AGREEMENT BETWEEN THE SWISS CONFEDERATION AND THE REPUBLIC OF BOLIVIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

PREAMBLE

The Swiss Federal Council and The Government of the Republic of Bolivia,

Wishing to strengthen between the two States economic cooperation based on intemational law and mutual trust,

Recognizing the important complementary role of private foreign capital investments in the economic development process, and the right of each Contracting Party to determine that role and to define the conditions under which foreign investments might play a part in that process,

Recognizing that the only way to establish and maintain an adequate international flow of capital is for each side to sustain a satisfactory Investment climate for the other side and for foreign investors to respect the sovereignty and laws of the host country that has jurisdiction over them, and to act in a manner compatible with the policies and priorities adopted by the host country and strive to make a significant contribution to its development,

With the intention of creating favourable conditions for capital investments in the two States,

Wishing to strengthen cooperation between nationals and private or public companies of the two States, especially in the fields of technology and industrialization,

Recognizing the need to protect Investments by nationals and companies of the two States with a view to promoting the economic prosperity of both States,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

Nationals

(a) "Nationals" means:

(aa) In the case of the Swiss Confederation, individuals who, under the laws of the Swiss Confederation and its cantons, are considered Swiss citizens;

(bb) In the case of the Republic of Bolivia, individuals who, under the Political Constitution and the laws based on it, are considered Bolivian citizens.

Companies

(b) "Companies" means:

(aa) In the case of the Swiss Confederation, legal entities or associations without legal status but able to possess property, in which, directly or indirectly, there is a substantial Swiss interest;

(bb) In the case of the Republic of Bolivia, companies, corporations and firms established according to the laws in force in its territory.

Investments

(c) The term "investments" covers all types of assets, in particular:

(aa) Movable and immovable property, as well as any other rights in rem, such as easements, land charges, landed security and pledges of movables;

(bb) Shares, company shares and other kinds of interest in companies;

(cc) Titles to capital which has been used to create economic value and titles to any benefit having economic value;

(dd) Copyrights, industrial property rights (such as patents for inventions, registered designs, industrial drawings or designs, trademarks, trade brands, quality guarantees, business names, indications of source or warranties of origin), know-how and goodwill;

(ee) Business concessions under public law, including concessions to search for, extract or exploit natural resources, as well as any other right bestowed by law, by contract or by decision of an authority in application of the law.

Article 2. Promotion and Admission

1. Each Contracting Party shall promote, as far as possible, investments made in its territory by nationals or companies of the other Contracting Party and shall admit such investments in accordance with its legislation, ordinances and regulations.

Permits

2. When a Contracting Party has admitted an investment into its territory, it shall grant whatever permits are necessary for that investment, including for the execution of licensing contracts and of contracts for technical, commercial or administrative assistance. Each Contracting Party shall grant, as far as possible, any permits that may be required for the activities of consultants or other qualified persons of foreign nationality.

Article 3. Protection and Non-discrimination

1. Each Contracting Party shall protect in its territory investments made in accordance with its legislation by nationals or companies of the other Contracting Party and shall not impair, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment, extension, sale and, if necessary, liquidation of such investments. In particular, each Contracting Party shall grant the permits referred to in article 2, paragraph 2, of this Agreement.

Treatment

2. Each Contracting Party shall ensure fair and equitable treatment in its territory for the investments of nationals or companies of the other Contracting Party. This treatment shall be no less favourable than that granted by each Contracting Party to investments made in its territory by its own nationals or companies or than that granted by each Contracting Party to Investments made in its territory by nationals or companies of the most favoured nation, if the latter treatment is more favourable.

Economic integration area

3. Most-favoured-nation treatment shall not apply to the privileges which either Contracting Party accords to nationals and companies of a third State by virtue of its membership in, or association with, a free-trade area, a customs union or a common market.

Article 4. Free Transfer

Each Contracting Party in whose territory nationals or companies of the other Contracting Party have made investments shall grant those nationals or companies free transfer of any payments relating to those investments in particular:

(a) Interest, dividends, profits and other current income;

(b) Loan repayments;

(c) Amounts assigned to cover expenses relating to the management of investments;

(d) Royalties and other payments deriving from the rights listed in article 1, paragraph (c), subparagraphs (cc), (dd) and (ee) of this Agreement;

(e) Additional contributions of capital necessary for the maintenance or devel- opment of the investments;

(f) Proceeds from the sale or partial or total liquidation of an investment, including any capital appreciation.

Article 5. Expropriation and Compensation

1. Neither Contracting Party shall take, directly or indirectly, expropriation or nationalization measures or any other measure of the same nature or having the same effect against investments belonging to nationals or companies of the other Contracting Party, except in the public interest or for reasons of public utility, and provided that the measures are not discriminatory, are in accordance with the law and are followed by the payment of effective and adequate compensation. The amount of compensation, including interest, shall be fixed in a freely convertible currency and paid without delay to the person or company entitled to it, regardless of where his domicile or its head office is located.

