

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA AND THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA FOR THE PROMOTION AND PROTECTION OF RECIPROCAL INVESTMENTS**

The Government of the Republic of Venezuela and the Government of the Republic of Argentina, hereinafter referred to as the "Contracting Parties

Desiring to intensify economic cooperation between the two countries;

With the aim of creating and maintaining favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Convinced that in this way they contribute to the technological progress and economic well-being of their peoples and to the development of cooperative and friendly relations between them;

Recognizing that the promotion and protection of such investments on the basis of an agreement will help to stimulate individual economic initiative and increase prosperity in both States.

## **Article 1. Definitions**

For the purposes of this Agreement:

(1) The term "investor" means:

- a) Any natural person who is a national of one of the Contracting Parties, in accordance with its legislation.
- b) Any legal person constituted in accordance with the laws and regulations of one Contracting Party and having its seat in the territory of that Contracting Party.
- c) Any legal person effectively controlled by investors of a Contracting Party.

(2) The term "investment" means, in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, every kind of assets invested by investors of one Contracting Party in the territory of the other contracting party, in accordance with the legislation of the latter. includes in particular, though not exclusively:

- a) Ownership of movable and immovable property as well as any other rights in rem such as mortgages, bonds and pledges;
- b) shares, company quotas, and any other type of participation in companies;
- c) Claims and rights to performance having an economic value; loans shall be included only when they are directly linked to a specific investment;
- d) Intellectual Property Rights, including copyrights, patents, industrial designs, trade marks, technical processes, trade names, know-how, goodwill and goodwill;
- e) Economic concessions conferred by law or under contract, including concessions to prospecting, cultivate, extract or exploit natural resources.

(3) The term "proceeds" means all amounts resulting from an investment interests, such as profits, dividends, royalties and other revenue streams.

(4) The term "territory" means the territory of each Contracting Party, including the territorial sea and any maritime areas adjacent to the outer limit of the territorial sea of the national territory, over which the Contracting Party concerned may, in

accordance with international law, sovereign rights or jurisdiction.

## **Article 2. Scope**

1. This Agreement shall apply to all investments made before or after the date of its entry into force, but the provisions of this Agreement shall not apply to any dispute, claims or disputes arising out of acts or events that occurred prior to its Entry into Force.

(2) The provisions of this Agreement shall not apply to investments made by natural persons who are nationals of one Contracting Party in the territory of the other Contracting Party if such persons, at the time of the investment, have been domiciled for more than two years in the latter Contracting Party, unless it is proved that the investment was admitted in its territory from abroad.

## **Article 3. Admission**

Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

## **Article 4. Treatment**

(1) Each Contracting Party, in accordance with the norms and standards of international law, at all times ensure fair and equitable treatment to investments of investors of the other Contracting Party and shall not affect their management, maintenance, use, enjoyment or disposal through unjustified or discriminatory measures.

(2) Each Contracting Party, once admitted investments of investors in its territory of the other Contracting Party, it shall accord to such investments full legal protection and they agree upon a treatment no less favourable than that accorded to its own investments or investors to investors of third States.

(3) Without prejudice to the provisions of paragraph (2), no Contracting Party shall be required to extend to investments of investors of the other Contracting Party the benefit of any treatment, privileges or advantages which either Contracting Party accords to investors of a third State as a result of:

a) Its participation in or association of a free trade area, customs union or common market, similar integration agreement.

b) An international agreement relating wholly or partially to taxation matters.

c) Bilateral agreements that provide concessional financing signed between the Argentine Republic the Republic of Italy on 10 December 1987 and the Kingdom of Spain on 3 June 1988.

(4) Obligations agreed by a Contracting Party with an investor of the other Contracting Party concerning the treatment of its investment are binding and are covered by this Agreement.

