

AGREEMENT BETWEEN THE BOLIVARIAN REPUBLIC OF VENEZUELA AND THE REPUBLIC OF COLOMBIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The **BOLIVARIAN REPUBLIC OF VENEZUELA** and the **REPUBLIC OF COLOMBIA**, hereinafter referred to as "the Parties" or individually as "the Party,"

- **DESIRING** to strengthen and deepen the bonds of friendship and the spirit of ongoing cooperation between the Parties;
- **DESIRING** to promote greater cross-border economic cooperation between them, particularly regarding direct cross-border investment by investors from one Party in the territory of the other Party;
- **SEEKING** to create and maintain favorable conditions for direct cross-border investments by investors from one Party in the territory of the other Party;
- **RECOGNIZING** the importance of direct cross-border investment in the transfer of technology, the formation of value-added chains, the adoption of new production methods, the stimulation of exports, the diversification of the productive matrix, the substitution of imports, economic growth, the stimulation of capital flows, job creation, and development for the Parties, among others;
- **CONVICED** that these objectives can be achieved without compromising general health, safety, and environmental measures, as well as internationally recognized labor rights;

HAVE AGREED AS FOLLOWS:

ARTICLE 1: Purpose

This Agreement aims to establish, maintain, and consolidate a legal framework that facilitates and promotes direct cross-border investments made by investors from one Party in the territory of the other Party, with the goal of promoting the harmonious, productive, and sustainable development of both peoples, respecting the sovereignty and self-determination of each of the Parties' national legal systems and international law.

ARTICLE 2: Definitions

For the purposes of this Agreement:

a. The term "**Investment**" means all types of assets related to activities aimed at producing goods and services, acquired directly by an investor of the Issuing Party with funds not originating from the Receiving Party, with the aim of establishing lasting economic relations in the territory of the Receiving Party, allowing for control or a significant degree of influence over the management of the production of goods or the provision of services, and that is an investment made in accordance with the national legal order of the Receiving Party, including compliance with capital commitment requirements or other resources, expectation of gain, contribution to economic development, or a certain duration. It will include but not exclusively:

i. A company established in accordance with the national legal order of the Receiving Party and that complies with the requirements established in this Agreement;

ii. Rights over movable and immovable property, including property and other real rights such as mortgages, pledge rights, usufruct, encumbrances, commitments, and any other similar right defined in accordance with the national legal order of the Receiving Party;

iii. Reinvested returns;

iv. Shares, titles, bonds, and obligations issued by commercial companies and any other similar forms of participation in companies of any kind;

v. Credit operations, rights over sums of money, or over any other payment right that is related to the economic value of an Investment;

vi. Intellectual property rights such as copyrights, patents, utility models, industrial designs, trademarks, know-how, and goodwill; and

vii. Economic rights such as business concessions, licenses or authorizations granted by law or contract, including concessions for exploration, processing, extraction, and exploitation of natural resources.

For greater certainty, the term "Investment" does not include:

- i. Real estate or other goods, tangible or intangible, that are not used, or have not been acquired in the expectation of using them, for the purpose of obtaining economic benefits or for other business purposes related to the investments covered by this Agreement;
- ii. An order, judgment, or arbitral award issued by a judicial, administrative, or arbitral authority;
- iii. Debt securities issued by a Party or loans granted by a Party to the other Party, bonds, obligations, loans, and other debt instruments of a state enterprise of a Party that this Party treats as public debt;
- iv. Portfolio investments that do not enable the Investor to have a significant degree of influence in their management;
- v. Monetary claims derived exclusively from commercial contracts for the sale of goods or services by a national of a company in the territory of a Party to a national or a company in the territory of the other Party, or the granting of credit in relation to a commercial transaction.

Any change in the form in which assets or rights are invested or reinvested shall not affect their character as Investment, provided that such change is made in accordance with the national legal order of the Party in whose territory the Investment was made.

b. The term "Investor" means:

- i. A natural person who has the nationality of a Party according to its national legal order, who has made an Investment in the territory of the other Party, and who does not possess the nationality of the Receiving Party;
- ii. A legal entity, including companies, enterprises, business societies, and other associations or organizations with profit motives, incorporated or constituted according to the legal order of the Issuing Party, and that have their registered offices along with significant commercial activities in the territory of such Party, provided they are not controlled by a national of the Receiving Party.

