

# Agreement between the Republic of Austria and the Republic of Paraguay on the promotion and protection of investments

THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF PARAGUAY, hereinafter referred to as 'Contracting Parties'

DESIRING to create favorable conditions for greater economic cooperation between the parties to the agreement,

RECOGNIZING that the promotion and protection of investments can strengthen the willingness to undertake such investments and thereby make an important contribution to the development of economic relations,

HAVE AGREED AS FOLLOWS:

## Article 1. Definitions

For the purposes of this Agreement

(1) The term "investment" shall mean all assets, and in particular but not exclusively:

- a) Ownership of movable and immovable property and other rights in rem, such as mortgages, rights of liens, liens, rights of use and similar rights;
- b) Shareholdings and other types of participations in companies;
- c) Claims for money that has been surrendered to create an economic value or claims for a service having an economic value;
- d) Copyrights, industrial property rights such as inventor's patents, trade marks, industrial designs and technical procedures, know-how, trade names and goodwill;
- e) Public-law concessions for the exploration, extraction or extraction of natural resources;

(2) The term "investor" refers to the Republic of Austria

- a) Any natural person who is a national of the Republic of Austria and who makes an investment in the territory of the other Contracting Party;
- b) Any legal person or partnership established in accordance with the legislation of the Republic of Austria is established in the territory of the Republic of Austria and makes an investment in the territory of the other Contracting Party;

With regard to the Republic of Paraguay

- a) Any natural person who is a national of the Republic of Paraguay in accordance with the laws of the Republic of Paraguay and who makes an investment in the territory of the other Contracting Party;
- b) Any legal person created in accordance with the laws of the Republic of Paraguay is established in the territory of the Republic of Paraguay and makes an investment in the territory of the other Contracting Party;

(3) The term "income" means the amounts that an investment provides and, in particular, but not exclusively, profits, interest, capital gains, dividends, royalties, royalties and other charges;

(4) The term 'expropriation' also includes nationalization or any other measure having equivalent effect.

## Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall, as far as possible, promote investment in its territory from investors of the other

Contracting Parties, shall allow such investments in accordance with its legislation and shall treat them in a fair and fair manner.

(2) Authorized investments as referred to in Article 1 (1) and their income shall enjoy the full protection of this Agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the case of a re-assessment of such income also for its income. The legal extension, alteration or conversion of an investment is considered a new investment. Paragraph 1 and its income enjoy the full protection of this agreement. The same shall apply, irrespective of the provisions of paragraph 1, in the case of a re-assessment of such income also for its income. The legal expansion, change or conversion of an investment is considered a new investment.

### **Article 3. Treatment of Investment**

(1) Each Contracting Party treats investors of the other Contracting Parties and their investments as well as their own investors and their investments or investors of third States and their investments.

(2) The provisions referred to in paragraph 1 can not be construed as requiring a contracting party to grant to the investors of the other Contracting Parties and their investments the present or future advantage of any treatment, preference or privilege which may arise under paragraph 1. May be interpreted as requiring a Contracting Party to grant to the investors of the other Contracting Parties and their investments the present or future advantage of any treatment, preference or privilege which arises

- a) A customs union, a common market, a free trade area or membership of an economic community;
- b) An international agreement, an intergovernmental agreement or domestic legislation on tax issues;
- c) Border traffic.

### **Article 4. Compensation**

(1) Investments by investors of a Contracting Party may be expropriated in the territory of the other Contracting Parties only in the public interest, on the basis of a legal procedure and against compensation. Such compensation shall be equal to the value of the investment immediately prior to the date on which the actual or imminent measure became publicly known. The compensation shall be paid without undue delay and shall be payable until the date of payment at the usual bank rate of the country in which the investment was carried out; It must be in freely convertible currency and freely transferable. At the latest at the time of expropriation, appropriate provisions must be made for the setting and performance of the compensation.

