

Agreement between the Government of the Kingdom of Sweden and the Government of the Republic of Venezuela on the Promotion and Reciprocal Protection of Investments

The Government of the Kingdom of Sweden and The Government of the Republic of Venezuela,

DESIRING to intensify economic co-operation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

RECOGNIZING that the promotion and protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

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, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights, such as mortgages, liens, pledges, usufructs, leases and similar rights;

(b) Shares and other kinds of interests in companies;

(c) Title to money or to any performance having an economic value;

(d) Intellectual property rights, technical processes, trade names, know-how, good-will and other similar rights;

(e) Rights conferred by law, administrative decisions or under contract to undertake any economic activity, including concessions to search for, cultivate, extract or exploit natural resources.

(2) Goods that under a leasing agreement are placed at the disposal of an investor in the territory of one Contracting Party by a lessor being a national of the other Contracting Party, or a legal person having its seat in the territory of that Contracting Party, shall be treated as an investment.

(3) The term "investor" shall mean a natural or legal person having title to an investment as defined in Paragraph (1) above and who is

(a) A natural person who is a national of a Contracting Party in accordance with its laws;

(b) A legal person having its seat in the territory of either Contracting Party, or

(c) A legal person having its seat in a third country but effectively controlled directly or indirectly by an investor as defined in (a) or (b) above.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

(2) Investments by investors of a Contracting Party shall at all times be accorded fair and equitable treatment in accordance

with the relevant international standards under International Law. Neither Contracting Party shall impair by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of such investments as well as the acquisition of goods and services and the sale of their production.

(3) Each Contracting Party shall observe any obligation it has entered into with an investor of the other Contracting Party with regard to the treatment and protection of an investment in its territory.

(4) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, who are nationals of that Contracting Party or are qualified personnel, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party as managers, advisers, technical personnel or skilled workers.

(5) The full protection of this Agreement applies to investments which are made by an investor of a Contracting Party in the territory of the other Contracting Party in accordance with the latter's laws and regulations.

Article 3. Treatment of Investments

(1) Each Contracting Party shall apply to investments in its territory by investors of the other Contracting Party a treatment which is not less favourable than that accorded to investments by its own investors or by investors of any third State, whichever is more favourable.

(2) The provisions of Paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investments by investors of the other Contracting Party the benefit of:

(a) Any treatment, preference or privilege granted to any third State by reason of its membership or association in a customs union, common market or free trade area, or

(b) Any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation and Compensation

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, and investor of the other Contracting Party of an investment unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are unequivocal and not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency.

(2) The provisions of Paragraph (1) of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, to the proceeds from the liquidation.

(3) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State, whichever is more favourable.

Article 5. Transfers

(1) Each Contracting Party shall allow without delay the transfer in a freely convertible currency of payments in connection with an investment, such as:

(a) The returns accruing from any investment by an investor of the other Contracting Party, including in particular, though not exclusively, capital gains, profit, interests, dividends, licenses, royalties or fees;

(b) The proceeds from a total or partial liquidation of any investment by an investor of the other Contracting Party;

(c) Funds in repayment of loans;

(d) The remuneration of natural persons who are not nationals of the Contracting Party in whose territory the investment is

situated and who are allowed to work in accordance with Article 2, paragraph (4);

(e) Other sums required for the coverage of expenses connected with the management of the investment.

(2) Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments.

Article 6. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee against non-commercial risks it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 7, recognise the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the subrogation of the former Contracting Party or its designated agency to any such rights or title.

Article 7. Disputes between an Investor and a Contracting Party

(1) Disputes between one Contracting Party and an investor of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of the latter shall at the request of the investor concerned be submitted to the International Centre for Settlement Investment Disputes (I.C.S.I.D.), 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.

(2) If for any reason I.C.S.I.D. is not available, the investor may submit the dispute to an ad hoc tribunal under the Rules of Arbitration of the United Nations Commission for International Trade Law (UNCITRAL). The parties to the dispute may agree to modify these rules.

(3) The arbitral award shall be limited to determining whether there is a breach by the Contracting Party concerned of its obligations under this Agreement whether such breach of obligations has caused damages to the investor concerned, and, if such is the case, the amount of compensation.

(4) Each Contracting Party hereby gives its unconditional consent to the submission of disputes as referred to in Paragraph (1) of this Article to international arbitration in accordance with the provisions of this Article.

The consent given by each Contracting Party in this Article and the submission of the dispute by an investor under the said Article shall satisfy the requirements of: (a) Chapter II of the Washington Convention (Jurisdiction of the Centre) for written consent of the parties to a dispute.

(b) Article 1 of the UNCITRAL Arbitration Rules for an agreement in writing on referral to arbitration by the parties to a contract; and

(c) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, for "an agreement in writing".

(5) In order to avoid doubt in the application of the Article it is confirmed that any legal person having its seat in one of the Contracting Parties or in a third State and which, before the occurrence of the measure that gave rise to the dispute and at the date of its submission to arbitration, is owned or effectively controlled by investors of the other Contracting Party, shall be treated as a legal person of the latter Contracting Party.

(6) The venue of any arbitration under this Article shall be such as to ensure recognition and enforceability of the award in all States which are parties to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958.

(7) The Arbitral Awards shall be final and binding upon the parties to the dispute. Each Contracting Party shall carry out, without delay, any such award and shall make provision for the effective enforcement in its territory of such awards.

Article 8. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled between the Governments of the two Contracting Parties.

(2) If the dispute cannot be settled within six months, following the date on which such negotiations were requested by

either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the Chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

(4) If the time limits referred to in paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make any necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-president shall be invited to make the necessary appointments. If the Vice-president is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision shall be final and binding on the Contracting Parties. 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 cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 9. Application of the Agreement

(1) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

(2) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment arising from actions completed before its entry into force.

Article 10. Entry Into Force, Duration and Termination

(1) This Agreement shall enter into force on the day the Governments of the two Contracting Parties notify each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

(3) 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 fifteen years from that day.

In witness whereof the undersigned, duly authorised to this effect, have signed this Agreement.

Done at Caracas on the 25th day of November, 1996, in the Swedish, Spanish, and English languages, the three texts being equally authentic. In case of divergence of interpretation, reference shall be made to the English text.