

# **Agreement between the Government of the Republic of Paraguay and the Government of El Salvador on reciprocal promotion and protection of investments**

The Government of the Republic of Paraguay and the Government of the Republic of El Salvador, hereinafter referred to as the "contracting parties".

Desiring to intensify economic cooperation in the mutual benefit of both States;

With the intent to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other contracting party;

Recognizing the need to promote and protect foreign investment in view of the economic prosperity of both States;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement the following definitions for the terms set out below shall apply :

1. "investment" means every kind of assets invested directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter.

The term designates in particular, though not exclusively:

- a) Ownership of movable and immovable property as well as any other rights in rem such as mortgages, liens and pledges;
- b) Actions or rights of participation in companies and other kinds of interests in companies or joint ventures;
- c) Claims of titles and rights to any provision of economic value; loans shall be included only when they are directly linked to a specific investment;
- d) Intellectual Property Rights and intangible, including in particular copyrights, patents, industrial designs, trademarks, trade names and technological know-how, procedures, and goodwill.
- e) Economic concessions conferred by law or contract, by the contracting party or its public entities for the exercise of an economic activity, including prospecting concessions, cultivate, extract or exploit natural resources;

2. "investor" means:

- a) Any natural person who is a national of one of the Contracting Parties, in accordance with its legislation;
- b) Any legal person constituted in accordance with the laws and regulations of one Contracting Party and having its seat in the territory of that Contracting Party;
- c) Legal persons established in the territory where the investment takes place, effectively controlled directly or indirectly by natural or legal persons as defined in 2 (a) and (b).

3. "Proceeds" means the amounts produced by an investment made in accordance with this Agreement, such as interests, profits, dividends, royalties and other current income.

4. "Territory" means:

- a) In respect of the Republic of Paraguay, refers to the extension of land including the air space over which the State exercises sovereignty or jurisdiction in accordance with international law.

b) In respect of the Republic of El Salvador, includes the land, sea and air space under the sovereignty of El Salvador, according to their respective legislation and international law.

## **Article 2. Scope of Application**

This Agreement shall apply to investments in the territory of one of the Contracting Parties, made in accordance with its laws, before or after the entry into force of this Agreement. However, this Agreement shall not apply to any dispute, claim or dispute which have been initiated prior to its entry into force.

## **Article 3. Promotion of Investment**

1. Each Contracting Party shall promote in its territory, as far as possible investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. The Contracting Party which has admitted an investment in its territory, it shall grant the necessary permits in connection with such investments, including the implementation of licensing agreements and technical, commercial or administrative assistance. Each Contracting Party shall grant, where appropriate, the necessary permits for the activities of consultants and other qualified persons of foreign nationality under the laws and regulations relating to the entry and sojourn, including the necessary permits for Entry and Sojourn in the territory of the members of his family.

## **Article 4. Protection of Investments. National Treatment and Most-favoured Nation**

1. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, growth, sale and, if it is the case, the liquidation of such investments. In particular, each Contracting Party shall grant the necessary permits referred to in article 3, paragraph of this Agreement.

2. Each Contracting Party shall guarantee in its territory a fair and equitable treatment to investments of investors of the other contracting party. This treatment shall not be less favourable than that accorded in similar circumstances by each contracting party to investments made within its territory by its own or granted to investors by each contracting party to investments made in its territory by investors of the most favoured nation, provided that this latter is more favourable treatment.

3. The most-favoured-nation treatment shall not apply to privileges which either Contracting Party agrees to investors of a third State by virtue of its participation or association, present or future, a free trade area, customs union, a common market or a similar regional agreement.

4. The treatment accorded by this article shall not apply to advantages which either of the Contracting Parties accords to investors of third States as a result of an agreement for the avoidance of double taxation or other tax arrangements.

## **Article 5. Transfers**

1. Each Contracting Party, in whose territory the investors of the other Contracting Party have made investments, shall guarantee to those the free transfer of payments relating to their investments and in particular, though not exclusively:

- a) Profit;
- b) Repayments of loans;
- c) Amounts assigned to cover expenses relating to the management of the investment;
- d) The additional contributions of capital necessary for the maintenance or development of the investments;
- e) The proceeds of the sale of or the partial or total liquidation of an investment;
- f) The compensation provided for in articles 6 and 7.

2. The transfers mentioned above shall be made without delay in freely convertible currency at the rate of exchange prevailing on the date of transfer pursuant to the exchange of regulations in force the Contracting Party in whose territory the investment was made. A transfer shall be deemed to be made without delay, when it has been made within the period normally necessary for the completion of the formalities of the transfers. The period shall run from the delivery of the request.

3. Notwithstanding the provisions of paragraphs 1 and 2, each Contracting Party may prevent a transfer in order to protect the rights of creditors or ensuring compliance of final decisions issued in judicial or arbitral through a fair, non-discriminatory and in good faith to its laws and regulations, including in particular though not exclusively:

- a) Bankruptcy or insolvency;
- b) Criminal or administrative offences;
- c) Ensuring compliance with judgments or orders in judicial proceedings;
- d) A breach of labour obligations;
- e) Failure of tax obligations.

