The Bilateral Investment Treaty between Spain and Mexico: Legal Framework

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1. INVESTOR AND INVESTMENT CONCEPTS

Investor

A) Individual: national legislation of each Party (Art. 1.5.a)

B) Legal person: constitution and establishment in the host State (Art. 1.5.b)
1. INVESTOR AND INVESTMENT CONCEPTS

Investment

Broad definition:
A) Direct investment + Portfolio investment (Art. I.4)

B) Movable and immovable property, mortgages, shares, intellectual property rights…(Art. I.4)
Territorial application

Bi-dimensional concept
(territory and maritime spaces)
(Art. 1.6)
2. TERRITORIAL AND TEMPORAL APPLICATION

Temporal application

A) **Investments** made *before* and *after* the entry into force of the BIT (Art. XXI)

B) **Disputes** arisen *after* the entry into force of the BIT (Art. XXI)
Temporal application

In case of termination

Investments made during the term of the BIT will be protected 10 additional years
(Art. XXIII)
3. THE DUTIES OF PROMOTION AND PROTECTION

A) Admission
(according to legislation of the Host State) (Art. II.1)

+ 

B) Promotion and information exchange
(general clause) (Art. II.2)
3. THE DUTIES OF PROMOTION AND PROTECTION

Protection

A) Fair and Equitable Treatment
(limited scope within NAFTA) (Art. IV)

B) National Treatment (Art. III)

C) Most-Favored Nation Treatment (excludes *Maffezini* effect) (Art. III)
3. THE DUTIES OF PROMOTION AND PROTECTION

D) Discriminatory Expropriation/Nationalization/Measure of equivalent effect (Art. V)

E) Compensation for losses (Art. VI)

F) Repatriation of investments (Art. VII)
3. THE DUTIES OF PROMOTION AND PROTECTION

Exceptions to MF Treatment

A) Any customs union/free trade area (Art. III.3.a)

B) International taxation agreements (Art. III.3.b)
4. DISPUTE SETTLEMENT

Inter State (Art. 9)

Diplomatic Channels

(within 6 months) Arbitral Tribunal
4. DISPUTE SETTLEMENT

Investor - State (Art. XI)

- Fork-in-the-road
  - ICSID Rules
  - UNCITRAL Rules
  - Any other arbitration rules
4. DISPUTE SETTLEMENT

Investor - State

A) Consent to arbitration (investor) (Arts. X.5.a and X.6.a)

B) Consent to arbitration (States) (Art. XII)

C) International or internal dispute settlement selection (Arts. X.5.b and X.6.b)
4. DISPUTE SETTLEMENT

Investor - State
Accumulation of proceedings (Art. XIV)

ICSID Secretary General

Accumulation Tribunal
5. OTHER PROVISIONS

Subrogation

State of origin (or designated Agency) may guarantee and pay their national investors and then claim or exercise rights against the Host State (Art. VIII).
5. OTHER PROVISIONS

Favor inversionis

Any most favorable treatment granted to the investor by International or national Law shall prevail over the BIT (Art. XX)