

**INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES**

ICSID CASE No. ARB/04/

BETWEEN:

- (1) GEMPLUS S.A.**
- (2) SLP S.A.**
- (3) GEMPLUS INDUSTRIAL S.A. de C.V.**

Claimants

-and-

UNITED STATES OF MEXICO

Respondent

REQUEST FOR ARBITRATION

DATED 10th AUGUST 2004

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Ref: DAF/RDH/EEP
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**TO: The Secretary-General of the International Centre for Settlement of
Investment Disputes (“ICSID”)**

I. PRELIMINARY STATEMENT

1. This Request is served pursuant to Articles 2 and 3 of the ICSID Arbitration (Additional Facility) Rules.

2. The dispute described in this Request arises out of the expropriation and unfair and unlawful treatment by the Government of the United States of Mexico (“Mexico”) of an investment established in Mexico by the Claimants and other investors. The Claimants made investments in Mexico in and through an investment company (constituted under the laws of Mexico), Concesionaria Renave S.A. de C.V., (“Renave”). In 1999, a consortium in which the Claimants were members successfully tendered for a concession granted by Mexico to establish and operate a national road vehicle registration system. Having granted the concession and permitted Renave to operate, Mexico subsequently took a number of measures which were intended to and did have the effect of frustrating the venture, first by arbitrarily intervening in the operations of Renave and ultimately by arbitrarily revoking the concession and expropriating and unlawfully interfering with the investment assets (including the rights obtained under the Concession Agreement). No compensation was offered. The Claimants, as shareholders in Renave, have suffered substantial loss. They objected to the measures taken by Mexico and have attempted to resolve the dispute amicably.

II. THE PARTIES

A. The Claimants

3. The Claimants are Gemplus S.A. ("Gemplus"), SLP S.A. ("SLP") and Gemplus Industrial S.A. de C.V. ("Gemplus Industrial").

A.1 Gemplus

4. Gemplus has been at all times, and remains, a national of France, which is a Contracting Party to the ICSID Convention.

5. Gemplus is a corporation organised under the laws of the Republic of France, with its registered office at Avenue du Pic de Bertagne, Parc d'Activités de Gémenos, 13240 Gémenos, France. At **Exhibit 1** appears the Articles of Association of Gemplus, an extract from the French commercial registry relating to Gemplus and the decision of 19 September 2003 by Gemplus to initiate ICSID Additional Facility Arbitration and to appoint Baker & McKenzie.

6. Until 31 October 2003, Gemplus was the holder of 99% of the issued share capital of Gemplus Card International de Mexico SA de C.V. ("Gemplus Card International"), which in turn held 99% of the issued share capital of Gemplus Industrial.

7. On 31 October 2003, Gemplus Card International merged with Gemplus Industrial and a further Mexican company, Grupo Gemplus de México, S.A. de C.V. ("Grupo Gemplus de Mexico"). The merged entity is Gemplus Industrial, the third Claimant. Until 27 April 2004, Gemplus was the holder of 99% of the issued share capital of Gemplus Industrial.

A.2 SLP

8. SLP has been at all times, and remains, a national of France, which is a Contracting Party to the ICSID Convention.
9. SLP is a corporation organised under the laws of the Republic of France, with its registered office at Avenue du Pic de Bertagne, Parc d'Activités de Gémenos, 13240 Gémenos, France. At **Exhibit 2** appears the Articles of Association of SLP, an extract from the French commercial registry relating to SLP and the decision of 13 May 2004 by SLP to initiate ICSID Additional Facility Arbitration and to appoint Baker & McKenzie.
10. On 27 April 2004, Gemplus transferred all its shares in Gemplus Industrial to SLP. Accordingly, SLP is the holder of 99% of the issued share capital of Gemplus Industrial. This was part of a corporate restructuring exercise within the Gemplus group of companies, undertaken for reasons unrelated to this dispute. Gemplus retained all its rights to the claims outlined in this Request.

A.3 Gemplus Industrial

11. Gemplus Industrial has at all times been and remains a corporation of variable share capital constituted under the laws of Mexico, with its registered office at Calle 9 Este No 192, Ciudad Industrial del Valle de Cuernavaca, 62500 Jiutepec, Morelos, Mexico. Its share capital has at all times been at least 99.9% owned by a French company and it is registered at the National Registry of Foreign Investments (Registro Nacional de Inversiones Extranjeras) in Mexico as evidenced by Certificate of Registration with file number 54788 issued by that Registry on 22 September 1997. At **Exhibit 3** appears the Certificate of Incorporation of Gemplus Industrial and the decision of 11 September 2003 by Gemplus Industrial to initiate ICSID Additional Facility Arbitration and to appoint Baker & McKenzie.