## **Article 6. Expropriation and Compensation**

1. None of the Contracting Parties shall adopt directly or indirectly, measures of expropriation, nationalization or any other measures of the same nature or effect against investments of investors of the other Contracting Party, except for cases expressly laid down in the respective national constitutions and provided that such measures are non-discriminatory and that give rise to the payment of just compensation, prompt, adequate and timely according to the laws in force.

2. The amount of such compensation shall correspond to the market value of the expropriated or nationalized investment prior to the date of expropriation, nationalization or similar measure became public knowledge.

## **Article 7. Compensation for Losses**

Investors of one Contracting Party who suffer losses of their investments in the territory of the other contracting party owing to war or other armed conflict, revolution, state of national emergency, revolt, riot or insurrection in the territory of the other Contracting Party, shall be accorded as regards restitution, indemnification, compensation or other relief, a treatment no less favourable than that accorded to its own investors to investors or of other States.

## **Article 8. Subrogation**

If a Contracting Party or its authorized agency has decided a guarantee or insurance to cover non-commercial risks with regard to an investment by one of its investors in the territory of the other contracting party, the latter Contracting Party shall recognize the subrogation of the first Contracting Party or its authorized agency of the investor in the same rights conferred by law of the host Party of the Investment, provided that the first Contracting Party has made a payment under such security.

## **Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. To resolve disputes with respect to investments between a Contracting Party and an investor of the other contracting party, the parties concerned shall enter into consultations to resolve the case, as far as possible, amicably.

2. If the consultations fail to resolve the dispute within a period of six months from the date of request for the settlement of dispute, the investor may submit the dispute either to:

a) The national jurisdiction of the Contracting Party in whose territory the investment is made; or to;

b) International arbitration. In the latter case the investor has the following options:

b-1) The International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington DC on 18 March 1965;

b-2) An ad hoc arbitral tribunal shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)

3. Once the investor has submitted the dispute to the jurisdiction of the Contracting Party concerned or to international arbitration, the choice of one of these procedures is final.

4. The Contracting Party which is a party to a dispute at any time during the proceedings may, in its defence used their

immunity or the fact that the investor has received compensation under an insurance contract, compensation all or part of the incurred damage or loss.

5. The arbitral tribunal shall decide on the basis of the present Agreement and other relevant agreements between the contracting parties; under the terms of a specific agreement to be concluded with respect to the investment; to the Law of the Contracting Party which is a party to the dispute including its rules on the conflict of laws; to those principles and rules of international law as may be applicable.

6. The decisions of the Tribunal are final and binding for the parties in dispute. The Contracting State will implement them in accordance with its legislation.

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. Disputes between the contracting parties concerning the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

2. If the contracting parties cannot reach an agreement within six months after the beginning of the dispute, this shall be submitted, at the request of either party to an arbitral tribunal composed of three members. Each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the Chairman of the Tribunal who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and in response to the invitation of the other contracting party to make that appointment within two months, the arbitrator shall be appointed upon the request of the latter 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 under paragraphs (3) and (4) of this article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the judge of the Court of greater seniority who is not a national of either of the Contracting Parties.

6. The arbitral tribunal shall reach its decision by a majority of votes. Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne, in principle, by parties in equal parts, by the contracting parties.

7. The tribunal shall determine its own procedure.

8. The decisions of the Tribunal are final and binding on the contracting parties.

## **Article 11. Complementary Provisions**

1. Each Contracting Party shall at all times obligations with regard to investments of investors of the other contracting party.

2. If the provisions of law of either Contracting Party or the obligations under international law, existing or future, between the Contracting Parties in addition to this Agreement contain a general or special reclamation, entitling investments by investors of the other contracting party to a more favourable treatment than that provided for in the present Agreement, such rules shall prevail over this Agreement.

3. Any term not defined in this Agreement shall have the meaning used in the legislation in force in each Contracting Party.

## **Article 12. Entry Into Force, Duration and Termination of the Agreement**

1. This Agreement shall enter into force thirty (30) days of the date of the last notification by the Contracting Parties which have notified each other in writing that it has complied with the constitutional procedures for approval in their respective countries and shall remain in force for a period of 10 years.

2. In the event that either Contracting Party may terminate this Agreement, it shall notify its decision in writing to the other contracting party at least twelve (12) months before the date of expiry of the current period. Otherwise, the present Agreement shall be extended indefinitely, at this stage, the contracting parties may notify the decision to terminate this Agreement. It shall take effect the termination of the Agreement in twelve (12) months after the date of the written

notification.

3. With respect to investments made prior to the date of termination of this Agreement, articles 1 to 11 above, shall remain in force for a period of ten years from that date.

In WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at San Salvador, at thirty days of January 1998 in two originals.

For the Government of the Republic of Paraguay

Ruben Melgarejo Lanzoni

Minister of Foreign Affairs

For the Government of the Republic of El Salvador

Ramon E. Gonzalez Giner

Minister of Foreign Affairs