



The OPEC Fund for International Development

**AGREEMENT FOR  
THE ENCOURAGEMENT AND PROTECTION  
OF INVESTMENT**

**BETWEEN**

**THE REPUBLIC OF PARAGUAY**

**AND**

**THE OPEC FUND FOR INTERNATIONAL DEVELOPMENT**

## The OPEC Fund for International Development

AGREEMENT between the Republic of Paraguay (hereinafter called the Host Country) and the OPEC Fund for International Development (hereinafter called the OPEC Fund).

Whereas OPEC Member States, being conscious of the need for solidarity among all developing countries and aware of the importance of financial cooperation between them and other developing countries, have established the OPEC Fund to provide financial support to the latter countries, in addition to the existing bilateral and multilateral channels through which OPEC Member States extend financial assistance to other developing countries;

And whereas the OPEC Member States have, in addition, empowered the OPEC Fund to partake in the stimulation of capital flows thereto and, specifically, to assist in financing private sector activities involving entities located in the territories of other developing countries, including the Host Country, with a view to optimizing the aforementioned objective of financial cooperation;

And whereas the Host Country and the OPEC Fund have agreed that a stable framework for the envisaged investments will maximize effective utilization of economic resources and improve living standards; and, accordingly, have resolved to conclude an agreement concerning the encouragement and protection of such investment activities;

Now, therefore, the parties hereto hereby agree as follows:

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## **ARTICLE I** **DEFINITIONS**

1.01 Wherever used in this Agreement, and unless the context otherwise requires, the following terms have the following meanings:

- (a) "Investment" means every kind of investment owned or controlled directly or indirectly by the OPEC Fund in the territory of the Host Country and, without prejudice to the generality of the foregoing, includes investment consisting or taking the form of:
- (i) shares, stock, and other form of equity participation, and bonds, credits, debentures, and other forms of debt interests, in a company;
  - (ii) tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges;
  - (iii) contractual rights, such as construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;
  - (iv) rights conferred pursuant to law, such as licenses and permits; and
  - (v) intellectual property, including copyrights and related rights, patents, industrial designs, as well as advisory services and confidential business information.
- (b) "Company" means any entity established under or pursuant to the Host Country's legislation and regulations, whether or not wholly or partially owned or controlled privately or by the state or any organ thereof, including a corporation, partnership, sole or joint venture or proprietorship, association or any other organization.

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- (c) "OPEC Fund" means the OPEC Fund for International Development established by the Member States of the Organization of the Petroleum Exporting Countries (OPEC) by virtue of the Agreement signed in Paris on January 28, 1976, as amended.
- (d) "OPEC Fund Management" means the Director-General of the OPEC Fund or his authorized representative.
- (e) "Host Country" means the Republic of Paraguay, including all political or administrative subdivisions thereof.

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### **ARTICLE II** **GENERAL PRINCIPLES**

2.01 With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments, the Host Country shall accord treatment no less favourable than that it accords, in like situations, to investments in its territory of its own nationals or investments in its territory of nationals or companies of a third party (hereinafter "most favoured party treatment"), whichever is most favourable (hereinafter "national and most favoured party treatment").

2.02 The Host Country shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that pertain to or affect investments are promptly published or otherwise made publicly available.

2.03 The Host Country shall provide effective means of asserting claims and enforcing rights with respect to investments and shall not in any way impair, by unreasonable or discriminatory measures, the management, conduct, operation, sale or other disposition of any such investment.

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2.04 The Host Country shall at all times accord to investments fair and equitable treatment and full protection and security, and shall in no case accord less favourable treatment than that required by international law.

2.05 The Host Country shall, as concerns matters that do not relate to national investors, accord treatment under or pursuant to its legislation and regulations to the OPEC Fund or, as the case may require, the officials, agents and other representatives of the OPEC Fund, no less favourably than the Host Country accords to other third parties, including other multilateral development finance institutions, their staff, agents and other representatives and such treatment shall extend but not be limited to the issuance of visas or permits to enter and remain in its territories for the purpose of initiating, appraising, establishing or administering, winding up or otherwise terminating any investment located in its territories or any other activity connected therewith.

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### **ARTICLE III** **PRIOR NOTIFICATION OF INVESTMENT PROPOSAL** **AND CONCURRENCE THEREON**

3.01 The OPEC Fund shall prior to each investment inform the Government of the Host Country about the envisaged investment in the form of a project proposal. Such a written proposal will contain a summary statement regarding the envisaged investment and will be forwarded by the OPEC Fund to the Minister of Finance or other representative of the Host Country designated in that behalf, for further consideration.

3.02 The OPEC Fund shall not finance any investment in the territories of the Host Country unless the Government of the Host Country confirms in writing to the OPEC Fund that it has raised no objection against the proposed investment and, furthermore, declares that it encourages the particular investment proposed by the OPEC Fund.

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## ARTICLE IV EXPROPRIATION OR NATIONALIZATION

4.01 The Host Country shall not expropriate or nationalize an investment either directly or indirectly through measures tantamount to expropriation or nationalization except for a public purpose or for a social interest; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II above.

4.02 Compensation shall be paid without delay and shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken; and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.