The definition of "**investor**" does not include financial entities, funds, or other lenders that provide credits or loans to an Investor covered under this Agreement.

c. The term "Returns" means the amounts obtained from an Investment, including interests, capital gains, dividends, rents, and fees for technical assistance and management, payments in kind, and any other payment regardless of its type.

d. "Receiving Party" means the Party in whose territory the Investment is made.

e. "Issuing Party" means the Party whose national makes the Investment.

f. "National" means a natural or legal person who, under the domestic law of a Party, is considered as its national, and who:

- i. Is not a national of both Parties;
- ii. Acquired the nationality of the Issuing Party before the Investment was made;
- iii. Has not lost the nationality of the Issuing Party after the Investment was made; and
- iv. Whose nationality of the Issuing Party is their effective nationality in accordance with the rules of customary international law.

g. "Territory" shall be understood as the continental territory and island formations, the airspace above them, and the electromagnetic spectrum in and over the continental and insular territory of each of the Parties, not considering, for the purposes of this Agreement, marine and submarine areas nor the common rivers of the Parties.

None of the provisions of this Agreement presupposes or conditions the positions of the Parties regarding the delimitation or demarcation of the border and may not be interpreted as a modification of what is established in the border agreements signed.

ARTICLE 3: Scope of Application

This Agreement shall apply to investments made in the territory of a Party in accordance with its national legal order by investors of the other Party, both before and after the entry into force of this Agreement. However, this Agreement shall not apply to disputes arising in respect of measures, actions, or omissions that occurred before its entry into force, even if their effects persist after such entry into force.

This Agreement shall not apply to any measures related to taxes and other levies.

ARTICLE 4: Promotion and Protection of Investments

- a. Subject to their national legal order, each Party shall encourage and create favorable conditions for investors of the other Party to make direct cross-border investments in its territory.
- b. The extension, alteration, or transformation of an investment must be made in accordance with the national legal order of the Receiving Party in whose territory the investment is made.
- c. In order to increase direct cross-border investment flows, each Party shall endeavor, at the request of the other Party, to inform the latter of investment opportunities in its territory.
- d. For the purpose of monitoring the behavior of investment flows, investors must inform the competent national authority in charge of investment matters of the Receiving Party about the investments made according to its internal regulations.

ARTICLE 5: Non-Discrimination

a. Nothing in this Agreement shall be interpreted as preventing a Party from adopting, maintaining, or applying non-discriminatory legal measures:

- i. Designed and applied to protect human, animal, or plant life or the environment;
 - ii. Ensuring compliance with laws and regulations that are not incompatible with the provisions of this Agreement;
- or
- iii. Related to the conservation of exhaustible natural resources, whether living or non-living.

b. Nothing in this Agreement shall be interpreted as to:

- i. Require any Party to provide or allow access to any information whose disclosure it considers contrary to its essential security interests;
- ii. Prevent any Party from taking any action it considers necessary for the protection of its essential security interests:

1. In relation to the traffic of arms, ammunition, and war implements, and for the traffic and transactions in other goods, materials, services, and technology carried out directly or indirectly with the purpose of supplying a military service or other security establishment;

2. Taken in times of war or other emergencies in international relations; or

3. In relation to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

4. Act in accordance with its obligations under the United Nations Charter for the maintenance of international peace and security.

iii. Prevent any Party from acting in compliance with its obligations under the United Nations Charter for the maintenance of international peace and security.

c. Nothing in this Agreement shall be interpreted to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

i. The protection of investors, depositors, financial market participants, policyholders, policy applicants, or persons to whom a fiduciary duty is owed by a financial institution;

ii. Maintaining the safety, soundness, integrity, or financial responsibility of financial institutions; or

iii. Ensuring the integrity and stability of its financial system. The adoption, maintenance, or application of the above measures is subject to the requirement that they are not applied in an arbitrary or unfair manner or constitute a disguised restriction on the investments of investors of the other Party."

