

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE ITALIAN REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Italian Republic and the Government of the Republic of Bolivia (hereafter called the Contracting Parties), wishing to create favorable conditions for greater cooperation between the two countries and in particular to determine favorable conditions for Italian investments in Bolivia and Bolivian investments in Italy; Aware that the promotion and protection of such investments stimulate transfers of capital and technology between the two countries, and recognizing that the promotion and mutual protection of such investments under the international agreements will help to stimulate entrepreneurial initiatives suitable for To promote the prosperity of the two Contracting Parties,

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "Investment" means, irrespective of the legal form chosen and of the legal order of reference, any asset invested by natural or legal persons of a Contracting Party in the territory of the other Contracting Party before or after the entry into force of this Agreement In accordance with the laws and regulations of the latter.

In this context, the term investment indicates:

- a) Property rights on movable and immovable property, as well as any other rights "in rem", including, to the extent that they can be used for investment, rights in rem on third parties' property;
  - b) Shares, bonds, participation shares, any other debt securities or government and public securities;
  - c) Financial claims or any other rights in respect of commitments or benefits having an economic value, relating to investments and, as defined in paragraph 5 of this Article below, reinvested investment income;
  - d) Copyright, trademarks, patents, industrial designs and other industrial intellectual property rights, know-how, commercial secrets, trade names, and goodwill;
  - e) Any law of economic nature conferred by law or by contract, as well as any license and concession issued in accordance with current provisions for the pursuit of economic activities, including those for prospecting, cultivation, extraction and exploitation of natural resources.
2. "Investor" means a natural or legal person of a Contracting Party which has carried out, carried out or assumed an obligation to make investments in the territory of the other Contracting Party.
3. "Natural person" means, for each Contracting Party, a natural person who, by law, has a nationality.
4. By "legal person" is meant, with reference to each Contracting Party, any entity having its registered office in the territory of one of them and recognised by the latter, such as public institutions and legal persons in general, partnerships or corporations, foundations, associations and, this, whether or not their liability is limited.
5. "Income" means the sums earned or to be derived from an investment, including, in particular, profits or units of profits, interest, capital gains, dividends, royalties, service fees technical services, and other income, including income reinvested and capital increases.
6. "Territory" means, in addition to the land within the land borders, also "maritime areas". The latter comprise marine and submarine areas on which the Contracting States have sovereignty or exercise, under international law, sovereignty and jurisdiction.

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

1. Each Contracting Party shall encourage investors from the other Contracting Party to make investments in their territory and shall grant such authorization in accordance with their legislation.
2. Each Contracting Party will always ensure fair and equitable treatment for investors of the other. Each Contracting Party shall ensure that the management, maintenance, enjoyment, transformation, termination and liquidation of investments made in its territory by investors of the other Contracting Party, and the companies and firms in the country in which such investments have been carried out, are in no way affected by unjustified or discriminatory measures.

## **Article 3. National Treatment and Most Favored Nation Clause**

1. Each Contracting Party shall, in its territory, accord investment and the income of the investors of the other Party a treatment no less favorable than that reserved for investment and the income of its own nationals or third-country investors.
2. The treatment accorded to investment-related activities by investors of each Contracting Party shall not be less favorable than that accorded to similar investment-related activities of its own investors or any other third country.
3. The provisions of paragraphs 1 and 2 of this Article shall not apply to the advantages and privileges that a Contracting Party shall recognize or recognize in the future to third countries as a result of its participation in Customs or Economic Unions, Common Market Associations, Free Trade Areas, Regional or Sub-Regional Agreements, International Multilateral Economic Agreements or Agreements concluded to avoid double taxation or to facilitate cross-border exchanges.

## **Article 4. Compensation for Damages or Losses**

If the Investors of either Contracting Party suffer losses in the Investments that they have made in the territory of the other Party due to war or other armed conflicts, emergency states or other similar events, the Contracting Party in which it was the affected investment will offer adequate compensation. Payments will take place without undue delay and will be freely transferable.

Investors concerned will have the same treatment as the citizens of the obliging Contracting Party and in any case will have no less favorable treatment than those accorded to third-country investors.

## **Article 5. Nationalization or Expropriation**

1. a) Investments covered by this Agreement may not be the subject of measures limiting the right of ownership, possession, control and enjoyment of rights to them, fixed or indefinite, except as provided for by law or by reason of judgments and Ordinances of the competent judicial authorities.  
  
b) Investors' investments in one of the Contracting Parties shall not be directly or indirectly nationalized, expropriated, subject or subject to measures having similar effects within the territory of the other Party, except for public purposes, for reasons of national interest, against immediate, full, and effective compensation and provided that such measures are taken on a non-discriminatory basis and in accordance with legal provisions and procedures.  
  
c) The right amount of compensation will be equivalent to the effective market value of the investment immediately prior to the date on which the nationalization or expropriation decisions have been announced or made public and will be determined on the basis of internationally accepted reference benchmarks. Where market valuation difficulties are found, compensation will be determined on the basis of a fair valuation of the constituent elements and distinctive features of the company as well as of the components and results of related business activities. Compensation will include interest accrued on the date of payment, calculated at LIBOR at six months and starting from the date of nationalization or expropriation. In the absence of an agreement between the investor and the Obligated Party, the amount of compensation shall be determined in accordance with the dispute settlement procedures referred to in Article 9 of this Agreement. Compensation, once determined, will be promptly paid and authorized for repatriation.
2. The provisions of paragraph 1 of this Article shall also apply to income from an investment as well as. In the event of liquidation, to income from the latter.