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## ARTICLE V MOST FAVOURABLE TREATMENT

5.01 The Host Country shall accord national and most favoured party treatment to investments as regards any measure relating to losses that investments suffer in its territories owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance or similar events.

5.02 The Host Country shall accord restitution, or pay compensation in accordance with Section 4.02 above, in the event that investments suffer losses in its territories, owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events, that result from:

- (a) requisitioning of all or part of such investments by the Host Country's forces or authorities; or

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- (b) destruction of all or part of such investments by the Host Country's forces or authorities that was not required by the necessity of the situation.

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## **ARTICLE VI** **PAYMENTS AND TRANSFERS**

6.01 The Host Country shall permit all transfers relating to an investment to be made without deduction for, and free from, any charges, taxes and restrictions as well as without delay into and out of its territory. Such transfers include:

- (a) contributions to capital;
- (b) profits, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
- (c) interest, royalty payments, management fees, technical assistance and other fees;
- (d) payments made under a contract; and
- (e) compensation pursuant to Articles IV and V.

6.02 The Host Country shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

6.03 Notwithstanding sections 6.01 and 6.02, the Host Country may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;

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- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offences; or
- (d) ensuring compliance with orders or judgments in adjudicatory proceedings.

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## **ARTICLE VII** **CONSULTATION**

7.01 The Parties to this Agreement agree to consult promptly, on the request of either, to resolve any dispute, controversy or claim in connection with this Agreement or the breach, termination or invalidity thereof or otherwise relating to the interpretation or application of this Agreement or the realization of the objectives of this Agreement.

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## **ARTICLE VIII** **ARBITRATION CLAUSE**

8.01 Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof or otherwise relating to the interpretation or application of this Agreement, that is not resolved through consultations, shall be submitted upon request of either Party to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the UNCITRAL Arbitration Rules, in force and effect on the date of this Agreement, shall govern.



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8.02 The Host Country and the OPEC Fund will each appoint one arbitrator and the two arbitrators so appointed shall together appoint the third arbitrator as chairman, failing which such third arbitrator shall be appointed by the International Court of Arbitration in Paris, France. Where the UNCITRAL Arbitration Rules do not provide for a particular situation, the arbitrators shall in their absolute discretion determine what course of action should be followed and the arbitrator's decision shall be final.

8.03 Any arbitration under this Agreement shall be held in a state (not being the Host Country) that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, United States of America, on June 10, 1958; and the English Language shall be used throughout the arbitral proceedings.

8.04 Each Party to this Agreement hereby waives any right of sovereign immunity as to it and its property in respect of the enforcement and execution of any award rendered by an arbitral tribunal constituted under or pursuant to this Agreement.

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### **ARTICLE IX** **GOVERNING LAW**

9.01 This Agreement and all documents executed in connection with this Agreement, and their validity, enforcement, and interpretation, and all disputes arising under such document, shall be governed by the applicable principles of international law and *ex aequo et bono*.

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## **ARTICLE X** **MAINTENANCE OF OTHER RIGHTS** **AND OBLIGATIONS**

10.01 This Agreement shall not derogate from any of the following that entitle investments to treatment more favourable than that accorded by this Agreement:

- (a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of the Host Country;
- (b) international legal obligations; or
- (c) any other obligations assumed by the Parties to this Agreement, including those contained in an investment authorization or an agreement or other legally enforceable undertaking for or in connection with an investment.

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## **ARTICLE XI** **ENTRY INTO FORCE,** **DURATION AND TERMINATION**

11.01 This Agreement shall enter into force upon receipt by the OPEC Fund of legal opinions, including a legal opinion or other certification issued by the Host Country's Minister of Justice or Attorney-General or the competent legal department, showing that this Agreement has been duly authorized and ratified or otherwise approved or accepted by the Host Country in conformity with its constitutional requirements and constitutes a valid and binding obligation of the Host Country in accordance with its terms.

11.02 This Agreement shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with Section 11.03.

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11.03 Each Party may terminate this Agreement at the end of the initial ten years period or at any time thereafter by giving one year's written notice to the other Party.

11.04 Notwithstanding the termination of this Agreement, all other provisions thereof, except those relating to the establishment of a new investment, shall continue to apply to any investments established or acquired prior to the date of termination and remain in force for an additional period of ten years from the said date.

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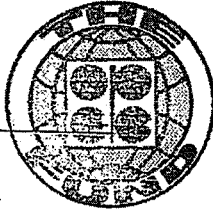
IN WITNESS whereof, the Parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in two copies in the English language, each considered an original and both to the same and one effect.

FOR THE REPUBLIC OF PARAGUAY:

Signature: *Alcides Jaramenz*  
Name: ALCIDES JARAMENZ  
Title: MINISTER OF FINANCE  
Address: Ministry of Finance  
Asunción  
Republic of Paraguay  
Telefax: 595-21-449069

Date of  
Signature: x JUNE 10<sup>th</sup>, 2003

FOR THE OPEC FUND FOR INTERNATIONAL DEVELOPMENT:

Signature: *Y. Seyyid Abdulai*   
Name: Dr. Y. Seyyid Abdulai  
Director-General  
Address: The OPEC Fund for International Development  
P.O. Box 995  
A-1011 Vienna  
Austria  
Telefax: 43-1-5139238

Date of  
Signature: June 11, 2002