ARTICLE 6: National Treatment

- a. For clarity, this Agreement shall not lead to unjustifiably favorable treatment of foreign investors over national investors.
- b. Subject to their national legal order, the Parties shall favorably consider applications for entry and residence from nationals of either Party wishing to enter the territory of the other Party in connection with making an Investment.
- c. The provisions for non-discrimination and national treatment in this Agreement shall not apply to any actual or future benefits granted by either Party as a result of its membership in or association with a customs, economic, or monetary union, a common market, or a free trade zone to nationals or companies of the member states of such union, common market, or free trade area or any other non-Party third party.
- d. The provisions of this Agreement shall not obligate a Party to grant to investments by investors of the other Party the same treatment accorded to investments by its own investors with respect to the acquisition of land, real estate, and real rights in accordance with its national legal order.

ARTICLE 7: Expropriation and Nationalization

- a. Investments made by investors of the Issuing Party may be expropriated or nationalized by the Receiving Party for reasons of public necessity, public interest, or general interest in accordance with the national legal order of each Party and subject to due process and against just compensation or indemnification, provided that such measures are not taken in a discriminatory manner in accordance with the national legal order of the Receiving Party.
- b. The amount of compensation or indemnification shall be equivalent to the market value of the investment immediately before the nationalization or expropriation measures become public knowledge.
- c. Non-discriminatory legal measures designed and applied to protect legitimate public welfare objectives, such as health, safety, and the environment, do not constitute expropriation.
- d. Affected investors shall have the right, in accordance with the national legal order of the Party making the expropriation, to access the judicial authority of that Party to review the amount of compensation and the legality of such expropriations or comparable measures.

ARTICLE 8: Compensation for Losses

Investors of either Party whose investments suffer losses in the territory of the other Party due to war, insurrection, civil disturbances, a state of national emergency, or other similar events, shall be granted restitution, compensation, or another form of settlement, under conditions no less favorable than those granted by the Receiving Party to its own investors or to investors of any third non-Party state regarding such losses.

ARTICLE 9: Transfer

- a. Each Party, subject to the fulfillment of all internal requirements established in its national legal order, will allow investors from the other Party to make transfers related to their Investment. Such transfers include, but are not limited to, the following:
 - i. The initial contribution and initial capital and additional amounts to maintain or increase the Investment;
 - ii. Returns directly related to the Investment;
 - iii. The proceeds from the total or partial sale or liquidation of the whole or part of an Investment;
 - iv. The amount of compensation in accordance with Articles 7 and 8;
 - v. Reimbursements and interest payments derived from loans in relation to investments;
 - vi. Salaries, wages, and other remunerations received by nationals of one Party who have obtained the corresponding work permits in the territory of the other Party related to an Investment; or
 - vii. Payments derived from an Investment dispute.
- b. Transfers will be made in the freely usable currency in which the Investment was made or in any freely usable currency at the exchange rate prevailing on the date of the transfer, unless the Investor and the Receiving Party agree otherwise. For the realization of the transfers, the fiscal obligations established in the national legal order of the Receiving Party of the Investment must be observed.

c. Notwithstanding the provisions of paragraphs a and b, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its national legal order, relating to:

- i. Bankruptcy, insolvency, or the protection of creditors' rights;
- ii. Issuing, trading, or dealing in securities;
- iii. Criminal offenses or administrative infractions;
- iv. Reporting of currency transfers or other monetary instruments; or
- v. Ensuring the satisfaction of judgments or awards in adjudicatory proceedings.
- vi. Establishing the instruments or mechanisms necessary to ensure the payment of income tax by means such as withholding the amount related to dividends or other concepts.

d. No Party may require its investors to transfer, or penalize its investors for not transferring, the income, earnings, or other amounts derived from or attributable to investments in the territory of the other Party.

e. Paragraph d shall not be construed as preventing a Party from imposing any measure through the equitable, non-discriminatory, and good faith application of its national legal order, related to the provisions set out in clauses (i) to (vi) of paragraph c.

Notwithstanding the stipulations in paragraph a, each Party shall have the right, in circumstances of exceptional or severe balance of payments difficulties, to temporarily restrict transfers in an equitable and non-discriminatory manner, in accordance with internationally accepted criteria. The limitations adopted or maintained by a Party in accordance with this paragraph, as well as their elimination, shall be promptly notified to the other Party.

