

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE BOLIVARIAN REPUBLIC OF VENEZUELA AND THE GOVERNMENT OF THE RUSSIAN FEDERATION ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Government of the Bolivarian Republic of Venezuela and the Government of the Russian Federation, hereinafter referred to as the "contracting parties",

Intending to create favourable conditions for investors of the State of one of the Contracting Parties to make investments in the State territory of the other contracting party,

Recognizing that the reciprocal promotion and protection of investments on the basis of this agreement will stimulate the flow of capital and contribute to the development of mutually beneficial cooperation in trade, economic, scientific and technical,

For the purpose of providing to investors of states of both contracting parties reliable and effective legal remedies to protect their rights and interests with respect to their investments,

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this agreement the following terms shall have the following meanings:

a) "Investment" means every kind of assets invested by investors of the State of one Contracting Party in the territory of the State of the other Contracting Party in accordance with the legislation of the State of the latter Contracting Party and in particular:

Movable and immovable property as well as rights related thereto; shares, stocks and other forms of participation in the capital of undertakings;

Intellectual Property Rights, such as copyrights, patents, industrial designs and models or names, trademarks and services, know-how, technology and information that has commercial value;

Rights conferred by the legislation of the State of the latter Contracting Party or under contract concluded in accordance with the legislation of the State of the latter Contracting Party and carrying out business activities, relating in particular, though not exclusively, to the exploration, development, extract and exploit natural resources.

Any change in the form of investments shall not affect their classification as investment if such a change does not contradict the laws of the State of the Contracting Party in whose territory the investment has been made:

b) "Investor" is a natural or legal person of the state of either Contracting Party which has made investments in the territory of the State of the other Contracting Party in accordance with the legislation of the State of the latter Contracting Party;

"Natural person" is a person who is a citizen of the State of a Contracting Party in accordance with its legislation;

"Legal person" is an entity either public or private established or constituted in accordance with the legislation of the State of a Contracting Party;

c) "Proceeds" amounts are obtained from investments and includes in particular income, dividends, interests, licence fees and other remuneration;

d) "Territory" means the Territory of the Russian Federation or the territory of the Bolivarian Republic of Venezuela, as well

as their respective exclusive economic zones and continental shelves defined in accordance with national legislation and international law;

e) "Legislation" includes laws and other regulations of the Russian Federation or the other laws and regulations of the Bolivarian Republic of Venezuela.

## **Article 2. Implementation of the Agreement**

This Agreement shall apply to investments made by investors from the State of one Contracting Party in the territory of the State of the other contracting party starting from 1 January 1992, but shall not apply to any dispute concerning an investment which arose before its entry into force or any claim relating to investments settled before its entry into force.

## **Article 3. Admission, Promotion and Protection of Investments**

1. Each Contracting Party will seek to create favourable conditions for investors of the State of the other contracting party to make investments in the territory of the State of one Contracting Party and shall admit such investments in accordance with the State of its national legislation.

2. Each Contracting Party shall, in accordance with the State of its national legislation, full legal protection in the territory of the State to investments of investors and investors of the State of the other contracting party.

## **Article 4. Treatment of Investments**

1. Each Contracting Party shall state in its territory a fair and equitable treatment to investments made by investors from the state of the other contracting party, as regards the management, maintenance, use, enjoyment or disposal of such investments.

2. The treatment referred to in paragraph 1 of this article shall not be less favourable than the treatment to be accorded by one contracting party to its investments or investors to investments of investors of any third State.

3. Each contracting party reserves the right to apply or introduce national legislation in accordance with the State of its exceptions to national treatment for foreign investors and investments, including their reinvestments.

4. The provision of paragraph 2 of this article relating to the most favoured nation treatment shall not be construed so as to oblige one contracting party to grant to investments made by investors from the state of the other Contracting Party the treatment of any benefit or privilege accorded preference, or in the future will provide the first Contracting Party:

a) In connection with their participation in a free trade area, customs union, monetary union, common market, any similar institution of economic integration and any international agreement resulting in such unions or institutions;

b) On the basis of agreements to avoid double taxation or other agreements relating to taxation.

