

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA AND THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Lithuania and the Government of the Republic of Venezuela, hereinafter referred to as the Contracting Parties,

- desiring to strengthen economic cooperation on mutually advantageous conditions,

- determined to establish favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party,

- recognizing that the promotion and reciprocal protection of such investments will be conducive to the stimulation of the individual business initiative and the flow of prosperity in both Contracting Parties,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" shall mean every kind of asset, invested by an investor 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 and pledges, and similar rights;
- b) Shares, bonds and other kinds of interest in companies;
- c) Claims to money which has been used to create an economic value or claims to any performance having an economic value;
- d) Copyrights, industrial property rights (such as patents, trade marks, industrial designs and models, trade names), know-how and good-will;
- e) Any right to conduct economic activities conferred by state authorities, including concessions to search for, extract and exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investment, provided such an alteration is made in accordance with the host country's laws. This Agreement shall apply to investments made by investors of the one Contracting Party in the territory of the other Contracting Party, whether they were made before or after the date of entry into force of this Agreement, provided that such investments were made in accordance with the laws and regulations in force of the host Contracting Party. It shall not apply, however, to disputes arising from acts or events having taken place before its entry into force. 2. The term "investor" means:

- a) Natural persons who are nationals of the Contracting Party according to its laws;
- b) Any entity constituted under the laws of the Contracting Party and registered in the territory of the Contracting Part in conformity with its laws and regulations;
- c) Any entity or organization established under the law of any third State which is, directly or indirectly, effectively controlled by nationals of that Contracting Part or by entities having their seat (head office) in the territory of that Contracting Party; it being understood that control requires a substantial part in the ownership.

3. The term "returns" means all amounts produced by an investment and in particular, though not exclusively, includes profits, capital gains, interest, dividends and royalties.

Returns from investment and from re-investment shall enjoy the same protection as investment. 4. The term "territory" means the territory of the Contracting Party, including the territorial sea and any maritime or submarine area within which the Contracting Party may exercise, in accordance with international law, rights for the purpose of exploration, exploitation and preservation of the sea-bed, sub-soil and natural resources;

## **Article 2. Promotion and Admission of Investment**

Each Contracting Part shall encourage investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

## **Article 3. Protection and Treatment of Investments**

1. Each Contracting Party shall at all times ensure, in accordance with the rules and principles of international law, fair and equitable treatment of the investments made by investors of the other Contracting Party as well as their full security and protection in its territory.

Neither Contracting Party shall by arbitrary or discriminatory measures impair the management, maintenance, use, enjoyment or disposal of investments made by investors of the other Contracting Part. 2. Each Contracting Party shall accord to the investments made by investors of the other Contracting Party treatment no less favourable than that accorded to the investments made by its own investors or by investors of any third State.

3. The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege extended to the investors of any third State by virtue of:

a) Any existing or future customs union, common market, free trade area, economic union or other forms of regional economic co-operation;

b) Any advantages accorded by now existing or future agreements relating to double taxation or any other arrangement relating to taxation.

## **Article 4. Expropriation and Compensation**

1. Neither Contracting Party shall expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party in its territory, unless:

a) Such expropriation is in the public interest and is carried out according to due process of law;

b) Such expropriation is carried out without discrimination;

c) Prompt, adequate and effective compensation is given.

2. The compensation mentioned in point (c) of the paragraph (1) of this Article shall be equivalent to the market value of the expropriated investments immediately before the expropriation occurred or the impending expropriation became public knowledge and shall be paid without undue delay. The compensation shall include interest at the prevailing market rate from the date of expropriation. The compensation shall be effectively realizable and freely transferable.

3. Investors, whose assets are being expropriated, have a right to prompt review by the appropriate judicial or administrative authorities of the expropriating Contracting Party to determine whether such expropriation, and any compensation therefor conforms to the principles of this Article and the laws of the expropriating Contracting Party.

4. Investors of one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the other Contracting Party, treatment no less favourable than that accorded to its own investors or to investors of any third State. Any resulting compensation shall be paid without undue delay.

5. An investor as defined in Article 1, paragraph 2, point c) may not raise a claim under the provisions of this Article if he has already received compensation for such claim pursuant to similar provisions in another agreement concluded with a third State by the Contracting Part in the territory of which the investment has been made.

## **Article 5. Transfers**

1. Each Contracting Part shall guarantee to investors of the other Contracting Party unrestricted transfer, without undue delay, in a freely convertible currency, of payments in connection with an investment, in particular;
  - a) The capital and additional amounts for the maintenance or extension of the investment;
  - b) Gains, profits, interest, dividends and other current income;
  - c) The proceeds from total or partial liquidation of the investment;
  - d) Funds in repayment of loans regularly contracted and documented and directly related to the investment;
  - e) Compensation provided for in Article 4;
  - f) The earnings of nationals (directors, managers, advisers, technicians) of one Contracting Party who are allowed to work in connection with an investment in the territory of the other.
2. Transfers in a freely convertible currency shall be effected without undue delay in accordance with procedures established by the Contracting Part in whose territory the investment was made.
3. The Contracting Parties undertake to accord to the transfers referred to in paragraphs 1 and 2 of this Article treatment as no less favourable than that accorded to transfers in connection with investments made by its own investors or by investors of any third State.

