

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF VENEZUELA AND THE GOVERNMENT OF THE PORTUGUESE REPUBLIC ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Venezuela and the Government of the Portuguese Republic, hereinafter referred to as “the Contracting Parties”,

Desiring to intensify economic cooperation between the two States for their mutual benefit and to maintain fair and equitable conditions for investments by investors of each Contracting Party in the territory of the other Contracting Party,

Considering that the reciprocal promotion and protection of investments will contribute to the economic prosperity of the two States,

Have agreed as follows:

Article I

For the purposes of this Agreement:

1. The term “investor” shall mean:

(a) Individuals who, under the legislation of the Contracting Party concerned, are nationals of that Contracting Party;

(b) Legal entities, including commercial companies and other companies or associations, which have their main office in one of the Contracting Parties and are constituted and operate under the laws of that Contracting Party.

2. The term “investments” shall include all kinds of assets and rights related to investments made in accordance with the legislation of the other Contracting Party and includes in particular, but not exclusively:

(a) Movable and immovable property, as well as any other rights *in rem* of enjoyment and guarantee, whether or not inherent in the ownership of such assets, in particular mortgages and pledges;

(b) Shares and other forms of interest in the capital or economic earnings of companies;

(c) Claims to sums of money or to any other benefit having economic value;

(d) Intellectual property rights, including copyrights and industrial property rights (such as patents, technical processes, trade marks, trade names, industrial designs, and also know-how, logo and name of the establishment, goodwill and clientele);

(e) Concessions under public or private law, including concessions to prospect for, explore and develop natural resources.

¹ Came into force on 7 October 1995 by notification, in accordance with article XII.

No change in the form in which the assets or rights have been invested or reinvested shall affect their status as investments, in accordance with this Agreement and based on the relevant legal provisions.

3. The term “territory” shall mean the territory of each Contracting Party as defined in the respective legislation, over which that Contracting Party exercises sovereignty, sovereign right or jurisdiction, in accordance with international law.

4. The term “income” shall mean the amounts generated by an investment, such as profits and dividends, interests, royalties and other forms of remuneration related to the investment, including any payment for technical or managerial assistance.

5. The term “liquidation of investments” shall mean the cessation of the investment in accordance with the procedures established by the legislation in force in the country where the investment was made.

Article II

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

2. Each Contracting Party shall protect investments made in its territory in accordance with its laws and regulations by investors of the other Contracting Party and shall refrain from adopting arbitrary or discriminatory measures that impede the management, manufacture, use, usufruct, expansion, disposal and liquidation of their investments.

Article III

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

2. In matters governed by this Agreement, the treatment referred to in paragraph 1 of this article shall be no less favourable than that granted by either Contracting Party to investments made in its territory, under similar conditions, by its own investors or by those of a third country.

3. The provisions contained in paragraphs 1 and 2 of this article shall not affect the most favourable treatment in force or that which shall in the future be granted by one Contracting Party to investments of investors of third States by virtue of:

(a) Participation in customs unions, free trade areas or other similar forms of economic cooperation or regional integration;

(b) Agreements on the avoidance of double taxation or any other instrument relating to taxation.

Article IV

1. Neither Contracting Party shall adopt measures which directly or indirectly deprive investors of the other Contracting Party of the investments they have made, except in the following conditions:

(a) The measures are taken for reasons of public or national interest, under the terms of the legislation in force;

(b) The measures are not discriminatory;

(c) The measures are accompanied by provisions guaranteeing the payment of immediate, adequate and effective compensation; such compensation shall be based on the market value of the investments concerned immediately before the measures were made public; the compensation shall earn interest at the exchange rate applicable on the date on which the operation is carried out, in the territory where the investment is situated; the legality of the measures referred to and the amount of the compensation may be subject to review through the applicable legal procedure.

Article V

1. Each Contracting Party shall, subject to its legislation, guarantee to investors of the other Contracting Party the free transfer without delay of amounts related to the investments, in particular:

(a) The capital and additional amounts for the maintenance or expansion of the investment;

(b) Income;

(c) Amounts required for the servicing or repayment of loans which both Parties have recognized as investments;

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

(e) Compensation and other payments contemplated in article IV of this Agreement;

(f) Any payment to be made by virtue of the subrogation contemplated in article VI of this Agreement.

2. For the purposes of this article, a transfer shall be considered to have been effected "without delay" if it has been effected within the period of time normally needed for the completion of the respective formalities. The period shall start to run on the date on which the appropriate request, accompanied by the necessary documents, was submitted and may in no case exceed one (1) month.

Article VI

If one of the Contracting Parties or an entity designated by it has provided insurance against non-commercial risks to investments made by investors of that Contracting Party in the territory of the other, and has made the payment corresponding to the insurance provided, the latter Contracting Party shall recognize the subrogation of the former with regard to all the rights of the original titleholder.

Article VII

1. Any disputes which arise between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be resolved through the diplomatic channel.

2. If no agreement is reached within a period of six (6) months following the date of notification of the dispute, either of the Contracting Parties may refer 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 a period of two months from the date of receipt of the request for arbitration, each

Contracting Party shall appoint an arbitrator. These two arbitrators shall, in turn, choose as chairman a national of a third State. The chairman shall be appointed within a period of three (3) months from the date of the appointment of the other two arbitrators.