12. Gemplus Industrial is the legal owner of 20% of the issued share capital of Renave. As set out above, Gemplus Industrial merged with Gemplus Card International and Grupo Gemplus de México on 31 October 2003. The merged company remains Gemplus Industrial.
13. The remaining 80% of Renave's share capital is held as follows:
 - 13.1 Talsud S.A. ("Talsud"), a company incorporated under the laws of Argentina, holds 29% of Renave's issued share capital. Talsud is pursuing parallel proceedings against the Respondent; and
 - 13.2 The remaining 51% of Renave's share capital is held by Aplicaciones Informáticas S.A. de C.V. ("Aplicaciones Informáticas"), a Mexican company wholly owned by Mr. Henry Davis Signoret, a Mexican national, and his sons. Neither Aplicaciones Informáticas nor its shareholders are claimants in these proceedings.

B. The Respondent

14. The Respondent is Mexico. These proceedings concern acts committed by Mexico, acting through the "Secretaría de Economía" (Secretariat of the Economy) (the "Secretariat"), formerly known as the "Secretaría de Comercio y Fomento Industrial" (Secretariat of Commerce and Industrial Development).
15. Mexico is not a Contracting Party to the ICSID Convention.
16. Contact details for the Respondent are as follows:

Dirección General de Inversión Extranjera
Insurgentes Sur 1940, piso 8,

Col. Florida, Mexico,
Distrito Federal, C.P. 01030
Tel. 52 29 61 00, Exts. 3535 y 3536
Fax 52 29 65 07

III. BACKGROUND TO THE INVESTMENT DISPUTES

A. **The creation of the Registry**

17. On 9 December 1997, the incumbent President of Mexico, Ernesto Zedillo Ponce de León, filed before the Senate of the Congress of the Mexican Union a bill which provided for the creation of a national registry of motor vehicles ("the Registry"). The bill provided for the Secretariat to grant a concession to private entities for the operation of the Registry. No vehicle registration system had previously existed in Mexico.
18. The National Registry of Vehicles Law (the "Law") was published in the Mexican Federation's Official Bulletin ("the Official Bulletin") on 2 June 1998. A copy of the Law appears at **Exhibit 4**. The Law created the Registry and provided for its regulation. The Law stated that the Registry should have a database, which would be the exclusive property of the Mexican Federal Government. This database would contain the information on all vehicles that relevant authorities, manufacturers, dealers, insurers, individual owners and others were legally obliged to supply to the Registry.
19. Section 16 of the Law allowed the Secretariat to grant concessions to one or more private entities to set up and run the Registry. The concessions could be granted for a term of up to ten (10) years, would be extendable, and could be revoked for the reasons set out in section 22 of the Law.

20. Pursuant to section 16 of the Law, on 26 February 1999 the Secretariat published the bidding rules and criteria for the concession for the operation of the Registry. The call for bids for the concession was then published by the Secretariat in the Official Bulletin on 29 March 1999. The rules and the call for bids provided that there was to be a competitive tender for the concession.
21. Ninety-one bidders met the initial requirements for the bid. Forty-five of these persons subsequently formed twenty-four consortia and issued twenty registrations. Finally, six consortia filed the requisite technical and economic proposals on time and in accordance with the rules of the bid.
22. On 27 August 1999, the Secretariat awarded the concession of the Registry to the consortium formed by Henry Davis Signoret/Talsud/Gemplus Industrial ("the Consortium"). Under the bidding rules, the winning consortium was required to incorporate a Mexican corporation as the concessionaire responsible for the operation of the Registry. Accordingly, on 6 September 1999 the Consortium incorporated Renave (a copy of Renave's by-laws are exhibited as **Exhibit 5**), a Mexican corporation of variable capital which was intended to be the Registry's concessionaire. The share capital of Renave was paid up as follows: (i) Henry Davis Signoret: 51% (Mr Signoret subsequently transferred his share capital to Aplicaciones Informáticas, with the Secretariat's approval); (ii) Talsud: 29%; and (iii) Gemplus Industrial: 20%. The shareholdings complied with section 16 of the Law which provides that "*foreign investment shall be entitled to share in up to 49 percent of the corporate capital of the concessionaire. A resolution of the National Committee of Foreign Investments shall be required for the foreign investment to represent a greater percentage*".

B. Organisation of the Registry

23. On 15 September 1999, the Secretariat and Renave entered into a concession agreement under which Renave was granted for an initial period of ten years the

exclusive right to operate the Registry and charged with the integration, administration, operation and updating of the Registry's database ("the Concession Agreement"). A copy of the Concession Agreement, without its exhibits, appears at **Exhibit 6**.

24. The terms of the Concession Agreement included, inter alia, the following:

"Third. This Concession grants the Concessionaire the exclusive right to render the public service of the operation of the Registry (the "Public Service"), with the purpose of identifying the vehicles manufactured, assembled, imported or circulating in the national territory, as well as to provide information to the public.

...

Eighth. The Concessionaire must comply with the programme of investment established in the Technical and Economic Proposal to which reference is made in the previous Antecedent VIII ...

...

Tenth. The Concessionaire shall have the following rights:

- 1. To charge the Prices which shall be published in the "Diario Oficial de la Federación" for the services rendered;*
- 2. To request the Secretariat to revise the Prices charged for the Services ...;*
- ...
- 4. To exploit the information of the Registry's Database in accordance with the Contract of Works to Order and the Licence Agreement entered into on this same date between the Secretariat and the Concessionaire;*

...

