

# AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PANAMA AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments of investors of one of the Contracting Party in the territory of the other Contracting Party,

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

Have agreed on the following:

## Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean any kind of asset owned or controlled directly or indirectly 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 particularly, but not exclusively: movable and immovable property as well as other property rights, such as mortgage, leases, lien, pledge, usufructs and other similar rights; a company or enterprise or shares, stocks, securities or other kinds of interests in a company or enterprise; claims to money or any performance having an economic value; intellectual property rights, technical processes, trade names, know-how and experience, goodwill and other similar rights; business concessions granted by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.a) Movable and immovable property as well as other property rights, such as mortgage, leases, lien, pledge, usufructs and other similar rights;

b) A company or enterprise or shares, stocks, securities or other kinds of interests in a company or enterprise;

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

d) Intellectual property rights, technical processes, trade names, know-how and experience, goodwill and other similar rights;

e) Business concessions granted by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.

Any change in the form in which assets are invested or reinvested shall not affect their character as investments.

2. The term "investor" of a Contracting Party shall mean: any natural person having the nationality of that Contracting Party in accordance with its legislation; any legal person or other organization organized in accordance with the applicable legislation in that Contracting Party, and any legal person not organized under the legislation of that Contracting Party but controlled by an investor as defined under (a) or (b).a) Any natural person having the nationality of that Contracting Party in accordance with its legislation;

b) Any legal person or other organization organized in accordance with the applicable legislation in that Contracting Party, and

c) Any legal person not organized under the legislation of that Contracting Party but controlled by an investor as defined under (a) or (b).

3. The term "returns" shall mean any amount yielded by an investment and shall include particularly, but not exclusively, profits, interests, capital gains, dividends, royalties or fees.

Such returns shall, in all relevant aspects covered by this Agreement, be given the same treatment and protection as an investment.

4. The term "territory" shall mean the territory of each Contracting Party as well as the exclusive economic zone and the seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration, exploitation and conservation of natural resources.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall promote and create favourable conditions so investors of the other Contracting Party could make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. Investments by investors of each Contracting Party shall be granted, at any time, a fair and equitable treatment, and shall enjoy full protection and security in the territory of the other Contracting Party. In no case shall a Contracting Party award treatment less favourable than that required by international law.

3. None of the Contracting Parties shall impair, in any way through unreasonable or discriminatory means, the operation, management, maintenance, use, usufruct or the disposal of investments in its territory by investors of the other Contracting Party.

4. Each Contracting Party shall observe any obligations it has entered into with regard to investments of investors of the other Contracting Party.

5. Each Contracting Party shall promote that its laws, regulations, administrative practices and procedures of general application, as well as applicable judicial decisions, that pertain or affect investments covered by this Agreement are published or otherwise made publicly available.

## **Article 3. Investment Treatment**

1. Each Contracting Party shall grant in its territory to investments of investors of the other Contracting Party a treatment which is no less favourable than that it grants to investments of its own investors or to investments of investors of any other State, whichever is more favourable to the investor.

2. Each Contracting Party shall grant in its territory to investors of the other Contracting Party, concerning the operation, management, maintenance, use, usufruct or disposal of its investments, a treatment which is no less favourable than that granted to its own investors or to investors of any third State, whichever is more favourable to the investor.

3. Notwithstanding the provisions of Paragraph (1) and (2) of this Article, a Contracting Party which has concluded or may conclude an agreement regarding the formation of a custom union, a common market or a free-trade area shall be free to grant, by virtue of such agreements, more favourable treatment to investments by investors of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.

4. The provisions of Paragraph (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of 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**

1. The investments of investors of a Contracting Party shall not, directly or indirectly, be nationalized, expropriated or subject, in any other way, to other measures having an effect equivalent to the nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, unless the following conditions are complied with:

a) The measures are taken for a public utility need or in the social interest and under due process of law;

b) The measures are distinct 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. Such compensation shall correspond to the fair market value of the expropriated investment immediately before the expropriation occurs or before the impending expropriation becomes known in such a way as to affect the value of the

investment, whichever takes place first. It shall include interest at the applicable commercial rate established on a market basis from the date of expropriation until payment date and it shall be done without undue delay and shall be effectively realizable and freely convertible and transferable.

3. Investors of a Contracting Party affected by expropriation shall have right to a prompt revision by a judicial authority or other independent authority of the other Contracting Party, of their case and of the valuation of their investments, in accordance with the principles established in this Article.

4. When a Contracting Party expropriates assets of a company that is incorporated or constituted under its laws and regulations, and in which investors of the other Contracting Party have shares, bonds or other forms of participation, the stipulations of this Article shall be applied.

## **Article 5. Compensation**

1. Investors of one of the Contracting Parties who suffer losses of their investments due to war or other armed conflict, a state of national emergency, riots, insurrection, revolt or other similar situations in the territory of the other Contracting Party, shall be granted by the latter Contracting Party, a treatment, concerning the restitution, indemnity, compensation or any other type of settlement, no less favourable than that which the latter Contracting Party grants to its own investors or to investors of any other third State. Resulting payments shall be transferable without undue delay in a freely convertible currency.