4. If the required appointments are not made within the time limits set in paragraph 3 of this article, either of the Contracting Parties may, unless otherwise agreed, invite the President of the International Court of Justice to make the said appointments. If the President is unable to act or is a national of one of the Contracting Parties, the appointments shall be made by the Vice-President. If he is also unable to act or is a national of one of the Contracting Parties, the appointments shall be made by the next-ranking member of the Court who 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 have diplomatic relations.

6. The arbitral tribunal shall base its decisions on the provisions of this Agreement and the rules and principles of international law. The tribunal shall take its decisions by a majority vote and its decisions shall be final and binding on both Contracting Parties. The arbitral tribunal shall adopt its own rules of procedure.

7. Each Contracting Party shall bear the costs of its own arbitrator and those relating to its representation in the arbitral proceedings. The costs of the chairman and other costs of the proceedings shall be borne equally by the Contracting Parties.

Article VIII

1. Any disputes concerning the application of this Agreement which may arise between one of the Contracting Parties and an investor of the other Contracting Party who has made investments in the territory of the former shall, as far as possible, be resolved by friendly consultations.

2. If the dispute cannot be resolved amicably within a period of six (6) months from the start of such consultations, it may be referred, at the choice of the investor:

(a) To the local tribunals of the Contracting Party in whose territory the investment was made; or

(b) To arbitration by the International Centre for Settlement of Investment Disputes (ICSID) established by the Washington Convention of 18 March 1965,¹ if both Contracting Parties are parties to it, or, if necessary, to the rules that govern the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings by the Secretariat of ICSID. If, for any reason, neither ICSID nor the Additional Facility is available, the arbitration shall be governed by the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL).²

3. The arbitral tribunal shall base its decision on the provisions of this Agreement, the relevant rules and principles of international law, the legislation of the Contracting Party in whose territory the investment was made and the terms of any specific agreements relating to the investment.

¹ United Nations, *Treaty Series*, vol. 575, p. 159.

² United Nations, *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17)*, p. 34.

4. The arbitral decisions shall be final and binding on the parties to the dispute and shall be enforced in accordance with the domestic legislation of the Contracting Party in whose territory the investment was made.

5. In any case, the arbitral decision shall be limited to determining whether the Contracting Party in question failed to comply with any obligation established in this Agreement, whether such non-compliance caused damage to the investor and, if so, how much the Contracting Party should pay to the investor as compensation for both damages.

6. The Contracting Parties shall refrain from dealing through the diplomatic channel with matters relating to disputes referred to judicial process or international arbitration, until the corresponding proceedings have been concluded, except when one of the parties to the dispute has not complied with the legal ruling or decision of the arbitral tribunal, in the terms established in the respective ruling or decision.

Article IX

Representatives of the Contracting Parties shall, whenever necessary, hold meetings on any matter relating to the application of this Agreement. Such meetings shall be held at the suggestion of either Contracting Party, in the place and on the date agreed through the diplomatic channel.

Article X

If the provisions of another international agreement to which the two Contracting Parties are or will be party, or those of the domestic regulations of either of the Contracting Parties, establish more favourable arrangements than those contemplated in this Agreement, the more favourable arrangements shall prevail over the Agreement.

Article XI

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

2. This Agreement shall not apply to disputes resulting from facts or acts which predate its entry into force.

Article XII

1. Each Contracting Party shall notify the other Contracting Party of the completion of the respective constitutional requirements necessary for the entry into force of this Agreement, which shall take place thirty (30) days after the date of receipt of the second notification.

2. This Agreement shall remain in force for an initial period of ten (10) years, after which it shall be tacitly extended for successive periods of five (5) years.

3. This Agreement may be denounced by either of the Contracting Parties by written notification through the diplomatic channel no less than one year before the relevant date of expiry.

4. Should the Agreement be denounced, the provisions stipulated in articles 1 to 11 of this Agreement shall continue to apply for a period of five (5) years to all investments made before the notification.

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

For the Government
of the Republic of Venezuela:

MIGUEL ANGEL BURELLI RIVAS
Minister for Foreign Affairs

For the Government
of the Portuguese Republic:

JOSÉ DURAO BARROSO
Minister for Foreign Affairs

PROTOCOL

Upon signature of the Agreement on the Reciprocal Promotion and Protection of Investments between the Republic of Venezuela and the Portuguese Republic, the undersigned plenipotentiaries also agreed on the following provisions, which form an integral part of the Agreement:

1. *With regard to article 2:*

When an investor of one of the Contracting Parties has made investments in the territory of the other Contracting Party and wishes to expand or develop activities in other sectors, such investments shall be considered as new investments and shall therefore be subject to the rules on admission of investments in accordance with article 2 of this Agreement.

2. *With regard to article 3:*

The Contracting Parties consider that the provisions 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 tax-payers who are not in the same situation as regards their place of residence or the place where the investment is situated.

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

For the Government
of the Republic of Venezuela:

MIGUEL ANGEL BURELLI RIVAS
Minister for Foreign Affairs

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