

# Treaty between the Federal Republic of Germany and the Republic of Venezuela on the Promotion and Reciprocal Protection of Capital Investments

The Federal Republic of Germany and the Republic of Venezuela -

In the desire to deepen economic cooperation between the two countries,

In the endeavor to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State,

Recognizing that the promotion and the contractual protection of these investments are appropriate to stimulate private economic initiatives and to increase the prosperity of both peoples,

Have agreed as follows:

## Article 1.

For the purpose of this Agreement

1. The term "investments" means all types of assets, in particular, not exclusively

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Shares, stocks and other types of participations in companies;
- c) Claims on money used to create an economic value or claims on an economic value;
- d) Intellectual property rights, in particular copyrights, patents, utility models, industrial designs, trade names, business and business secrets, technical procedures, know-how and goodwill;
- e) Public-law concessions, including concession and concession concessions;

An alteration of the form in which assets are invested shall not affect their property as an investment;

2. The term "income" means the amounts accruing to an investment, such as profit shares, dividends, interest, royalties or other charges;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

Germans within the meaning of the Basic Law for the Federal Republic of Germany,

b) As regards the Republic of Venezuela:

Venezuelan legislation;

4. The term "companies" means legal persons as well as commercial companies or other companies or groups with or without legal personality who are established in the territory of one of the Contracting Parties, whether or not their activity is directed to profit.

## Article 2.

(1) Each Contracting Party shall, in its territory, promote the investments of nationals or companies of the other Contracting

Parties and allow such investments in accordance with its laws. It will in any case treat capital investments fairly and cheaply in accordance with generally accepted rules and principles of international law.

(2) This contract shall apply to the investments of nationals or companies of a Contracting Party carried out in the territory of the other Contracting Party in accordance with its legislation. These investments enjoy the full protection of the contract. The same applies to income from investment and, in the case of reinvestment, to income.

(3) A Contracting Party shall in no way detract from the administration, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary or discriminatory measures.

### **Article 3.**

(1) Each Contracting Party shall treat investments in its territory which are the property or under the actual control of nationals or companies of the other Contracting Parties no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall treat nationals or companies of the other Contracting Parties no less favorably than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to the privileges granted by a Contracting Party to nationals or companies of third States because of their membership in a customs or economic union, a common market or a free trade zone or because of their association with it.

(4) The treatment provided for in this Article does not apply to benefits granted by a Contracting Party to third-country nationals or companies under a double-taxation agreement or other arrangements for taxation.

### **Article 4.**

(1) Investments by nationals or companies of a Contracting Party shall enjoy full legal protection and security in the territory of the other Contracting Parties.

(2) Investments by nationals or companies of a Contracting Party may be expropriated in the territory of the other Contracting Parties only for the general good and for compensation, be subject to nationalization or be subject to other measures equivalent in their effects to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure became publicly known. The compensation must be paid without delay and is payable at the business rate until the time of payment; It must in fact be usable and transferable in freely convertible currency. The legality of the expropriation, nationalization or comparable acquisition and the amount of the indemnity must be re-examined in proceedings before the competent courts.

(3) Where a Contracting Party, as referred to in paragraph 2, invests in the assets of a company in which nationals or companies of the other Contracting Parties are involved, it shall make appropriate compensation in accordance with paragraph 2 with regard to such participation.

(4) A national or a company of a Contracting Party which incurs losses in capital in the territory of the other Contracting Party through war or other armed conflicts, révolution, a state of emergency or turmoil shall be treated no less favorably by the Contracting Party as regards its reimbursement, compensation, compensation or other consideration Nationals and companies or nationals and companies of third States.

### **Article 5.**

(1) Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Parties the unrestricted transfer of payments in connection with an investment, in particular

- a) Of capital and additional amounts for the maintenance or expansion of investment;
- b) The income;
- c) For the repayment of the loans referred to in Article 1 (1) (c);
- d) Remuneration;

- e) Of the proceeds in the event of complete or partial liquidation or disposal of the investment;
  - f) Of the compensatory amounts referred to in Article 4 (2) and (3);
  - g) Of the compensation referred to in Article 4 (4) insofar as it is paid in cash.
- (2) The transfer shall be effected without delay at the current market rate.

