

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF PERU AND THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA ON INVESTMENT PROMOTION AND PROTECTION**

The Government of the Republic of Peru and the Government of the Republic of Venezuela, hereinafter referred to as the contracting parties;

Desiring to intensify economic cooperation for mutual benefit of both States;

In order to create favourable conditions for investments by nationals or companies of one Contracting Party in the territory of the other contracting party;

Recognizing that the promotion and protection of such an agreement can stimulate investments by private economic initiative and enhancing the well-being of the peoples of both countries.

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

(1) "investment" means every kind of asset defined in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made in accordance with this Agreement; and in particular, though not exclusively:

(a) Ownership of movable and immovable property and other property rights such as mortgages, liens and pledges;

(b) Actions or rights of participation in a company and any other form of participation ensociedades risk sharing;

(c) Claims to money, securities, rights and any other performance having an economic value;

(d) Intellectual Property Rights, such as copyrights, patents, designs, deutilidad models and industrial designs, trademarks, trade names and technological know-how, procedures, standing and goodwill;

(e) Concessions conferred by law or under a contract for the exercise of a actividadeconómica concessions, including prospecting, exploration and exploitation of natural resources.

(2) "proceeds" means the amounts obtained from an investment made in accordance with this Agreement, such as interests, profits, dividends, royalties and other income.

(3) "company" means all legal entities, including companies, business associations and other civil and carrying out an economic activity within the scope of this Agreement and that are directly or indirectly controlled by nationals of one of the Contracting Parties.

(4) National "" means natural persons who according to the laws of each Contracting Party, having the nationality of the same.

(5) "" territory means, in the areas within the land boundary, the maritime and airspace adjacent areas over which the contracting party exercises sovereignty and jurisdiction according to their respective legislation and international law.

(6) "host state" means the State in whose territory the investment is made.

## **Article 2. Promotion and Protection of Investments**

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

and shall admit in accordance with its laws and regulations.

(2) Investments by nationals or companies of one Contracting Party in the territory of the other contracting party, in accordance with the laws and regulations of the latter, shall enjoy the full protection and security of this Agreement.

### **Article 3. National Treatment and Most-favoured-nation Clause**

(1) Each Contracting Party shall ensure fair and equitable treatment in accordance with the rules of international law, in principle to investments of nationals or companies of the other contracting party made in accordance with this Agreement and shall not preclude, or Arbitrary Discriminatory Measures The management, use, enjoyment, use or disposal of investments by nationals or companies of that Contracting Party.

(2) Each Contracting Party specifically accord to such investments treatment no less favorable than accorded to investments of its own nationals or companies or to investments of nationals or companies of any third State whichever is more favourable consideration to investments of nationals or companies of the other contracting party.

(3) This treatment shall not extend to the privileges which one of the Contracting Parties to its national accords or companies of third States as part of a customs union, economic or a common market or a free trade area or similar international agreements or companies in third States.

(4) The treatment accorded by the present article shall not extend to the benefits and advantages which either contracting party grants to nationals or companies of third States as a result of the conclusion of conventions or agreements to avoid double taxation or other tax arrangements.

(5) Nothing in this Agreement shall prevent a Contracting Party from adopting the measures exigidas for reasons of national security or public order internal and external, provided they are neither discriminatory nor contrary to international law.

### **Article 4. Repatriation of Capital and Profits of Investments**

(1) No Contracting Party shall restrict to nationals or companies of the other contracting party the free transfer of payments related to investments and in particular, though not exclusively:

(a) The capital investment and reprints of made according to the laws of the host State yreglamentaciones;

(b) All the profit;

(c) The repayment of loans as defined in subparagraph (c) of paragraph (1) of article 1 of the present convenio and their interests;

(d) The proceeds of the total or partial sale or liquidation of the investment;

(e) Compensation and compensation under articles 5 and 6 of this Agreement, respectively;

(2) The transfer shall be effected in a freely convertible currency, without any restriction or delay.

### **Article 5. Expropriation**

(1) Investments made in accordance with this Convention de una by nationals or companies of the Contracting Parties may not, in the territory of the other Contracting Party, be expropriated or nationalized, subject to measures other than in its shortcomings are equivalent to expropriation or nationalization, except for cases of public interest or need declared under the laws of the Contracting Party where the measure and, in this case shall be adequately compensated.

(2) The compensation shall correspond to the value of the expropriated investment or nacionalizada immediately before the date of expropriation, nationalization or public measure having equivalent. the compensation shall be paid without delay and shall include interest until the date of actual payment, according to the usual bank interest and realizable; shall be freely transferable.