Sixteenth. On the date of signature of this Concession Agreement, the Concessionaire shall pay the amount of \$11,300,000.00 (eleven million three hundred thousand Pesos 00/100 N.C.) plus Value Added Tax for the grant of the Concession. ...

[Further provisions for additional payments by the Concessionaire]

Nineteenth. Pursuant to the provisions of section 17 of the Law this Concession shall be in force for a term of ten (10) years, to be counted as of the date of the signature of this document. The Concession may be prorogated at the Secretariat's discretion, up to for a term equal to the one originally established, provided that the Concessionaire has complied with the conditions foreseen in the Concession and requests it not later than three (3) years before its conclusion ...”

25. Payments were duly made by Renave in accordance with the terms of the Concession Agreement, these funds provided by the shareholders of Renave in proportion to their respective shareholdings.
26. In accordance with the Concession Agreement, Renave put forward three consulting firms to monitor and report to the Secretariat on Renave's compliance with its obligations. On 18 November 1999, the Secretariat wrote to Renave to inform it that it had appointed Analítica Consultores Asociados S.C. ("Analítica"), on the basis that it "[met] the characteristics necessary to act as supervisor of the Registry's preoperative stage". In basic terms, Analítica's role was to confirm to the Secretariat whether Renave had complied with the 59 obligations and commitments set out in Exhibit 13 of the Concession Agreement ("the Targets").
27. Exhibit 3 of the Concession Agreement provided that the operation of the Registry should be divided into two clearly differentiated stages: (i) the pilot or trial phase ("the Pilot Phase"); and (ii) the national implementation ("the National Phase").
28. The Pilot Phase commenced on 15 February 2000 in the states of Hidalgo and San Luis Potosí. The Secretariat approved the results of the Pilot Phase.
29. The Concession Agreement provided for the National Phase to begin on 15 June 2000. With the consent of the Secretariat, Renave started the operation of the Registry at a national level with regard to new vehicles on 2 May 2000 (i.e., one month and a half earlier than had been provided for by the Concession

Agreement). The Registry became effective on 15 June 2000 with regard to used vehicles, in accordance with the provisions of the Concession Agreement.

30. Analítica concluded that Renave achieved 54 of the Targets, and that the default of the Secretariat prevented fulfillment of the remaining 5. Sr Luis Pablo Monreal Lorestanou, Legal director of the Secretariat's Department of Industries, participated in the production of the reports confirming Renave's fulfillment of the Targets.
31. At all material times Renave was fully resourced, well managed and its management and personnel possessed the skills and expertise required to operate the Registry. It operated out of a central office based in Mexico City (Calle Moras 313, Colonia Del Vallo, Mexico DF, Mexico) and had offices in each Federal State. It had 15 employees in management and approximately 350 persons (including employees and contractors) performing administration and support functions.
32. The Claimants contributed capital and other financial resources to Renave in proportion to Gemplus Industrial's shareholding in Renave.

C. First Problems with the Registry

33. On 21 August 2000, the Secretariat announced the postponement of the deadline for the registration of used vehicles. This decision allowed the Secretariat to postpone the execution of agreements between the Registry and the governments of the federative entities and of certain federal districts which were required to implement the National Phase. It was also made without any consultation with Renave's management or shareholders.
34. This delay occurred within a context of growing political opposition to the Registry. The Claimants believe this opposition was politically motivated and

caused, amongst other reasons, by the defeat of the governing party (Partido Revolucionario Institucional, "PRI") in the presidential elections of July 2000. Opposition parties subsequently declined to execute necessary agreements with the Registry in those federated states where they governed, leading to a lack of support for the Registry within the Secretariat.

35. Mr Ricardo Miguel Cavallo was the general manager of Renave from the date of its incorporation. On 23 August 2000, Mr Cavallo was arrested by Interpol in Mexico for his alleged participation in Argentina's "dirty war" of the 1970s and early 1980s. Mr Cavallo was extradited from Mexico to Spain in July 2003, pursuant to an international request made by the Spanish Judge Baltasar Garzón, to face trial for human rights violations allegedly committed during his time in the Argentine naval forces. Mr Cavallo's arrest was not in any way linked with his role as Renave's general manager. It concerned events that are alleged to have occurred some 20 years before he was employed by Renave.
36. Immediately following Mr Cavallo's arrest, Renave's shareholders appointed Mr Guillermo Bilbao Gonzalez Glenn to replace Mr Cavallo as the general manager of Renave. Under Mexican law, Mr Cavallo's employment relationship with Renave was automatically suspended. Mr Cavallo was not, at any time, a member of either Renave's Management Committee (Consejo de Administración) or its Executive Committee (Comite Ejecutivo).
37. Mr Cavallo's arrest was highly publicised in "Reforma", a Mexican newspaper, on 24 August 2000. Later that day, the Secretariat unexpectedly launched a series of audits and inspections, not only of Renave's premises but also of the data centre responsible for processing information for Renave (but which belonged to Hewlett Packard), of the "Keon" capture and digitalisation centre and of Gemplus's premises. The auditors continued their inspection at the offices of Renave until 5 September 2000. The Secretariat further took the following measures which represented an unlawful interference with Renave's operations.

