

**SUPPLEMENTAL TREATY
BETWEEN THE HIGH PARTIES TO THE FINAL ACT
OF THE CONGRESS AT VIENNA
CONCERNING
THE PROMOTION AND
PROTECTION OF INVESTMENTS**

The plenipotentiaries of the high powers who signed the Treaty (hereinafter individually referred to as "the Contracting Party", or collectively referred to as "the Contracting Parties"),

In the name of the most holy and undivided trinity,

DESIRING to foster lasting peace, economic stability and create favourable conditions for greater investment by nationals and companies of one Contracting Party in the territory of another Contracting Party;

RECOGNISING that the encouragement and protection under international agreement of such investments will be conducive to the stimulation of mutual trust, peace and individual business initiatives and will increase prosperity in the Contracting Parties;

HAVE AGREED as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement:

(a) "**companies**" means:

any corporation, firm or association incorporated or constituted under the law of one of the Contracting Parties.

(b) "**investment**" means:

every kind of asset and any contribution in cash, in kind or in services, invested or reinvested directly or indirectly and particularly, though not exclusively, includes:

(i) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) shares in and stock and debentures of a company and any other form of participation in a company;

(iii) claims to money or to any performance under contract having a financial value; and

(iv) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets or contributions in cash, in kind, or in services, invested or reinvested directly or indirectly does not affect their character as investments.

(c) "**nationals**" means:

in respect of the Contracting Parties, any physical person who, according to the legislation of the Contracting Party, is considered as a citizen of said Contracting Party

(d) "**returns**" means:

the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, and fees.

(e) "**territory**" means:

in respect of the Contracting Parties, the land territory, as well as the maritime areas, i.e. the marine and underwater areas which extend beyond the territorial waters of the Contracting Party upon which it exercises, in accordance with international law, its sovereign rights and its jurisdiction for the purpose of exploring, exploiting and persevering natural resources;

ARTICLE 2

Promotion and Protection of Investment

1. Each Contracting Party shall encourage and create favourable conditions for nationals or companies of the other Contracting Parties to invest capital in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such capital.
2. Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Parties.
3. Except for measures required to maintain public order or public safety, no Contracting Party shall in its territory impair, either in law or in practice, by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Parties.
4. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Parties.

ARTICLE 3

National Treatment and Most-Favoured-Nation Provisions

1. No Contracting Party shall in its territory, subject investments or returns of nationals or companies of the other Contracting Parties to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any Third State.
2. No Contracting Party shall in its territory subject nationals or companies of the other Contracting Parties, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any Third State.
3. For the avoidance of doubt it is confirmed that the treatment provided for in paragraphs (1) and (2) above shall apply to the provisions of Articles 1 to 13 of this Agreement.

ARTICLE 4

Compensation for Losses

Without prejudice to the other provisions of this Agreement, investors of one Contracting Party whose investments suffer losses owing to war or other armed conflict, a state of national emergency or revolt in the territory of any other Contracting Party shall be granted by the latter Contracting Party a treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party grants to its own investors or to the investors of the most favoured nation, whichever is more favourable to the investors concerned. Resulting payments shall be freely transferable.

ARTICLE 5

Expropriation

1. Investments of nationals or companies of any Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Parties except for a public purpose, security or national interest of compensation. Such

compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay be effectively realizable and be freely transferable. The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of the Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

2. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Parties own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Parties who are owners of those shares.

ARTICLE 6

Transfers

Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Parties the free transfer of all investments and returns including all payments relating thereto. Transfers shall be affected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency with no other expenses than the usual banking cost. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

ARTICLE 7

Exceptions

The provisions of this Agreement relative to the grant of treatment no less favourable than that accorded to the nationals or companies of any Contracting Party or of any Third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any

treatment, preference or privilege resulting from any existing or future customs union.

ARTICLE 8

Settlement of Investment Disputes

1. Any dispute relating to an investment between an investor of one Contracting Party and another Contracting Party shall be notified in writing.

As far as possible, the Parties to the dispute shall endeavour to settle the dispute through amicable negotiations.

2. If the dispute cannot be settled within three months from the notification, the investor may choose to submit it for resolution:

- (a) to the competent jurisdiction of the Contracting Party where the investment was made; or
- (b) to international arbitration.

To this end, each Contracting Party agrees in advance and irrevocably to the settlement of any dispute by this type of arbitration. Such consent implies that both Parties waive the right to demand that all domestic administrative or judicial remedies be exhausted.

3. In the case of international arbitration under subparagraph (2) (b) of this article, the dispute shall be submitted in writing for settlement by arbitration to one of the hereinafter mentioned organisations, at the option of the investor:

- (a) an ad hoc arbitral tribunal set up according to the arbitration rules laid down by the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.) in the territory of a Contracting State to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the "New York Convention");
- (b) the International Centre for the Settlement of Investment Disputes (I.C.S.I.D.), set up by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on March 18, 1965;
- (c) an arbitral tribunal established

(i) in accordance with the Permanent Court of Arbitration (P.C.A.) Arbitration Rules 1812 (P.C.A. Rules) which will resolve the dispute under the said rules; and

(ii) in the territory of a Contracting State to the New York Convention.