## **Article 6. Free Transfer of Capital, Profit and Wages**

1. Each of the Contracting Parties shall guarantee to investors of the other, once the investors have fulfilled every tax obligation, the transfer abroad in any convertible currency and without undue delay:

- a) Capital and additional capital shares used to maintain and increase investment;
- b) Net income, dividends, royalties, fees for assistance and technical services, interests and any other profit;
- e) Sums deriving from the total or partial sale or liquidation of an investment;
- d) Sums for repayment of loans related to an investment and payment of the relevant interest;
- e) Remunerations and allowances received by citizens of the other Contracting Party arising from subordinate employment and services rendered in the performance of investments made in their territory, to the extent and in accordance with the procedures laid down by the applicable national laws and regulations;

2. Taking into account Article 3 of this Agreement, the Contracting Parties undertake to grant the transfers referred to in paragraph 1 of this Article the same treatment as those arising from investments made by investors of non-member States, if more favorable.

## **Article 7. Subrogation**

In the event that a Contracting Party or its institution has granted an insurance against non-commercial risks for investments made by its investor in the territory of the other and has made payments on the basis of the guarantee granted, it will be recognized as a surrogate in law in the same Insured lender's credit standing. Payments to be made to the Contracting Party or its Institution under this Agreement shall be subject to Articles 4, 5 and 6 of this Agreement respectively.

## **Article 8. Transfer Modalities**

The transfers referred to in Articles 4, 5, 6, and 7 will be made without undue delay after the fulfillment of the tax obligations and in any case within six months.

## **Article 9. Settlement of Disputes between Investors and Contracting Parties**

1. Controversies between a Contracting Party and investors of the other in relation to investments including those on the amount and payment of damages shall, as far as possible, be resolved amicably.
2. If such disputes can not be resolved amicably within six months of the date of a request for composition, the investor concerned may in turn submit it:
  - a) To the court competent for territorial jurisdiction, and its successor instances of the Contracting Party in which the investments were made;
  - b) To an arbitral tribunal ad hoc, in accordance with the Arbitration Rules and the United Nations Commission on International Commercial Law (UNCITRAL);
  - c) To the International Centre for the Settlement of Investment Disputes for the application of arbitration procedures under the Washington Convention of 18 March 1965 on the "Rules of Disputes concerning Investment Disputes between States and Nationals of Other States" if or as soon as both Contracting Parties have acceded to them.
3. The two Contracting Parties shall refrain from negotiating, by diplomatic means, matters relating to an arbitration or a judicial proceeding already initiated until the relevant proceedings have been brought to an end and one of the Parties to the dispute has failed to comply with the arbitral tribunal's award to the judgment of the ordinary court within the time-limits laid down in the judgment or in the same judgment or within the limits otherwise determined by the law of international or domestic law applicable in the present case.

## **Article 10. Rules of Contracts between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be, as far as possible, amicably composed by diplomatic means.
2. In the event that such disputes can not be made within three months of the date on which one of the Contracting Parties

has made a written request, they shall, on the initiative of one of them, be subject to the jurisdiction of an arbitration tribunal ad hoc in accordance with provisions of this Article.

3. The Arbitral Tribunal shall be constituted as follows: within two months from the date of receipt of the request for arbitration, each Party shall appoint a member of the Tribunal. These two members will then, as President, be a national of a third State. The Chairman shall be appointed within three months of the date of appointment of the two members.

4. If, within the time limit referred to in paragraph 3 of this Article, the appointments had not yet been made, each of the two Contracting Parties may, in the absence of other Agreements, request their execution to the President of the International Court of Justice. If he is a citizen of one of the Contracting Parties or for any other reason he can not accept the assignment, he will be asked by the Vice President of the Court. Whenever the Vice President is a citizen of one of the Contracting Parties or for any other reason it is not possible for him to accept, he will be invited to the senior member of the International Court of Justice and not a citizen of one of the Contracting Parties.

5. The Arbitral Tribunal shall decide by majority vote and its decisions shall be binding. Each Contracting Party shall bear the costs of its arbitrator and those for his participation in the arbitration proceedings. The expenses for the President and the remaining expenses shall be borne by the two Parties equally. The Arbitral Tribunal will establish its own procedures.

## **Article 11. Relations between Governments**

The provisions of this Agreement shall apply irrespective of the fact that there are diplomatic or consular relations between the Contracting Parties.

## **Article 12. Application of Various Provisions**

1. Where a matter is governed by both this Agreement and any other International Agreement to which the two Contracting Parties have acceded, or otherwise regulated by the rules of general international law, the Contracting Parties and their investors shall apply the provisions of more favorable to their case.

2. If a Contracting Party, by virtue of laws, regulations, provisions or specific contracts, has adopted, for investors of the other, more favorable rules than those provided for in this Agreement, it shall accord the same treatment to the most favorable treatment.

## **Article 13. Entry Into Force**

This Agreement shall enter into force on the date on which the two Contracting Parties have been notified of the completion of their respective constitutional procedures.

## **Article 14. Duration and Expiration**

1. This Agreement shall remain in force for 10 years from the date of completion of the notification procedures referred to in Article 13 and shall be extended tacitly for subsequent periods of five years, unless one of the two Parties has denounced it in writing before one year from their respective deadlines. Article 13 and shall be extended tacitly for subsequent periods of five years, unless one of the two Parties has denounced it in writing before one year of their respective deadlines.

2. For investments made before the expiry dates referred to in the preceding paragraph, the provisions of Articles 1 to 12 shall remain in force for a further period of five years from the above mentioned dates.

Done in duplicate in Rome on 30 April 1990, in the Italian and Spanish languages, both texts being equally authentic.

For the Government of the Italian Republic

For the Government of the Republic of Bolivia