

# **Agreement between the Government of the Bolivarian Republic of Venezuela and the Government of the Socialist Republic of Vietnam for the Promotion and Protection of Investments**

The Government of the Bolivarian Republic of Venezuela and the Government of the Socialist Republic of Vietnam (hereinafter referred to as the Contracting Parties);

Desiring to create favourable conditions for the development of economic cooperation between them and in particular for investments made by investors of one Contracting Party in the territory of the other Contracting Party;

Recognising that the encouragement and reciprocal protection of such investments will be conducive to growth and prosperity of the business initiatives in both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

Article 1

Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean any type of asset invested in a productive activity, in the territory of one Contracting Party, by the investor of the other Contracting Party, in accordance with the laws and regulations of the first Contracting Party and includes assets consisting of or taking the form of:

- (a) Shares of a company, inventories and other forms of equitable interest, and bonds, debentures and other forms of debt interest in a company, and other debts, loans and guarantees issued by any investor of a Contracting Party.
- (b) Claims to money and claims to any other type of asset, returns relating to contracts having economic value.
- (c) Intellectual property rights, such as copyrights, trademarks, patents, industrial designs, technical patterns and processes, know-how, trade secrets, trade names and goodwill.
- (d) Any rights conferred by law, contract or under any license or permit granted pursuant to law, including rights to search for, explore, extract or use natural resources, and rights having other economic value, commercial activities or services rendered.
- (e) Any other tangible or intangible, real or personal property and any other rights related to intellectual property, such as contracts, mortgages, liens and guarantees.

But investment shall not mean claims for money arising from:

- (i) Commercial contracts for the sale of goods or services by a national or an enterprise in the territory of one Contracting Party to an enterprise in the territory of the other Contracting Party, or
- (ii) The extension of credit in connection with a commercial transaction, such as financial trading.

The term "investment" shall also apply to "profits" retained for reinvestment and the "liquidation" processes defined below. Any change in the form in which the assets or rights are invested or reinvested shall not affect their character as an investment, provided that such change is made in accordance with the legislation of the Contracting Party in whose territory the investment was made.

2. The term "investor" in relation to the Contracting Party shall mean:

(a) A natural person having the nationality of that Contracting Party in accordance with its applicable laws.

(b) a juridical person constituted or incorporated under the laws and regulations of that Contracting Party, such as corporations, partnerships, funds, joint ventures, organizations, associations or enterprises.

3. The term return shall mean the amounts earned on an investment including profits. Interest, capital gains, dividends, rents and fees for technical assistance and management, payments in kind, and any other payments regardless of their type.

4. The term "liquidation" shall mean any action taken for the purpose of partially or completely terminating an investment.

5. The term "territory", with respect to a Contracting Party, shall mean the territory of land, islands, national waters, territorial sea and the airspace above them, the maritime zones beyond the territorial sea including the seabed, soil and subsoil over which the Contracting Party exercises sovereignty, sovereign rights and jurisdiction in accordance with national legislation and international law.

6. The term "freely convertible currency" shall mean the currency commonly used in international trade.

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

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and, subject to its laws and regulations, shall admit such investments.

2. Investments of investors of each Contracting Party shall accord at all times fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall take any unreasonable or discriminatory measures the management, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

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

1. Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party, as regards the management, use, enjoyment or disposal of such investments, a treatment no less favourable than that accorded in similar situations to investments made by investors of any third State.

2. The provisions of this article shall not constitute as an obligation of one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) A customs union, economic union, free trade area, monetary union or any other form of regional or bilateral agreement or any other international agreement to which either of the Contracting Parties is or may become a party.

(b) Any international agreement, regional or bilateral or other similar arrangement or any domestic legislation relating wholly or mainly to attributes.

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

1. When investments made by an investor of either Contracting Party suffer losses product of a war or other armed conflict, a national state of emergency, revolt, civil disturbance, riot, insurrection or other similar events in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party treatment as restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party has agreed with its investors investors or of any third State, in accordance with the laws of the Contracting Party in whose territory the investment has been made.

2. Without prejudice to paragraph 1, investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) Requisition of their investment or part thereof by armed forces or authorities;

(b) Destruction of its investment or part thereof by armed forces or authorities, which was not caused in combat or war not required by the necessity of the situation, they shall agree treatment of restitution or compensation which in either case shall be prompt, adequate and effective.

## **Article 5. Expropriation**

1. (a) Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be nationalised or expropriated by the other Contracting Party except for reasons of public interest and against prompt, effective and adequate compensation and on condition that such measures are not taken in a discriminatory manner and in accordance with the legal procedures of general application.

(b) Such compensation shall be calculated in a freely convertible currency chosen by the investor, on the basis of the market rate fixed in exchange for that currency on the valuation date and shall include interest in accordance with the laws of the Contracting Party in whose territory the investment has been made.

2. In the light of the principles set out in paragraph 1 and without prejudice to the rights of the investor under Article 8 of this Agreement, the investor affected shall have the right to prompt review by a competent and independent authority of the Contracting Party that made the expropriation of his case, including the valuation of its investment and the payment of compensation.

