

# **Agreement between the Government of the Portuguese Republic and the Government of the Republic of Venezuela on the mutual promotion and protection of investments**

The Government of the Portuguese Republic and the Government of the Republic of Venezuela, hereinafter referred to as the contracting parties:

Desiring to intensify economic cooperation between the two States, for the benefit mútuo and maintain fair and equal conditions for investments by investors of either Contracting Party in the territory of the other contracting party;

Recognizing that the reciprocal promotion and protection of investments will contribute to the prosperity of both States;

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1) The term investor "means:

- a) Natural persons who according to the laws of that Contracting Party, are nationals of that Contracting Party;
- b) Legal entities, including companies and other corporations or associations with headquarters in one of the Contracting Parties and is constituted and functioning according to the law of that Contracting Party;

2) The term investments shall comprise every kind of asset and rights related to investments made in accordance with the legislation of the other contracting party, and includes specific but not exclusively:

- a) Ownership of movable and immovable property as well as any other rights in rem or enjoyment guarantee or not inherent to ownership of goods, especially those pledges or mortgages;
- b) Assessments and other forms of social equity participation in the economic or outturn societies;
- c) Credit rights relating to money or to any other performance with economic value;
- d) Intellectual Property Rights, including copyrights and industrial property rights, such as patents, technical processes, trade marks, trade names, industrial designs, as well as know-how, signature and the name of the establishment, standing and customers);
- e) Concessions under public or private law, including concessions prospecting, exploration and exploitation of natural resources.

Any alteration of the form in which assets or rights have been invested or reinvested, affect its quality as investments; in accordance with this Agreement from relevant legislation;

3) The term "territory means the territory of each Contracting Party as defined in the respective legislation, over which that contracting party exercises, in accordance with international law, sovereign, sovereign rights or jurisdiction;

4) The term returns shall mean the amounts generated by an investment interests, such as profits, dividends, royalties and other forms of remuneration related to investment, including any payments under technical assistance or management;

5) The term "liquidation of investments means the EESC investment made in accordance with the procedures established by the legislation in force in the country where the investment has been made.

## **Article 2.**

1 - Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and shall admit in accordance with its legislación.

2 - Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other contracting party and to refrain from taking Arbitrary or Discriminatory Measures to prevent the manufacture, use, enjoyment, extension and sale or disposal of their investments.

### **Article 3.**

1 - Each Contracting Party shall in its territory, non-discriminatory, fair and equitable treatment, in accordance with international law, to investments made by investors of the other contracting party.

2 - In the matters covered by this Agreement, the treatment referred to in paragraph 1 of this article shall not be less favourable than accorded by one Contracting Party to investments made in its territory under similar conditions by its own investors or by a third country.

3 - The provisions contained in paragraphs 1 and 2 of this article shall not affect the most favourable treatment applicable or which is granted in the future by one Contracting Party to investments of investors of any third State by virtue of:

- a) Participation in customs unions, free trade areas or other similar forms of regional economic cooperation and integration;
- b) Agreements for the avoidance of double taxation or any other instrument.

### **Article 4.**

Neither Contracting Party shall take any measures depriving, directly or indirectly, to investors of the other Contracting Party to investments made by them, unless the following conditions are met:

- a) The measures to be taken for reasons of public interest or national purpose under the laws in force;
- b) Where the measures are not discriminatory;
- c) Where the measures are accompanied by provisions for the payment of prompt, effective and adequate compensation. this compensation shall be based on the market value of the investment concerned at a time immediately preceding the date on which the measure was issued; the compensation shall include interest at the rate of exchange applicable on the date when the operation is situated in the territory where the investment; the legality of the measure concerned and the amount of compensation shall be subject to review by the applicable legal procedure.

### **Article 5.**

1 - Each Contracting Party, in accordance with its laws, guarantee to investors of the other contracting party, and the free transfer without delay, amounts relating to investment, in particular;

- a) The capital and additional amounts for the maintenance or extension of the investment;
- b) Returns;
- c) The amounts required for the repayment of loans or service, which both parties have recognized as investments;
- d) The proceeds of the total or partial sale or liquidation of the investment;
- e) Compensation and other payments referred to in article 4 of this Agreement;
- f) Any payment made by virtue of subrogation under article 6 of this Agreement.

2 - For the purposes of this article, a transfer shall be deemed to have been made without delay if it is normally made within the period necessary for the completion of their respective formal requirements. the period shall run from the day on which the application, accompanied by the necessary documents has been submitted and on no account may exceed one month.

### **Article 6.**

If a Contracting Party or an entity designated by that party has granted a insurance against non-commercial risks to

investments made by investors of that Contracting Party in the territory of the other party, and the insurance payment for granted, the latter Contracting Party shall recognize the subrogation rights holder in all the original.

## **Article 7.**

1 - disputes arising between the contracting parties concerning the interpretation and application of this agreement should, as far as possible, be settled through diplomatic via.

2 - where there is an understanding illegue within a period of six months from the date of notification of the difference, either Contracting Party may submit it to an ad hoc arbitral tribunal in accordance with the provisions of this article.