Extraordinary situations

2. Nationals or companies of either Contracting Party whose investments have suffered losses owing to war or any other armed conflict, revolution, state of emergency or rebellion occurring in the territory of the other Contracting Party shall be accorded, by the latter, treatment in accordance with article 3 of this Agreement. In any case, they shall receive compensation.

Article 6. Investments Which Predate the Agreement

1. This Agreement shall also apply to investments made in the territory of one Contracting Party, in accordance with its legislation, by nationals or companies of the other Contracting Party before the entry into force of this Agreement.

2. This Agreement shall in no case apply to disputes arising before its entry into force.

Article 7. More Favourable Conditions

Notwithstanding the conditions laid down by this Agreement, more favourable conditions which have been or which may be agreed upon between one of the Contracting Parties and nationals or companies of the other Contracting Party shall apply.

Article 8. Subrogation

Where one Contracting Party has granted a financial guarantee of any kind against non-commercial risks in respect of an investment made by a national or a company in the territory of the other Contracting Party, the second Contracting Party shall, according to the principle of subrogation, recognize the rights of the first Contracting Party in the rights of the investor if a payment has been made by the first Contracting Party by virtue of this guarantee.

Article 9. Disputes between One Contracting Party and an Investor of the other Contracting Party

1. Without prejudice to article 10 of this Agreement (Disputes between Contracting Parties), the settlement of investment disputes between one Contracting Party and a national or company of the other Contracting Party shall be sought through consultations between the parties concerned.

2. If such consultations fail to produce a settlement within 12 months and if the national or company in question so consents in writing, the dispute shall be submitted to an arbitral tribunal.

3. The arbitral tribunal shall be established on a case-by-case basis. In the absence of any other arrangement between the two parties to the dispute, each of them shall appoint an arbitrator and these two arbitrators shall appoint a national of a third State as chairman. The arbitrators shall be appointed within two months and the chairman within three months of the date on which the national or company in question gave consent under paragraph 2? of this article.

4. If the time-limits set in paragraph 3 of this article have not been observed, each party to the dispute may, in the absence of any other arrangement, invite the Chairman of the International Court of Arbitration of the International Chamber of Commerce in Paris to make the necessary appointments. If the Chairman is of the same nationality as one of the two parties to the dispute or he is prevented for any other reason, the provisions of article 10, paragraph 5, of this Agreement shall apply.

5. The tribunal shall determine its own procedures. Its decisions shall be final and binding.

6. If the two Contracting Parties have acceded to the Washington Convention of 18 March 1965 on the settlement of

investment disputes between States and nationals of other States, the disputes referred to in this article shall be submitted, in accordance with the provisions of the Convention, to the International Centre for the Settlement of Investment Disputes.

Article 10. Disputes between Contracting Parties

1. Disputes between Contracting Parties concerning the interpretation or application of the provisions of this Agreement shall be settled through the diplomatic channel.

2. If the two Contracting Parties fail to reach a settlement within 12 months from the start of the dispute, the dispute shall, at the request of either Contracting Party, be submitted to an arbitral tribunal consisting of three members. Each Contracting Party shall appoint an arbitrator and these two arbitrators shall appoint a chairman who shall be a national of a third State.

3. If either Contracting Party has not appointed its arbitrator and has not acted on the invitation from the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed, at the request of the latter Contracting Party, by the President of the International Court of Justice.

4. If the two arbitrators cannot agree on the choice of a Chairman within two months of their appointment, the chairman shall be appointed, at the request of either Contracting Party, by the President of the International Court of Justice.

5. If, in the cases referred to in paragraphs 3 and 4 of this article, the President of the International Court of Justice is a national of cither Contracting Party or if he is prevented from carrying out his function, the appointments shall be made by the Vice-President and, if the latter is prevented or if he is a national of either Contracting Party, they shall be made by the most senior judge of the Court who is not a national of either Contracting Party.

6. Unless the Contracting Parties arrange otherwise, the tribunal shall deter- mine its own procedures.

7. The decisions of the tribunal shall be final and binding on each Contracting Party.

Article 11. Respect for Commitments

Each Contracting Party shall, at all times, respect the commitments it has made with regard to investments by nationals and companies of the other Contracting Party.

Article 12. Entry Into Force, Renewal and Denunciation

1. This Agreement shall enter into force on the day by which both Governments have notified each other that the constitutional formalities for the conclusion and entry into force of international agreements have been completed; it shall remain in force for a period of 10 years. Unless it is denounced in writing six months before expiry of that period, it shall be considered to have been renewed under the same conditions for a period of two years, and this renewal procedure shall continue.

2. Inthe event of denunciation, the provisions of articles 1 to 11 of this Agreement shall continue to apply for a period of 10 years to investments made before such denunciation.

Donu at La Paz. on 6 November 1987, in four originals, two in French and two in Spanish, each text being equally authentic.

For the Swiss Federal Council:

DAVID DE PURY

For the Government of the Republic of Bolivia:

ALFREDO OLMEDO