## **Article 6.**

Where a Contracting Party or a company which it employs carries payments to its nationals or companies on the basis of a guarantee taken to cover non-commercial risks for investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the rights of the former Contracting Parties, The law on the law of power or the exercise of all rights and claims of those nationals or companies to the former Contracting Party or the undertaking authorized by it. The other Contracting Party shall also recognize the occurrence and the rights of the first party as to the extent and amount of the entry of the former Contracting Party or of the enterprise authorized by it. Article 5 shall apply mutatis mutandis to the transfer of payments on the basis of the transferred rights and claims.

## **Article 7.**

- (1) If, under the legislation of a Contracting Party, or under national law obligations which exist between the Contracting Parties or are to be founded in the future, a general or special regulation which gives a more favorable treatment to the investments of the nationals or companies of the other Contracting Parties than under this Treaty, The provisions of this Treaty shall apply to the present Treaty in so far as it is more favorable.
- (2) Each Contracting Party shall comply with any other obligation which it has assumed in its territory as regards the treatment of investments by nationals or companies of the other Contracting Parties.

## **Article 8.**

This Agreement shall also apply to matters arising after the entry into force of this Agreement with respect to investments made by nationals or companies of one Contracting Party in the territory of the other Contracting Party pursuant to its legislation before the entry into force of this Treaty. However, it does not apply to differences of opinion concerning matters which arose prior to its entry into force.

## **Article 9.**

- (1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by the Governments of the two Contracting Parties.
- (2) If a disagreement can not be settled in this manner, it shall be submitted to an arbitration court at the request of one of the two contracting parties.
- (3) The arbitral tribunal shall be constituted on a case-by-case basis, by the appointment of each contracting party as a member, and of the appointment of both members to the members of a third state, to be appointed by the governments of the two contracting parties. The members shall be appointed within two months to appoint the chairman within three months after the one party to the agreement has notified the other that they intend to submit the disputes to an arbitration tribunal.
- (4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President shall make the appointments. If the Vice-President also has the nationality of either Contracting Party, or if he is also prevented from attending, the next member of the Court of Justice, who is not the nationality of either Contracting Party, shall make the appointments.
- (5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. In the rest, the arbitral tribunal shall regulate its own procedures.

## **Article 10.**

(1) Disputes concerning rights and obligations under this Agreement with respect to investments between one of the Contracting Parties and a citizen or a company of the other Contracting Parties shall, as far as possible, be settled amicably between the Contracting Parties.

(2) If the disagreement can not be settled within six months from the date of its assertion by one of the two parties, it shall be subject to arbitration at the request of the national or the company. Unless the controversy makes a different agreement, the dispute shall be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States.

(3) The arbitral tribunal shall make its decisions on the basis of this contract and, where appropriate, other agreements between the Contracting Parties, the national law of the Contracting Party in whose territory the investment is situated, including the rules of private international law and the general principles of national law.

(4) The arbitral tribunal shall determine in its arbitral award whether the conduct of the contracting party is compatible with the contract. In the event that the Arbitral Tribunal determines that the Contracting Party is in breach of its obligations under this Agreement, it shall be liable for the damages incurred by the national or the Company and shall, in the event of a claim, decide to determine the financial obligations arising therefrom ,

(5) The arbitration award shall be binding and shall not be subject to any means of redress or other remedies other than those provided for in the agreements referred to in paragraph 2. The financial obligations referred to in paragraph 4 shall be enforced in accordance with the provisions of this Agreement.

(6) The Contracting Party involved in the dispute shall not argue as an objection during the arbitration proceedings or the execution of an arbitration award that the national or the company of the other Contracting Party has received compensation for part of the damage or the total loss resulting from an insurance.

## **Article 11.**

This Agreement shall be without prejudice to diplomatic or consular relations between the two Contracting Parties.

## **Article 12.**

(1) This Treaty shall be subject to ratification; The instruments of ratification will be exchanged as soon as possible in Bonn.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for fifteen years; After the expiration of this period, the term of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the contract in writing with a period of twelve months before expiry of the period. After expiry of the first fifteen years, the contract may be terminated at any time by a period of twelve months.

(3) For investments made up to the date of the expiry of the contract, Articles 1 to 11 shall continue to apply for a further fifteen years from the date of expiry of the contract.

Done at Caracas, on May 14, 1996, in two original copies, each in Spanish and German, both texts being equally authentic.

For the Federal Republic of Germany.

