Agreement between the Republic of Bolivia and the Republic of Cuba for the Promotion and Reciprocal Protection of Investments

The Republic of Bolivia and the Republic of Cuba referred to hereinafter as the "Contracting Parties";

Intending to create and maintain favourable conditions for investments of investors of a Contracting Party in the territory of the other Contracting Party involving transfers of capital.

Recognizing that the reciprocal promotion and protection of investments in accordance with this Agreement, will contribute to the economic prosperity of both States.

Aware of the need to establish an appropriate legal framework regulating and ensure the promotion and reciprocal protection of investments between the two countries;

Hereby agree as follows:

Article I. Definitions

For the purposes of this Agreement:

1. The term "capital" refers to every kind of property or right related to an investment provided that this is done in accordance with the laws and regulations in force in the Contracting Party in whose territory the investment was made and includes in particular:

a) Movable and immovable property as well as any other rights in rem;

b) Shares, stocks and any other kind of participation in companies in the territory of either of the contracting parties;

c) Reinvestment of profits;

d) The rights of claim or any other performance having economic value;

e) Intellectual property rights, including copyrights and industrial property;

f) Concessions granted by law, including concessions to prospecting, exploration, extraction, industrialization and exploitation of natural resources.

Any alteration of the form in which assets have been invested capital and reinvested or affect their qualification of investments under this Agreement

Investment does not include;

a) A payment obligation of a loan to a State enterprise or the granting of the same.

b) Monetary claims arising solely from commercial contracts for the sale of goods by a national or enterprise in the territory of a party to an enterprise in the territory of the other party.

2. The term "Investor" means for each Party to the following subjects who effected elterritorio investments of the other Contracting Party in accordance with this Agreement:

a) Natural or natural persons who, according to the legislation of a Contracting Party, are considered to be nationals of the same;

b) Legal persons duly constituted in accordance with the legislation of one Contracting Party, having their seat, and substantial economic activities in the territory of that Contracting Party.

c) Legal persons constituted under the law of any country, which are mostly controlled by investors referred to in subparagraphs (a) and (b) above.

3. The term "proceeds" means all amounts resulting from an investment such as profits, dividends, interests, and other benefits.

4. The term "territory" includes any area subject has sovereignty and jurisdiction of either Contracting Party, in accordance with their respective laws and international law.

Article II. Promotion and Protection of Investments

1. Each Contracting Party promoverd and create favourable conditions in its territory for investments of investors of the other Contracting Party and shall allow such investments in accordance with its legislation.

2. Each Contracting Party in accordance with its laws and regulations, be granted to investments made in its territory by the investors of the other contracting party, the protection and guarantees provided for in this Agreement.

3. Each Contracting Party in accordance with its laws, allow investors of the other contracting party to engage, managerial and technical expertise, at his choice regardless of nationality.

Furthermore, the Contracting Parties in accordance with its laws, will allow to investors of the other contracting party, the entry and sojourn in its territory in order to implement and administer its investment.

4. Each Contracting Party shall guarantee to investors of the other Contracting Party the free access to the courts of justice and administrative tribunals and all agencies and other bodies exercising jurisdictional authority.

5. Each Contracting Party shall publicize and disseminate laws and regulations related to investments of investors of the other Contracting Party.

Article III. Treatment of Investments

1. Each Contracting Party shall guarantee within its territory to investments of investors of the other Contracting Party fair and equitable treatment; ensure that the exercise of the rights recognized in the present Agreement is not hindered and investors to fulfil its obligations under its law.

2. Each Contracting Party shall accord to investments of investors of the other contracting party in its territory treatment no less favourable than that accorded to its own of investments or investors to investors of any third country, whichever is more favourable treatment. To this effect confirms that investments referred to above, are governed by the legislation of each country covering foreign investment and that the treatment provided for in the preceding subparagraph and in this paragraph shall apply to the provisions of Articles I to XI of this Agreement.

3. In the event that a Contracting Party has accorded special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union, economic union, a common market or any other form of regional economic organization or by virtue of any agreement relating wholly or mainly to taxation matters, that Party shall not be obliged to grant such advantages to investors of the other contracting party.

Article IV. Expropiation and Compensation

1. Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other contracting party of an investment unless the following conditions are met:

a) The measures are taken for a public purpose or national interest and in accordance with the law;

b) The measures are not discriminatory;

c) The measures are accompanied by provisions for the payment of compensation without delay, adequate and effective.

2. The compensation shall be based on the market value of the affected investments immediately on a date prior to the date on which the measure became public knowledge.

When it is difficult to determine this value, compensation may be set according to the evaluation principles generally recognized as fair, taking into account the capital invested, its depreciation, the capital repatriated up to that date, the replacement value, and other relevant factors. Any delay in the payment of compensation will accrue interest at a

commercial rate established on the basis of the market value, counting from the date of expropriation or loss until the date of payment.

The amount of compensation, including interest if applicable, will be paid to the investor in freely convertible currency.

3. The legality of the nationalisation, expropriation or any other measure having equivalent effect and the amount of compensation may be challenged in legal proceedings before the courts of the Contracting Party adopting the expropriation measure or making the compensation effective, in accordance with the provisions of its legislation in force.

4. Investors of either Contracting Party whose investments in the territory of the other contracting party are losses due to a war or any other armed conflict, a national state of emergency, civil disturbance or other similar events in the territory of the other Contracting Party, shall receive from this latter, with respect to restitution, compensation, compensation or other settlement, not a less favourable treatment than that which the Contracting Party accords to domestic investors or any third State.

Payments that may arise under this heading shall be effected in a freely convertible currency.