(2) If a Contracting Party acquires the assets of a company which is to be regarded as a company of that Contracting Party pursuant to Article 1 (2) of this Agreement and in which an investor of the other Contracting Party has share rights it shall apply the provisions of paragraph 1 in such a way that the (2) of this Agreement is to be regarded as a company of that Contracting Party and in which an investor of the other Contracting Party has share rights, it shall apply the provisions of paragraph 1 in such a way as to ensure the appropriate compensation of that investor.

(3) The investor has the right to have the legality of the expropriation reviewed by the competent organs of the contracting party, which has prompted the expropriation.

(4) The investor has the right to have the amount of the compensation and the payment arrangements reviewed by either the competent organs of the contracting party which caused the expropriation or by an international arbitration court pursuant to Article 8 of this Agreement. Article 8 of this Agreement.

### **Article 5. Transfer**

(1) Each Contracting Party guarantees investors of the other Contracting Parties without undue delay the free transfer in freely convertible currency of the payments connected with an investment, in particular but not exclusively,

- a) Of the capital and additional amounts for maintaining or extending the investment;
- b) Of amounts intended to cover expenditure related to the management of the investment;
- c) Of income;
- d) Repayment of loans;

e) Of the proceeds in case of complete or partial liquidation or disposal of the investment;

f) Compensation referred to in Article 4 (1) of this Agreement.

(2) Payments pursuant to this Article shall be made at the exchange rates applicable on the day of the transfer payment in the territory of the Contracting Party from which the transfer is made.

(3) The exchange rates shall be determined in accordance with the quotations made to the exchanges located in the territory of each Contracting Party, or by the respective banking system in the territory of each of the Contracting Parties. The bank fees will be fair and reasonable.

## **Article 6. Subrogation**

Where a Contracting Party or an institution empowered by it provides payments to its investor on the basis of a guarantee for an investment in the territory of the other Contracting Party, that other Contracting Party shall recognize the rights of the investor of the first Contracting Party referred to in Article 8 of this Agreement and of the rights of the former The Contracting Party of Article 9 of this Agreement, the transfer of all rights and claims of this investor by law or by virtue of a legal transaction to the former Contracting Party. Furthermore, the other Contracting Party shall recognize the entry of the former Contracting Party into all such rights or claims as may be exercised by the former Contracting Party to the same extent as its legal predecessor. Article 4 and Article 5 of this Agreement shall apply mutatis mutandis to the transfer of payments to the Contracting Party in question on the basis of the rights transferred.

## **Article 7. Other Obligations**

(1) If the legislation of a Contracting Party or obligations under international law existing between the Contracting Parties or which are established in the future constitute a general or specific rule by which investments from investors of the other Contracting Parties are to be granted more favorable treatment than under this Agreement, This provision shall apply to this Agreement in so far as it is more favorable.

(2) Each Contracting Party shall comply with any contractual obligation which it has assumed in respect of investments made in its territory by an investor of the other Contracting Party.

## **Article 8. Settlement of Investment Disputes**

(1) If disputes arise from an investment between a contracting party and an investor of the other Contracting Parties, the latter shall be consigned as much as possible between the parties.

(2) If a disagreement in accordance with paragraph 1 can not be settled within three months from a written communication of sufficiently specific claims, the difference of opinion shall, at the request of the investor of the other Contracting Parties, be subject either to the jurisdiction of the Contracting Party in whose territory the investment was made or to the International Center for Investment The settlement of investment disputes created by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, \* which was opened for signature in Washington on March 18, 1965. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance, even without an individual agreement between the Contracting Party and the investor, to submit such differences of opinion to the Center and to recognize the arbitration award as binding. Such consent shall include the waiver of the requirement that the national administrative or judicial proceedings have been exhausted. If paragraph 1 is not served within three months of a written communication of sufficiently definite claims, the dispute shall, at the request of the investor of the other Contracting Parties, The Contracting Party in whose territory the investment was made or the International Center for the Settlement of Investment Disputes set up by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was signed in Washington on March 18, 1965 Has been created. In the case of an arbitration procedure, each Contracting Party irrevocably agrees in advance, even without an individual agreement between the Contracting Party and the investor, to submit such differences of opinion to the Center and to recognize the arbitration award as binding. Such consent shall include waiving the requirement that national administrative or judicial proceedings have been exhausted.