It required Renave (i) to deliver to it all the passwords and access codes needed to operate the Registry's database; (ii) to cancel the existing passwords for Renave's offices; (iii) to deliver all the files (both in paper and electronic form) provided to Renave by each of the federal states for integration into the Registry's database; and (iv) to delete any additional backup copies of this information.

38. The audits established no wrongdoing or non-compliance by Renave or its shareholders with the terms of the Concession Agreement, the Law or other relevant regulations.

D. Technical and Administrative Interventions

39. On 28 August 2000, during the course of the audits, the Secretariat issued a decree authorising a technical intervention in the management of the Registry (the "Technical Intervention"). (The decree was published in the Official Bulletin on 29 August 2000 - **Exhibit 7**). The technical intervener's function was stated as being to "*guarantee the integrity and confidentiality of the information contained in said registration*". Neither the Law, the applicable regulations nor any other rule in connection with the Registry provides for any type of "technical intervention".
40. On 14 September 2000, the Secretariat ordered by decree an administrative intervention in the management of the Registry (the "Administrative Intervention") and appointed Erasmo Martín Córdova as administrative intervener and general manager of the public service of operation of the Registry (the decree was published in the Official Bulletin on 15 September 2000 - **Exhibit 8**). Mr Córdova replaced Mr Gonzalez, who was demoted to the role of Chief Administrator and Finance Manager. Mr Córdova, although he was not directly involved in the day-to-day operations of Renave, assumed overall control of financial matters during the course of the Administrative Intervention. The

administrative intervener established no breach by Renave of the Concession Agreement, the Law or other relevant regulation.

41. On 15 September 2000 the Secretariat published in the Official Bulletin an “*acuerdo*” effectively suspending the legal obligation of vehicle owners, suppliers and sellers to register used vehicles pending the execution of coordination agreements with the federated states (**Exhibit 9**). This “*acuerdo*” deprived the Registry of information that was essential to its operation. The suspension of the legal obligation to register used vehicles deprived the Registry of a significant part of its function as a national depository of vehicle registration records and removed the basis for Renave’s operations and existence.
42. Following the inauguration of Mexico’s new President in December, 2000, the Secretariat changed its name to Secretariat of Economy. On 7 May 2001, the Secretariat appointed Professor María de la Esperanza Guadalupe Gómez Mont Urueta as the new administrative intervener in the Registry’s operations.

E. The Seizure of the Registry

43. On 25 June 2001, the Secretariat ordered by decree the seizure of the Registry operated by Renave (the “Seizure”) (the decree was published in the Official Bulletin on 27 June 2001 - **Exhibit 10**). This involved the requisition of the centre of operations and other facilities, real property, movable property and equipment required for the operation of the Registry. This property was entrusted to Professor Gómez Mont Urueta, the general administrator appointed by the Secretariat.
44. On 27 June 2001, Professor Gómez Mont Urueta undertook the following measures: (i) she dismissed all of Renave’s most senior managers, who had been appointed by Renave’s shareholders (those managers were Guillermo Bilbao Gonzalez Glenn (Chief Administrator and Finance Manager), José Luis Robles

(Chief Legal Manager) and José Luis Barajas Quiles (Chief Technology Manager)); (ii) she appointed new managers to replace the individuals referred to in (i) above, and appointed a further manager to take charge of services and operations; (iii) she cancelled all existing passwords for the previous management, and denied them access to their offices or personal computers; (iv) she cancelled all bank authorizations, and issued new authorizations in favour of the new management; and (v) she revoked all existing powers of attorney in favour of the previous managers.

45. These measures were taken with the assistance of the Mexican Federal Police, which took control of access to and from Renave's premises. As a result of Professor Gómez Mont Urueta's actions, the operations of the Registry ceased to be controlled by Renave and its shareholders.
46. On 1 October 2001, Gemplus Industrial (together with Talsud) wrote to the Secretariat stating (i) that the Seizure and the Secretariat's other acts and omissions amounted to an unlawful expropriation without fair indemnification; (ii) that the Seizure and the Secretariat's other acts and omissions therefore constituted a breach of the Treaties for the Reciprocal Promotion and Protection of the Investments entered into between Mexico and Argentina on 13 November 1996 (the "Argentine BIT") (**Exhibit 11**) and between Mexico and France on 12 November 1998 (the "French BIT") (**Exhibit 12**) (together, the "BITs"); and (iii) that they were contemplating proceedings under the BITs. They formally invited the Secretariat to take the necessary steps for an amicable solution to the controversy, as provided for in the BITs. A copy of the letter appears as **Exhibit 13**.
47. In May 2002, the Secretariat met with one of Renave's legal representatives. The Secretariat requested Renave to waive its rights to the concession for the operation of the Registry, without offering any form of compensation to be paid to Renave or to its shareholders. Renave declined this request.

