

AGREEMENT BETWEEN THE BOLIVARIAN REPUBLIC OF VENEZUELA AND THE REPUBLIC OF COLOMBIA CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The BOLIVARIAN REPUBLIC OF VENEZUELA and the REPUBLIC OF COLOMBIA, hereinafter referred to as "the Parties" or individually as the "Party";

DESIRING to strengthen and deepen the ties of friendship and the spirit of continued cooperation between the Parties;

DESIRING to promote greater cross-border economic cooperation between them, particularly with respect to cross-border direct investment by investors of one Party in the territory of the other Party;

SEEKING to create and maintain favorable conditions for cross-border direct investment by investors of one Party in the territory of the other Party;

RECOGNIZING the importance of cross-border direct investment in the transfer of technology, the formation of value-added chains, the adoption of new forms of production, the stimulation of exports, the diversification of the productive matrix, the substitution of imports, economic growth, the stimulation of the flow of capital, the creation of employment and development for the Parties, among others;

CONVINCED that these objectives can be achieved without compromising generally applicable health, safety and environmental measures, as well as internationally recognized labor rights;

HAVE AGREED AS FOLLOWS:

Article 1. Object

The purpose of this Agreement is to establish, maintain and consolidate a legal framework that facilitates and promotes cross-border direct investments made by investors of one Party in the territory of the other Party, with the aim of promoting the harmonious, productive and sustainable development of both peoples, respecting the sovereignty and self-determination of each of the Parties, their national legal system and international law.

Article 2. Definitions

For the purposes of this Agreement:

- a. The term "Investment" means any type of assets, related to activities aimed at producing goods and services, acquired directly by an Investor of the Party Issuing the Investment, with funds that do not originate in the Party Receiving the Investment, for the purpose of establishing lasting economic relations in the territory of such Party Receiving the Investment, which permits the exercise of control or a significant degree of influence over the management of the production of goods or provision of services and which is an Investment made in accordance with the national legal system of the Receiving Party, including compliance with the requirements of commitment of capital or other resources, expectation of profit, contribution to economic development, or a certain duration and shall include in particular, but not exclusively:
 - i. An enterprise constituted under the national law of the Recipient Party and meeting the requirements set forth in this Agreement;
 - ii. Rights in movable and immovable property including ownership and other rights in rem such as mortgages, pledges, usufruct, encumbrances, pledges and any other similar rights defined in accordance with the national legal system of the Receiving Party;
 - iii. Invested income;

- iv. Shares, securities, bonds and debentures issued by commercial companies and any other similar forms of participation in companies of any kind;
- v. Credit operations, rights over sums of money or over any other right of payment that is related to the economic value of an Investment;
- vi. Intellectual property rights, such as copyrights, patents, utility models, industrial models and designs, trademarks, know how and good will; and viii.
- vii. Rights of an economic nature such as business concessions, licenses or authorizations conferred by law or by contract, including concessions for the exploration, processing, extraction and exploitation of natural resources.

For greater certainty, the term "Investment" does not include:

- i. Real estate or other property, tangible or intangible, which is not used, or acquired in the expectation of being used, for the purpose of economic benefit or for other business purposes related to the investments covered by this Agreement;
- ii. An order, judgment or arbitration award issued by a judicial, administrative or arbitral authority;
- iii. debt securities issued by a Party or loans granted by a Party to the other Party, bonds, debentures, debenture loans and other debt instruments of a state enterprise of a Party that this Party treats as a public debt;
- iv. Portfolio investments, which do not enable the Investor to exercise a significant degree of influence over their management; or
- v. pecuniary claims arising exclusively from commercial contracts for the sale of goods or services by a national of an enterprise in the territory of a Party to a national or enterprise in the territory of the other Party, or the extension of credit in connection with a commercial transaction.

Any change in the manner in which the assets or rights are invested or reinvested shall not affect their character as an Investment, provided that such change is made in accordance with the domestic law of the Party in whose territory the Investment was made.

b. The term "investor" means:

- i. A natural person having the nationality of a Party in accordance with its national legal system, who has made an Investment in the territory of the other Party and who does not possess the nationality of the Receiving Party;
- ii. A juridical person, including partnerships, companies, firms, partnerships and other for-profit associations or organizations incorporated or constituted under the legal system of the Issuing Party and having their registered offices together with substantial business activities in the territory of that Party, provided that they are not controlled by a national of the Receiving Party;

The definition of "investor" does not include financial institutions, funds or other lenders extending credit or loans to an Investor covered under this Agreement.

c. The term "returns" means amounts earned by an Investment, including interest, capital gains, dividends, rents and fees for technical assistance and management, payments in kind and any other payments regardless of their type.

d. "Receiving Party" means the party in the territory of which the Investment is made.

e. "Issuing Party" means the party whose national makes the Investment.

f. "National" means a natural or juridical person who, under the domestic law of a Party, is considered to be its national; and

i. Is not a national of both Parties;

ii. Acquired the nationality of the Issuing Party before the Investment was made; iii. Has not lost the nationality of the Issuing Party before the Investment was made;

iii. Has not lost the nationality of the Issuing Party after the Investment was made; and

iv. The nationality of the Issuing Party is its effective nationality under the rules of customary international law.

g. "Territory": shall mean the territory of each Party its continental territory and island formations, the airspace above it and the electromagnetic spectrum, in and over the continental and island territory, without considering only for the purposes of

this Agreement, the marine and submarine areas, nor the common rivers of the Parties.