(3) The arbitration award shall be final and binding; It is enforced under national law; Each Contracting Party shall ensure the recognition and enforcement of the arbitration award in accordance with its relevant legislation.

(4) A Contracting Party which is a party to the dispute shall not, at any stage of the settlement or arbitration proceedings or the enforcement of an arbitration award, make any objection to the fact that the investor forming the other Contracting Party has received compensation for all or part of its losses on the basis of a guarantee.

## **Article 9. Settlement of Disputes between the Contracting Parties**

- (1) Differences of opinion between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by friendly negotiations.
- (2) If a dispute can not be settled within six months in accordance with paragraph 1, it shall be submitted to an arbitration tribunal at the request of one of the contracting parties. If paragraph 1 is not submitted within six months, it shall be submitted to an arbitration court at the request of one of the contracting parties.
- (3) Such an arbitration shall be formed on a case by case basis: each Contracting Party shall appoint a member and these two members shall agree on a third country national as chairman. These members shall be appointed by the chairman within a further two months within two months after the one party to the other Contracting Party has notified that it intends to submit the dispute to an arbitration tribunal.
- (4) If the time limits laid down in paragraph 3 are not met, each Contracting Party may request the President of the International Court of Justice to make the necessary appointments, in the absence of any other such agreement. If the President of the International Court of Justice has the nationality of either Contracting Party or is otherwise prevented from exercising this function, the Vice-President, or, in the event of his / her failure, may be invited to the necessary appointments under the same conditions 3, any Contracting Party may request the President of the International Court of Justice to make the necessary appointments, in the absence of any other relevant agreement. If the President of the International Court of Justice has the nationality of either Contracting Party or is otherwise prevented from exercising this function, the Vice-President, or, in the event of his / her failure, may be invited to the appointment of the most senior member of the International Court of Justice.
- (5) The arbitral tribunal shall decide its own rules of procedure.
- (6) The arbitral tribunal shall decide on the basis of this Agreement as well as on the basis of generally accepted rules of international law. It decides with multiple votes; The arbitration award shall be final and binding.
- (7) Each Contracting Party shall bear the costs of its member and its legal representation in the arbitration proceedings. The costs of the chairman and the other costs are borne equally by the two contracting parties. The court may, however, in its arbitral award, adopt a different cost regime.

## **Article 10. Application of this Agreement**

This Agreement shall apply to investments made or to be carried out by investors of one Contracting Party in accordance with the laws of the other Contracting Parties in their territory, both before and after the entry into force of this Agreement.

This Agreement shall not apply to disputes as referred to in Articles 8 and 9 of this Agreement which are pending at the time of its entry into force.

## **Article 11. Entry Into Force and Duration**

- (1) This Agreement shall be ratified and shall enter into force on the first day of the third month following the date on which the instruments of ratification have been exchanged.
- (2) The Agreement shall remain in force for ten years; After which it shall be extended indefinitely, and may be terminated in writing by any Contracting Party by giving twelve months' notice in writing by diplomatic means.
- (3) For investments made up to the date of the expiry of this Agreement, Articles 1 to 10 of this Agreement shall continue to apply for a further period of 10 years from the date of expiry of the Agreement. Articles 1 to 10 of this Agreement for a further ten years from the date of the expiry of this Agreement Of the Agreement.

DONE at Asuncion, on 13 August 1993, in two originals, each in the German and Spanish languages, both texts being equally authentic.

