

# **Agreement between the Government of the Republic of Costa Rica and the Government of the Republic of Bolivia on the Promotion and Reciprocal Protection of Investments**

The Government of the Republic of Costa Rica and the Government of the Republic of Bolivia referred to hereinafter as the "Contracting Parties"

Desiring to intensify the economic integration in the mutual benefit of both parties;

In order to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and protection of investments by such agreement may serve to stimulate private business initiative and increasing prosperity in both States;

Have agreed as follows:

## **Article I. Definitions**

For the purposes of this Agreement, the following definitions shall apply to the terms set out below:

1. The term "investment" means every kind of asset invested 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 in particular, though not exclusively:

- a) ownership of movable and immovable property and other rights in rem, such as mortgages, liens, rights of way, usufruct and similar rights;
- b) securities, shares, bonds, rights of participation in companies and other types of participation in companies;
- c) credit rights, obligations or any other benefits which has economic value;
- d) intellectual property rights such as copyright and related rights; industrial rights such as patents on invention, utility models, integrated circuits, industrial designs, marks, distinctive signs and geographical indications; as well as the undisclosed information and plant breeders' rights vegetables;
- e) concessions granted by public law entities of the Contracting Parties, including exploration concessions prospecting, cultivation, extraction or exploitation of natural resources

No change in the legal form under which the investment was made will affect their investment qualification under this Agreement.

2. "Income" means sums obtained from an investment made from in accordance with this Agreement, in particular, but not exclusively, the profits, earnings, interest, dividends, royalties, other current income and any other profit from the operating surplus.

3. The term "investor" means

- a) any natural person who is a national of the Contracting Party of in accordance with its legislation;
- b) any legal person including partnerships, corporations, trade associations or any other entity constituted of conformity with the laws and regulations of a Contracting Party and which has its seat in the territory of that Contracting Party regardless of whether their activity is for profit or not.

4. The term "territory" means:

a) with respect to Costa Rica: the land and air space, as well as the maritime space, including the exclusive economic zone, the and the adjacent subsoil that extends out to sea territorially, over which Costa Rica exercises, in accordance with the international, jurisdiction and sovereign rights.

b) with respect to Bolivia: any area subject to the sovereignty and jurisdiction of the Republic of Bolivia, in accordance with their respective laws and international law.

## **Article II. Investment Promotion**

1. Each Contracting Party shall promote and guarantee investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations, including fair and equitable treatment.

2. Neither Contracting Party shall, in its territory, prejudice the management, use, or enjoyment of investments of investors of the other Contracting Party through arbitrary and discriminatory measures.

## **Article III. Protection of Investments : National Treatment and Most Favoured Nation**

1. Each Contracting Party shall protect investments made within its territory by investors of the other contracting party, in accordance with its laws and regulations and shall not hinder by unjustified discriminatory measures or the management, maintenance, use, enjoyment, growth, if the sale and liquidation of such investments.

2. Once admitted investment neither Contracting Party shall in its territory to investments of the other Contracting Party to treatment less favourable than that accorded to investments of its own to investors or investments of investors of any third State.

3. This treatment shall not apply to privileges which either Contracting Party accords to the investments of investors of third countries as part of a customs union, economic or common market, free trade area, or because of its association with such groupings.

4. The treatment referred to in this Article shall not apply to advantages which either Contracting Party accords to the investments of investors of third States as a result of an agreement for the avoidance of double taxation or other tax arrangements.

5. Investments of investors of one Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

## **Article IV. Expropriation and Compensation**

1. Investments by investors of one of the Contracting Parties may not, in the territory of the other Contracting Party, be expropriated, nationalized or subjected to other measures which in their effect amount to expropriation or nationalization, except in the public interest and shall, in that case, be compensated promptly, adequately and effectively on a non-discriminatory basis and in accordance with due process of law.

2. The compensation shall correspond to the market value of the investment immediately before the expropriation (the date of expropriation), or when the expropriation became public knowledge, whichever occurs first.

3. The compensation shall be paid without delay and shall include interest from the date of dispossession of the expropriated property until the date of payment, at the rate passive commercial banking system according to the procedures of each country; it shall be effectively realisable and freely transferable. The legality of expropriation, nationalization or other measures, and the amount of compensation shall be reviewable by ordinary judicial procedure.

4. Investments of investors of one Contracting Party who suffer losses of their investments due to war or other armed conflict, revolution, state of emergency or national revolt in the territory of the other Contracting Party, shall be treated no less favourably than by its own investors as regards restitutions, adjustments, compensation or other payments. Such payments shall be freely transferable.

5. Any matter relating to the access of goods produced in the territory of a Contracting Party on foreign markets, including those matters related to quantitative restrictions and internal distribution and allocation, applied in accordance with the provisions of the agreements concluded under the auspices of the WTO particularly with article XIII of GATT 1994 shall not be covered by this Article.

## **Article V. Transfers**

1. Each Contracting Party shall guarantee to investments of investors of the other Contracting Party the free transfer of payments relating to an investment in particular, though not exclusively:

- a) The initial capital and additional amounts for the maintenance or development of the investments;
- b) The benefits, dividends, interests, capital gains, royalties payments;
- c) Amortisation of loans related to an investment;
- d) The amounts assigned to cover expenses relating to the management of the investment;
- e) The proceeds of the sale of or the partial or total liquidation of an investment;
- f) The compensation, and compensation provided for in Articles IV and V.