2. Without prejudice to paragraph (1) of this Article, investors of a Contracting Party who in any of the situation referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from

- a) Requisitioning of its investment or part thereof by the latter's forces or authorities; or
- b) Destruction of its investment or part thereof by the latter's forces or authorities, which were not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

## **Article 6. Transfers**

1. Each Contracting Party shall guarantee to investors of the other Contracting Party, the free transfer of payments related to their investment. Such transfers shall include, particularly but not exclusively:

- a) Returns such as net profits, capital gains, dividends, interests, royalties, contributions and any other current revenue accumulated from investments;
- b) The proceeds from a total or partial sale or liquidation of any investment by an investor of the other Contracting Party;
- c) Funds in repayment of loans related to investments;
- d) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory;
- e) Additional funds needed in order to maintain or develop the existing investments; and
- f) Compensation according to Articles 4 and 5.

2. All transfers under this Agreement shall be done in a currency of free convertibility, without restrictions or undue delays, at the market exchange rate prevailing on the day of transfer. In the absence of a market for foreign exchange, the applicable rate of exchange shall correspond to the cross rate obtained from the key international currencies applied by the International Monetary Fund (IMF).

## **Article 7. Subrogation**

If a Contracting Party or its designated entity makes a payment to any of its investors under a guarantee that it has granted in connection with an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize, without prejudice to the rights of the former Contracting Party under Article 9, the transfer of any right or title of such an investor to the former Contracting Party or to its designated entity, and the right of the former Contracting Party or its designated entity to exercise, by virtue of subrogation, any such right or title to the same extent as its predecessor in title.

## **Article 8. Disputes between an Investor and a Contracting Party**

1. Any investment-related dispute between an investor of a Contracting Party and the other Contracting Party shall be settled, as far as possible, amicably.
2. If any such dispute cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investor's choice, for resolution by international arbitration to one of the following fora:
  - i) The International Centre for Settlement of Investment Disputes (ICSID) for settlement through arbitration, under the Washington Convention of March 18th 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, as long as both Contracting Parties have adhered to this Convention, or
  - ii) The Additional Facility of the Centre, if the Centre is not available under the Convention, or
  - iii) An ad hoc tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under these rules shall be the ICSID Secretary General.

If the Parties of such dispute have different opinions regarding the proper method to settle the dispute, whether it is conciliation or arbitration, the investor is the one with the right to choose.

3. For the purposes of this Article and Article 25 (2) (b) of the Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and that, before a dispute arises, was controlled by an investor of the other Contracting Party, shall be granted treatment of a national of the other Contracting Party.
4. Any arbitration under the Rules of the Additional Facility or under the UNCITRAL Arbitration Rules shall take place, by request of either of the parties to the dispute, in a State that is a party to the United Nation Convention on the Recognition and Enforcement of Foreign Arbitral Awards, effectuated in New York, 10 June , 1958 (New York Convention).
5. The consent given by each Contracting Party in paragraph (2) and the submission of the dispute by an investor under the said paragraph, shall constitute the written consent and written agreement of the parties of the dispute, of its presentation in order to be settled for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre) and for the purpose of the Additional Facility Rules, Article 1 of UNCITRAL Arbitration Rules and Article II of the New York Convention.
6. In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract, but the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.
7. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such an award.

## **Article 9. Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled, as far as possible, through negotiations between the Governments of both Contracting Parties.
2. Nevertheless, if a dispute cannot be settled within six months after the date on which the negotiations were requested by any of the Contracting Parties, it shall be submitted to an arbitration tribunal at the request of any of the Contracting Parties.
3. The Arbitration Tribunal shall be established case by case, each Contracting Party shall appoint one member. These two members shall then agree to elect a national of a third country as chairman, that shall be appointed by the Governments of both Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date on which either Contracting Party, has informed the other Contracting Party of its intention 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, each Contracting Party may, in absence of any other relevant arrangement, invite the President of the International Court of Justice to make the 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 being the final and binding on the Contracting Parties.

7. Each Contracting shall bear the costs of the member appointment 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 10. Application of the Agreement**

1. 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 which arose, or any claim concerning an investment which was settled, before its entry into force.

2. 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.

Such a possibility for the investor is recourse to national courts under the laws and regulations of a Contracting Party in the territory where the investment has been made.

## **Article 11. Application of other Rules**

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.

## **Article 12. Amendment and Consultation**

1. This Agreement may be amended by mutual consent. For this purpose either Contracting Party may propose to the other Contracting Party that consultations be held.

2. Either Contracting Party may propose to the other Contracting Party that consultations be held on any matter concerning the interpretation or application of the present Agreement.

3. The other Contracting Party shall accord sympathetic considerations to such proposals and shall accord adequate opportunity for consultations.

## **Article 13. Entry Into Force, Duration and Termination**

1. The Contracting Parties shall notify each other when the constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

2. This Agreement shall remain in effect for a period of 20 years. Hereinafter, it shall remain in effect until the expiration of 12 months from the date on which any of the Contracting Parties gives written notice to 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 12 shall remain in force for the further period of twenty years from that date.

IN WITNESS WHEREOF the undersigned, duly authorized to this effect, have signed this Agreement.

Done at Panamá on 15 January 2008 in duplicate in the Swedish, Spanish, and English languages, each text being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of Sweden

Lena Nordström

For the Government of the Republic of Panama

Ricardo J. Durán J.