions for the Pacific Settlement of International Disputes*, done at The Hague on 29 July 1899 and 18 October 1907;

**"TRIPS Agreement"** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement, as revised or amended from time to time by a revision or amendment that applies to the Contracting Parties and including any waiver of any provision thereof granted by Members of the World Trade Organization;

**"UNCITRAL Arbitration Rules"** means the arbitration rules of the United Nations Commission on International Trade Law as revised in 2010; and

**"WTO Agreement"** means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994.

## ARTICLE 2

## Promotion of Investments

Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its area.

## ARTICLE 3

## Admission of Investments

Each Contracting Party shall admit investments made by investors of the other Contracting Party subject to its applicable laws and regulations.

## CHAPTER II: TREATMENT AND PROTECTION OF INVESTMENTS

### ARTICLE 4

### Non-discriminatory Treatment

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

3. This Article shall not be construed so as to oblige a Contracting Party to extend to the investors of the other Contracting Party and their investments the benefits of any treatment, preference or privilege which may be granted by the former Contracting Party by virtue of:

(a) any bilateral or multilateral agreement or arrangement establishing, strengthening, expanding or varying a free trade area, a customs union, a common market, an economic organisation or a similar institution;

(b) any other agreement or arrangement for promotion and protection of investments; or

(c) any bilateral or multilateral agreement or arrangement relating wholly or mainly to taxation, or any domestic legislation relating wholly or mainly to taxation. In the event of any inconsistency between this Agreement and any tax-related bilateral or multilateral agreement or arrangement between the Contracting Parties, such agreement or arrangement shall prevail to the extent of such inconsistency.

4. For greater certainty, in respect of intellectual property rights, a Contracting Party may derogate from this Article in a manner that is consistent with the TRIPS Agreement.

5. For greater certainty, the obligation in this Article does not encompass a requirement to extend to investors of the other Contracting Party dispute resolution procedures other than those set out in Chapter III.

## ARTICLE 5

## Minimum Standard of Treatment

1. Each Contracting Party shall accord to investments treatment in accordance with applicable customary international law principles, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens[1] (as evidenced by general and consistent State practice and *opinio juris*) as the standard of treatment to be afforded to investments. 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 that standard, and do not create additional substantive rights. The obligations in paragraph 1 to provide:

(a) "fair and equitable treatment" include the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process; and

(b) "full protection and security" require each Contracting Party to provide the level of police protection required under customary international law.

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

[1] The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights of aliens.

4. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed, or maintained, or has been modified or reduced, by a Contracting Party, even if there is loss or damage to the investment as a result, does not constitute a breach of this Article.

## ARTICLE 6

## Compensation for Losses

1. Investors of a Contracting Party whose investments in the area of the other Contracting Party suffer losses owing to war, armed conflict, revolution, a state of national emergency, 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 Contracting Party accords to its own investors or investors of any non-Contracting Party.

2. Without prejudice to paragraph 1, investors of a Contracting Party who in any of the situations referred to in that paragraph suffer losses in the area of the other Contracting Party resulting from:

(a) requisitioning of their property by the latter Contracting Party's forces or authorities; or

(b) destruction of their property by the latter Contracting Party's forces or authorities which was not caused in combat action or was not required by the necessity of the situation

shall be accorded restitution or compensation. Resulting payments shall be made in a freely usable currency.

## ARTICLE 7

## Expropriation and Compensation

1. Neither Contracting Party may expropriate an investment either directly or indirectly through measures tantamount to 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.

2. Compensation shall:

(a) be equivalent to

(i) the fair market value (if the expropriating Contracting Party is Mexico); or

(ii) the real value (if the expropriating Contracting Party is the HKSAR)

of the expropriated investment immediately before the expropriation occurred or before the impending expropriation became public knowledge whichever is the earlier. The compensation shall not reflect any change in value occurring because the intended 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 compensation;

(b) be paid in a freely usable currency without delay;

(c) include interest at a commercially reasonable rate for that currency, from the date of expropriation until the date of actual payment; and

(d) be fully realisable and freely transferable.

3. The investor affected shall have a right, under the laws and regulations of the expropriating Contracting Party, to prompt review by a judicial or other independent authority of that Contracting Party, of the investor's case and of the valuation of the investment in accordance with the principles set out in paragraphs 1 and 2.