3 The arbitral tribunal shall be constituted in the following manner: within two months counting from the date of receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator. those two arbitrators shall in turn shall choose Chairman as a national of a third State. the Chairman shall be appointed within three months, from the date of appointment of the other two arbitrators.

4 If the necessary appointments are not made within the time frame laid down in paragraph 3 of this article, either Contracting Party may, in the absence of an agreement to the contrary, request the President of the International Court of Justice to make such appointments. if the President is an impediment or is a national of either Contracting Party, the appointment shall be made by the Vice-President. if that is an impediment or is a national of either Contracting Party, the appointment shall be made by the member of the Court who continue in rank and is not a national of either of the Contracting Parties.

5 - The Chairman of the arbitral tribunal shall be a national of a State with which both contracting parties maintain diplomatic relations.

6 The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the rules and principles of international law. the Tribunal shall decide by a majority of votes and its decisions shall be final and binding on both contracting parties. the arbitral tribunal shall determine its own procedural rules.

7 - Each Contracting Party shall bear the costs of its own arbitrator and its representation in the arbitral proceedings. the costs of the Chairman and other costs of the proceedings shall be borne in equal parts by the contracting parties.

## **Article 8.**

1 - differences with regard to the implementation of this Agreement that may arise between one of the Contracting Parties and an investor of the other Contracting Party which has made investments in the territory of the first shall, as far as possible, be settled through amicable consultations.

2 - if the difference is cannot be amicably within six months from the start of such consultations shall be submitted, at the choice of the investor:

a) A local courts of the Contracting Party in whose territory the investment was made; or

b) The arbitration by the International Centre for Settlement of Investment Disputes (ICSID established by the Washington Convention of 18 March 1965, in the event that both contracting parties are party, or, where appropriate, the rules governing the additional facility for the administration of conciliation or arbitration proceedings and Fact-Finding by the secretariat of ICSID. if, for any reason, not available or the ICSID Additional Facility, the arbitration is governed by the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

3 The arbitral tribunal shall decide on the basis of the provisions of this Agreement, the rules and principles of international law, under the law of the Contracting Party in whose territory the investment is made and in the terms of any specific agreements relating to investment.

4 - arbitral awards shall be final and binding on the parties to the dispute and shall be executed in accordance with the domestic law of the Contracting Party in whose territory the investment has been made.

5 - In any case the arbitral award shall be limited to determine whether the Contracting Party concerned has failed to fulfil an obligation under this Agreement if such non-compliance has caused injury to the investor, and if so, the amount to be paid by the contracting party of the investor as compensation for the damage.

6 - Each Contracting Party shall treat through diplomatic channels matters related to disputes submitted to arbitration or court proceedings until the relevant international processes have been concluídos, except in the case of one of the Parties

to the dispute has failed to comply with the court decision or the decision of the arbitral tribunal, under the terms established in the respective decision or award.

## **Article 9.**

The representatives of the Contracting Parties shall, whenever necessary, meetings on any matter relating to the implementation of this Agreement. these meetings shall be carried out at the request of either of the Contracting Parties on the date and venue agreed through diplomatic channels.

## **Article 10.**

If the provisions of another international agreement to which they are party or by the two contracting parties, or of domestic regulation of either Contracting Party provides for more favourable treatment than that provided for in this Agreement, prevail over this the most favourable regime.

## **Article 11.**

1 - This Agreement shall apply to all investments made by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the respective legal provisions.

2 - This Agreement does not apply to disputes arising out of acts or events that occurred prior to its entry into force.

## **Article 12.**

1 - Each Contracting Party shall notify the other Contracting Party that their respective constitutional requirements for entry into force of this Agreement, which shall be 30 days after the date of receipt of the latter notification.

2 - This Agreement shall remain in force for an initial period of ten years, after which shall be automatically extended for further periods of five years.

3 - This Agreement may be terminated by either contracting party by written notification through diplomatic channels by not less than one year before the date of expiry.

4 - In the event of a complaint, the provisions of articles 1 to 11 of this Agreement shall continue to apply for a period of five years, to all investments made before its notification.

Done at Caracas on the seventeenth day of June nineteen ninety-four in two originals in the English and Portuguese languages, both texts being equally authentic.

On the signing of the Agreement for the reciprocal promotion and protection of investments between the Republic of Venezuela and the Portuguese Republic, the undersigned Plenipotentiaries have agreed in the following provisions which constitute an integral part of this Agreement:

1) With reference to article 2:

Where an investor of one of the Contracting Parties has made investments in the territory of the other contracting party and to extend or activities in other sectors, such investments shall be considered as a new investment and therefore shall be subject to the rules on the admission of investment in accordance with article 2 of this Agreement.

2) With reference to article 3:

The Contracting Parties consider that the disposiciones of article 3 of this Agreement shall not affect the right of each contracting party to apply the relevant provisions of its tax laws which distinguish between taxpayers who are not in identical situations as regards their place of residence or with regard to the place where the investment.

Done at Caracas on the seventeenth day of June nineteen ninety-four in two originals in the English and Portuguese languages, both texts being equally authentic.