ARTICLE 10: Subrogation

If a Party or a duly authorized public or private entity of that Party indemnifies an investor under insurance or other guarantee for non-commercial risks in relation to their investment in the territory of the other Party, it shall be subrogated to the rights corresponding to the investor under this Agreement. The rights or claims subrogated shall not exceed the original rights or claims of the investor. Conflicts between a Party and an insurer shall be resolved in accordance with the provisions of Article 12 of this Agreement.

ARTICLE 11: Settlement of Disputes between the Parties

The Parties shall, as far as possible, resolve any dispute concerning the interpretation or application of this Agreement through consultations or diplomatic channels.

ARTICLE 12: Settlement of Disputes between a Party and Investors of the Other Party

a. Any investment-related dispute between one of the Parties and an investor of the other Party concerning matters governed by this Agreement shall be notified in writing by the investor to the Receiving Party, including detailed information on the claim, specifying the provisions of the Agreement considered to have been violated, the facts on which the dispute is based, the estimated value of the damages claimed, and the compensation sought. The investor and the interested Party shall endeavor to resolve the dispute through direct consultations and negotiations in good faith.

b. If the dispute cannot be amicably resolved within six (6) months from the date of receipt of the written notification mentioned in paragraph a of this article, it shall be submitted, at the investor's choice, to:

- i. The competent court of the Party in whose territory the investment was made; or
- ii. An ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) adopted by the United Nations General Assembly on December 15, 1976.

The Parties may agree that the administration of arbitral disputes is carried out by a binational Arbitration Center.

c. An investor may submit a dispute as mentioned in paragraph a to arbitration according to paragraph b only if:

- i. The investor has stated it in writing;

- c. The Joint Committee will be co-chaired by the Minister of Popular Power with competence in Foreign Trade of Venezuela and the Minister of Commerce, Industry, and Tourism of Colombia or those they respectively designate.
- d. The Joint Committee will agree on its meeting schedule and establish its agenda.
- e. The Joint Committee may:
- i. Establish or dissolve subcommittees, working groups, and other bodies or assign them responsibilities;
 - ii. Communicate with all stakeholders, including the private sector and social organizations, through the government of the corresponding Party;
 - iii. Make recommendations as provided in this Agreement;
 - iv. Adopt its internal regulations.
- f. The Joint Committee shall:
- i. Ensure the proper functioning of this Agreement;
 - ii. Supervise and facilitate the implementation and application of this Agreement and promote its general objectives;
 - iii. Supervise the work of all subcommittees, working groups, and other bodies established under this Agreement;
 - iv. Consider ways to further improve trade relations between the Parties;
 - v. Explore ways of cooperation to strengthen productivity and integration between the Parties;
 - vi. Address any other matter of interest related to the area covered by this Agreement.

ARTICLE 16: Consultation and Exchange of Information

The Parties may agree at any time, at the request of either Party, to hold consultations on the interpretation or application of this Agreement. At the request of either Party, information will be exchanged on the measures of the other Party that may have an impact on new investments, existing investments, or profits covered by this Agreement.

ARTICLE 17: Entry into Force, Duration, Amendments, and Denunciation


- a. This Agreement shall enter into force sixty (60) days after the date of receipt of the last notification made by the Parties in writing and through diplomatic channels, regarding the completion of their respective internal legal procedures necessary for this purpose.
- b. This Agreement shall remain in force for a period of ten (10) years and will continue in force unless terminated in accordance with paragraph d of this article.
- c. This Agreement may be amended by mutual written consent of the Parties at any time. Amendments shall enter into force in accordance with the same legal procedure prescribed in paragraph a of this Article.
- d. In the event of denunciation, it shall be carried out in accordance with the applicable customary international law norms and principles. The provisions of Articles 1 to 16 of this Agreement shall remain in effect for a period of five (5) years following the date of denunciation.

Signed in duplicate in the Spanish language in the city of Caracas, Bolivarian Republic of Venezuela, on the third (03) day of February 2023.



NICOLÁS MADURO MOROS

FOR THE BOLIVARIAN REPUBLIC OF VENEZUELA: Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela



DARÍO GERMÁN UMAÑA MENDOZA

FOR THE REPUBLIC OF COLOMBIA: Darío Germán Umaña Mendoza, Minister of Commerce, Industry, and Tourism