F. The Revocation of the Concession

48. On 17 June 2002 the Secretariat commenced internal (non judicial) administrative proceedings in Mexico for alleged violations to the rules regulating the Registry. On 16 December 2002, after six months of administrative formalities, the Secretariat issued a resolution revoking the Concession Agreement (“the Revocation”) (the resolution was published in the Official Bulletin on 17 December 2002 - **Exhibit 14**). The Secretariat did not offer any compensation to be paid to Renave or its shareholders.
49. The Revocation amounts to a further manifestation of the Government of Mexico’s unlawful and arbitrary expropriation of Renave’s property, alternatively its taking of measures tantamount to expropriation, without just cause and without compensation. In a letter to the Secretariat dated 19 March 2003, the Claimants informed Mexico that they intended to submit the dispute to ICSID in accordance with the dispute resolution provisions of the BITs (**Exhibit 15**).

G. Administrative and Judicial Actions brought by Renave

50. Renave did not passively accept the violation and forfeiture of its rights but brought several administrative and judicial actions. These include (i) on 20 September 2000 Renave filed before the Secretariat a “motion to reopen the case” challenging the Technical Intervention; (ii) on 6 October 2000 Renave filed an “amparo” before the “District Judge in Administrative Matters of the Federal District” challenging the lawfulness of the Administrative Intervention; (iii) on 17 September 2001 Renave filed a judicial complaint before the Federal Court for Tax and Administrative Matters challenging the Seizure; (iv) on 22 November 2000, Renave filed before the Secretariat an administrative action challenging the newly-introduced rules of the Registry’s operation (the “Operation Rules”) and, when this action was rejected, it filed a claim before the

Federal Court for Tax and Administrative Matters challenging the lawfulness of the Operation Rules on 2 May 2001; and (v) on 7 March 2003, Renave filed before the Federal Court for Tax and Administrative Matters a complaint requesting that the Revocation should be declared null and void. None of these actions were taken by the Claimants and no benefit from them has accrued to the Claimants. The actions do not effect the Claimants' juridically distinct cause of action that arises under Mexico's international treaty obligations. Renave's claims (i) and (ii) have been dismissed. Decisions in relation to the proceedings listed in (iii), (iv) and (v) are still pending.

H. Loss

51. As a result of these matters the Claimants have suffered financial loss comprising the full value of their investments. It is unquestionably the case that Renave would have made operating profits of the equivalent of hundreds of millions of US dollars had it been permitted to continue operations under the Concession Agreement. The Claimants would have benefited from a show in those profits.
52. The investment of Gemplus/SLP/Gemplus Industrial is quantified as (a) 20% of the profits that Renave would have made during the initial 10-year Concession period and the further 10-year term pursuant to Article 19 of the Concession Agreement; alternatively (b) the value, immediately prior to the expropriation and breach of the BITs, of Gemplus Industrial's shareholding in Renave, if to be quantified by any measure other than (a); alternatively (c) such other quantification as may be assessed.

IV. APPROVAL OF THE AGREEMENTS FOR ACCESS TO THE ADDITIONAL FACILITY

53. The Claimants hereby seeks the Secretary General of ICSID's approval of the arbitration agreement contained in the French BIT pursuant to Article 4(1) of the

Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Dispute (the "Additional Facility Rules").

54. France is a contracting state the ICSID Convention. The Respondent is not. Accordingly, the Claimants' application to the Additional Facility is based on Article 2(a) of the Additional Facility Rules. Under Article 4(2), in the case of an application based on Article 2(a) approval of the agreement providing for arbitration under the Additional Facility shall be granted where (a) the Secretary General is satisfied that the requirements set out in Article 2(a) of the Additional Facility Rules are fulfilled; and (b) both parties give their consent to the jurisdiction of ICSID under Article 25 ICSID Convention (in lieu of the Additional Facility) in the event that the jurisdictional requirements *ratione personae* of that Article shall have been met at the time when proceedings are instituted. Both of these tests are met.
55. The requirements of Article 2(a) of the Additional Facility Rules are (a) that the proceedings "*are not within the jurisdiction of ICSID because either the State party to the dispute or the State whose national is a party to the dispute is not a Contracting State*"; (b) that it is a "*legal dispute*"; and (c) that the dispute is one "*arising directly out of an investment*".
56. As set out above, the Respondent which is the state party to the dispute is not a Contracting Party to the ICSID Convention. The Claimants are French investors as defined by the terms of the French BIT. France is a Contracting Party to the ICSID Convention. France signed the ICSID Convention on 21 May 1991, and deposited its ratification of the Convention on 19 October 1994. The ICSID Convention entered into force for France on 18 November 1994.
57. The dispute between the Claimants and the Respondent involves the validity and legality of actions taken by the Respondent, and in particular whether these

actions are arbitrary and amount to an expropriation of or unlawful interference with the Claimant's investment in Mexico in breach of the terms of the French BIT. It is manifestly a legal dispute. The Claimants provided capital to acquire a shareholding in Renave, a Mexican company which obtained a long term concession from the Respondent to run a national vehicle licensing system. This was a classic investment. The dispute arises directly out of the investment. Accordingly, the three requirements of Article 2(a) are satisfied.