2. The transfers referred to in the present Agreement shall be made without delay in freely convertible currency at the market exchange rate prevailing on the date of transfer.

4. Notwithstanding the provisions of paragraph 1 of this Article, each Contracting Party shall be entitled in circumstances of exceptional difficulties or serious balance of payments to temporarily restrict transfers, in an equitable and non-discriminatory basis in accordance with internationally accepted standards. Restrictions adopted or maintained by a Contracting Party in accordance with this paragraph, as well as their elimination, shall be notified promptly to the other contracting party.

## **Article VI. Subrogation and Recognition of Rights**

If a Contracting Party or its authorized agency has decided a guarantee or insurance to cover non-commercial risks with regard to an investment by one of its investors in the territory of the other contracting party, the latter Contracting Party shall recognize the subrogation of the first Contracting Party or its authorized agency of the investor in the same rights conferred by the law of the host Party of the Investment, provided that the first Contracting Party has made a payment under such guarantee.

## **Article VII. Scope**

1. This Agreement shall also apply to all investments made before or after the entry into force of this Agreement in accordance with the laws of the other Contracting Party in the territory of the latter. However, this Agreement shall not apply to any dispute, claim or dispute which have been initiated prior to its Entry into Force, even if their effects persist thereafter.

2. Each Contracting Party shall perform any other commitment that has entered into with regard to investments of investors of the other Contracting Party in its territory.

3. Any term not defined in this Agreement shall have the meaning used in the legislation in force in each Contracting Party.

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

1. Disputes arising between the contracting parties concerning the interpretation or application of this agreement should, if possible, be settled by the Governments of the contracting parties through the diplomatic channel.

2. If a dispute cannot be settled in this way within six months from the date of the written request for initiation of the dispute shall be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

3. The arbitral tribunal shall be constituted ad hoc; each Contracting Party shall appoint one member and these two members shall agree to choose as president is a national of a third State who shall be appointed by the Governments of the two contracting parties. The members shall be appointed within two months and the Chairman within a period of two months that a Party has notified the other that it wishes to submit the dispute to an arbitral tribunal.

4. If the time limits referred to in paragraph 3 have not been observed, and in the absence of any other agreement, either Contracting Party may invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented, the Vice-President shall make the appointment. If the Vice-President is also a national of either party or is prevented, the member of the Court next in seniority and is not a national of one of the Contracting Parties to make the appointments.

5. The arbitral tribunal shall reach its decisions by a majority of votes. Its decisions are final and binding for each Contracting Party. Each Contracting Party shall bear the costs incurred in the exercise of its arbitrator, as well as the costs for its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in principle in equal parts by the two contracting parties.

6. The arbitral tribunal shall determine its own procedure.

## **Article IX. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party**

1. Disputes that may arise between one of the Contracting Parties and an investor of the other contracting party in connection with, if possible, investments shall be settled amicably between the parties to the dispute.

2. If the consultations fail to resolve the dispute within 6 months from the date of a written request for the settlement of dispute, the investor may submit the dispute to:

a) The national jurisdiction of the Contracting Party in whose territory the investment was made; or

b) To international arbitration:

i) the International Centre for Settlement of Disputes concerning Investment (ICSID) established by the "Convention on the Agreement on Investment differences between States and Nationals of other States", opened for signature in Washington on 18 March 1965, when each Contracting Party has acceded to it;

ii) if one of the Contracting Parties is not a State ICSID Contracting Party, the dispute shall be settled in accordance with the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Procedures done by the ICSID Secretariat;

iii) to an ad hoc arbitration tribunal established in accordance with United Nations Commission on International Trade Law Arbitration Rules for International Trade Law (UNCITRAL), where none of the Contracting Parties is a party to ICSID.

3. Once the investor has submitted the dispute to the jurisdiction of the State party concerned or to international arbitration, the choice of one of these procedures is final.

4. The arbitration shall be based on:

a) The provisions of this Agreement and any other agreements concluded between the Contracting Parties;

b) The national law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law; and

c) The rules and the universally accepted principles of International Law.

5. The Contracting Party which is a party to a dispute at any time during the proceedings may, in its defence used their immunity or the fact that the investor has received compensation under an insurance contract, compensation all or part of the incurred damage or loss.

6. The decisions of the Tribunal are final and binding for the parties in dispute. The State party shall be implemented in accordance with its legislation.

7. The Contracting Parties shall seek, through diplomatic channels matters related to disputes submitted to court proceedings or international arbitration in accordance with this article, except where the other party in the dispute has not complied with the court decision or the decision of the arbitral tribunal, under the terms established in the respective decision or award.

## **Article X. Duration , Duration and Termination of the Agreement**

1. This Agreement shall be approved and ratified according to the domestic laws of each party. The instruments of ratification shall be exchanged as soon as possible.

2. This Agreement shall enter into force one month after the date on which the exchange of instruments of ratification. They shall be valid for 10 years and thereafter shall be extended for an indefinite period unless denounced in writing by either Contracting Parties 12 months before its expiration. After ten years, this Agreement may be denounced at any time, with a 12 months notice.

3. Investments made for up to the date of termination of this Agreement, the provisions of articles I to IX continue to govern during the 10 years after the date of expiry of the entry into force of this Agreement.

Done in duplicate at San Jose on 7 October 2002 in duplicate in the English language, both texts being equally authentic.

For the Government of the Republic of Costa Rica

Gabriela Llobet Yglesias

For the Government of the Republic of Bolivia

Victor Rico Frontaura