4. For greater certainty, this Article does not apply to the issuance of a compulsory licence granted in relation to intellectual property rights, or to the revocation, limitation or creation of an intellectual property right, to the extent that the issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

## ARTICLE 8

## Transfers

1. Each Contracting Party shall permit all transfers related to an investment[2] to be made freely and without delay. Monetary transfers shall be made in a freely usable currency unless otherwise agreed by the investor, at the market rate of exchange prevailing on the date of transfer. Such transfers shall include:

(a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees and amounts derived from the investment;

(b) proceeds from the sale of all or any part of the investment, or from the partial or complete liquidation of the investment;

(c) payments made under a contract entered into by the investor or its investment, including payments made pursuant to a loan agreement;

(d) payments arising from the compensation for losses or expropriation; and

(e) payments pursuant to Section One of Chapter III.

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

[2] For greater certainty, transfers related to an investment cover transfers of initial and subsequent capital contributions as well as transfers of items within the scope of the definition of "investment".

(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;

(e) ensuring the satisfaction of judgments in adjudicatory proceedings; or

(f) imposing income taxes by such means as a withholding tax.

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 programme 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 9

## Subrogation

If a Contracting Party, or any agency, institution, statutory body or corporation designated by the Contracting Party, makes a payment to an investor of the Contracting Party under a guarantee, a contract of insurance or other form of indemnity that it has entered into with respect to an investment, the other Contracting Party in whose area the investment was made shall recognise the subrogation or transfer of any rights the investor would have possessed under this Agreement with respect to the investment but for the subrogation, and the investor shall be precluded from pursuing these rights to the extent of the subrogation.

## ARTICLE 10

## Denial of Benefits

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of that other Contracting Party and to investments of that investor if the enterprise:

(a) is owned or controlled by a person of a non-Contracting Party or of the denying Contracting Party; and

(b) has no substantive business operations in the area of the other Contracting Party.

## ARTICLE 11

## Transparency[3]

1. Each Contracting Party shall promptly publish, make publicly available or provide upon the request of the other Contracting Party, its laws, regulations, procedures and administrative rulings and judicial decisions of general application as well as bilateral and multilateral agreements, which may affect the investments of investors of a Contracting Party in the area of the other Contracting Party.

2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws or regulations protecting confidentiality or prejudice legitimate commercial interests of particular investors.

## ARTICLE 12

## Investment and Environmental, Health or other Regulatory Objectives[4]

[3] Article 11 (Transparency) shall not be subject to Section One of Chapter III.

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining, or enforcing any measure consistent with this Agreement that it considers appropriate to ensure that investment activity in its area is undertaken in a manner sensitive to environmental, health or other regulatory objectives.

2. The Contracting Parties recognise that it is inappropriate to encourage investment by relaxing their measures related to environmental, health or other regulatory objectives. Accordingly, a Contracting Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, those measures to encourage the establishment, acquisition, expansion or retention in its area of an investment of an investor of the other Contracting Party.

## ARTICLE 13

## Corporate Social Responsibility[5]

Each Contracting Party may encourage enterprises operating within its area or subject to its jurisdiction to voluntarily incorporate into their internal policies internationally recognised standards, guidelines and principles of corporate social responsibility that are supported by that Contracting Party.

[4] Article 12 (Investment and Environmental, Health or other Regulatory Objectives) shall not be subject to Section One of Chapter III.

[5] Article 13 (Corporate Social Responsibility) shall not be subject to Section One of Chapter III.

# CHAPTER III: DISPUTE SETTLEMENT

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

### ARTICLE 14

### Purpose

This Section shall apply to settle disputes between a Contracting Party and an investor of the other Contracting Party arising from an alleged breach of an obligation under Chapter II entailing loss or damage.

### ARTICLE 15

### Notice of Intent and Consultations

1. The disputing parties should first attempt to settle a claim through consultations.

2. With a view to settling the claim amicably, the disputing investor shall deliver to the disputing Contracting Party a written notice of its intention to submit a claim to arbitration at least six months before the claim is submitted. Such notice of intent 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 16 (Submission of a Claim), the name and address of the enterprise;

(b) the provisions of Chapter II alleged to have been breached;

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

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

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

## ARTICLE 16

## 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 under Chapter II, 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 constituted or organised under the laws and regulations of the other Contracting Party, that is a legal person such investor owns or controls, may submit to arbitration a claim that the other Contracting Party has breached an obligation under Chapter II, 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 claim to arbitration under:

(a) the UNCITRAL Arbitration Rules; or

(b) any other arbitration rules, if the disputing parties so agree.

