

No. 43459

**Venezuela
and
Paraguay**

Agreement for the promotion and reciprocal protection of investments between the Government of the Republic of Venezuela and the Government of the Republic of Paraguay. Asunción, 5 September 1996

Entry into force: *14 November 1997 by notification, in accordance with article 12*

Authentic texts: *Spanish*

Registration with the Secretariat of the United Nations: *Venezuela, 2 January 2007*

**Venezuela
et
Paraguay**

Accord relatif à la promotion et à la protection réciproque des investissements entre le Gouvernement de la République du Venezuela et le Gouvernement de la République du Paraguay. Asunción, 5 septembre 1996

Entrée en vigueur : *14 novembre 1997 par notification, conformément à l'article 12*

Textes authentiques : *espagnol*

Enregistrement auprès du Secrétariat des Nations Unies : *Venezuela, 2 janvier 2007*

[TRANSLATION – TRADUCTION]

AGREEMENT FOR THE PROMOTION AND RECIPROCAL PROTECTION
OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC
OF VENEZUELA AND THE GOVERNMENT OF THE REPUBLIC
OF PARAGUAY

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

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

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing the need to promote and protect foreign investments, with the aim of fostering the economic prosperity of both States;

Have agreed as follows:

Article I

For the purposes of this Agreement, the following definitions shall apply for the terms indicated below:

1. The term "investment" means any kind of asset invested directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party, pursuant to the laws and regulations in force in the latter.

In particular, although not exclusively, the term designates:

- (a) Movable and immovable property and other property rights such as mortgages, liens and pledges;
- (b) Stocks or shares in companies and other forms of equity in companies or joint ventures;
- (c) Claims to sums of money and rights to any performance having an economic value; loans shall be included only when they are directly linked to a specific investment;
- (d) Intellectual or immaterial property rights, including, in particular, copyrights, patents, industrial designs, trademarks, commercial trade names, technological processes, know-how and goodwill; and
- (e) Economic concessions conferred by law or by contract by the Contracting Parties or their public entities, for the purpose of exercising an economic activity, and including concessions to prospect, cultivate, extract or exploit natural resources.

2. The term "investor" means:

- (a) Any natural person who is a national of one of the Contracting Parties under its legislation;

- (b) Any legal person constituted pursuant to the laws and regulations of a Contracting Party and having its head office in the territory of the said Contracting Party; and
 - (c) Legal persons constituted in the territory where the investment is made, which are under the effective control of natural or legal persons as defined in paragraphs 2(a) and (b).
3. The term "returns" means the amounts yielded by an investment, such as profits, earnings, dividends, interest, royalties and other regular income.
4. The term "territory" means:
- (a) In respect of the Republic of Paraguay, the territory over which the State exercises sovereign rights or jurisdiction in accordance with international law; and
 - (b) In respect of the Republic of Venezuela, its national territory, including maritime territory, as well as the continental shelf and exclusive economic zone over which it exercises sovereign rights and jurisdiction in accordance with international law.

Article 2. Scope of application

The present Agreement shall apply to investments in the territory of one of the Contracting Parties, made in accordance with its legislation, including, as the case may be, future admission procedures for investors of the other Contracting Party, before or after the entry into force of this Agreement. It shall not, however, be applicable to any dispute, claim, or disagreement that arose prior to its entry into force.

Article 3. Promotion of investments

1. Each Contracting Party shall promote, as far as possible, investments within its territory by investors of the other Contracting Party, and it shall admit such investments in accordance with its laws and regulations.

2. A Contracting Party that has admitted an investment in its territory, shall not arbitrarily deny or unduly delay the necessary permits in relation to such investment, including the execution of licensing contracts and technical, commercial or administrative assistance, and the entry of management, administrative, advisory, or technical personnel as necessary.

Article 4. Protection of investments

1. Each Contracting Party shall protect investments made within its territory by investors of the other Contracting Party, in accordance with its laws and regulations, and it shall not use arbitrary and discriminatory measures to obstruct the management, maintenance, use, enjoyment, growth, sale and, where appropriate, liquidation of such investments.

2. Each Contracting Party shall ensure fair and equitable treatment within its territory, in accordance with international law, for investments made by investors of the other Contracting Party. This treatment shall not be less favourable than that accorded by each Contracting Party to the investments made in its territory by its own investors, or than that granted by each Contracting Party to investments made within its territory by investors of the most favoured nation, provided the latter treatment is more favourable.

3. Most-favoured-nation treatment shall not include privileges granted by a Contracting Party to investors of a third State by virtue of its participation or membership of a free-trade zone, customs union, common market, or similar regional agreement.

4. The treatment accorded under this Article shall not refer to privileges granted by either Contracting Party to the investors of third States by virtue of a double taxation treaty or other agreements regarding taxation matters.

Article 5. Transfer

1. Each Contracting Party, in whose territory investments have been made by investors of the other Contracting Party, shall guarantee those investors free transfer of the payments relating to the investments, including in particular, but not limited to:

- (a) Returns;
- (b) Loan amortizations;
- (c) Amounts allocated to cover expenses relating to the management of the investments;
- (d) Additional contributions of capital necessary for the maintenance or development of the investments;
- (e) Proceeds from the sale or the partial or total liquidation of an investment;
- (f) The compensations provided for under Articles 6 and 7.

2. The aforementioned transfers shall be effected without delay, in freely convertible currency at the exchange rate applicable on the date of the transfer, in accordance with exchange control regulations in force in the territory of the Contracting Party in which the investment was made.