For the Republic of Austria:

Dr. Gerhard Heible

For the Republic of Paraguay:

Dr. Alexis Frutos Vaesken

AGREEMENT ON THE INTERPRETATION OF CERTAIN ARTICLES OF THE AGREEMENT BETWEEN THE REPUBLIC OF AUSTRIA AND THE REPUBLIC OF PARAGUAY ON THE PROMOTION AND PROTECTION OF INVESTMENT SIGNED ON 13 AUGUST 1993

Ministerio de Relaciones Exteriores

N.R. No. 5/97

Asuncion, 4 July 1997

Madam Secretary of State!

I have the honour of addressing Your Excellency to propose some definitions in the context of the Agreement signed by the Republic of Paraguay and the Republic of Austria on 13 August 1993 on the Promotion and Protection of Investments in accordance with the Constitution of our country, as follows:

With reference to Article 4(1), which states that the term "public purpose" shall include "social interest"; with reference to Article 8(4), it is emphasized that the purpose of this provision is not to provide compensation twice to the aggrieved investor. It is only a matter of ensuring that compensation is paid by the expropriating State even if the injured firm is compensated by its risk insurance. The aggrieved firm would then, if necessary, have to cede the payments made by the expropriating State to the risk insurance. This interpretation is fully consistent with the text of Article 6 of the Convention concerning subrogation; and with reference to Article 10: the provision of this Article is expressly intended to cover, without distinction, both investments made before and after the entry into force. On the other hand, the Agreement will not apply to disputes concerning an investment which arose and were brought before the entry into force. If the Austrian Government were to agree to the above declarations, this letter and Your Excellency's reply would constitute an agreement on the interpretation of certain articles of the Agreement between the Republic of Paraguay and the Republic of Austria on the Promotion and Protection of Investments signed on 13 August 1993, which forms an integral part of that Agreement. This Agreement is subject to ratification and will enter into force on the first day of the third month following the month in which the instruments of ratification have been exchanged.

I take this opportunity to renew to Your Excellency the assurance of my highest consideration.

Ruben Melgarejo Lanzoni

Minister for Foreign Affairs

Republic of Paraguay

Ms

Dr. Benita Ferrero-Waldner

State Secretary

Federal Ministry for Foreign Affairs

Republic of Austria

Asuncion

THE SECRETARY OF STATE

DR. BENITA FERRERO-WALDNER

Federal Ministry for Foreign Affairs

4 July 1997

Mr. Minister!

I have the honour to acknowledge receipt of your letter of 4 July 1997 containing the following information:

"I have the honour of addressing Your Excellency with a view to proposing some definitions in the context of the Agreement between the Republic of Paraguay and the Republic of Austria on the Promotion and Protection of Investments, signed on 13 August 1993, in conformity with the Constitution of our country, as follows:

With reference to Article 4(1), which states that the term "public purpose" shall include "social interest"; with reference to Article 8(4), it is emphasized that the purpose of this provision is not to provide compensation twice to the aggrieved investor. It is only a question of ensuring that compensation is paid by the expropriating State even if the injured firm is compensated by its risk insurance. The aggrieved firm would then, if necessary, have to assign the payments made by the expropriating State to the risk insurance. This interpretation is consistent with the text of Article 6 of the Agreement concerning subrogation; and with reference to Article 10: the provision of this Article is expressly provided for in order to cover, without distinction, both investments made before and after the entry into force.

However, the Agreement will not apply to disputes concerning an investment which arose and were brought before the entry into force.

If the Austrian Government were to agree to the above declarations, this letter and Your Excellency's reply would constitute an agreement on the interpretation of certain articles of the Agreement between the Republic of Paraguay and the Republic of Austria on the promotion and protection of investments signed on 13 August 1993, which forms an integral part of that Agreement. This agreement must be ratified and will enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged.

I have the honour to express my agreement with the definitions set out in your letter and to the fact that they form an integral part of the Agreement.

I take this opportunity to renew to Your Excellency the assurance of my highest consideration.

Mr

Dr. Ruben Melgarejo Lanzoni

Minister for Foreign Affairs

Asuncion

Signed by the Federal President and countersigned by the Federal Chancellor