None of the provisions of the present Agreement presupposes or conditions the positions of the Parties with respect to the delimitation or demarcation of the border and they cannot be interpreted as a modification of the established in the boundary agreements subscribed.

Article 3. Scope of Application

This Agreement shall apply to investments in the territory of a Party, made in accordance with its domestic law, by investors of the other Party, whether before or after the entry into force of this Agreement.

However, this Agreement shall not apply to disputes that have arisen in respect of measures, actions or omissions, which were produced, adopted or implemented prior to its entry into force, even if their effects continue after such entry into force.

This Agreement shall not apply to any measures relating to taxes and other duties.

Article 4. Promotion and Protection of Investments

a. Subject to its domestic legal system, each Party shall encourage and create favorable conditions for investors of the other Party to make cross-border direct investments in its territory.

b. The extension, addition or transformation of an Investment must be made in accordance with the national legal system of the Receiving Party in whose territory the Investment is made.

c. With a view to increasing cross-border direct investment flows, each Party shall endeavor, at the request of the other Party, to inform the latter of investment opportunities in its territory.

d. For the purpose of monitoring the behavior of investment flows, investors shall inform the competent national investment authority of the Receiving Party of investments made in accordance with its domestic regulations.

Article 5. Non-Discrimination

a. Nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining or enforcing nondiscriminatory legal measures:

- i. designed and applied for the protection of human, animal or plant life or the environment;
- ii. To secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; or
- iii. Related to the conservation of living or nonliving exhaustible natural resources.

b. Nothing in this Agreement shall be construed to:

- i. Require any Party to provide or permit access to any information the disclosure of which it determines to be contrary to its essential security interests;
- ii. Prevent any Party from taking any action it considers necessary for the protection of its essential security interests:
 - 1. In connection with the traffic in arms, ammunition and implements of war and for traffic and transactions in other goods, materials, services and technology carried on directly or indirectly for the purpose of providing a military service or other security establishment,
 - 2. Taken in time of war or other emergency in international relations, or
 - 3. In connection with the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- iii. Prevent any Party from acting in fulfillment of its obligations under the Charter of the United Nations for the maintenance of international peace and security.

c. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

- i. The protection of investors, depositors, financial market participants, policyholders, policy applicants, or persons to whom a fiduciary duty is owed by a financial institution;
- ii. The maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; or
- iii. Ensuring the integrity and stability of its financial system.

The adoption, maintenance or enforcement of the above measures is subject to the requirement that they are not applied in an arbitrary or unjust manner or constitute a disguised restriction on investments of investors of the other Party.

Article 6. National Treatment

- a. For greater certainty, this Agreement shall not result in unjustifiably more favorable treatment of foreign investors vis-à-vis domestic investors.
- b. The Parties, in accordance with their national legal system, shall give favorable consideration to requests for entry and stay by nationals of either Party who wish to enter the territory of the other Party in connection with the making of an Investment.
- c. The non-discrimination and national treatment of this Agreement shall not apply to all actual or prospective advantages accorded by either Party by virtue of its membership in, or association with, a customs, economic or monetary union, a common market or a free trade area, to its own nationals or companies, of the other Party's nationals or companies, or of the other Party's nationals or companies of the other Party, of member states of such union, common market or free trade area, or of any other non-Party.
- d. The provisions of this Agreement shall not oblige a Party to accord to investments of investors of the other Party the same treatment that it accords to investments of its own investors with respect to the acquisition of land, real property and real rights, in accordance with its domestic law.

Article 7. Expropriation and Nationalization

- a. Investments made by investors of the Issuing Party may be expropriated or nationalized by the Receiving Party, out of necessity, for reasons of public interest, or for reasons of public utility or general interest, in accordance with the national legal system of each Party and in accordance with due process and against just compensation or indemnification, provided that such measures are not taken in a discriminatory manner, in accordance with the national legal system of the Receiving Party.
- b. The amount of compensation or indemnification shall be equivalent to the market value price of the investment immediately before the nationalization or expropriation measures become public knowledge.
- c. Non-discriminatory legal measures designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute expropriation.
- d. Affected investors shall have the right of access, in accordance with the domestic legal system of the Party making the expropriation, to the judicial authority of that Party for the purpose of reviewing the amount of compensation and the legality of such expropriations or comparable measures.