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

5. A claim is submitted to arbitration under this Section when:

(a) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Contracting Party; or

(b) the notice of arbitration given under any other arbitration rules agreed by the disputing parties under paragraph 3(b) is received by the disputing Contracting Party.

## ARTICLE 17

### Consent of Each Contracting Party to Arbitration

1. Each Contracting Party hereby gives its consent to the submission of a claim to arbitration under this Section.

2. The consent and the submission of a claim to arbitration by the disputing investor shall satisfy the requirements of Article II of the New York Convention for an "agreement in writing".

## ARTICLE 18

### Conditions and Limitations on Consent of Each Contracting Party to Arbitration

1. No claim may be submitted to arbitration under this Section if more than three years or less than six months have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the breach alleged under Article 16 (Submission of a Claim) and knowledge that the disputing investor or the enterprise, as the case may be, has incurred loss or damage.

2. A disputing investor may submit a claim to arbitration on its own behalf only if:

(a) the investor consents to arbitration under this Section; and

(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of the disputing 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 and regulations of a Contracting Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach of an obligation set out in Chapter II, 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 and regulations of the disputing Contracting Party.

3. A disputing investor may submit a claim to arbitration on behalf of an enterprise of the disputing 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 under this Section; and

(b) waive their right to initiate or continue before any administrative tribunal or court under the laws and regulations of a Contacting Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Contracting Party that is alleged to be a breach of an obligation set out in Chapter II, 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 and regulations of the disputing Contracting Party.

4. 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 (notice of arbitration).

## ARTICLE 19

## Constitution of the Tribunal

1. Unless the disputing parties otherwise agree, the tribunal shall be composed of 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 tribunal.

2. If a tribunal is not established within 90 days from the date on which the claim has been submitted to arbitration, either because a disputing party has failed to appoint an arbitrator or because the disputing parties have failed to agree upon the chairman, the Secretary-General, upon request of any of the disputing parties, shall appoint, at his own discretion, the arbitrator or arbitrators not yet appointed. Nevertheless, the Secretary-General, when

appointing the chairman, shall ensure that he or she is not a national of a State which cannot be regarded as neutral in relation to the dispute.

## ARTICLE 20

## Consolidation

1. The Secretary-General 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 to 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 under this Section.

3. Upon request of a disputing party, a tribunal established under Article 19 (Constitution of the Tribunal), awaiting the determination of the consolidation tribunal in accordance with paragraph 4 below, may stay the proceedings that it has initiated.

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

(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 that in doing so it would contribute to the settlement of the other claims.

5. A tribunal established under Article 19 (Constitution of the Tribunal) shall lack jurisdiction to hear and determine a claim, or a part thereof, over which a consolidation tribunal has assumed jurisdiction.

6. A disputing party that intends consolidation of a claim under this Article may issue a request to the Secretary-General for the establishment of a consolidation tribunal, and shall specify in its request:

(a) the name of the 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. The disputing party referred to in paragraph 6 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 60 days of receipt of the request, the Secretary-General may establish a tribunal composed of three arbitrators. One shall be a natural person of the disputing Contracting Party; one shall be a natural person of the Contracting Party of the disputing investors; and the third, the presiding arbitrator, shall not be a national of a State which cannot be regarded as neutral in relation to the dispute. Nothing in this paragraph shall prevent the disputing investors and the disputing Contracting Party from appointing the members of the tribunal by agreement.

9. Where a disputing investor has submitted a claim to arbitration under Article 16 (Submission of a Claim) and has not been named in a request made under paragraph 6 above, that disputing investor or the disputing Contracting Party, as appropriate, may make a written request to the tribunal that it be included in an order made under paragraph 4 above, 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. The disputing investor referred to in paragraph 9 shall deliver a copy of its request to the disputing parties named in a request under paragraph 6 above.

## ARTICLE 21

## 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 submitted to arbitration under this Section shall be considered to have arisen out of a commercial relationship or transaction.

## ARTICLE 22

## Indemnification

In an arbitration under this Section, a disputing Contracting Party shall not assert as a defence, counterclaim, right of set-off or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

## ARTICLE 23

## 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 principles of international law.

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

## ARTICLE 24

## Finality and Enforcement of Awards

1. Unless the disputing parties agree otherwise, an award which provides that a Contracting Party has breached its obligations under 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. For greater certainty, when an investor of a Contracting Party submits a claim to arbitration under this Section, it may recover only for loss or damage that it has incurred in its capacity as an investor of a Contracting Party.