Article 6. Expropriation and compensation

1. Neither Contracting Party shall take direct or indirect expropriation or nationalization measures, or any other measure of the same nature or effect, against investments made by investors of the other Contracting Party, unless such measures are taken for the public benefit or in the social interest, and provided that they are non-discriminatory, and make provision for the payment of fair, adequate, rapid or timely compensation, in accordance with legislation in force.

2. The amount of such compensation shall correspond to the real value of the expropriated or nationalized investment before the date on which the expropriation, nationalization or equivalent measure became public knowledge.

Article 7. Compensation for losses

Investors of one Contracting Party who suffer losses on their investments in the territory of the other Contracting Party owing to war or other armed conflict, revolution, state of national emergency, rebellion, insurrection or riot in the territory of the other Contracting Party, shall receive in terms of restitution, compensation, or other settlement, treatment that is no less favourable than that accorded to its own investors or the investors of other States.

Article 8. Subrogation

When a Contracting Party or one of its authorized agencies has granted a guarantee or insurance against non-commercial risks in respect of an investment made by one of its investors in the territory of the other Contracting Party, the latter shall recognize the right of the first Contracting Party or its authorized agencies to be subjugated to the rights of the investor as recognized under the legislation of the Contracting Party receiving the investment, provided the first Contracting Party has made a payment under that guarantee.

Article 9. Settlement of disputes between a Contracting Party and an investor of the other Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party, concerning fulfilment of this Agreement in relation to an investment of the first-mentioned Contracting Party, shall, as far as possible, be settled through amicable consultations.

2. If these consultations do not result in a solution within six months from the date of the dispute settlement request, the investor may submit the dispute either to the national jurisdiction of the Contracting Party in whose territory the investment was made, or else to international arbitration.

3. The international arbitration referred to in this paragraph shall take place in the International Centre for Settlement of Investment Disputes (ICSID), created by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was opened for signature at Washington, D.C., on 18 March 1965. If, for any reason, ICSID is unavailable, arbitration shall be effected in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. Once the investor has submitted a dispute to the jurisdiction of the State party in question or to international arbitration, the choice of one or other of those procedures shall be final.

5. The arbitration tribunal shall make its decision on the basis of the present Agreement and other relevant agreements between the Contracting Parties; the terms of any particular agreement that may have been concluded with respect to the investment; the law of the Contracting Party that is a party to the dispute, including its rules on the conflict of laws; and such principles and rules of international law as may be applicable.

6. The arbitral award shall be limited to determining whether the Contracting Party has breached any provision of the present Agreement and, as a result, has caused harm to the investor.

7. The decisions of the tribunal shall be final and binding on the parties to the dispute. Each State Party shall implement them in accordance with its legislation.

Article 10. Settlement of disputes between the Contracting Parties

1. Disputes between the Contracting Parties relating to the interpretation or application of the provisions of this Agreement shall be settled through the diplomatic channel.

2. If the Contracting Parties cannot reach an agreement within six months after the beginning of the dispute, the matter shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal composed of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman, who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not responded to the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed, upon the request of that Contracting Party, by the President of the International Court of Justice.

4. If the two arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the chairman shall be appointed, upon the request of either Contracting Party, by the President of the International Court of Justice.

5. If, in the cases specified in paragraphs 3 and 4 of this Article, the President of the International Court of Justice is prevented from carrying out the said function, or if he or she is a national of either Contracting Party, the appointments shall be made by the Vice President; and, if the latter is prevented from doing so, or if he or she is a national of either Contracting Party, the appointments shall be made by the most senior judge of the court who is not a national of either Contracting Party.

6. The arbitral tribunal shall reach its decision by a majority of votes. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall, in principle, be borne in equal parts by the Contracting Parties.

7. The tribunal shall determine its own procedures.

8. The decisions of the tribunal shall be final and binding on the Contracting Parties.

Article 11. Additional provisions

1. Each Contracting Party shall observe at all times all the commitments it has entered into with respect to treatment of the investments of investors of the other Contracting Party.

2. If, either now or in the future, the legislation of either Contracting Party, or the mutual obligations of the two Contracting Parties arising from international law apart from this Agreement, contain a general or specific rule under which the investments of investors of the other Contracting Party are granted more favourable treatment than that provided for in this Agreement, such a rule shall prevail over this Agreement.

Article 12. Entry into force, and duration and termination of the Agreement

1. This Agreement shall enter into force 30 days after the date on which the Contracting Parties have notified each other in writing that they have fulfilled the constitutional procedures necessary for its approval in their respective countries; and it shall remain in force for a period of 10 years.

2. Unless either of the Contracting Parties decides to renounce the Agreement, by giving at least 12 months' written notice prior to its current expiry date, the present Agreement shall be tacitly renewed for successive 10-year periods.

3. With respect to investments made before the date of termination of this Agreement, Articles 1 to 11 thereof shall remain in force for a period of 10 years from that date.

In witness whereof, the signatories below, duly authorized for the purpose by their respective Governments, have signed the present Agreement.

Done in the city of Asunción on 5 September 1996, in two original copies in the Spanish language, both texts being equally authentic.

For the Government of the Republic of Venezuela:

MIGUEL ANGEL BURELLI RIVAS
Minister of Foreign Relations

For the Government of the Republic of Paraguay:

RUBEN MELGAREJO LANZONI
Minister of Foreign Relations