58. Article 9.4 of the French BIT provides for arbitration of disputes under the Additional Facility Rules.
59. In addition to providing for access to the Additional Facility, the French BIT provides for the jurisdiction of ICSID in lieu of the Additional Facility in the event of the Respondent becomes a contracting state to the ICSID Convention. Accordingly, the requirement of Article 4(2)(b) that the parties consent to the jurisdiction of ICSID under Article 25 of the Convention (in lieu of the Additional Facility) in the event that the jurisdictional requirements *ratione personae* of that Article shall have been met at the time when proceedings are instituted is met.
60. Both requirements at Article 4(2) are therefore satisfied, and the Claimants requests the approval of the arbitration agreement contained in the French BIT in accordance with Article 4(1) of the Additional Facility Rules.

V. **BREACH OF TREATY OBLIGATIONS AND REMEDIES**

61. The Respondent has
 - (1) failed to accord the Claimants' investments fair and equitable treatment;
 - (2) failed to accord the Claimants' investments no less favorable treatment and/or most favoured nation treatment;

- (3) taken arbitrary and/or discriminatory measures in breach of its treaty obligations not to harm the management, maintenance, use, enjoyment or order of such investments;
- (4) expropriated and dispossessed the Claimants' investments without just cause and without compensation; and/or
- (5) adopted measures equivalent to expropriation without just cause and without compensation. The actions of Mexico are arbitrary and contrary to the French BIT and to international law.

A. The BIT between Mexico and France provides that ICSID Additional Facility arbitration is available to resolve Gemplus, SLP and Gemplus Industrial's investment dispute

62. The French BIT was signed on 12 November 1998, and came into effect in Mexico following its publication in the Official Bulletin on 11 December 1998. It became effective in France on 26 October 2000. A copy of the French BIT (in Spanish, French and an English translation taken from the website of the Ministry of Economic Affairs of Mexico - <http://www.economia.gob.mx>) appears at **Exhibit 12**. Article 9 of the French BIT provides that investment disputes may be referred to ICSID for resolution under the Additional Facility.

"Article 9:

- 4¹. A dispute under this Article may be submitted for arbitration [...] to:*
 - (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 the Contracting Party of the investor and the Contracting Party to the dispute are both parties to the ICSID Convention;*
 - (ii) the Centre under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, if the*

¹ In the English translation on the Respondent's website, this clause is mistakenly numbered 9(3).

Contracting Party of the investor or the Contracting Party to the dispute, but not both, is a party to the ICSID Convention;

- (iii) an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL");*
- (iv) the International Chamber of Commerce, by an ad hoc tribunal under its rules of arbitration."*

63. Gemplus, SLP and Gemplus Industrial are investors from France (as explained in paragraphs 67 and 68 below). France is a party to the ICSID Convention. Mexico is not a Contracting Party to the ICSID Convention. Accordingly, Gemplus, SLP and Gemplus Industrial are entitled to submit this investment dispute to international arbitration under the ICSID Additional Facility Rules. The Respondent consented to arbitration under the ICSID Additional Facility Rules as a forum to resolve this dispute when it signed and ratified the French BIT.

B. All requirements of the French BIT for the referral of these investment disputes to ICSID have been met

64. Under the French BIT, an investor may pursue arbitration under the ICSID Additional Facility Rules if:

- (1) the dispute arises under the French BIT;
- (2) six months have elapsed from the date on which the events giving rise to the dispute arose;
- (3) it has not submitted the dispute for resolution to a competent court or administrative tribunal of the host state, nor has a company held or controlled by that investor alleged a breach of the provisions of the French BIT in any proceedings before a competent court or tribunal of the host state; and

(4) it has given the host state at least 60 days' notice of its intention to submit the dispute to international arbitration.

65. Each of these requirements and suggestions has been met. These are examined in form below.

(1) The Claimants' disputes arise under the BITs

(a) Investments and investors

66. Article 1.1 of the French BIT defines an "investment" as being:

"[...] every kind of asset, such as goods, rights and interest of whatever nature, including property rights, acquired or used for the purpose of economic benefit or other business purpose, and in particular though not exclusively: [...]"

(b) shares, premium on share and other kinds of interest including minority or indirect forms, in companies constituted in the territory of one Contracting party; [...]"

(e) rights derived from any concession conferred by any legal means."

67. Article 1.2 of the French BIT defines an investor as, *inter alia*:

"any legal person constituted in the territory of one Contracting Party in accordance with the legislation of that Party and having its head office in the territory of that Party, or controlled directly or indirectly by the nationals of one Contracting Party, or by legal persons having their head office in the territory of one Contracting Party and constituted in accordance with the legislation of that Contracting Party. A legal person will be considered as controlled if the majority of its shares having voting rights is held by a national or a legal person having its head office in the territory of one Contracting Party and constituted in accordance with the legislation of that Contracting Party." (underlining added)

68. Gemplus and SLP are legal entities constituted under the laws of France (a party to the French BIT) and have their main offices in France. They are accordingly nationals of France under the French BIT.

