# Agreement on encouragement and reciprocal protection of investments between the Kingdom of the Netherlands and the Republic of Bolivia

The Government of the Kingdom of the Netherlands

And

The Government of the Republic of Bolivia,

Desiring to strengthen the traditional ties of friendship between their countries, to extend and intensify the economic relations between them particularly with respect to investments by the nationals of one Contracting Party in the territory of the other Contracting Party.

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties and that fair and equitable treatment of investment is desirable,

Have agreed as follows:

## Article 1.

For the purposes of the present Agreement:

(a) The term "investments" shall comprise every kind of asset and more particularly, though not exclusively:

i. Movable and immovable property as well as any other rights in rem in respect of every kind of asset;

ii. Rights derived from shares, bonds and other kinds of interests in companies and joint ventures;

iii. Title to money, goodwill and other assets and to any performance having an economic value;

iv. Rights in the field of intellectual property, technical processes and know-how;

v. Rights granted under-public law, including rights to prospect, explore, extract and exploit natural resources.

(b) The term "nationals " shall com prise with regard to either Contracting Party:

i. Natural persons having the nationality of that Contracting Party in accordance with its law;

ii. Without prejudice to the provisions of (iii) hereafter, legal persons constituted in accordance with the law of that Contracting Party;(iii) hereafter, legal persons constituted in accordance with the law of that Contracting Party;

iii. Legal persons controlled directly or indirectly, by nationals of that Contracting Party, but constituted in accordance with the law of the other Contracting Party,

The term "territory" includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

## Article 2.

Either Contracting Party shall, within the framework of its law and regulations, promote economic cooperation through the protection in its territory of investments of nationals of the other Contracting Party. Subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit such investments.

## Article 3.

1) Each Contracting Party shall ensure fair and equitable treatment to the investments of nationals of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals.

2) More particularly, each Contracting Party shall accord to such investments full security and protection which in any case shall not be less than that accorded either to investments of its own nationals or to investments of nationals of any third State, whichever is more favourable to the investor.

3) If a Contracting Party has accorded special advantages to nationals of a third State by virtue of agreements establishing customs unions, economic unions or similar institutions, or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to nationals of the other Contracting Party.

4) Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals of the other Contracting Party.

5) 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 the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such a regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

## Article 4.

With respect to taxes-, fees, charges and to fiscal deductions and exemptions, each Contracting Party shall accord to nationals of the other Contracting Party, who are engaged in any economic activity in its territory, treatment not less favourable than that accorded to its own nationals or to those of any third State, whichever is more favourable to the nationals concerned. For this purpose, however, there shall not be taken into account any special fiscal advantages accorded by that Party under an agreement for the avoidance of double taxation, by virtue of its participation in a customs union, economic union or similar institution, or on the basis of reciprocity with a third State.

## Article 5.

The Contracting Parties shall guarantee that payments related to an investment may be transferred. The transfers shall be made in a freely convertible currency, without undue restriction and delay. Such transfers include in particular though not exclusively:

(a) Profits, interest, dividends and other current income;

(b) Funds necessary

(i) For the acquisition of raw or auxiliary-materials, semi-fabricated or finished products, or

ii. To replace capital assets in order to safeguard the continuity of an investment;

(c) Additional funds necessary for the development of an investment;

(d) Funds in repayment of loans;

(e) Royalties or fees;

(f) Earnings of natural persons;

(g) The proceeds of sale or liquidation of the investment.

## Article 6.

Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;

(c) The measures are accompanied by provision for the payment of just compensation. Such compensation shall represent the genuine value of the investments affected and shall, in order to be effective for the claimants, be paid and made transferable, without undue delay, to the country designated by the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

## Article 7.

Nationals of the one Contracting Party who suffer losses in respect of their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which that Contracting Party accords to its own nationals or to nationals of any third State, whichever is more favourable to the nationals concerned.

## Article 8.

If the investments of a national of the one Contracting Party are insured against noncommercial risks under a system established by law, any subrogation of the insurer or reinsurer into the rights of the said national pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

## Article 9.

1) For the purpose of resolving disputes that may arise from investments between one Contracting Party and a national of the other Party to the present Agreement, consultation will be held with a view to settling, amicably the conflict between the parties to the dispute.

2) If a dispute cannot be settled within a period of six months from the date on which the interested national shall have formally notified it, the dispute shall, at the request of the interested national, be submitted to an arbitral tribunal.

3) The arbitral tribunal shall be constituted ad hoc, in such a way that each party shall nominate an arbitrator, and the arbitrators shall agree on the choice of a national of a third State as chairman of the tribunal. The arbitrators shall be nominated within a period of two months, and the chairman within a period of three months, from the time the interested national shall have communicated his wish to submit the dispute to an arbitral tribunal.

4) If the time limits provided for in paragraph 3 are not observed, either of the parties to the dispute shall, if no other provisions apply between the parties to the dispute, be empowered to request the President of the Court of Arbitration of the Paris International Chamber of Commerce to proceed to make the necessary appointments.

5) Paragraphs 4 to 7 of article 13 of the present Agreement shall apply mutatis mutandis.Paragraphs 4 to 7 of article 13 of the present Agreement shall apply mutatis mutandis.

6) If both Contracting Parties have acceded to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965, any disputes that may arise from investment between one of the Contracting Parties and a national of the other Contracting Party shall, in accordance with the provisions of that Convention, be submitted for conciliation or arbitration to the international Centre for Settlement of Investment Disputes.

## Article 10.

The provisions of this Agreement shall, from the date of entry into force there of, also apply to investments, which have been made before that date.

## Article 11.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe, the Netherlands Antilles and to Aruba.

## Article 12.

Either Contracting Party may propose the other Party to consult on any matter concerning the interpretation or application

of the Agreement. The other Party shall accord sympathetic consideration to and shall afford adequate opportunity for such consultation.

## Article 13.

1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement which cannot be settled, within a reasonable lapse of time, by means of diplomatic negotiations, shall, unless the Parties have otherwise agreed, be submitted, at the request of either Party, to an arbitral tribunal, composed of three members. Each Party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either Party.

2) If one of the Parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other Party to make such appointment, the latter Party may invite the President of the International Court of Justice to make the necessary appointment.

3) If the two arbitrators are unable to reach agreement, in the two months following their appointment, on the choice of the third arbitrator, either Party may invite the President of the International Court of Justice, to make the necessary appointment.

4) If, in the cases provided for in the second and third paragraph of this Article, the President of the International Court of Justice is prevented from discharging the said function 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 Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.second and third paragraph of this Article, the President of the International Court of Justice is prevented from discharging the said function 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 Party the most senior member of the Court available who is not a national of either Party shall be invited to make the necessary appointments.

5) The tribunal shall decide on the basis of respect for the law, including in particular the present Agreement and any other relevant agreement between the Contracting Parties as well as the generally recognized rules and principles of International Law. Before the tribunal decides, it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the tribunal to decide the dispute ex aequo et bono if the Parties so agree.

6) Unless the Parties decide otherwise, the tribunal shall determine its own procedure.

7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties.

## Article 14.

1) The present Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with, and shall remain in force for a period of fifteen years.

2) Unless notice of termination bas been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.

3) In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of fifteen years from that date.

4) Subject to the period mentioned in paragraph (2) of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of one of the parts of the Kingdom.

In witness whereof, the duly authorized representatives of their respective Governments have signed this Agreement.

DONE in duplicate at (place), on (date) in the Netherlands, Spanish and English language, the three texts being equally authentic. In case of difference of interpretation the English text will prevail.

For the Government of the Kingdom of the Netherlands

For the Government the Republic of Bolivia