Article V. Free Transfer

1. Each Contracting Party shall authorize, without delay after satisfying its fiscal obligations, the investors of the other Contracting Party to carry out the transfer of the funds related to its investments in freely convertible currency in particular:

a) Profits, dividends, interests and other benefits, upon payment of taxes imposed by the legislation of the Parties;

b) External amortisation of loans related to an investment;

c) The proceeds of the sale or total or partial liquidation of an investment or where appropriate the invested capital;

d) Payments of the product of a dispute settlement; and compensation pursuant to Article IV;

2. Transfers shall be made in accordance with the rate of exchange prevailing on the date of transfer, according to the Law of the Contracting Party which has admitted the investment

Article VI. Subrogation

1. If a Contracting Party or an agency authorised by that party has granted a contract of insurance or other financial guarantees against non-commercial risks with regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party to the rights of subrogation of the investor, where payment under the guarantee or insurance contract has been made.

2. If a Contracting Party has paid to the investor and therefore assumed their rights and benefits, the investor shall not claim such rights and benefits to the other Contracting Party, except with the express authorization of the first Contracting Party and provided that those rights and benefits remain in force and legally recognized by the other contracting party.

3. As regards property rights, use, enjoyment, or any other right, the subrogation may occur only after obtaining the relevant authorisations in accordance with the legislation of the Contracting Party where the investment was made.

Article VII. Consultations

The Contracting Parties shall consult on any matter relating to the application or interpretation of this Agreement.

Article VIII. Settlement of Disputes between the Contracting Parties

1. Disputes arising between the contracting parties concerning the interpretation and application of this Agreement shall be settled as far as possible through direct negotiations.

2. If both Contracting Parties cannot reach an agreement within six months from the date of notification of the dispute shall be submitted, at the request of either contracting party to an arbitral tribunal.

This Tribunal will be composed of three members, each Contracting Party having to designate, within two months of receiving the request for arbitration, an arbitrator and those two arbitrators must designate, within two months of its designation, a President who must be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not accepted the invitation of the other contracting party to make that appointment within two months from the date of notification of the request of arbitration, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified in paragraphs 3 and 4 of this Article, the President of the International Court of Justice is prevented from performing that function or if he is a national of either Contracting Party, the Vice-President shall make the appointment, and if the latter is prevented from doing so or is a national of either of the Contracting Parties, the Judge of the Court who followed him in seniority and who is not a national of either of the Contracting Parties must make the appointment.

6. The Chairman of the arbitral tribunal shall be a national of a State with which both contracting parties maintain diplomatic relations.

7. The arbitral tribunal shall take its decision by a majority of votes. In all other respects, the procedure of the arbitral tribunal shall be determined by the Tribunal itself.

8. The arbitral award shall be final and binding on the Contracting Parties.

9. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings. The expenses of the Chairman as well as any other costs shall be removed in equal parts by the two contracting parties.

Article IX. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes arising under this agreement between one Contracting Party and an investor of the other Contracting Party which has made investments in the territory of the first, shall, as far as possible, be settled through amicable consultations.

2. If, through such consultations, a solution is not reached within a period of six months from the date of the request for a settlement, the investor may remit the dispute:

a) The competent court of the Contracting Party in whose territory the investment was made; or

b) A tribunal established ad hoc arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3. Once the investor has referred the dispute to the competent court of the Contracting Party in whose territory the investment was made or to the arbitral tribunal, the choice of either procedure shall be final.

4. For the purposes of this article, any juridical person that has been constituted in accordance with the legislation of one of the Contracting Parties and whose actions, prior to the appearance of the controversy, are mostly held by investors of the other Contracting Party, will be treated as a legal entity of the other Contracting Party.

5. The arbitral award shall be definitive and binding on both parties. Each Contracting Party shall in accordance with its legislation.

6. The Contracting Parties shall not treat through diplomatic channels matters related to disputes submitted to court proceedings or international arbitration in accordance with the provisions of this article, until the relevant processes are completed, except where the other party in the dispute has not complied with a judicial decision or the decision of the arbitral tribunal, under the terms established in the respective decision or award.

Article X. Scope

This Agreement shall apply to all investments made before or after the entry into force of the Agreement, by an investor of a Contracting Party, in accordance with the laws of the other Contracting Party in the territory of the latter. However, it shall not apply to disputes or controversies that have arisen prior to its entry into force.

The provisions of this Agreement shall not apply to any measure that a Contracting Party adopts or maintains on investment

services and measures to restrict the participation of investments of investors of the other party in its territory for security reasons.

Article XI. Application of other Standards

1. If, in the future, the Contracting Party in whose territory an investor of the other Contracting Party has made an investment, promulgates legal norms that accord more favorable treatment than the one foreseen in this Agreement to foreign investments in its territory, these provisions shall prevail. on this Agreement, to the extent of the favorable.

2. Furthermore, should the Contracting Parties establish between themselves Conventions containing more favourable rules for investments by investors of the other Party in their territories, the provisions of such Conventions shall prevail over those of this Agreement.

Article XII. Final Provisions

1. This Agreement shall enter into force thirty days after the date on which the Contracting Parties have notified each other of compliance with the respective legal requirements for the entry into force of the Agreement.

2. This Agreement shall remain in force for a period of ten years and shall be automatically extended for equal periods unless one of the Contracting Parties denounces written notification by one year before the date of implementation of the validity period.

3. The provisions of this Agreement shall remain in force for a further period of ten years from the notice of termination of this Agreement, for investments made prior to that date.

Done at Havana on 6 May 1995, in duplicate in Spanish, both texts being equally authentic.

For the Republic of Bolivia

For the Republic of Cuba