## **Article 5. Free Transfer**

(1) Each Contracting Party shall accord to investors of the other Contracting Party the unrestricted transfer of their investments and returns, and in particular, though not exclusively:

a) The principal and additional amounts necessary for the maintenance or extension of the investment.

b) The benefits, profits, dividends, interests and other current income;

c) The funds in repayment of loans as defined in article 1, paragraph (1) (c);

d) Royalties and fees;

e) The proceeds from a total or partial sale or liquidation of an investment.

f) The compensation provided for in articles 6 and 7.

g) The earnings of nationals of one Contracting Party who, in accordance with the laws of the other Contracting Party, serve as directors, administrators, advisers, technical and skilled workers in connection with an investment of an investor of the party in the territory of the latter.

(2) Transfers shall be effected without delay in a freely convertible currency at the rate of exchange applicable on the date of transfer pursuant to the procedures established by the Contracting Party in whose territory the investment was made, which shall not affect the substance of the rights under this article.

## **Article 6. Expropriation**

(1) Neither of the Contracting Parties shall take measures of expropriation or nationalization or any other measures having equivalent effect against investments within its territory and belonging to investors of the other contracting party unless the measures are taken for a public purpose; on a non-discriminatory basis and under due process of law.

(2) The measures shall be accompanied by provisions for the payment of prompt, effective and adequate compensation. The amount of such compensation shall correspond to the market value of the expropriated investment immediately before the expropriation was higher, or if, before impending expropriation becomes public interest, shall include until the date of payment at a normal commercial rate shall be paid without delay and shall be effectively realizable and freely transferable.

## **Article 7. Compensation for Damage**

Investors of one Contracting Party who suffer losses of their investments in the territory of the other contracting party owing to war or other armed conflict, a national state of emergency, revolt, riot or insurrection shall be accorded, with respect to restitution, indemnification, compensation or other relief, a treatment no less favourable than that accorded by the latter party to its own investors or of any third State.

## **Article 8. Subrogation**

(1) If a Contracting Party or a legal person designated by it made a payment to an investor by virtue of a guarantee or insurance to cover non-commercial risks it has engaged in connection with an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of that Contracting Party or the juridical person concerned in respect of any right or title of the investor. The Contracting Party or the juridical person concerned shall be authorized, within the limits of subrogation to exercise the rights which the investor would have been entitled to exercise.

(2) In the case of subrogation as defined in paragraph (1) of this article, the investor shall not pursue a claim unless he is authorized to do so by the contracting party or the juridical person concerned.

## **Article 9. Implementation of other Rules**

If the provisions of law of either Contracting Party or obligations under international law existing or future between the Contracting Parties in addition to this Agreement or whether an agreement between an investor of one Contracting Party and the other contracting party contain rules whether general or specific that accorded to the investments made by investors of the other contracting party to a more favourable treatment than is provided for by the present Agreement, such rules shall prevail over this agreement to the extent that they are more favourable.

## **Article 10. Settlement of Disputes between the Contracting Parties**

(1) Any dispute arising between the contracting parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

(2) If a dispute between the contracting parties cannot be settled in this way within six months after the beginning of negotiations, the dispute shall be submitted, at the request of either contracting party to an arbitral tribunal.

(3) Such an 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 select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this article shall not make the necessary appointments, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to proceed with the necessary appointments. If the President is a national of one of the contracting parties or, if for any reason, is prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either of the contracting parties or if he is also prevented from discharging the function, the said member of the International Court of Justice who is next in order of precedence and is not

a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the costs of the member of the Tribunal and of 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 contracting parties. However, the arbitral tribunal shall determine its decision that a higher proportion of costs be borne by one of the two contracting parties, and this award shall be binding on both contracting parties. the tribunal shall determine its own procedure.

## **Article 11. Settlement of Disputes between an Investor and the Host Contracting Party of the Investment**

(1) Any dispute between an investor of one Contracting Party and the other contracting party regarding compliance with the provisions of this Agreement shall, as far as possible, be settled by amicable consultations.

(2) If the dispute cannot be settled within six months from the date on which it was raised by one or other party, it may be submitted at the request of the investor:

- either to the competent courts of the Contracting Party in whose territory the investment was made;
- or to international arbitration under the conditions described in paragraph (3).

