

AGREEMENT BETWEEN THE CZECH REPUBLIC AND THE REPUBLIC OF VENEZUELA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Czech Republic and the Republic of Venezuela (hereinafter referred to as the "Contracting Parties"),

Desiring to develop economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments of investors of one State in the territory of the other State, and

Conscious that the promotion and reciprocal protection of investments, according to the present Agreement, stimulates the business initiatives in this field.

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall comprise every kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges and similar rights;

(b) Shares, stocks and debentures of companies or any other form of participation in a company;

(c) Claims to money or to any performance having an economic value associated with an investment;

(d) Intellectual property rights, including copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and good-will associated with an investment;

(e) Any rights conferred by laws or under contract and any licenses and permits pursuant to law, including the concessions to search for, extract, cultivate or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investments.

2. The term "investor" shall mean any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party.

(a) The term "natural person of a Contracting Party" shall mean any natural person having the nationality of that Contracting Party in accordance with its laws.

(b) The term "legal person of a Contracting Party" shall mean any entity incorporated or constituted in accordance with, and recognized as legal person by the laws of that Contracting Party, and having a permanent seat in the territory of that Contracting Party.

3. The term "returns" shall mean any amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, shares, dividends, royalties or fees.

4. The term "territory" shall mean the territory of either Contracting Party including, as the case may be, the territorial sea and any maritime or submarine area within which a Contracting Party exercises or may come to exercise, in accordance with international law, sovereign rights or jurisdiction for the purpose of exploration, exploitation and preservation of the sea-

bed, subsoil and natural resources.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments. In accordance with its laws and regulations.

(2) Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in accordance with the rules and principles of international law, and shall enjoy full protection and security in the territory of the other Contracting Party.

Article 3. National and Most-favoured-nation Treatment

(1) Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment which is not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.

(2) Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment which is not less favourable than that which it accords to its own investors or to investors of any third State.

(3) The provisions of paragraph (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investments or investors of the other the benefit of any treatment, preference or privilege which may be extended by former Contracting Party by virtue of: paragraph (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investments or investors of the other the benefit of any treatment, preference or privilege which may be extended by former Contracting Party by virtue of:

(a) Any customs union, free trade area, monetary union or similar international agreement leading to such unions or institutions or other forms of regional cooperation to which either of the Contracting Parties is or may become a party;

(b) Any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Compensation for Losses

1. When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

2. Paragraph (1) of this Article shall not be construed to mean that a Contracting Party is relieved of its obligations under international law to accord restitution or adequate compensation in any of the situations referred to in that paragraph, for losses suffered by investors of the other Contracting Party as a result of requisitioning of their property by its forces or authorities or the destruction by them of investors' property not caused by combat action or required by the necessity of the situation. Paragraph (1) of this Article shall not be construed to mean that a Contracting Party is relieved of its obligations under international law to accord restitution or adequate compensation in any of the situations referred to in that paragraph, for losses suffered by investors of the other Contracting Party as a result of requisitioning of their property by its forces or authorities or the destruction by them of investors' property not caused by combat action or required by the necessity of the situation.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or impending expropriation became public knowledge, shall include interest from the date of expropriation, shall be made without delay, be effectively realizable and be freely transferable in a freely convertible currency.

2. The investor affected shall have a right to prompt review by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 6. Transfers

1. The Contracting Parties shall guarantee the unrestricted transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without any undue delay. Such transfers shall include in particular, though not exclusively:

(a) Capital and additional amounts to maintain or increase the investments:

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

(c) Funds in repayment of loans:

(d) Royalties or fees:

(e) Proceeds of sale or liquidation of the investment:

(f) Earnings of nationals of a Contracting Party who, in accordance with the laws of the other Contracting Party, work as directors, administrators, advisors, technicians or skilled labourers in connection with an investment of an investor of the former Contracting Party in the territory of the latter.

2. For the purpose of this Agreement, exchange rates shall be the prevailing rates for current transactions at the date of transfer, unless otherwise agreed.

3. Transfers shall be considered to have been made "without any undue delay" in the sense of paragraph (1) of this Article when they have been made within the period normally necessary for the completion of a transfer. Such period shall under no circumstances exceed two months.

Article 7. Subrogation

1. If a Contracting Party or its designated Agency makes payments to its own investors under a guarantee against non-commercial risks it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) The assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as,

(b) That the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party regarding compliance by the Contracting Party with any obligation under this Agreement in connection with an investment on its territory shall be subject to negotiations between the parties in dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months, and unless the parties to the dispute agree on another procedure, the investor shall be entitled to submit the case to the International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington D.C. on 18 March, 1965, in the event both Contracting Parties shall have become a party to this Convention, or, if only one of the Contracting Parties is a party to the Convention, to the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings of ICSID (Additional Facility)

3. If for any reason neither ICSID nor the Additional Facility are available and unless the parties to the dispute agree on another procedure, the investor may submit the dispute to an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the

dispute may agree in writing to modify these rules. The arbitral awards shall be final and binding on both Parties to the dispute. Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these rules. The arbitral awards shall be final and binding on both Parties to the dispute.

4. The jurisdiction of the arbitrator or the arbitral tribunal shall be limited to determining whether there has been a breach by the Contracting Party concerned of any of its obligations under this Agreement, whether such breach of its obligations has caused damage to the investor concerned, and, if this is the case, the amount of compensation.

Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

2. If the dispute cannot be thus settled within six months. It shall upon the request of either Contracting Party be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the tribunal (hereinafter referred to as "the Chairman"). The Chairman shall be appointed within three months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice-president shall be invited to make the appointments. If the Vice-president also happens to be a national of either Contracting Party or 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 appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

Article 10. Application of other Rules and Special Commitments

1. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, or the provisions of a contract between a Contracting Party and an investor of the other Contracting Party regarding the treatment of an investment, in addition to the present Agreement contain rules, 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 rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 11. Applicability of this Agreement

The provisions of this Agreement shall apply to future investments by investors of one Contracting Party in the territory of the other Contracting Party, and also to investments existing in accordance with the laws of the Contracting Parties on the date this Agreement comes into force. It shall not apply, however, to disputes arising from acts or events which took place before its entry into force.

Article 12. Entry Into Force, Duration and Termination

1. Each Contracting Party shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of notification by the second Contracting Party.

2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of a twelve month period from the date either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall

continue to be effective for a period of ten years from the date of termination.

Done in duplicate at Caracas this 27th day of April, 1995 in the Czech, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation, reference shall be made to the English text.

For the Czech Republic

For the Republic of Venezuela