

# **Agreement between the Government of the French Republic and the Government of the Republic of Bolivia on the reciprocal encouragement and protection of investments**

The Government of the French Republic and the Government of the Republic of Bolivia, hereinafter referred to as the "Contracting Parties",

Desiring to enhance economic cooperation between the two States and to create favourable conditions for French investments in Bolivia and Bolivian investments in France;

Convinced that the promotion and protection of such investments will be conducive to the stimulation of capital and technology transfer between the two countries in the interest of their economic development,

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. The term "investment" means assets, such as property rights and interests of all kinds, and particularly but not limited to:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, usufruits deposits, loans and similar;
- b) Shares, stocks and other forms of participation, even indirect minority, or to companies established in the territory of one of the Contracting Parties;
- c) The obligations and rights, claims to any performance having economic value;
- d) Copyrights, industrial property rights, such as patents, licences, trademarks, industrial designs or models, technical processes, trade names and goodwill;
- e) Concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources including those situated in maritime areas of the Contracting Parties.

Recognizing that such assets must be or have been invested in accordance with the law of the Contracting Party in the territory or maritime zones of which the investment is made before or after the entry into force of this Agreement.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such change is not contrary to the legislation of the Contracting Party in the territory or maritime zones in which the investment is made.

2. The term "national" means natural persons having the nationality of one of the Contracting Parties.

3. The term "companies" juridical means any person in the territory of one of the Contracting Parties in accordance with their legislation and having its registered office or directly or indirectly controlled by nationals of either Contracting Party, or by a juridical person with its head office in the territory of one of the Contracting Parties and in accordance with its law.

4. The term "returns" means all amounts yielded by an investment interests, such as profits, royalties or during a period of time.

Investment income and in case of reinvestment, income from their reinvestment shall enjoy the same protection as the investment.

5. The term "Maritime Zones" means of marine and submarine areas over which the contracting party exercises, in

accordance with international law, sovereign, sovereign rights or jurisdiction.

## **Article 2.**

Each Contracting Party recognizes and encourages, within the framework of its laws and the provisions of this Agreement, all investments made by companies and nationals of the other party in its territory and in the maritime zones.

## **Article 3.**

Each Contracting Party undertakes to provide, in its territory and in the maritime areas, fair and equitable treatment in accordance with the principles of international law, to investments of nationals and companies of the other party and to ensure the enjoyment of the right thus recognized is hampered in either law or in fact.

Barriers are considered of fact or law in fair and equitable treatment any restriction to purchase and transport of raw materials and auxiliary materials, energy and fuel and means of production or operation of any kind, interference with the sale and transport of goods within the country and abroad, as well as any other measures having a similar effect.

The Contracting Parties shall consider sympathetically, within the framework of their national legislation, applications for entry and residence permits, labour and movement of nationals of one Contracting Party in respect of an investment in the territory of the other Contracting Party.

## **Article 4.**

Each Contracting Party shall, in its territory and in the maritime zones to nationals or companies of the other Contracting Party as regards their investments and activities associated with such investments, the treatment accorded to its own nationals or companies or the treatment accorded to nationals or companies of the most favoured nation, whichever is more favourable. In this connection, nationals who are authorised to work in the Territory and in the maritime areas of either Contracting Party shall enjoy adequate physical facilities for the performance of their professional activities.

This treatment does not extend to the privileges which either Contracting Party accords to nationals or companies of any third State by virtue of its association or participation in a free trade area, customs union, common market or any other form of regional economic organization.

## **Article 5.**

1. Investments made by companies or nationals of either Contracting Party shall enjoy, in the territory or maritime zones of the other contracting party; protection and security.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is, directly or indirectly dispossessing nationals and companies of the other party to investments in its territory and in the maritime areas, except for a public purpose and provided that they are neither discriminatory nor contrary to a specific engagement.

The measures of expropriation or nationalization or dispossession of any action that could be taken shall be subject to the payment of prompt and adequate compensation in the amount calculated on the real value of the investment concerned must be assessed in relation to a normal economic situation and prior to any threat of expropriation or nationalization or dispossession of action).

This compensation, its amount and payment terms are fixed at the latest on the date of expropriation (or nationalisation or any other action of dispossession). This compensation is effectively realizable, paid without delay and freely transferable. It produces, until the date of payment, interest calculated at the rate of interest agreed by the Contracting Parties. The rate of interest agreed by the Contracting Parties is the official rate of interest of the special drawing right, as fixed by the F.M.I.

3. Companies or nationals of either Contracting Party whose investments have suffered losses due to war or any other armed conflict, revolution, state of emergency or national revolt occurring in the territory or maritime zones of the other Contracting Party benefit, on the part of this latter, from a treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

## **Article 6.**

Each Contracting Party in the territory or maritime zones of the investment which has been made by nationals or companies

of the other Contracting Party shall grant those nationals or companies the free transfer of:

- a) Profits, dividends, interests and other current income;
- b) Royalties arising out of intangible rights referred to in paragraph 1 (d) and (e) of Article 1;
- c) Payments made for the reimbursement of loans contracted regularly;
- d) The proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;
- e) Compensation for loss or dispossession provided for in Article 5, paragraphs 2 and 3 above.