69. Gemplus held, and SLP now holds, 99.9% of the shares in Gemplus Industrial, a Mexican company which has legal title to 20% of Renave's shares. Gemplus Industrial is currently controlled by SLP, a French company. It is accordingly an investor from France within the terms of the French BIT, and the ICSID Convention (Article 25(2)(b)). Before 28 April 2004 and at all material times until then, Gemplus Industrial was controlled by Gemplus, a French Company. It has accordingly always been a French investor under the French BIT. Further, as stated in paragraph 11 above, Gemplus Industrial is duly registered at the Mexican National Registry of Foreign Investments (Registro Nacional de Inversiones Extranjeras), as evidenced by a certificate dated 22 September 1999.

70. By subscribing to shares in Renave (a Mexican company) and contributing capital and other resources to the development of the Registry pursuant to the Concession Agreement, and deriving rights therefrom, Gemplus/SLP and Gemplus Industrial made investments in Mexico. Accordingly, Gemplus, SLP and Gemplus Industrial are investors within the meaning of the French BIT.

(b) Protection of investments

71. Article 4.1 of the French BIT provides that:

"Either Contracting Party shall extend and ensure fair and equitable treatment in accordance with the principles of International Law to investments made by investors of the other Contracting Party in its territory or in its maritime area, and ensure that the exercise of the right thus recognized shall not be hindered by law or in practice."

72. Article 4.2 provides that:

"Each Contracting Party shall extend in its territory and in its maritime area to the investors of the other Contracting Party, with respect to their investments, and to the operation, management, maintenance, use, enjoyment or disposal of such investments, treatment not less favourable than that granted to its investors, or the treatment granted to the investors of the most favoured nation, if the latter is more favourable."

73. Article 5.1 provides that:

"Neither Contracting Party shall nationalize or expropriate directly or indirectly, or take any measure having a similar effect, on an investment of the other Contracting Party, in its territory and in its maritime area, except:

- (i) in the public interest;*
- (ii) provided that these measures are not discriminatory;*
- (iii) in accordance with due process of law;*
- (iv) on payment of a compensation in accordance with paragraphs 2 and 3 of the present Article."*

74. The French BIT provides that compensation or indemnity paid should equate to the market value of the investment.

(2) At least six months but less than four years have elapsed since the disputes arose

75. Article 9.4 of the French BIT provides that arbitration may only be commenced after six months but no more than 4 years have elapsed from the date when the events giving rise to the dispute occurred. The Technical Intervention was ordered on 28 August 2000. The Administrative Intervention was ordered on 14 September 2000. The Seizure was ordered on 25 June 2001. The Respondent formally and permanently revoked the Concession Agreement on 17 December 2002. This 6-month term has therefore elapsed, whichever of the above four dates is taken as the basis for the claim, it being the Claimants' position that these four events amounted to unlawful expropriation, or equivalent measures, both independently and collectively. Similarly, less than four years have elapsed since the earliest possible date of the events giving rise to this dispute.

76. Accordingly, the provisions of Article 9.4 of the French BIT are satisfied.

(3) The Claimants' disputes are submitted only to ICSID

77. Article 9.2(a) of the French BIT provides that:

"an investor of one Contracting Party may not allege that the other Contracting Party has breached an obligation under this Agreement both in arbitration under this Article and in a proceeding before a competent court or administrative tribunal of the former Contracting Party, party to the dispute."

Further, Article 9.2(b) states that:

"likewise, where an enterprise of one Contracting Party that is a juridical person that an investor of the Contracting Party owns or controls alleges in proceedings before a competent court of administrative tribunal of the Contracting Party, party to the dispute, that the former Contracting Party has breached an obligation under this Agreement, the investor may not allege that breach in an arbitration under this article."

78. Accordingly an investor's choice to pursue a replica judicial complaint in the local courts would prevent later recourse to international arbitration.

79. The Claimants have not brought any action against the Respondent before any administrative or judicial court. All the administrative and judicial actions which have been filed in Mexico in relation to the facts surrounding this dispute (see paragraph 50 above) were brought by Renave, a juridically distinct entity from the Claimants, and do not affect the international law causes of action advanced in this Request.

80. On 20 September 2000, Renave filed before the Secretariat a "motion to reopen the case" whereby it challenged the technical intervention ordered on 28 August 2000. This was an administrative action filed by Renave (not by its shareholders) before the same administrative body (Secretariat) which ordered the challenged act (Technical Intervention). Accordingly, it has no effect on the Claimants' right to commence this arbitration.