3. Subject to paragraph 1, 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 internal law.

4. An award shall be final and binding solely between the disputing parties and with respect to the particular case.

5. A tribunal may not award punitive damages.

6. A disputing investor may seek enforcement of an award under the New York Convention.

7. A disputing party may not seek enforcement of a final award until:

(a) three 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

(b) 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 under Section Two of this Chapter by reason of an alleged breach under this Section, unless the other Contracting Party fails to abide by or comply with a final award rendered under this Section.

## ARTICLE 25

## Transparency of Arbitral Proceedings

1. The written submissions[6] presented by the disputing parties to the tribunal and the procedural orders, decisions, and award(s) of the tribunal shall be made available to the public after the tribunal renders its final award, except for protected information consisting of:

(a) business information that is not in the public domain which describes, contains or otherwise reveals trade secrets or financial, commercial, scientific or technical information that has been consistently treated as confidential information by the party to whom it is related, including but not limited to information on prices, costs, strategic and marketing plans, market share data, and accounting or financial records;

(b) information that is protected from disclosure by law;

(c) information the disclosure of which a Contracting Party determines to be contrary to its essential security interests; and

(d) information the disclosure of which would impede law enforcement or otherwise be contrary to public interest.

2. Within 30 days after the final award is delivered, a disputing party that considers that any submission made before the tribunal or any procedural

[6] Submissions include the memorial, counter-memorial, reply, rejoinder and any other submission made by a disputing party during the arbitration.

order, decision or award of the tribunal contains protected information that it would like to remain confidential shall consult the other disputing party (or parties) with a view to reaching an agreement on redaction of such information prior to make it available to the public.

3. If the disputing parties cannot agree on the proposed redactions within a further 30 days they shall submit the points on which they cannot agree to the chairman of the tribunal who shall decide the matter forthwith and make an allocation of any additional costs of the arbitration arising from the disputing parties' failure to agree.

4. If a disputing party does not notify the other disputing party (or parties) of its request to preserve confidentiality over protected information in a particular submission, procedural order, decision or award within 30 days of the delivery of the final award, that disputing party shall be deemed to have consented to make available to the public such submission, procedural order, decision or award.

5. The notice of intent and the notice of arbitration shall be available to the public at any time.

## ARTICLE 26

## Interim Measures of Protection

1. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the 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 tribunal's jurisdiction.

2. A tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 16 (Submission of a Claim). For the purposes of this paragraph, an order includes a recommendation.

## SECTION TWO: SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

### ARTICLE 27

### Scope of Application

This Section shall apply to settle 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 II shall be settled under Section One of this Chapter.

### ARTICLE 28

### Consultations on the Interpretation or Application of this Agreement

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

2. If a dispute arises between the Contracting Parties on the interpretation or application of this Agreement, it shall, to the extent possible, be settled amicably through consultations.

3. In the event the dispute is not settled through the means mentioned above within six months from the date such consultations were requested in writing, either Contracting Party may submit such dispute to a tribunal established under this Section or, by agreement of the Contracting Parties, to any other international tribunal.

### ARTICLE 29

### Constitution of the Tribunal

1. Arbitration proceedings shall be initiated upon written notice delivered by a Contracting Party ("the requesting Contracting Party") to the other Contracting Party ("the respondent Contracting Party") through official channels. Such notice shall contain a statement setting out the legal and

factual grounds of the claim, a summary of the development and results of the consultations pursuant to Article 28 (Consultations on the Interpretation or Application of this Agreement), the requesting Contracting Party's intention to initiate proceedings under this Section and the name of the arbitrator appointed by the requesting Contracting Party.

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

3. Within 30 days after 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 tribunal upon approval of the Contracting Parties.

4. If within the time limits set out 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 the International Court of Justice to appoint, in a personal and individual capacity, the arbitrator or arbitrators not yet appointed. If the President is a natural person of either Contracting Party, or he or she is otherwise unable to act, the Vice-President or the next most senior Member who is not disqualified on that ground shall be invited to make the said 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 30

## Proceedings

1. Unless the Contracting Parties agree otherwise, the place of arbitration shall be determined by the tribunal.

2. The 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 tribunal may propose to the Contracting Parties that the dispute be settled amicably.