The nationals of either Contracting Party who have been authorised to work in the territory or maritime zones of the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin in a proportion appropriate remuneration, in accordance with the agreed by both parties.

The transfers referred to in the preceding paragraphs shall be effected without delay formally at the normal rate of exchange applicable on the date of transfer.

## **Article 7.**

To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, within the framework of a case-by-case examination, to investments made by nationals or companies of that Party in the territory or in the maritime zones of the other Party.

Investments by nationals and companies of one of the Contracting Parties in the territory or in the maritime zones of the other Party may not obtain the guarantee referred to in the first paragraph above unless they have first obtained the agreement of the latter Party.

## **Article 8.**

1. Any investment dispute between a Contracting Party and a national or company of the other Contracting Party shall as far as possible, be settled amicably between the two parties concerned.

2. If such a dispute cannot be settled within six months from the time at which it was raised by either party to the dispute, it shall be submitted at the request of either of the parties to arbitration, to an ad hoc arbitral tribunal.

The arbitral tribunal shall be constituted for each individual case in the following way: within two months from the date on which the dispute was raised by either party to the dispute, each Party to the dispute shall appoint one member of the Tribunal. The two Members shall appoint a national of a third State who shall be appointed chairman (hereinafter referred to as "President"). The Chairman shall be appointed within three months from the date of appointment of the other two members.

If within the periods specified in paragraph 1 of this article a party to the dispute has not appointed its arbitrator or if the two arbitrators are not able to reach an agreement on the appointment of the President, either party to the dispute shall invite the President of the Stockholm Chamber of Commerce to make the necessary appointments. If the President of the Stockholm Chamber of Commerce is a national of either Contracting Party or if he is unable to perform this function, the Vice-President of the Stockholm Chamber of Commerce shall make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he is unable to perform this function, the member of the Stockholm Chamber of Commerce and the oldest who is not a national of either Contracting Party shall make the necessary appointments.

The arbitral tribunal shall reach its decision by a majority of votes and its decisions shall be binding. Each Party to the dispute shall bear the costs of its own arbitrator and its representation in the arbitration proceedings; the cost of the Chairman and the remaining costs shall be shared equally between the parties to the dispute. Once the dispute shall be settled under the Rules of the United Nations Commission on International Trade Law (UNCITRAL) adopted by the United Nations General Assembly in its resolution No. 31-98 of 15 December 1976.

3. When each Contracting Party has become a party to the United Nations "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", done at Washington on 18 March 1965, any dispute with respect to investments between a Contracting Party and an investor of the other Contracting Party, if it has not been settled amicably within six months from the time at which it was raised by one of the Parties to the dispute shall be submitted to the International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration.

## **Article 9.**

If one of the Contracting Parties, by virtue of a guarantee given in respect of an investment in the territory or maritime zones of the other party makes its payment to one of its nationals or companies, it is thereby entered into the rights and claims of the national or company, in particular those resulting from the provisions of Article 8.

## **Article 10.**

Investments in respect of a particular undertaking of one of the Contracting Parties with respect to nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, the terms of that commitment to the extent that it is more favourable provisions than those laid down in this Agreement.

## **Article 11.**

1. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.
2. If, within a period of six months from the time at which it was raised by either contracting party, the dispute is not settled, it shall be submitted, at the request of either contracting party to an arbitral tribunal.
3. The Tribunal shall be constituted for each individual case as follows: each Contracting Party shall appoint one member and these two Members shall designate by common agreement, a national of a third State who shall be chairman appointed by both Contracting Parties. All members shall be appointed within two months from the date one Contracting Party has informed the other contracting party of its intention to submit the dispute to arbitration.
4. If the periods specified in paragraph 3 above have not been made, either Contracting Party, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the most senior Under-Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.
5. The arbitral tribunal shall reach its decisions by a majority of votes. such decisions shall be final and enforceable automatically to the Contracting Parties.

The court itself shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal provides otherwise, having regard to special circumstances, the costs of the arbitral proceedings, including the fees of the arbitrators, shall be divided equally between the Parties.

## **Article 12.**

Each Party shall notify the other completion of the internal procedures for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This agreement is concluded for an initial period of ten years and shall continue in force thereafter the term unless one of the Parties denounces through diplomatic channels with one year notice.

On expiry of the period of validity of the present Agreement investments over which it was in force will continue to benefit from the protection of its provisions for a further period of twenty years.

Done in Paris, 25 October 1989.

For the Government of the French Republic:

Jean-Claude Trichet

For the Government of the Republic of Bolivia:

Enrique Garcia