## **Article 6. Subrogation**

If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, ("the second Contracting Party") the second Contracting Party shall recognize:

- a) The assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified, and
- b) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

## **Article 7. Disputes between One Contracting Party and an Investor of the other Contracting Party**

1. Notice of a dispute concerning the application of this Agreement in relation with an investment between one of the Parties and an investor of the other Party shall be given in writing. This shall include a detailed statement by the investor to the Contracting Party in whose territory investment was made. The Parties shall, if possible, endeavour to settle their differences by means of a friendly agreement.
2. If such dispute cannot be settled amicably within six months from the date of the written notification provided in paragraph 1, the dispute, at the request of either party and provided the investor gives his consent, shall be submitted to:  
  
The International Center for the Settlement of Investment Disputes (ICSID) established under the 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, for arbitration under ICSID Rules of Procedure for Arbitration Proceedings or as the case may be, to the Additional Facility of ICSID. 3. If for any reason neither ICSID nor the Additional Facility are available, the dispute shall be submitted at the request of either party, to an ad hoc court of arbitration, for arbitration in accordance with the Arbitration Rules issued in 1976 by the United Nations Commission on International Trade Law.
4. The jurisdiction of the arbitral tribunal shall be limited to determining whether the Contracting Party concerned has failed to comply with any obligations under this Agreement, whether such noncompliance has caused damages to the investor concerned and, if this is the case, to determining the amount of compensation to be paid by the Contracting Party concerned.
5. The arbitral decisions shall be final and binding on both parties to the dispute. Each Contracting Party shall execute them in accordance with its laws and international obligations.

## **Article 8. Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through the diplomatic channels.
2. If the Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the latter shall, upon the request of either Contracting Party, be submitted to an Arbitral Tribunal.
3. Such an arbitral Tribunal shall be constituted for each case in the following way. Within two months from the date on which either Contracting Party receives from the other Contracting Party a request for arbitration, each Contracting Party shall appoint one arbitrator. These two arbitrators shall together, within a further two month period, select a third arbitrator who is a national of a third State. The third arbitrator, once approved by the two Contracting Parties; shall serve as Chairman of the Arbitral Tribunal.
4. If the Arbitral Tribunal has not been constituted within the periods specified in paragraph 3 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party, or is otherwise prevented from discharging this function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he (she) too is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.
5. The Tribunal shall determine its procedure subject to the provisions of this Agreement and international law. The Tribunal shall reach its decisions by a majority of votes. The decisions of the Tribunal are final and binding upon each Contracting Party.
6. Each Contracting Party shall bear the costs of its own member of the Arbitral Tribunal and of its representation in the arbitration proceedings; the costs of the Chairman and remaining costs shall be borne in equal parts by the Contracting Parties. The Arbitral Tribunal may, however, decide that a higher proportion of costs shall be borne by one of the two Contracting Parties and such award shall be binding on both Contracting Parties.

## **Article 9. More Favourable Provisions**

If the domestic law of either Contracting Party or obligations under international law, existing at present or established hereafter, entitle investments by investors of the other Contracting Part to treatment more favourable than that provided by this Agreement, such treatment shall prevail.

## **Article 10. Consultations and Exchange of Information**

Upon request by either Contracting Party, the other Contracting Party shall agree promptly to hold consultations on the interpretation or application of this Agreement. Upon request by either Contracting Party, information shall be exchanged on the impact that the laws, regulations, decisions, administrative practices or procedures or policies of other Contracting Party may have on investments covered by this Agreement.

## **Article 11. Amendments**

At the time of entry into force of this Agreement or at any time thereafter the provisions of this Agreement may be amended in such manner as may be agreed between the Contracting Parties. Such amendments shall enter into force when the Contracting Parties have notified each other that all necessary constitutional formalities for the entry into force have been completed.

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

1. This Agreement shall enter into force on the date when the Contracting Parties have notified each other that all necessary constitutional formalities for its entry into force have been completed.
2. This Agreement shall remain in force for a period of fifteen (15) years. It shall continue to be in force thereafter until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other.

3. With respect to investments made prior to the effective date of termination of this Agreement, the provisions of Articles 1 through 11 shall remain in force for a further period of fifteen (15) years from such date.

Done in duplicate at ..... on ..... 199..... in the Lithuanian, Spanish and English languages, all texts being equally authentic. In case of divergences the Contracting Parties shall refer to the English text.