4. At all times, the tribunal shall afford a fair hearing to the Contracting Parties.

## ARTICLE 31

## Award

1. The 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 32

## Applicable Law

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

## ARTICLE 33

## 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 tribunal and of other expenses associated with the conduct of the arbitration shall be borne equally by the Contracting Parties, unless the tribunal decides that a higher proportion of costs be borne by one of the Contracting Parties.

## CHAPTER IV: FINAL PROVISIONS

### ARTICLE 34

### Scope of Application

1. This Agreement shall apply to investments made prior to or after its entry into force.

2. This Agreement shall apply to measures adopted or maintained by a Contracting Party, after the entry into force of this Agreement, relating to investors of the other Contracting Party or their investments.

3. This Agreement shall not apply to claims arising out of events that have occurred before the entry into force of this Agreement.

### ARTICLE 35

### Consultations

A Contracting Party may propose to the other Contracting Party to carry out consultations on any matter relating to this Agreement. These consultations shall be held at a place and at a time agreed by the Contracting Parties. Consultations under this Article shall be without prejudice to the consultations on the interpretation or application of this Agreement under Article 28 (Consultations on the Interpretation or Application of this Agreement).

### ARTICLE 36

### Entry into Force, Duration and Termination

1. The annexes and footnotes to this Agreement constitute an integral part of this Agreement.

2. The Contracting Parties shall notify each other in writing through official channels the fulfillment of their internal requirements in relation to the approval and entry into force of this Agreement.

3. This Agreement shall enter into force 30 days after the date of the latter of the two notifications referred to in paragraph 2 above.

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

5. Article 1 to Article 35 inclusive and paragraph 1 above shall continue to be effective for a period of ten years from the date of termination with respect to investments made prior to such date.

6. This Agreement may be modified by written agreement of the Contracting Parties, and the agreed modification shall come into effect pursuant to the procedures set out in paragraphs 2 and 3 above.

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

**Done** in Davos, Switzerland on this _____ day of January 2020, in duplicate, in the Chinese, English and Spanish languages, each text being equally authentic. In case of divergence of interpretation, the English text shall prevail.

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|---|---|
| **FOR THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA** | **FOR THE GOVERNMENT OF THE UNITED MEXICAN STATES** |
| **Edward Yau Tang-wah**<br>**Secretary for Commerce and Economic Development** | **Luz María de la Mora Sánchez**<br>**Undersecretary of Foreign Trade of the Ministry of Economy** |

## Annex to Article 7 (Expropriation and Compensation)

The Contracting Parties confirm their shared understanding that:

1. A measure or a series of measures by a Contracting Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Article 7(1) (Expropriation and Compensation) addresses two situations. The first is direct expropriation, where an investment is directly expropriated through formal transfer of title or outright seizure.

3. The second is indirect expropriation, where a measure or a series of measures by a Contracting Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether a measure or a series of measures by a Contracting Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the measure or the series of measures, although the fact that a measure or a series of measures by a Contracting Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the measure or the series of measures interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the measure or the series of measures.

(b) Non-discriminatory measures by a Contracting Party that are designed and applied to achieve legitimate public welfare objectives, such as public health, safety, and the protection of the environment, do not constitute indirect expropriation, provided that such measures:

(i) are not so severe in the light of their purpose that they can be reasonably viewed as having been adopted and applied in good faith; and

(ii) are not used as a disguised means to repudiate or breach the provisions in Article 7 (Expropriation and Compensation).

## Annex to Article 15 (Notice of Intent and Consultations)

1. The notice of intent referred to in Article 15 (Notice of Intent and Consultations) shall be delivered to:

(a) in the case of Mexico, the Dirección General de Consultoría Jurídica de Comercio Internacional of the Ministry of Economy; and

(b) in the case of the HKSAR, the Trade and Industry Department.

2. The disputing investor shall submit the notice of intent in English.

3. In order to facilitate the process of consultations, the disputing investor shall provide, along with the notice of intent, copy of the following documentation:

(a) official document of identity issued by the non-disputing Contracting Party, where the disputing investor is a natural person, or the applicable document of constitution or organisation under the laws and regulations of the non-disputing Contracting Party, where the disputing investor is an enterprise of such Contracting Party;

(b) where the disputing investor intends to submit a claim to arbitration on behalf of an enterprise of the disputing Contracting Party that the disputing investor owns or controls:

(i) the applicable document of constitution or organisation of the enterprise under the laws and regulations of the disputing Contracting Party; and

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

Where applicable, power of attorney or the document whereby a person is duly authorised to act on behalf of the disputing investor shall also be submitted.