4. An investor other than a physical person which has the nationality of a Contracting Party to the dispute on the date of the submission in writing referred to in paragraph (3) of this article and which, before the dispute between it and that Contracting Party arose, was controlled by investors of another Contracting Party, shall for the purposes of article 25 (2) (b) of the I.C.S.I.D. Convention be treated as a "national of another Contracting State" and for the purposes of article 1 (*2bis*) P.C.A. Rules be treated as a "party of another State".

5. At any stage of the arbitration proceedings or of the execution of an arbitral award, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection or as defence to claim the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant to an insurance policy or to the guarantee provided for in Article 10 of this Agreement.

6. The arbitral awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to execute and comply with the awards in accordance with its national legislation and applicable international agreements in force.

ARTICLE 9

Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel.

2. If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of any Contracting Party be submitted to an arbitral tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a Third State who on approval by the two Contracting Parties shall be appointed Chairman of the

tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, any Contracting Party may, in the absence of any other agreement, invite the Secretary-General of the Permanent Court of Arbitration to make any necessary appointments. If the Secretary-General is a national of any Contracting Party or if he is otherwise prevented from discharging the said function, the Deputy Secretary-General shall be invited to make the necessary appointments. If the Deputy Secretary-General is a national of any Contracting Party or if he too is prevented from discharging the said function, the Member of the Permanent Court of Arbitration next in seniority who is not a national of any Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on all Contracting Parties which were parties to the dispute. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties that were parties to the dispute. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one Contracting Party, and this award shall be binding on all Contracting Parties that were parties to the dispute. The tribunal shall determine its own rules of procedure.

ARTICLE 10

Subrogation

Where a Contracting Party or its designated agency has guaranteed any indemnity in respect of any investment by any of its investors in the territory of the other Contracting Parties and has made payment to such investors in respect of their claims under this Agreement, the other Contracting Parties agree that the first Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and assert the claims of those investors. The subrogated rights or claims shall not exceed the original rights or claims of such investors.

ARTICLE 11

Application of other Rules

If the provisions of law of any Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by nationals or companies of the other Contracting Parties to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

ARTICLE 12

Scope of Application

This Agreement shall apply to all investments made before or after its entry into force by investors of any Contracting Party. However, the provisions of this Agreement shall not apply to claims which have been settled prior to its entry into force.

ARTICLE 13

Meetings

1. The representatives of the Contracting Parties shall hold meetings for the purpose of:
 - (a) reviewing the implementation of this Agreement;
 - (b) exchanging information about legal matters and investment opportunities;
 - (c) reviewing disputes arising out of investments;
 - (d) forwarding proposals on promotion of investment; and
 - (e) studying other issues in connection with investment.
2. Where any Contracting Party requests consultation on any matters of paragraph (1) of this Article, the other Contracting Parties shall give prompt response through diplomatic channels on the consultation to be held alternately in the capitals of the Contracting Parties.

ARTICLE 14

Entry into Force

Each Contracting Party shall notify the other Contracting Parties of the fulfilment of its internal legal procedures required for the bringing into force of this Agreement. This Agreement shall enter into force on the day following the date of receipt of the latter of all notifications.

ARTICLE 15

Duration and Termination

1. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which any Contracting Party shall have given written notice of termination of this Agreement to the other Contracting Parties.

2. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Article 1 to 13 shall remain in force for a further period of twenty years from the date.

* * *

A copy of this General Treaty shall be deposited, in the Archives of the Court and State of his Imperial and Royal Apostolic Majesty, at Vienna, in case any of the Courts of Europe shall think proper to consult the original text of this instrument.

In faith of which the respective Plenipotentiaries have signed this Act, and have affixed thereunto the seals of their arms.

Done at Vienna the 10th of June, in the year of our Lord 1815.

Austria, (L. S.)The Prince of Metternich

(L. S.) The Baron of Wessenberg

Spain,

France, (L. S.) The Prince of Talleyrand

(L. S.) The Duke of Dalberg

(L. S.) The Count Alexis of Noailles

Great

Britain, (L. S.) Clancarty

(L. S.) Cathcart

(L. S.) Stewart, L. G.

Portugal, (L. S.) The Comte oh Palmella

(L. S.) Antonio de Saldanha da Gania

(L. S.) D.Joaquim Leboda Siltxira

Prussia, (L. S.) The Prince of Hardenberg

(L. S.) The Baron of Humboldt

Russia, (L. S.) The Prince of Rasoumoffsky

(L. S.) The Count of Stackelberg

(L. S.) The Count of Nesselrode

Sweden, (L. S.) The Count Charles-Axel de
Lowenhielm