5. Without prejudice to the provisions of Articles 5, 6 and 9 of this Agreement, the contracting parties are committed by this agreement to agree on a more favourable treatment than the treatment accorded by each Contracting Party in accordance with the Agreement Establishing the World Trade Organization (WTO) of 15 April 1994, including the obligations of the General Agreement on Trade in Services (GATS), and also in accordance with any multilateral arrangement concerning the treatment of investments of that States parties are of both contracting parties.

## **Article 5. Expropriation**

1. Investments of investors of the State of one Contracting Party in the territory of the State of the other Contracting Party and the earnings of such investors shall not be expropriated, nationalized or subject to measures having effect equivalent to expropriation or nationalization (hereinafter referred to as expropriation) except where such measures are taken in the public interest and in accordance with the procedure laid down by the legislation of the State of the latter Contracting Party, when nondiscriminatory and result in prompt, effective and adequate compensation.

2. The compensation referred to in paragraph 1 of this article shall correspond to the fair market value of the expropriated investment calculated on a date immediately preceding the date of expropriation or on the day immediately preceding the date on which the impending expropriation became public, the earlier. the compensation shall be paid without delay in a freely currency conversion, transfer and be freely, in accordance with article 7 of this Agreement, the territory of the State of one Contracting Party in the territory of the State of the other contracting party. from the date of expropriation until the

date of actual payment of compensation in the amount of compensation shall be subject to accrue interest to the commercial rate defining the market but not less than the LIBOR rate for claims in United States dollars for six months.

## **Article 6. Compensation for Damages and Losses**

Investors of the State of one Contracting Party whose investments and returns suffer loss or damage owing to war, armed conflict, insurrection, revolt, dispute, civil disturbance, state of national emergency or any other similar event in the territory of the State of the other contracting party, the latter Contracting party they shall agree on such damage or loss, as regards restitution, indemnification, compensation or other treatment a settlement, in accordance with paragraph 2 of article 4 of this Agreement.

## **Article 7. Transfer of Payments**

1. Each Contracting Party shall guarantee to investors of the State of the other Contracting Party, once they have fulfilled all their tax obligations, a free transfer abroad of payments relating to their investments and in particular:

- a) The initial capital and any additional amount for the maintenance or extension of the investment;
- b) Profit;
- c) Funds in repayment of loans and credits by both contracting parties have recognized as investments and interest;
- d) Proceeds of the total or partial liquidation of the sale or investment;
- e) Compensation, compensation and other arrangements referred to in the articles 5 and 6 of this Agreement;
- f) Wages and other remunerations received by investors and nationals of the State of the latter Contracting Party who are allowed to work in the territory of the State of one contracting party in connection with investments;
- g) Payments arising out of the settlement of a dispute under article 9 of this Agreement.

2. The transfer of payments referred to in paragraph 1 of this article shall be made without delay in a currency conversion of free at the rate of exchange applicable on the date of transfer according to the legislation of the State of the Contracting Party in whose territory the investment has been made.

## **Article 8. Subrogation**

If a Contracting Party or its designated agency, whether public or private, given by the investor of its State a financial guarantee against non-commercial risks with regard to an investment of that investor in the territory of the State of the other contracting party, and paid under the guarantee, the other Contracting Party shall recognize the acquisition by the first Contracting Party or its designated agency by virtue of subrogation of all the rights and claims of the investor. The first Contracting Party or its designated agency shall not assert greater rights or claims of the Rights of the investor and acquired such claims. such rights and claims shall be exercised in accordance with the legislation of the State of the Contracting Party in whose territory the investment has been made.

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

1. Disputes between a Contracting Party and an investor of the State of the other contracting party which may arise in connection with investments of the investor in the territory of the State of one Contracting Party, including but not limited to disputes relating to the amount, the conditions and procedure for payment of compensation pursuant to Articles 5 and 6 of this Agreement or with the procedure for the transfer of payments stipulated in article 7 of this Agreement shall, if possible, be settled amicably through negotiations.