## **Article 6. Transfers of Payments Related to Investments**

1. Each Contracting Party shall, subject to its laws and regulations by investors of the other Contracting Party the free transfer of payments related to investments within and outside its territory, including the transfer of:

(a) The initial capital and any additional capital for the maintenance, operation and development of the investment;

(b) Returns;

(c) Payments under contract, including amortisation and accrued interest payments made pursuant to a loan agreement;

(d) Payments under contracts, including amortisation of all or any part of the investment;

(e) Generators royalties and fees for the rights referred to in article 1, paragraph 1 (c);

(f) Products from the sale or liquidation of all or any part of the investment;

(g) Payments of compensation under articles 4 and 5;

(h) Payments referred to in article 7;

(i) Payments arising out of the settlement of disputes.

2. Transfers shall be made in accordance with the rate of exchange applicable on the receiving Party on the date of transfer for the currency to be transferred, in accordance with its laws and regulations.

## **Article 7. Subrogation**

1. If a Contracting Party or its designated agency (the party "indemnified") makes payment under an indemnity or guarantee it has assumed in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The allocation of the party indemnified by law or by legal transaction of all the rights and claims resulting from such an investment.

(b) The right of the party indemnified to exercise such rights and enforce the rights and assume all obligations related to the investment by virtue of subrogation.

2. The party indemnified shall be entitled in all circumstances to the same treatment in respect of:

(a) The acquired rights and claims and the obligations assumed by it by virtue of the assignment referred to in paragraph 1 above.

(b) Any payments received in relation to those rights and claims.

As well as the original investor had rights granted under this agreement to its investment,

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

1. For the purpose of solving any legal dispute arising directly from an investment between one Contracting Party of the

investor and the other Contracting Party, consultations will take place between the parties relating to solving the case to the extent possible, amicably.

2. If the consultations fail to reach a settlement within six months from the date of receipt of the claim, the investor may submit the dispute, by mutual consent, to:

(a) A competent court of the Contracting Party in whose territory the investment was made; or

(b) An ad hoc arbitral tribunal which, in the absence of any other agreement between the parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(c) Any other international ad hoc arbitration previously agreed.

3. Each Contracting Party consents to the submission of the dispute between these and the investor of the other Contracting Party to international arbitration in accordance with the provisions of paragraphs 2 (b) or 2 (c) of this Article.

4. Once the investor has submitted the dispute to the competent court of the host Contracting Party or to one of the arbitration procedures stipulated above, the choice of the procedure shall be final.

5. Neither Contracting Party, which is a party to the dispute, objection can, at any phase of the arbitration procedure or of the execution of an arbitral award, on the basis of the fact that the investor who is the other party to the dispute has received an indemnification covering a part or all of its losses by virtue of an insurance.

6. The arbitral award shall be final and binding on both parties to the dispute. each Contracting Party shall in accordance with its laws and in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention), if the Contracting Parties are members of this Convention.

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

1. The Contracting Parties shall be settled as far as possible, any dispute concerning the interpretation or application of this Agreement or through consultations through diplomatic channels.

2. If the dispute has not been settled within six months following the date on which such consultations or other diplomatic channel requested by either Contracting Party and unless the Contracting Parties otherwise agree in writing either Contracting Party may, by written notice to the other Contracting Party submit the dispute to an ad hoc arbitral tribunal in accordance with the following provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as Chairman of the arbitral tribunal to be appointed by the two Contracting Parties. Such members shall make the appointment within a period of three months, and the designation of the Chairman within five months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal.

4. If within the periods specified in paragraph 3 above have not been complied with, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party or if, in which case, is unable to perform its functions, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting Party or if he too is prevented from discharging its functions, 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 reach its decisions by a majority of votes. such decision shall be made in accordance with this Agreement and the rules of international law previously accepted and shall be final and binding on both Contracting Parties. Each Contracting Party shall in the cost of the member appointed by the arbitral tribunal appointed by that Contracting Party as well as the costs for its representation in the proceedings. the cost of the Chairman as well as any other costs of the arbitration proceedings shall be borne in equal parts by the two Contracting Parties. However, the arbitral tribunal may, at its discretion, or appoint a higher proportion of all such costs be paid by one of the Contracting Parties. in all other respects, the tribunal shall determine its own procedure.

## **Article 10. Implementation of other Rules**

If the obligations set out in the international agreements or arrangements between the Contracting Parties in addition to the present Agreement, whether general or specific, rights granted to investors of the other Contracting Party to a more

favourable treatment to the investor and shall prevail over this Agreement.

## **Article 11. Scope**

This Agreement shall apply to all existing investments, before or after its Entry into Force by investors of either Contracting Party in the territory of the other Contracting Party. however, it shall not apply to any dispute that arose or any claim made before its entry into force.

## **Article 12. Entry Into Force**

Each Contracting Party shall notify the other in writing that their constitutional requirements for the Entry into Force of this Agreement have been completed, the Agreement shall enter into force on treintaavo day after receipt of the last notification.

## **Article 13. Duration and Termination**

1. This Agreement shall remain in force for a period of ten (10) years and shall continue in force unless terminated in accordance with paragraph (2) of this article.
2. Each Contracting Party may, with one (1) year in advance and by written notification to the other Contracting Party, terminate this Agreement at the end of the initial ten (10) years or at any time thereafter in front.
3. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other articles shall continue in force for a period of ten years from the date of termination.

In WITNESS THEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Caracas on 20 November 2008 in the English and Spanish, Vietnamese languages, all texts being equally authentic. in case of divergence of interpretation, the English text shall prevail.

William Contreras

Minister

Ministry of Industry and Commerce

The Government of the Bolivarian Republic of Venezuela

Cao Viet Sinh

Deputy Minister

Ministry of Planning and Investment

The Government of the Socialist Republic of Vietnam