Once the investor has submitted the dispute to the courts of the Contracting Party concerned or to international arbitration, the choice of one of these procedures is final.

(3) In the event of recourse to international arbitration, the investor and the Contracting Party may agree it:

a) the International Centre for Settlement of Investment Disputes (ICSID), established by the "Convention on the Settlement of Investment Disputes between States and Nationals of other States", opened for signature in Washington on 18 March 1965, once each State Party to this Agreement has acceded to it. Until this condition is met, each Contracting Party gives its consent to submit the dispute to arbitration under the Rules of Procedure of the Additional Facility of the C.I.A.D.I. for the administration of conciliation, arbitration or enquiry proceedings;

b) to an ad hoc arbitration tribunal established in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

If, after a period of three months from the notification of the submission of the dispute to arbitration, there is no agreement on one of the above alternative procedures, the parties to the dispute shall submit it to the International Centre for Settlement of Investment Disputes (ICSID) or its Additional Facility referred to in subparagraph (a) of this paragraph.

(4) The arbitral tribunal shall decide on the basis of the provisions of this Agreement, the Law of the Contracting Party which is a party to the dispute including its rules on the Conflict of Laws, to the terms of any specific agreement concluded in relation to the investment as well as the principles of international law.

(5) The arbitral award shall be limited to determining whether there has been a breach of this Agreement by the Contracting Party concerned, whether that breach has caused damage to the investor and, if so, to fixing the amount of compensation.

(6) The arbitral awards shall be final and binding on the parties to the dispute. each Contracting Party shall execute the In accordance with its legislation.

(7) Each Contracting Party undertakes not to use diplomatic channels for disputes referred to in this article unless the other contracting party fails to comply with the award.

(8) The investor and the Contracting Party concerned may agree on any means of resolving disputes arising between them.

## **Article 12. Entry Into Force , Duration and Termination**

(1) This Agreement shall enter into force on the first day of the second month following the date on which the contracting parties have notified each other in writing that they have completed their respective constitutional requirements for entry into force of this Agreement. they shall be valid for 10 years. thereafter it shall remain in force until the expiration of twelve months from the date on which either contracting party notifies in writing the other contracting party of its decision to terminate this Agreement.

(2) With respect to investments made prior to the date when the notice of termination of this Agreement becomes effective,

the provisions of articles 1 to 11 shall remain in force for a period of ten years from that date.

Done at Caracas, on 16 November 1993, in two original copies, in the Spanish language, both texts being equally authentic.

For the Government of the Republic of Venezuela

Fernando Ochoa Antich: Minister for Foreign Affairs

For the Government of the Republic of Argentina

Guido Di Tella: Minister for Foreign Affairs, International Trade and Worship

## **Accompanying protocol**

In the act of signing the Agreement on Reciprocal Promotion and Protection of Investments between the Government of the Republic of Venezuela and the Government of the Republic of Argentina, the undersigned have also agreed to the following clauses, which form an integral part of this Agreement:

I - With regard to Article 1, Paragraph 1, sub-paragraph c), legal entities wishing to invoke this Agreement may be required to provide proof of such control.

The following facts, among others, shall be accepted as evidence:

1. The affiliated status of a legal entity of one of the Contracting Parties.
2. A percentage holding in the capital of a legal person which affords effective control, such as, in particular, a holding of more than half the capital.
3. The direct or indirect holding of voting rights, which makes it possible to exercise a determining influence on the governing bodies of the legal person or otherwise to influence decisively its functioning.

II - Remittances relating to investments made under a programme of a Contracting Party for the exchange of public debt for investment shall be governed by the applicable legal and contractual provisions.

For the Government of the Republic of Venezuela:

M. Fernando Ochoa Antich, Minister for Foreign Affairs

For the Government of the Republic of Argentina

Guido Di Tella, Minister for Foreign Affairs, International Trade and Worship