Article 8. Compensation for Losses

Investors of either Party whose investments suffer losses in the territory of the other Party due to war, insurrection, civil disturbance, a state of national emergency or other similar events, shall be accorded in accordance with its domestic legal system, by way of restitution, indemnification, compensation or other arrangement, treatment no less favorable than that accorded by the Host Party to its own investors or to investors of any non-Party third State in respect of such losses.

Article 9. Transfer

- a. Each Party shall, subject to compliance with all domestic requirements under its domestic law, allow investors of the other Party transfers relating to their Investment. Such transfers include, but are not limited to, the following:
 - i. The initial contribution and the initial capital and additional amounts to maintain or increase the Investment;
 - ii. Remainder directly related to the Investment;

- iii. Proceeds from the sale in whole or in part or liquidation of all or part of an Investment;
 - iv. The amount of an indemnification pursuant to Articles 7 and 8;
 - v. Repayments and interest payments derived from borrowings in connection with the Investments;
 - vi. Wages, salaries and other remuneration received by the nationals of a Party who have obtained in the territory of the other Party the corresponding work permits in connection with an Investment; or
 - vii. Payments arising from an Investment dispute.
- b. Transfers shall be made in the freely usable currency in which the Investment was made or in any freely usable currency at the exchange rate in effect on the date of transfer, unless otherwise agreed between the Investor and the Receiving Party. The tax obligations established in the national legal system of the Receiving Party of the Investment must be observed in order to carry out the transfers.
- c. Notwithstanding the provisions of paragraphs a and b, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its domestic legal system, relating to:
- i. Bankruptcy, insolvency or the protection of creditors' rights;
 - ii. The issuance, trading or negotiation of securities;
 - iii. Criminal offenses or infractions;
 - iv. Reports of transfers of currency or other monetary instruments; or
 - v. Securing the satisfaction of judgments or awards in adjudicatory proceedings.
 - vi. Establishment of the necessary instruments or mechanisms to ensure the payment of income taxes by such means as withholding the amount related to dividends or other concepts.
- d. Neither Party may require its investors to transfer, or penalize its investors who fail to transfer, income, profits or other amounts derived from or attributable to investments in the territory of the other Party.
- e. Paragraph d shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its domestic legal system relating to the provisions set out in subparagraphs (i) through (vi) of paragraph c.

Notwithstanding the provisions of paragraph a, each Party shall have the right, in circumstances of an exceptional or severe balance of payments difficulties, to limit transfers temporarily, on an equitable and non-discriminatory basis, in accordance with internationally accepted criteria. The limitations adopted or maintained by a Party of a transfer shall be in accordance with internationally accepted criteria. The limitations adopted or maintained by a Party in accordance with this paragraph, as well as their elimination, shall be promptly notified to the other Party.

Article 10. Subrogation

The Party, or the duly authorized public or private entity of that Party, which indemnifies an Investor under an insurance or other guarantee to cover non-commercial risks in connection with its Investment in the territory of the other Party, shall be subrogated to the rights accruing to the Investor under this Agreement. The subrogated rights or claims shall not exceed the original rights or claims of the Investor. Disputes between a Party and an insurer shall be resolved in accordance with the provisions of Article 12 of this Agreement.

Article 11. Settlement of Disputes between the Parties

The Parties shall, to the extent possible, settle any dispute concerning the interpretation or application of this Agreement through consultations or diplomatic channels.

Article 12. Dispute Settlement between a Party and Investors of the other Party

a. Any investment dispute arising between a Party and an Investor of the other Party concerning matters governed by this Agreement shall be notified in writing by the Investor to the Receiving Party, including details of its claim and stating the provisions of the Agreement which it considers to have been violated, the facts on which the dispute is based, the estimated value of the damages claimed and the compensation sought. To the extent possible, the Investor and the Party concerned

shall endeavor to resolve the dispute through direct consultations and negotiations in good faith.

b. When the dispute cannot be settled amicably within six (06) months from the date of receipt of the written notice referred to in paragraph a of this Article, the dispute shall be submitted to the Investor's choice before:

i. The competent court of the Party in whose territory the Investment has been made; or

ii. An ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), adopted by the General Assembly of the United Nations on December 15, 1976.

The Parties may agree that the administration of arbitral disputes shall be carried out by a binational Arbitration Center.

c. An Investor may submit a dispute referred to in paragraph a to arbitration in accordance with paragraph b only if:

i. The Investor has so stated in writing;

ii. The Investor has waived its right to initiate or continue any other proceeding in connection with the measure that in its opinion constitutes a breach of this Agreement, before the courts or tribunals of the Receiving Party or in any type of dispute settlement proceeding; and

iii. no more than three (3) years have elapsed since the date on which the Investor first became aware or should have become aware of the alleged breach.

d. Once the Investor has submitted the dispute to one or the other of the dispute resolution forums mentioned in paragraph b, the choice of one of these forums shall be final.

e. The arbitration shall be based on:

i. The provisions of this Agreement;

ii. The national law of the Receiving Party, including its conflict of laws rules; and

iii. The generally accepted principles of international law.

f. Arbitral awards shall be final and binding on all parties to the dispute. Each Party shall enforce the award in accordance with its national law.