2. If the dispute cannot be settled amicably through negotiations for a period of five months starting from the date of receipt of the written request of any party to the dispute resolution through negotiations such a dispute may be submitted at the choice of the investor to:

- A competent court of the State of the Contracting Party in whose territory the investment has been made; or
- An ad hoc arbitral tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

- The Arbitration Institute of the Stockholm Chamber of Commerce.

3. The dispute may be submitted at the choice of the investor to one of the three procedures referred to in paragraph 2 of this article, if the disputing parties do not reach an agreement on the procedure for the resolution of the dispute over a period of three months, starting from the date of receipt of the written request by either of its resolution on the disputing parties.

4. The arbitral award on the dispute concerned in accordance with this article shall be final and binding on both parties to the dispute. each Contracting Party shall ensure the enforcement of the award in accordance with the State of its national legislation.

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

1. Disputes between the contracting parties concerning the interpretation or application of this Agreement shall be settled amicably, as far as possible through consultations or negotiations between the contracting parties.

2. If the dispute cannot be settled amicably through consultations or negotiations between the Contracting Parties within six months from the date of a written request for consultation or negotiation of either of the Contracting Parties shall, at the request of either of the contracting parties to an arbitral tribunal.

3. The arbitral tribunal shall be constituted for each individual case for the purpose of each Contracting Party shall appoint one member of the arbitral tribunal within two months of the receipt of a request for arbitration. These two members of the arbitral tribunal shall then select a national of a third State who upon approval by the two Contracting Parties shall be appointed Chairman of the arbitral tribunal within two months from the date of appointment of the last two of the members of the arbitral tribunal.

4. If within the time limits specified in paragraph 3 of this article the necessary appointments have been made, either Contracting Party may, in the absence of any other agreement between the Contracting Parties shall request the President of the International Court of Justice to make such appointments. If the President of the International Court of Justice is a national of the state of either Contracting Party or is otherwise unable to perform this role, it shall request the Vice-President of the International Court of Justice to make the necessary appointments. If the Vice-President of the International Court of Justice is also a national of the state of either Contracting Party or is otherwise unable to perform this function, it shall request the member of the International Court of Justice who is next in seniority who is not a national of the state of either Contracting Party or is otherwise prevented from discharging the function referred to make the necessary appointments.

5. The arbitration tribunal shall take its decision by a majority of votes. such decision shall be final and binding on the contracting parties. each Contracting Party shall bear the costs of the member of the arbitral tribunal and of its representation in the arbitration proceedings. The costs related to the Chair of the Arbitration Tribunal and other costs will be borne in equal parts by the contracting parties. the Tribunal may, however, in its decision direct that a higher proportion of the costs the medium of the Contracting Parties and one such decision shall be binding on both contracting parties. the arbitral tribunal shall determine independently its rules of procedure.

## **Article 11. Consultations**

The Contracting Parties shall consult, at the request of any of them, on matters concerning the interpretation or application of this Agreement.

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

1. Each Contracting Party shall notify the other party in writing of the completion of a Contracting State internal procedures required for the Entry into Force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications.

2. This Agreement shall remain in force for an initial period of ten years. thereafter it shall be automatically renewed for further periods of five years unless either contracting party notifies in writing the other contracting party, not less than 12 months before the end of the period, of its intention to terminate this Agreement.

3. This Agreement may be amended by written mutual consent of the Contracting Parties, any amendment to this Agreement shall enter into force when each Contracting Party has notified in writing to the other contracting party that it has completed all internal State procedures required for the Entry into Force of such amendment.

4. With respect to investments falling within the scope of application of this agreement made prior to the date of termination of this Agreement, the provisions of this Agreement shall remain in force for a further period of ten years from the date of termination of this Agreement.

Done at Caracas on 7 November 2008, in duplicate in the Spanish, Russian and English languages, all texts being equally authentic. In case of differences in the interpretation of this Agreement shall be conducted in the English language.

For the Government of the Bolivarian Republic of Venezuela

William Antonio Contreras

Minister of the People Power's to Light Industries and Trade

For the Government of the Russian Federation

Sergey Ryabkov

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