E. Bracklo

For the Republic of Venezuela

M. A. Burelli Rivas

## **Protocol**

In the act of signing the Treaty between the Republic of Venezuela and the Federal Republic of Germany on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have adopted the following provisions, which

are considered as an integral part of the Treaty:

(1) Ad Article 1:

(a) In determining whether the concept of "corporations" as set forth in Article 1, paragraph 4, is applicable, regard shall be had to their headquarters, which shall be understood to mean the place where the corporation has its principal place of business.

b) Article 1, paragraph 4 does not affect the legislation of each Contracting Party relating to the legal status of corporations.

(c) The Treaty shall also apply to those areas of the Exclusive Economic Zone and of the Continental Shelf over which international law grants to the Contracting Party concerned rights of sovereignty or jurisdiction.

(2) Ad Article 3:

(a) An investment shall be deemed to be under the effective control of nationals or companies of a Contracting Party where such nationals or companies hold substantial interests in a company in the territory of the other Contracting Party and participate in a systematic manner in its decisions.

b) "Activities" within the meaning of Article 3(2) shall include, in particular, but not limited to, the administration, use, use and development of an investment. In particular, but not exclusively, less favorable treatment within the meaning of Article 3 shall be considered as "less favorable treatment" for an investment affecting the purchase of raw materials and other inputs, energy and fuels, as well as production and operating means of any kind, or the sale of products within the country and abroad. Measures taken for reasons of internal or external security, public safety, public order, public health or morality shall not be considered as less favorable treatment within the meaning of Article 3.

(c) The provisions of Article 3 do not oblige a Contracting Party to extend the tax concessions, exemptions and reductions granted under its tax laws only to natural persons residing in the territory of a Contracting Party. A Contracting Party shall not be obliged to extend the sales, exemptions and tax reductions which, under the tax laws, are granted only to natural persons resident in its territory or to companies having their headquarters in its territory to natural persons resident in the territory of the other Contracting Party or to companies having their headquarters in the territory of the other Contracting Party.

(d) Each Contracting Party, in accordance with its internal legal provisions, shall keep in good faith the applications for registration and registration of:

(i) nationals of the other Contracting Party seeking to enter its territory as investors, and

(ii) foreign nationals who are going to engage in any activity in connection with an investment.

They shall likewise consider with good faith the applications for work permits for such persons.

(3) Ad Article 5:

(a) The salary remittances referred to in Article 5, paragraph 1, subparagraph d) are those of persons who, at the initiative of the investor, have entered the territory to perform qualified acts in connection with the investment.

(b) Transfers made within the period normally required for the execution of a transfer shall be deemed to have been effected without delay within the meaning of Article 5, paragraph 2. This period shall not exceed two months.

(c) In the absence of a foreign exchange market, the transfers referred to in Article 5 shall be effected at an exchange rate which shall not differ substantially from the cross rate resulting from the exchange rates applied by the International Monetary Fund at the time of payment in exchange for the corresponding currencies in special drawing rights.

(4) Ad Article 10:

(a) As long as the Republic of Venezuela has not become a Party to the Convention on the Settlement of Disputes relating to Disputes between States and Nationals of other States of March 18, 1965, the dispute shall be submitted to arbitration before the International Centre for the Settlement of Disputes relating to Disputes in accordance with the rules governing the Additional Facility for the Administration of Disputes by the Secretariat of the Centre (Rules on the Additional Facility), insofar as the dispute is referred to the International Centre for the Settlement of Disputes relating to Disputes between States and Nationals of other States, in the event that the parties to the dispute have not agreed to another arrangement.

(b) If it is not possible to resort to the arbitral procedure under the Additional Facility Rules, the dispute shall, at the request of the national or the company, be submitted to an ad hoc arbitral procedure in accordance with the Arbitration Rules of the

United Nations Commission on International Trade Law.

(c) Paragraphs 3, 4, 5 and 6 of Article 10 shall apply, *mutatis mutandis*, to the cases listed in paragraphs (a) and (b).

(5) Without prejudice to the rules of any other international agreement between the Contracting Parties, neither Contracting Party shall restrict the investor's freedom to use the carrier of his choice for the transport of goods and persons in connection with his investment. To this effect, each Contracting Party shall grant the necessary authorizations.

Done at Caracas, on May 14, 1996, in two original copies, in Spanish and German languages each, both texts being equally authentic.

For the Federal Republic of Germany

E.E. Bracklo

For the Republic of Venezuela

M.A. Burelli Rivas