(3) The amount of compensation may be reviewed by a judicial procedure, in accordance with the laws and regulations of the Contracting Party where the measure.

### **Article 6. Compensation for Losses**

Nationals or companies of one Contracting Party who suffer losses of their investments due to war or other armed conflict,

revolution, state of national emergency, a state of siege, insurrection or other similar events in the territory of the other Contracting Party, shall be treated by the latter no less favourably than to its own nationals or companies as regards restitution, indemnification, compensation.

## **Article 7. Subrogation**

(1) If one contracting party or its authorized agent makes payment to its nationals or sociedades under a guarantee given by an investment against non-commercial risks in the territory of the other contracting party, the latter, without prejudice to their rights under article 11 relate to the first Contracting Party shall recognize the subrogation of the rights of those nationals or companies to the first Contracting Party or its authorized agent either by law or by legal transaction.

(2) Furthermore, the other Contracting Party shall recognize the scope of the case and subrogation of the contracting primeraparte or its authorized agent in all these rights of the previous incumbent conferred pursuant to this Agreement.

## **Article 8. Implementation of the Convention**

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, claim or dispute arisen prior to its Entry into Force originating in acts that occurred before that date.

## **Article 9. More Favourable Treatment**

(1) If the provisions of law of either contracting party or as agreed by the partescontratantes beyond as agreed in this Agreement is of a general or special rules under which must be accorded to investments of nationals or companies of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over the same, as is more favourable.

(2) Each Contracting Party shall perform any other altratamiento commitments incurred with regard to investments of nationals or companies of the other contracting party in its territory.

## **Article 10. Settlement of Disputes between a Contracting Party and a National of the other Contracting Party**

(1) Any dispute arising between a national or company of a Contracting Party and the contracting otraparte regarding compliance with this of this agreement should, if possible, be settled amicably between the parties to the dispute.

(2) If a dispute within the meaning of paragraph (1) cannot be settled within seis meses after the date on which either party to the dispute has promoted, shall be submitted at the request of the national or company concerned:

(a) The competent court of the Contracting Party in whose territory the investment has been made; or

(b) To international arbitration of the International Centre for Settlement of Investment Disputes), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, "signed in Washington on 18 March 1965; or, where appropriate, the additional facility for the administration of conciliation or arbitration proceedings and Fact-Finding by the secretariat of ICSID. if not available or the ICSID Additional Facility, the dispute shall, at the request of the national company, or to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) Once it has submitted the dispute to the competent court of the Contracting Party in the cuyoterritorio investment has been made or to international arbitration, the choice of one or other of the procedure shall be final.

(4) The arbitral award shall be limited to determine whether there has been a breach of this Agreement by contracting laparte concerned if such non-compliance and has caused injury to the national or company concerned. if this is the case, shall be limited to determine the amount of damages.

(5) The arbitral award shall be binding and each Party shall be implemented in accordance with its legislation.

## **Article 11. Settlement of Disputes between the Contracting Parties**

(1) Any dispute arising between the contracting parties concerning the interpretation or application del presente Convention shall, if possible, be settled by the Governments of the two Contracting Parties, through its diplomatic.

(2) If a dispute cannot be settled in this way within six months, the controversy shall, from the date in which one of the Contracting Parties to the dispute has promoted, 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 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 three months after a Contracting Party has notified the other that it wishes to submit the dispute to an arbitral tribunal.

(4) If the periods specified in paragraph (3) should not be observed, and in the absence of any other agreement, each State 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 from carrying out the said appointments, they shall be made by the Vice-President. If the Vice-President is also a national of either Contracting Party or if he is also prevented from carrying out the said appointments, they shall be made by the member of the Court next in seniority and is not a national of one of the Contracting Parties to them.

(5) The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be binding. 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 equal parts by the two Contracting Parties. The arbitral tribunal shall determine its own procedure.

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

(1) The Contracting Parties shall notify each other when their respective legislative requirements for the entry into force of this Agreement have been fulfilled.

(2) This Agreement shall enter into force thirty days after the date of the second notification. The validity period of fifteen years and thereafter shall be extended indefinitely unless either Contracting Party notifies in writing the other Contracting Party of its intention to terminate it at least twelve months before its expiration.

(3) After the expiry of the initial period of fifteen years, this Agreement may be denounced at any time with 12 months' notice.

(4) For investments made prior to the date of termination of this Agreement, the latter shall continue to be valid within 15 years after that date.

In WITNESS WHEREOF, the undersigned, have signed this Agreement.

Done at Caracas on 12 January 1996, in duplicate in the Spanish languages, both texts being equally authentic.