The Parties' offer to arbitrate contained in paragraph b.ii shall be subject to compliance with the requirements of this Agreement.

Article 13. Denial of Benefits

a. A Party may deny the benefits of this Agreement to an Investor of the other Party if the Investor fails to comply with any of the requirements set forth in Article 2.

b. Benefits may be denied at any time by the Receiving Party, including after any claim has been initiated pursuant to the dispute resolution mechanism provided for in this Agreement and provided that any of the following conditions are met:

i. That an enterprise is controlled directly or indirectly by, or under a significant degree of influence of, natural or juridical persons of a non-Party to this Agreement and that such enterprise does not have substantial business activities in the territory of the Receiving Party;

ii. An enterprise is controlled directly or indirectly by, or under a significant degree of influence of, natural or juridical persons of the denying Party and that enterprise does not have substantial business activities in the territory of the other Party;

iii. That it has been judicially or administratively proven, in accordance with the legal system of the Party, that the Investor has incurred in acts of corruption with respect to the Investment.

Article 14. Environmental and Labor Measures

a. Nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining, or enforcing any measures it considers appropriate to ensure that an investment activity in its territory is undertaken in accordance with its environmental and labor laws and regulations, provided that such measures are proportionate to the objectives sought.

b. The Parties recognize that it is not appropriate to encourage Investment by lowering the standards of their labor and environmental measures. Accordingly, a Party shall not fail to require or waive, or offer, such measures as a means of encouraging the establishment, acquisition, expansion or retention of an Investment or an Investor in its territory.

Article 15. Joint Committee

a. The Parties hereby establish a Joint Committee, composed of representatives of Colombia and Venezuela.

b. The first meeting of the Joint Committee shall take place during the year following the entry into force of this Agreement.

Thereafter, the Joint Committee shall meet every two (2) years in Caracas and Bogota, alternately, unless otherwise agreed by the Parties.

c. The Joint Committee shall be co-chaired by the Minister of People's Power with competence in Foreign Trade of Venezuela and the Minister of Commerce, Industry and Tourism of Colombia, or whoever they may designate respectively.

d. The Joint Committee shall agree on its schedule of meetings and establish its agenda.

e. The Joint Committee may:

i. Establish or dissolve subcommittees, working groups and other bodies, or assign responsibilities to them;

ii. Communicate with all interested parties, including the private sector and social organizations, through the government of the Party concerned;

iii. Make recommendations as provided in this Agreement.

iv. Adopt its own rules of procedure.

f. The Joint Committee shall:

i. Ensure that this Agreement functions properly.

ii. Oversee and facilitate the execution and implementation of this Agreement, and promote its overall objectives.

iii. To oversee the work of all sub-committees, working groups and other bodies established pursuant to this Agreement;

iv. Consider ways to further improve trade relations between the Parties;

v. Explore forms of cooperation to strengthen productivity and integration between the Parties;

vi. Any other matter of interest related to the area covered by this Agreement.

Article 16. Consultation and Exchange of Information

The Parties may agree, at any time, at the request of either Party, to consult on the interpretation or application of this Agreement. At the request of either Party, information shall be exchanged on measures of the other Party that may have an impact on new investments, investments or earnings covered by this Agreement.

Article 17. Entry Into Force, Duration, Amendments and Termination

a. This Agreement shall enter into force sixty (60) days after the date of receipt of the last notification made by the Parties, in writing and through diplomatic channels, of the completion of the respective internal legal procedures necessary to that effect.

b. This Agreement shall remain in force for a period of ten (10) years and shall continue in force for a period of ten (10) years unless terminated in accordance with paragraph (d) of this Article.

c. This Agreement may be amended by mutual written consent of the Parties at any time. Amendments shall enter into force in accordance with the same legal procedure prescribed in paragraph a of this Article.

d. In the event of denunciation, such denunciation shall be made in accordance with the applicable rules and principles of customary international law. The provisions of Articles 1 to 16 of this Agreement shall continue in force for a period of five (5) years following the date of denunciation.

Signed in duplicate and original in the Spanish language, in the city of Caracas, Bolivarian Republic of Venezuela, on the third (03) day of February of the year 2023.

NICOLAS MADURO MOROS

President of the Bolivarian Republic of Venezuela

DARIO GERMAN UMAÑA MENDOZA

Minister of Trade, Industry and Tourism