

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

Preamble

The Government of the Kingdom of Denmark and the Government of the Republic of Venezuela, hereinafter referred to as the Contracting Parties,

DESIRING to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them, particularly with respect to investments by the investors of one Contracting Party in the territory of the other Contracting Party.

RECOGNIZING that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties, and that fair and equitable treatment of investments will serve this aim.

HAVE agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term »investment« shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party and in particular, but not exclusively:

(i) Movable and immovable property, as well as any other rights such as mortgages, guarantees and leases in respect of every kind of asset;

(ii) Rights derived from shares, bonds and all kinds of interests in companies and joint ventures;

(iii) Title to money, to other assets or to any performance having an economic value;

(iv) Rights in the field of industrial and intellectual property, technical processes, trademarks, goodwill and know-how;

(v) Rights granted under public law, including rights to prospect, explore, extract, and exploit natural resources;

(vi) Returns which are reinvested.

(2) The term »returas« shall mean the amounts yielded by an investment and in particular though not exclusively, include profits, interests, capital gains, dividends, royalties or fees.

(3) The term »investor« shall mean with regard to either Contracting Party any of the following making an investment in the territory of the other Contracting Party:

(i) Natural persons having status as nationals of either Contracting Party according to its law;

(ii) Any entity established in accordance with, and recognized as a legal person by the law of that Contracting Party, such as corporations, firms, associations, development finance institutions, foundations or similar entities irrespective of whether their liabilities are limited and whether or not their activities are directed at profit.

(4) The term »territory« shall mean in respect of each Contracting Party the territory under its sovereignty and the sea and submarine areas over which the Contracting Party exercises, in conformity with international law, sovereignty, sovereign

rights or jurisdiction.

Subject to Article 14 the present Agreement shall not apply to the Faroe Islands and Greenland.

(5) The term »without delay« shall be deemed to be fulfilled if a transfer is made within such period as is normally required by international financial custom and not later, in any case, than three months.

(6) »Fair and equitable treatment« shall mean treatment that conforms with the standards of international law.

Article 2. Promotion of Investment

Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its legislation and administrative practice, and promote such investments as far as possible.

Article 3. Treatment of Investments and Investors

(1) Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by arbitrary or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. To this end, it shall be understood that the treatment accorded to investments by a Contracting Party shall conform to the treatment of investments of investors of said Contracting Party or investments of investors of any third State, whichever may be more favourable to the investor concerned.

(2) Each Contracting Party shall accord to such investments full physical security and protection, which in any case shall not be less than that accorded either to investments of its own investors or to investments of investors of any third State, whichever is more favourable to the investor concerned.

(3) Each Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment or returns, to treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

Article 4. Exceptions

(1) The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union, regional economic organisations, or similar international agreement to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation including agreements for avoidance of double taxation or any domestic legislation relating wholly or mainly to taxation.

(2) The provisions of article 7, section 1, of this Agreement shall be without prejudice to the right of each Contracting Party to take protective measures in respect of capital movements provided such measures are taken in accordance with multilateral agreements to which either of the Contracting Parties is or may become a party.

(3) If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by nationals of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that it is more favourable prevail over the present Agreement.

Article 5. Expropriation and Compensation

Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as »expropriation«) in the territory of the other Contracting Party except for a public purpose related to the needs of the expropriating Party, on a basis of non-discrimination and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall be made without delay and shall include interest at normal commercial rate until the date of payment, be effectively realisable in convertible currency and be freely transferable. The investor concerned shall have a right to prompt

review of the legality of the measure taken against the investment and of its valuation in accordance with the principles set out in this paragraph by due process of law in the territory of the Contracting Party making the expropriation.

Article 6. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to the investor concerned.

Article 7. Repatriation and Transfer of Capital and Returns

(1) Each Contracting Party shall without delay allow the free transfer of:

(a) The invested capital or the proceed of total or partial liquidation or alienation of the investment;

(b) The returns realized;

(c) The payments made for the reimbursement of the credits for investments and interests due;

(d) Unspent earnings and other remunerations of foreign personnel working in connection with an investment as administrators, advisers, technicians or skilled labourers.

(2) Transfers of currency pursuant to Article 5, 6 and section (1) of this Article shall be made in the convertible currency in which the investment has been made or in any convertible currency if so agreed by the investor at the prevailing market rate at the date of transfer.

Article 8. Subrogation

(1) If one Contracting Party or its designated agency makes payment to its own investors under a guarantee, covering non-commercial risks, it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or to its designated agency as well as

(b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

(2) Such rights should be exercised in accordance with the legislation of the Contracting Party in whose territory the investment was made.

Article 9. Disputes between a Contracting Party and an Investor

(1) Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this agreement in connection with an investment on its territory shall be subject to negotiations between the parties in dispute.

(2) If any such dispute continues to exist after a period of three months, the investor shall be entitled to submit the case to:

(a) The International Centre for Settlement of Investment Disputes for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965; Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965;

(b) As long as the Republic of Venezuela has not become a Contracting State of the Convention as mentioned in section 2 (a) of this Article, disputes as referred to in that section shall be submitted to the International Centre for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre;

(c) Should this facility not be available, the investor shall be entitled to submit the case to an arbitrator or international ad

hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law. The parties to the dispute may agree in writing to modify these Rules. The arbitral awards shall be final and binding on both Parties to the dispute; Arbitration Rules of the United Nations Commission on International Trade Law. The parties to the dispute may agree in writing to modify these Rules. The arbitral awards shall be final and binding on both Parties to the dispute;

(d) The arbitral tribunal shall determine whether there is a breach by the Contracting Party concerned of its obligations under this Agreement, and whether such breach of obligations has caused damages to the investor concerned. If such is the case, the arbitral tribunal shall decide the amount of compensation and terms of payment.

Article 10. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations between the Contracting Parties.

(2) If such a dispute cannot be settled within three months from the request for negotiations, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State, who on approval by the Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within any of the periods specified the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall apply the provisions of this Agreement, other Agreements concluded between the Contracting Parties, and the procedural standards called for by international law. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties. The arbitral tribunal determines its own procedure.

(6) Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

Article 11. Amendments

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that the constitutional requirement for the entry into force have been fulfilled.

Article 12. Consultations

Either Contracting Party may propose the other Party to consult on any matter affecting the application of the present Agreement. These consultations shall be held at a place and at a time agreed upon through diplomatic channels.

Article 13. Applicability of this Agreement

The provisions of this Agreement shall, from the date of its entry into force, also apply to investments which have been made before that date, but shall not apply to any disputes in existence at that date or to claims based on actions or events having taken place before that date.

Article 14. Territorial Extension

At the time of entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be

extended to the Faroe Islands and Greenland as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 15. Entry Into Force

This Agreement shall enter into force thirty days after the date on which the Governments of the Contracting Parties have notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled.

Article 16. Duration and Termination

(1) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of ten years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(2) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 10 shall remain in force for a further period of ten years from that date. Articles 1 to 10 shall remain in force for a further period of ten years from that date.

DONE in duplicate at Caracas on November 28th, 1994, in the Danish, Spanish and English languages, all texts being equally authentic.

In the case of divergence of interpretation, reference shall be made to the English text.

For the Government of the Kingdom of Denmark Michael Bendix Ambassador

For the Government of the Republic of Venezuela Miguel Angel Burelli Rivas Minister of Foreign Affairs