

# **Agreement on the Promotion and Reciprocal Protection of Investments between the Government of the Republic of Venezuela and the Government of the Republic of Paraguay**

The Government of the Republic of Venezuela and the Government of the Republic of Paraguay, hereinafter referred to as the "CONTRACTING PARTIES";

DESIRING to intensify economic cooperation for the mutual benefit of both States;

INTENDING to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING the need to promote and protect foreign investments in order to promote the economic prosperity of both States;

HAVE AGREED AS FOLLOWS:

## **Article 1. Definitions**

For the purposes of this Convention, the following definitions shall apply to the terms listed below:

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 and intangible rights including in particular, copyrights, patents, industrial designs, trademarks, trade names, technical know-how, processes and key value; and
- 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; and
- c. Legal persons established in the territory where the investment takes place, effectively controlled by natural or legal persons as defined in a and b.

3. "Proceeds" means the amounts produced by an investment interests, such as profits, dividends, royalties and other revenue streams.

4. "Territory means:

- a. In respect of the Republic of Paraguay, refers to the territory of the State over which it exercises its sovereignty or

jurisdiction in accordance with international law; and

b. With respect to the Republic of Venezuela, its national territory, including the territorial sea, as well as the continental shelf and exclusive economic zone over which it exercises, in accordance with international law, sovereign rights or jurisdiction.

## **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 legislation, including the procedures for the temporary admission by investors of the other Contracting Party, 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 Investments**

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, not arbitrarily denied or undue delay the necessary permits in connection with such investments, including the implementation of licensing agreements and technical assistance, commercial or administrative and income, administrative, managerial and technical adviser.

## **Article 4. Protection of Investments**

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 Arbitrary Measures, the management, maintenance, use, enjoyment, growth, sale and, if it is the case. the liquidation of such investments.

2. Each Contracting Party shall in its territory a fair and equitable treatment in accordance with international law to investments of investors of the other Contracting Party. This treatment shall not be less favourable than that accorded 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 association or participation in a free trade area or a 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 agreements relating to taxation.

## **Article 5. Transfers**

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

- a. profits;
- 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 applicable on the date of transfer pursuant to the exchange of regulations in force the Contracting Party in whose territory the investment was made.

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

1. Neither Contracting Party shall, 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 public purposes or social interest and provided that such measures are non-discriminatory and that give rise to the payment of compensation, fair and prompt, adequate and timely according to the laws in force.

2. The amount of such compensation shall correspond to the real value of the expropriated or nationalized investment was made prior to the date of expropriation, nationalization or public measure having equivalent.

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

1. 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 treatment no less favourable than that accorded to its own investors to investors or of other States.

## **Article 8. Subrogation**

1. 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. Any dispute between an investor of one Contracting Party and the other Contracting Party regarding the implementation of this Agreement in connection with an investment that shall be settled as far as possible in friendly consultations.

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 either submit the dispute to the national jurisdiction of the Contracting Party in whose territory the investment was made: or to international arbitration.

3. The International Arbitration referred to in this paragraph shall be made by 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. If for any reason ICSID is not available the arbitration shall be conducted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. Once the investor has submitted the dispute to the jurisdiction of the State party concerned or to international arbitration, the choice of one of these procedures is final.

5. The arbitral tribunal shall decide on the basis of the present Agreement and other relevant agreements between the Contracting Parties, based on the terms of any specific agreement which may 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 means those principles and rules of international law as may be applicable.

6. The arbitral award shall be limited to determine whether the Contracting Party has failed to fulfil any provision of this Convention and, as a result, causing damage to the investor.

7. The decisions of the Tribunal are final and binding for the parties in dispute. The State party shall be implemented in accordance with its legislation.

## **Article 10. Settlement of Disputes between 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 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 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. Supplementary Provisions**

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

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

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

1. This Agreement shall enter into force on the thirtieth day following the date on which the contracting parties 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. Unless either of the Contracting Parties has denounced in writing at least twelve months prior to the expiry date of its validity, the present Agreement shall be tacitly for extended periods of ten years.

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 Asunción, the five day of September 1996, in two originals in the English language, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA

MIGUEL ANGEL BURELLI RIVAS

Minister for Foreign Affairs

FOR THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY

RUBEN MELGAREJO LANZONI