81. As set out in paragraph 50 above, Renave has also brought four judicial actions against the Government of the United States of Mexico before different Mexican courts. At no point in these proceedings were the provisions of the BITs invoked by Renave.
82. The purpose of the judicial actions brought by Renave is fundamentally different from the purpose of these arbitration proceedings. In these proceedings, the Claimants, and not Renave, seek (i) declarations that the Respondent acted arbitrarily and that its conduct amounted to an expropriation without indemnification in breach of the provisions of the BITs and (ii) orders that Gemplus, SLP and Gemplus Industrial be compensated for the expropriation and/or loss caused by the Respondent's unlawful interference under the terms of the French BIT.
83. The prohibition against instituting international arbitration proceedings when local judicial proceedings have already been commenced is intended to avoid contradictory findings on the same subject. The arbitration proceedings have a different purpose, pursue a different objective, rely on different causes of action and have different claimants to the judicial proceedings. Accordingly, the Claimants have only submitted their dispute with the Respondent to ICSID.
- (4) The Claimants provided the Respondent with more than 60 days' notice of their intention to submit these investment disputes to international arbitration**
84. On 19 March 2003, the Claimants delivered to the Respondent, through the Secretariat, a letter formally notifying it of these disputes, seeking to resolve the disputes by consultation and negotiation, and notifying it of their intention to seek compensation through ICSID arbitration if no settlement could be reached (**Exhibit 15**). The notice period of 60 days, as set out in Article 9.4 of the French BIT, has therefore expired. Accordingly, the Claimants may submit their

investment dispute to international arbitration under the ICSID Additional Facility Rules.

(5) Consultation and Negotiation

85. Although the French BIT does not make consultation and negotiation a prerequisite to the initiation of an ICSID Additional Facility arbitration, the Claimants have attempted, as far as possible, to reach a settlement of their dispute through negotiation and consultation.

86. On 1 October 2001, Gemplus Industrial (together with Talsud) wrote to the Secretariat, on behalf of the Respondent, notifying it of their claims under the BITs and inviting the Respondent to enter into formal negotiations with a view to reaching a settlement of these disputes (**Exhibit 13**). Representatives of the Claimants and Talsud met with officials from the Respondent on 15 February 2002 to consult about this matter but no agreement could be reached. Two further meetings took place on 22 and 27 August 2002 between representatives of Renave, its shareholders and the Secretariat. However, the parties were unable to reach any form of agreement.

87. On 19 March 2003, the Claimants delivered their above-mentioned letter to the Secretariat, on behalf of the Respondent. The Respondent has failed to respond to this letter.

88. The Claimants have consulted and negotiated with the Respondent since at least 1 October 2001, but the disputes have not been resolved.

VI. JUDICIAL ECONOMY: THIS CLAIM SHOULD BE DETERMINED BY THE SAME TRIBUNAL AS THE PARALLEL ARBITRATION BETWEEN THE RESPONDENT AND TALSUD

89. As set out above, Talsud has commenced, in parallel to these proceedings, its own claim against the Respondent.
90. While the two separate legal disputes are advanced in two separate (but parallel) arbitrations, they arise from investments concerning the same set of facts. Judicial economy and expedience would therefore clearly be served by the claims being heard together.
91. No agreement has been reached between the Claimants and Talsud on the one hand, and the Respondent, on the other, on this question; in fact it has not been addressed. The Claimants' preference, however, is that both claims be dealt with before a single arbitral tribunal.
92. As appears from the description of the background to the claims set out in Section III above, the dispute arises from a factual matrix which comprises a number of complex legislative, administrative and judicial elements and interventions. The circumstances in which the expropriation and arbitrary and unfair treatment complained of by the Claimants occurred will be the subject of detailed evidence concerning the meaning and effect of the administrative and judicial steps taken by the Respondent against Renave. The evidence may well include the evidence of legal and other experts. These matters are the same as will be required in the claim brought by Talsud against the Respondent. It would be wasteful of costs and it would involve unnecessary duplication for the Claimants and Talsud to adduce evidence of these matters before two separate tribunals.
93. The possibility of two separate tribunals proceeding at a different pace would involve a number of complications and risks. These include the obvious risk of

treatment; (2) has failed to accord the Claimants' investments no less favourable treatment and/or most favoured nation treatment; (3) has breached its treaty obligation not to harm the management, maintenance, use, enjoyment or order of such investments with arbitrary or discriminatory measures; (4) has expropriated and dispossessed the Claimants' investments without just cause and without compensation; and/or (5) has adopted measures equivalent to expropriation without just cause and without compensation;

- (ii) their losses set out at paragraph 52 above;
- (iii) interest pursuant to Article 5.3 of the French BIT; and
- (iv) legal costs and costs of this arbitration, including ICSID and Tribunal fees.

RESPECTFULLY SUBMITTED.

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inconsistent decisions being reached; the difficult question of the influence of the first decision on the second decision and complexities concerning whether a decision in one case concerning a particular issue precludes one of the parties from taking a different position on the same issue in the other case.

VII. RESERVATION OF THE RIGHT OF AMENDMENT

94. The Claimants reserve the right to amend any statements of fact and law set out in this Request .

VIII. DOCUMENTS

95. An index of the documents exhibited to this Request is attached as Appendix G.

IX. REGISTRATION FEE

96. A cheque for US\$15,000 payable to ICSID is enclosed with this Request in respect of the lodging fee under Article 16 of the ICSID Administrative and Financial Regulations.

X. REQUEST FOR REGISTRATION

97. The Secretary General is requested to register this Request in accordance with Article 4 of the Arbitration (Additional Facility) Rules.

XI. REQUEST FOR RELIEF

98. The Claimants claim:

- (i) a declaration that the Government of Mexico has acted arbitrarily and (1) has failed to accord the Claimants' investments fair and equitable